

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.812 of 2019

Arising Out of PS. Case No.-407 Year-2016 Thana- KUDHNI District- Muzaffarpur

RAMAN KUMAR @ RAMANIYA, Son of Lalan Patty, Resident of Village -
Kudhani Tola, P.S. - Kudhani , Distt. - Muzaffarpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Shankar Das, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date :07-04-2021

This is an appeal against the judgment of conviction. The sole appellant, named above, faced trial before the learned 1st Additional Sessions Judge-cum-Special Judge, under the POCSO Act, Muzaffarpur in connection with Kudhani P.S. Case No. 407 of 2016 corresponding to G.R. No. 84 of 2016 and Trial No. 06 of 2017. By the impugned judgment dated 21.01.2019, the appellant was found guilty for the offences under Sections 354-A and 341 of the Indian Penal Code as well as under Section 8 of the Protection of Children from Sexual Offences Act, 2012 (in short “POCSO Act”). By the same judgment, the appellant was acquitted of the charges under Sections 323 and 324 of the Indian Penal Code. By the impugned order of sentence dated 29.01.2019, the learned Trial Judge awarded one year rigorous imprisonment for offence under Section 354-A of the Indian Penal Code, one month simple



imprisonment for offence under Section 341 of the Indian Penal Code and four years rigorous imprisonment plus fine of rupees ten thousand for offence under Section 8 of the POCSO Act. In default of payment of fine, six months rigorous imprisonment was ordered. The sentences are to run concurrently.

2. The prosecution case as disclosed in the written report (Ext. 1) of the prosecutrix (P.W. 2) is that on 15.12.2016 at 06:00 a.m., the prosecutrix a girl aged about fifteen years was going to the *Bathan* from her house. On the way, near the water pumping machine of Darogi Mahto, the appellant, a co-villager, all of a sudden, caught her and started sexual harassment. Pressing on the mouth of the victim, the appellant gave tooth bite at different portion of the chick. The appellant torn her lower garment. On alarm, the people nearby assembled then appellant fled away and the informant could save her chastity. The family of the informant went to the local *Sarpanch* who asked to go to the police station because the appellant was not ready for *Panchayati*. In the past also, the appellant had harassed the informant for which *Panchayati* had taken place.

3. On the basis of written report aforesaid Kudhani P.S. Case No. 407 of 2016 was registered.



After investigation of the case, the police submitted charge-sheet and the appellant was put on trial accordingly.

During trial, prosecution examined altogether seven witnesses and the defence also produced two witnesses.

4. The defence of the appellant is that Pramila Devi, Bhabhi of the appellant had lodged Kudhani P.S. Case No. 30 of 2017 against P.W. 6 Chandan Kumar, the full-brother of the prosecutrix, Niranjan Kumar another full-brother of the prosecutrix, Fhuleshwari Devi the mother of the prosecutrix, against the prosecutrix herself as well as against her father for offences under Sections 147, 341, 354(B), 452, 224, 225, 380 and 504/34 of the Indian Penal Code allegedly committed on 06.12.2016. The record reveals that initially Complaint Case No. 1571 of 2016 was filed by Pramila Devi for the occurrence dated 06.12.2016 on 23.12.2016 which was registered as Kudhani P.S. Case No. 30 of 2017 on 15.01.2017 on direction of the learned Magistrate under Section 156(3) Cr.P.C. Claim of the appellant is that just to pressurize for withdrawal/compromise of the aforesaid case, the present false case was lodged. In fact, the victim had sustained superficial injuries due to fall in the muddy water and stone at the water pumping machine of Darogi Mahto.



5. Learned counsel for the appellant submits that there are several material infirmities and suppression of fact in the testimony of the prosecutrix which runs contrary to the medical evidence. Except the prosecutrix, there is no other eye-witness of the occurrence. Rather the defence witnesses, who were, working in the nearby field have stated that no such occurrence took place, rather quarrel between the two families had taken place. Learned counsel further contends that in view of the contradictions in prosecution evidence, it cannot be irresistibly concluded that the prosecution has proved the charges against the appellant beyond all reasonable doubts.

6. To contra, learned counsel for the State contends that for minor infirmities, the prosecutrix cannot be disbelieved and the learned Trial Judge has minutely examined the evidence on record while recording the finding of guilt against the appellant. The same needs no interference.

7. P.W. 1 Fhuleshwari Devi is mother of the victim and has supported the case of the prosecutrix as hearsay witness. She admits that P.W. 6 Chandan Kumar is her son and Pramila Devi is an enemy. However, she expressed ignorance, on the suggestion of the defence, that Chandan Kumar, about nine days prior to the alleged incident of this case i.e. on 06.12.2016, had entered into



the house of Pramila Devi with illicit intention against Pramila Devi and was caught in the house of Pramila Devi. For that, Kudhani P.S. Case No. 30 of 2017 was registered. A *Panchayati* was convened which was not accepted by this witness and her family members and just to save skin from the case of Pramila Devi, the present case was lodged. This witness denied the prosecution suggestion that the prosecutrix slipped down on the water near the water pumping machine on a hard surface and sustained injury and just to pressurize in Pramila's case, the false case was lodged.

