

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1064 of 2017

Arising Out of PS. Case No.-26 Year-2014 Thana- GRIYAK District- Nalanda

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Dharamveer @ Dharo Manjhi S/o Ramchander Manjhi, Village- Pyarepur, P.S.-
Giriyak, Dist.- Nalanda.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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*Indian Penal Code, 1860—Sections 366A, 376, 363—POCSO Act—Section 4—
a four years girl was raped, medical evidence supports it—prosecution
witnesses are trustworthy—benefit on the ground that investigating agency has
not sent the accused for medical examination, not to be given to the
appellant/convict—the prosecution has proved the case against the accused
beyond reasonable doubt and established complete chain of circumstances from
which it can be said that the accused/appellant has committed alleged offences
—no error in Trial Court judgment—appeal dismissed.*

Paras 18.1, 19 and 20)

(2023) 6 SCC 742—Distinguished.

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P.S.- Giriyak, Dist.- Nalanda.

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Appearance :

For the Appellant/s	:	Mr. Ravindra Kumar, Advocate Mr. Sudhir Kumar Raj, Advocate Mr. Amarendra Narayan, Advocate Mr. Sandeep Kumar Pandey, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 09-04-2024

The present appeal has been filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Code’) challenging the judgment of conviction dated 22.06.2017 and order of sentence dated 28.06.2017 passed by learned 1st Additional Sessions Judge-cum-Spl. Judge, Nalanda in Giriyak P.S. Case No. 26/2014/G.R. No.- 374/14, whereby the concerned Trial Court has convicted the present appellant for the offences punishable under Sections 366A, 376, 363 of I.P.C. and Section 4 of the POCSO Act and he has been sentenced to undergo



imprisonment for 10 years with fine of Rs. 5,000/- under Section 366A of I.P.C., imprisonment for 7 years and fine of Rs. 5,000/- under Section 363 of I.P.C. and imprisonment for life and fine of Rs. 5,000/- for offence under Section 4 of the POCSO Act as per Section-42 of the POCSO Act as alternative punishment for Section 376 of I.P.C. In default of payment of above three heads of fine, the convict has to serve further S.I. for two month separately for each fine. All the sentences have been ordered to run concurrently.

2. The facts of the present case, in a nutshell, is as under:-

2.1. On 04.02.2014, at 12:00 in the night, the informant and his minor daughter, aged about 4 years, were sleeping on the same cot and the accused Dharmveer @ Dharo Manjhi was sleeping there on another cot. When the informant woke up at 6 O'clock on next morning, i.e. on 05.02.2014, he saw that his daughter was not on the cot. Then he enquired about this from his wife, who also showed the ignorance about the whereabouts of her daughter. Thereafter, the informant, his wife and the villagers started searching for the minor daughter. In course of search, the people of same *tola* disclosed that at wee hours at 4 O'clock, they had seen Dharmveer @ Dharo Manjhi going towards northern side



of *khandha* (field). Then, they started searching Dharmveer @ Dharo Manjhi and he went towards Ishua village. The informant and villagers followed him to Ishua where, on inquiry regarding the accused, one woman resident of that village disclosed that one boy had come there and he had entered in a pig barn. Thereafter, informant and the villagers took him (accused) out from there and they brought the accused to Pyarepur. On asking the whereabouts of informant's daughter, the accused disclosed that he had taken the minor girl at 4 O'clock in the morning at *khandha* and committed rape upon her and he also disclosed that the victim girl was left by him at southern side of *khandha* of the village. The agitated villagers also assaulted the accused in which the accused had sustained some injury. Meanwhile, after receiving the information, local Police also came and the villagers along with Police searched out the minor girl from the southern side of *khandha* of this village and there was swelling in her private part. The victim also indicated towards her urinary organ naming the appellant. Lastly, the informant has alleged that the accused Dharmveer @ Dharo Manjhi, after enticing away the minor girl, committed rape upon her.

3. Heard learned counsel Mr. Ravindra Kumar for the appellant assisted by Mr. Sudhir Kumar Raj, Mr. Amrendra



Narayan and Mr. Sandeep Kumar Pandey, Mr. Dilip Kumar Sinha, learned counsel for the respondent/informant and Mr. Sujit Kumar Singh, learned A.P.P. for the State.

4. Learned counsel for the appellant submits that there are no eye-witnesses to the occurrence in question and the case of the prosecution rests on circumstantial evidence. It is further submitted that the prosecution has examined only interested witnesses and no independent witness has been examined with a view to prove the case against the appellant beyond reasonable doubt. It is also contended that the Police got the information through a third party, on the basis of which, Station Diary entry was made and the concerned Police Officer came to the village. However, the said Station Diary entry has not been produced before the Court. Thereafter, it is contended that there are major contradictions in the depositions of the prosecution witnesses about the arrival of the Police at the place of occurrence. It is also contended that the Police Officer, who has recorded the *fardebayan* and who has filed the formal F.I.R., have not been examined by the prosecution. Learned counsel for the appellant would thereafter submit that the place of occurrence and the time of occurrence is also not established and the clothe of the victim girl is also not seized by the Investigating Agency. Lastly, learned counsel for the



appellant submits that the Investigating Agency has also not followed the procedure prescribed under Section 53(A) of the Code and the accused was not sent for medical examination. Learned counsel, therefore, urged that when the prosecution has failed to prove the case against the appellant beyond reasonable doubt, the Trial Court ought to have acquitted the appellant.

5. Learned counsel for the appellant has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of **Chotkau Vs. State of Uttar Pradesh**, reported in **(2023) 6 SCC 742**.

6. On the other hand, learned A.P.P. has vehemently opposed the present appeal. Learned A.P.P. submits that though it is a case of the circumstantial evidence, the prosecution has completed the chain of circumstances by leading cogent evidence before the Trial Court from which it is established that the appellant herein has committed the alleged offences. It is further contended that, from the evidence led by the prosecution, it is established that during night hours, the victim girl, aged about 4 years, was sleeping with her father, i.e. the informant, on a cot and the appellant was also sleeping on another cot near the cot of the informant. While the father of the victim girl i.e. the informant woke up in the morning, he did not find his daughter as well as the



appellant and, therefore, initially asked his wife about the whereabouts of his daughter and thereafter, when they were searching, they came to know that the accused was seen early in the morning at 04:00 a.m. going towards village Ishua. It is further submitted that the accused was found in the pig barn. When enquired by the informant and another villagers, extra-judicial confession was made by the appellant/accused that he had committed rape on the daughter of the informant and subsequently the daughter of the informant i.e. the victim was found. She also made hand gesture and pointed it towards her private parts. It is further submitted that medical evidence also supports the case of the prosecution. Therefore, the prosecution has proved the case against the appellant beyond reasonable doubt and, therefore, no error is committed by the Trial Court while passing the impugned judgment and order of conviction.

7. Having heard the learned counsels for the parties and having gone through the material placed on record, it would emerge that the case of the prosecution rests on circumstantial evidence and there is no direct evidence of the occurrence in question. Therefore, we have to examine whether the prosecution has completed the chain of circumstances from which it can be



established that the appellant herein has committed the alleged offences or not.

8. PW-1 Manoj Manjhi has stated in his examination-in-chief that when the incident happened, the victim was of 4 years of age. The victim is her grand daughter. They were sleeping in their room at the time of the incident. The victim girl was sleeping on the cot with her father. Next to her Dharamveer was also sleeping on the cot outside the house. In the morning, he saw that the girl was not there. On this, he started searching for his grand daughter, but could not find her. So, when he asked the people in the village, some people told that they had seen the girl going towards the north towards *khandha* with Dharamveer Manjhi. On this, when all the people of the village went towards Ishua village searching Dharamveer Manjhi, a woman told them that a boy has come running there and has entered the pig barn. Dharamveer was caught and brought to Pyarepur and when interrogated, he told them that he took her to the north side of the village and raped her and left her there. When asked, the girl did not tell them anything. She just made hand gesture and pointed it towards her private parts.