P.W. 2 the prosecutrix in her examination-in-chief fully supported what she had stated in the first information report. The prosecutrix admits that her brother took her for *Panchayati* but the appellant was not ready for that. She further disclosed that the appellant in the past also, twice/thrice, had sexually harassed her and on all the occasions *Panchayati* was convened but the appellant did not participate. She disclosed her date of birth as 21.04.2000 on the school records. This witness admits that Pramila Devi had lodged a case against Chandan Kumar and others vide Kudhani P.S. Case No. 30 of 2017 but that case is a false one. The witness denied that she had sustained injury by fall. The prosecutrix had denied the suggestion of the



defence that she sustained injury as she slipped on the hard surface near the boring of Darogi Mahto.

P.W. 3 Surendra Singh supported the prosecution case as hearsay witness.

P.W. 4 Jageshwar Rai deposed that he had heard from the female folk of the village that there was a quarrel between the two families. Though the witness was declared hostile and his attention was drawn to the earlier statement under Section 161 Cr.P.C. but the Investigating Officer P.W. 7 Sudama Ji Pandey has not been confronted that the witness had made such statement before him. Therefore, the prosecution cannot take benefit of the hostility of P.W. 4.

P.W. 5 Doctor Santosh Priya had examined the prosecutrix on the date of occurrence itself i.e. 15.12.2016 and had noticed the following injuries:-

- (i) Abrasion of 1"x¼" below right eye.
- (ii) Abrasion of 1"x½" at lateral side of right eye.
- (iii) Complain of back pain.
- (iv) Abrasion of 1"x¼" at the right thumb.
- (v) Abrasion of 1"x½" at root of left thumb.

All the injuries were simple in nature and caused by hard and blunt substance. In the cross-examination, the Doctor



specifically stated that at the time of examination, there was no bleeding.

P.W. 6 Chandan Kumar has supported the prosecutrix's case as hearsay witness and stated that he had written the first information report at the police station and prosecutrix had simply signed on that.

P.W. 7 the Investigating Officer has supported the investigation done by him. There is nothing in his testimony worth noting.

8. D.W. 1 Bilash Panty deposed that the prosecutrix has lodged this false case. The two families had dispute prior to the present case. The witness was present at the place of occurrence, on the date and time of occurrence and he had not seen any incident as alleged. During cross-examination, the witness admitted that his field is just west to the boring of Darogi Mahto.

D.W. 2 Dinesh Rai deposed that the prosecutrix has lodged false case against the appellant. Rather the case was lodged for different reasons due to quarrel between another brother of the appellant and Chandan Kumar (P.W. 6). During cross-examination, the witness stated that on 15.12.2016 in the morning, he was watering his field. The field was near the



boring of Darogi Mahto. No such incident took place as alleged by the prosecutrix.

9. On careful scrutiny of the evidence on record, the Court finds that the prosecution witnesses have admitted that Pramila Devi, Bhabhi of the appellant had lodged an earlier case against the prosecutrix and other family members and this fact was suppressed by the prosecution. The prosecutrix admitted during cross-examination that since she was in state of semi unconscious and her body was soiled, hence, she could not write the first information report, rather only signed on it. The medical report of the Doctor that the injuries found were caused by hard and blunt substance, the nature of the injuries inconsistent with the claim of the prosecutrix, coupled with the admission of the prosecutrix that her body was soiled with mud etc. goes to show that the prosecutrix might have sustained injury by fall at the water pump. The claim of the prosecutrix in the first information report that the appellant gave tooth bite at different portions of the chick is not corroborated by the medical evidence nor the prosecutrix has explained about other abrasions as noticed by the Doctor. There is no reason to disbelieve the defence witnesses who have deposed that at the time of alleged occurrence they were nearby the place of occurrence and no such incident had taken



place. The aforesaid material contradiction leaves sufficient room to doubt the prosecution case and evidence. The benefit whereof must go to the accused.

10. Since the prosecution case and evidence are not of such a purity to lead to only irresistible conclusion that the prosecution has proved the charges against the appellant beyond all reasonable doubts, in my view, the impugned judgment of conviction and sentence cannot be upheld. The appellant is already in custody since 21.01.2019.

11. In the result, the conviction of the appellant is hereby set aside and this appeal is allowed.

12. Let the appellant be set free at once.

(Birendra Kumar, J)

Kundan/-

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