8.1. In his cross-examination he has stated that he slept in his house at a distance of 50 metres from the incident spot.



Dharamveer slept there for the first time that day and did not sleep there forcibly. He had never seen Dharamveer and the girl together. He went to Ishua and interrogated the woman but was unable to tell the name of the woman. Dharamveer was sitting in the pig barn and from there, they caught him. Police came to the spot at 8:00-9:00 in the morning. Further, it is stated that Dharamveer Manjhi was not treated by any doctor.

9. PW-2 Bachchi Devi @ Malo Devi has stated in her examination-in-chief that, during the search, it was found that Dharambeer Manjhi had taken the girl to *khandha* at the north. While searching for her, they went to village Ishua in which she, her son Ashok Kumar Manjhi, Manoj who is her brother-in-law along with other people of the village reached there and on reaching there, they came to know that a man had come running away and was hiding in the pig barn. When the accused was asked where the child was, he told that he had taken away their child to *khandha* where he raped her in the mustard field and left her there alone. When they searched for the girl, they found her in *khandha* and brought her back. They found that the girl had swelling in her private parts.

9.1. In her cross-examination, she has stated that she got the information at 06:00 in the morning from her son. It takes an



hour from her house to go to Ishua. When they went to Ishua, the accused was brought to Pyarepur. When Dharamveer saw them, he started running and after running for an hour, he was caught. Her son caught the accused from *bakhor*.

10. PW-3 Sharan Manjhi has stated in examination-in-chief that the victim girl is her great grand daughter. When she was searched, it was found that Dharamveer @ Dharo Manjhi had taken her and gone towards the north of the village. Later, during the search, he was caught in Ishua village. Dharamveer was found hiding in the pig barn. When Dharamveer was asked, he said that it is he who took away the girl, raped her and left her there.

10.1. In his cross-examination, he has stated that Ashok, victim girl and Dharamveer were sleeping on the same cot and he was sleeping on his cot at a distance of four bamboos. Further, he has stated that he was not a member in the searching team. He cannot say with whom Ashok had gone for search. He saw Ashok's mother with him but he did not see anyone else with him. It is also stated that Dharamveer was in the village.

11. PW-4 Tanik Manjhi has stated in his examination-in-chief that Dharamveer was caught at Ishua. When he was interrogated, he told them that he had sexually abused the girl and, as per his description, the girl was found.



11.1. In his cross-examination, he has stated that when he woke up at 06:00 in the morning, he saw that the villagers had caught hold of and interrogating Dharamveer. Further, he has stated that he had come there only to tell them what he has been asked to disclose.

12. PW-5 Sangeeta Verma was posted at V.I.M.S. Pawapuri, Nalanda on 05.02.2014. She had conducted the medical examination of the victim girl and found following injuries:-

“Female child, secondary sex character was not developed, no external injury found, no foreign body found.

Dental Examination:- ^{5/5/5/5} all decidual teeth.

On pelvic examination, laceration of labia minora, torned hymen, vagina freely admits index figure, no bleeding at present, vaginal swab taken for histopathological examination, spermatozoa not found.

R.B.C., W.B.C. -nil.

Epithelial cell present.

M.I. old scar mark on left knee.

Opinion:

(I) Lacerated wound in labia minora.

(ii) Torned hymen.

(iii) Vagina admits index finger.

Conclusion:- Rape has been committed.”

12.1. In her cross-examination, she has stated that the victim girl was brought with her grand mother for the medical examination. Opinion was based on Opinion No. (i), (ii) and (iii) of Medical Report of the victim. Laceration wounds of *labia minora* may be caused due to rubbing by her own finger. Ruptured



hymen may have been caused due to jumping or running and no external injury was found on thigh and on buttock of the victim.

13. PW-6 Alok Ranjan Kumar, the Investigating Officer who had conducted the investigation, has stated that, the formal F.I.R. bears the signature of S.H.O. Arjun Lal which he identifies. He had inspected and investigated the place of incident. The incident site is in village Pyarepur under Giriyak Police Station.

13.1. In his cross-examination, he has stated that the accused Dharamveer Manjhi @ Dharo Manjhi was presented before the Police by the villagers in an injured condition. No eye-witness was found while the accused was taking the victim away from her village Pyarepur. The statement was yet to be taken from where the accused was recovered by the villagers from the pig barn. Since there was no confirmation by the witnesses regarding the actual place where the incident of rape took place upon the victim, he had not mentioned regarding that place in the Case Diary.

14. PW-7 Ashok Kumar Manjhi is the informant who has stated in his examination-in-chief that it was the time of Saraswati Puja when Dharamveer and he were sleeping in the north direction of the house. His daughter and he himself were sleeping on the same cot. His daughter was about 4 years old at



that time. Dharamveer Manjhi was also sleeping there on the other cot. When he woke up in the morning, he did not find his daughter on the cot. Then he asked his wife Renu Devi whether she had brought the girl or not. After that, she said that she had not brought her. Then both of them together started searching for the girl. Then a man told them that Dharamveer was going in the north direction. When they started searching together, a man said that Dharamveer had run towards Ishua. When they inquired, an old woman told them that Dharamveer had entered the pig barn. Then they caught him and brought him to village Pyarepur and after that, they inquired about his daughter upon which Dharamveer said that he had raped her and thrown her in the north direction. When the villagers informed the Police, the Police came and then everyone together started searching for the girl. Then, at 04:00 p.m., his daughter was found in a *Khandha* in the north direction. Then, when the girl was interrogated, she gestured and pointed towards her private parts.

14.1. In his cross-examination, he has stated that he had been living in Pyarepur since he was born. Dharamveer's house is on the southern side of his house. It is also stated that Dharamveer is his nephew. He was on visiting terms with Dharamveer from before the incident. Dharamveer's mother is his sister-in-law.



Further, it has been stated that, before the incident, Dharamveer did not sleep with him. He had slept with him for the first time on the day of the incident. He and his daughter slept on one cot and Dharamveer slept on the other cot. Dharamveer had brought his own cot. He never had any doubts about Dharamveer's behaviour in the past. His wife slept inside the house in the night of the incident. Earlier his child used to sleep with her mother only but, on the day of *puja*, she slept with him. His daughter and he had gone to sleep at 07:00 in the evening in the night before the incident. When he woke up in the morning, he did not find the girl with him. When he woke up in the morning and did not find Dharamveer Manjhi on his cot, he started searching. The rest of the people sleeping together were there but only his daughter and Dharamveer were not there. Since they were also asleep, they could not tell about his daughter. When Dharamveer was not found after searching everywhere, a man from the village told him that Dharamveer had gone towards Ishua. He cannot reveal the name of the person who told him that Dharamveer had gone towards Ishua. It was that person who told him that he had seen Dharamveer running away with his daughter. Then, they went towards Ishua village to search for Dharamveer and his daughter. An old lady in Ishua told them that Dharamveer was hiding in the



pig barn. Many people went there with him to Ishua but he cannot tell the names of any of them. Dharamveer was found in a pig barn in the north direction of Ishua village. The girl was found later. The police had arrived by the time Dharamveer was apprehended. The police also started searching for the girl and the girl was traced. His daughter was also found in the north garden of his village. He cannot say whose garden it is. The garden is in Pyarepur. The girl was coming from there crying while walking. He picked up the girl and brought her home. The Police arrested Dharamveer from there and took him away. The Police interrogated him in *Khandha* of the village itself. At that time, it was 9 O'clock in the morning. The girl was taken to the Hospital for medical treatment. The same day, after treatment, his daughter was discharged from the Hospital. Whatever clothes the girl was wearing were not taken away by the Police. The girl was not wearing underpant when she was recovered. The distance between his village and Ishua is 1.5 k.ms. His daughter was found 50 mtrs. away from his house in the north direction. Further, he has stated that he did not have an illicit relationship with Dharamveer's mother and Dharamveer was a hindrance in it. That is why, to get him out of the way, using the excuse of the girl, he filed a false



case against him and sent him to jail so that his work could continue.

15. PW-8 Sunil Kumar Nirjhar is the Investigating Officer. He was posted at Giriyak Police Station on 11.03.2014. He has stated that he did not do any research because the jail term of 90 days of the accused was coming to an end. For this reason, he immediately submitted the charge-sheet. Further, he has stated that it is wrong to say that the final report of his research is incomplete and erroneous.

16. From the deposition given by PW-1, who is the grandfather of the victim girl, PW-2, who is the grandmother of the victim girl, PW-3 who is the great-grandfather of the victim girl and PW-7 who is the father of the victim girl and the informant of the present case, the prosecution has proved that the informant and his daughter (victim) were sleeping together on the cot whereas the accused was also sleeping on another cot near the cot of the informant. When the informant woke up in the morning, at about 04:00 am, he did not find his daughter and, therefore, he enquired from his wife and thereafter, they started searching the victim girl. It is further revealed that, during the course of the said search, from the village people, the informant came to know that the appellant was seen going towards village Ishua. It is also



revealed that the appellant had hidden himself in the said barn of the pig and from there he was found and then taken to the village Pyarepur, i.e. the village of the informant. It is also revealed from the deposition of the witnesses that the appellant made extrajudicial confession before the informant and others that he had committed rape on the daughter of the informant near *khandha*. Thereafter, the victim girl was also found near the said place. When the informant enquired, she made hand gesture and pointed it towards her private parts.

17. At this stage, it is relevant to note that PW-5 Dr. Sangeeta Verma, who had examined the victim girl, has specifically deposed that there was laceration of labia minora, torn hymen and, in conclusion, she has specifically stated that rape has been committed. At this stage, it is pertinent to note that the victim girl is aged about 4 years and the medical evidence also supports the version given by the prosecution. At this stage, it is to be observed that though there are minor contradictions and certain discrepancies in the evidence of the prosecution, however, that does not affect the case of the prosecution. There was no reason for the informant to falsely implicate the appellant/accused in the occurrence of rape of his daughter, who is aged about 4 years. Though, the defence has tried to put suggestion that the informant



is having illicit relationship with the mother of the appellant, as a result of which, he has been implicated, there is nothing on record to prove that there was such relationship between the mother of the appellant and the informant.

18. In the case of **Chotkau (supra)**, the Hon'ble Supreme Court has considered the provisions contained in Section 53(A) of the Code. However, thereafter it has been observed that the Hon'ble Supreme Court has not examined the question whether the Section 53(A) is mandatory or not. The Hon'ble Supreme Court has observed that failure of the prosecution in the said case to subject the appellant concerned to medical examination is certainly fatal to the prosecution case, especially when the ocular evidence is found to be not trustworthy. Thus, in the said case, the ocular evidence was not found to be trustworthy and, therefore, the Hon'ble Supreme Court acquitted the concerned accused in the said case.

18.1. However, the facts of the present case are different and we are of the view that the prosecution witnesses in the present case are trustworthy. Hence, merely because the Investigating Agency has not sent the accused for medical examination, benefit of the same is not required to be given to the appellant/convict in the facts of the present case.



19. We have also gone through the reasoning recorded by the Trial Court while passing the impugned order and we are of the view that the prosecution has proved the case against the accused beyond reasonable doubt and established complete chain of circumstances from which it can be said that the accused/appellant has committed alleged offences. Therefore, no error is committed by the Trial Court while passing the impugned order. Hence, no interference is required in this appeal.

20. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Sachin/-

AFR/NAFR	A.F.R.
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