

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.914 of 2016**

Arising Out of PS. Case No.-17 Year-2014 Thana- GOPALPUR District- Patna

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Srikant Paswan @ Srikant Paswn, Son of Jattu Paswan, R/o village - Kansari,
P.S. Gaurichak, District Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : None

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

ORAL JUDGMENT

Date : 04-08-2022

By this appeal, appellant/convicted accused, Srikant Paswan @ Srikant Paswn is challenging the Judgment and order dated 25.07.2016 and 01.08.2016 passed by the learned Ist Additional Sessions Judge, Patna, in Special (POCSO) Case No. 08 of 2014 between the parties, thereby convicting him of the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offence Act ("POCSO Act" for the sake of brevity). The accused is sentenced to suffer rigorous imprisonment for ten years apart from imposition of fine of Rs.10,000/- and default sentence of simple imprisonment for six months for the offence punishable under Section 4 of the POCSO Act. He is not separately sentenced for the offence



punishable under Section 376 of the Indian Penal Code in view of the provisions of Section 42 of the POCSO Act. For the sake of convenience, the appellant shall be referred to in his original capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. The victim of the crime in question is P.W. 6 Ms. J. (identity concealed). She used to reside at village Bhogipur falling under jurisdiction of Gopalpur Police Station. The accused used to reside in the same village. It is case of the prosecution that at about 7 P.M. of 16.02.2014, victim Ms. J. had gone to attend the call of nature in the field out side the village. While returning therefrom, near Devi Sthan, the accused caught her and forcibly dragged in the Dhania field. Then the accused stuffed her mouth by tearing her clothes. The accused thereafter committed forcible sexual intercourse with her. P.W. 6 Ms. J. was then traced out by her relatives and villagers. The accused also came to be apprehended but he was set free by other villagers subsequently. Parents of the victim female child were advised by the villagers not to file the FIR in order to save the honour of the village. However subsequently P.W. 6 Ms. J. lodged the FIR with the Station House Officer, Gopalpur Police



Station which resulted in registration of Crime No. 17 of 2014 on 19.02.2014 for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

B. After completing the routine investigation and after getting the victim examined through P.W. 2 Dr. Prem Lata Verma, Medical Officer of Guru Gobind Singh Hospital, Patna City, Patna, the accused came to be charge sheeted.

C. The learned trial court had framed and explained the charges to the accused. He pleaded not guilty and claimed trial. In order to bring home the guilt to the accused, the prosecution has examined in all eight witnesses. The defence of the accused was that of false implication. He however did not enter in the defence.

3. After hearing the parties, by the impugned Judgment and order, the learned trial court was pleased to convict the accused and to sentence him as indicted in the opening para of this Judgment.

4. In this old appeal on 11.07.2022, none appeared for the appellant. Then on 26.07.2022, the learned counsel for the appellant expressed his inability to workout the appeal. None had appeared for the State. Hence there was no alternative but to close the appeal for Judgment as the appeal is an old



appeal in which no bail has been granted to the appellant.

5. I have carefully gone through the record and proceedings including oral as well as the documentary evidence. According to the prosecution case, the accused had committed rape on the victim female child who at the relevant time was just twelve years of age. By now, it is well settled that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout the life of such victims. It is also well settled that the victim of offence of rape is not an accomplice, but she is the victim of lust of another person. Her evidence, therefore, stands on higher pedestal than the evidence of an injured witness. Therefore, if totality of circumstances emerging on record discloses that the victim of such offence does not have any motive to falsely implicate the accused, then, it is absolutely not necessary to search for any corroboration to the evidence of the victim of such offence and the court is generally bound to accept version of such victim.

6. Fate of the prosecution case, considering the nature of offence, hinges on the testimony of the victim of crime



in question. In this case, she is Ms. J. and is examined as P.W. 6. The learned trial court in order to ascertain her competency to depose had put her few preliminary questions and after coming to the conclusion that this witness is in a position to understand the questions and to give rational answers to them, allowed to examine her. P.W. 6 Ms. J. deposed that at about 7 P.M. of 16.02.2014, after relieving herself in the field, she was returning to her house. The accused then dragged her inside the Dhania field. There he stuffed her clothes in her mouth and committed rape on her. She was assaulted by the accused. As per version of the victim then her mother, father, brother and uncle found her in the field. They took her to the house. She has proved the FIR lodged by her which is at Ext.2. During cross-examination, this witness has stated that she is taking education in 5th standard in the Government School. It is brought on record from her cross-examination that the accused is also residing in her village Bhogipur with his mother-in-law Rajo Devi. It is further brought on record from her cross-examination that the accused was also apprehended on the spot of the incident but thereafter he managed to flee away. She further stated that her father had slapped her after the incident. Surprisingly it is brought on record from her cross-examination that the accused stuffed her



sweater in her mouth and made her to lie the ground. She further stated in her cross-examination that her father and brother came inside that field and gave a big scarf to her. This implies that the victim was not having any clothes on her person and she was provided a scarf by her parents. Her version in cross-examination that she was made to lie by the accused after stuffing sweater in her mouth is cementing the case of the prosecution against the accused. From cross-examination of the victim female child, nothing could be brought on record which may create doubt on her version regarding commission of rape on her.

7. The victim female child was medically examined by P.W. 2 Dr. Prem Lata Verma, the Medical Officer of Guru Govind Singh Hospital, Patna City, Patna. The victim was subjected to the ossification test. P.W. 2 Dr. Prem Lata Verma, upon ossification test of the victim had concluded that bony age of the victim was between fourteen to sixteen and half years. This Medical Officer further deposed that there were no mark of injury on body of P.W. 6 Ms. J.

8. Evidence of P.W. 2 Dr. Prem Lata Verma shows that the victim of the crime in question had not attained the age of consent. Even version of P.W. 6 Ms. J. shows that she was 12



years of age at the time of the incident. Her version about her age was not challenged in cross-examination by the defence. Therefore, it needs to be held that the victim had not attained the age of consent and she was a child at the time of commission of rape on her. The incident took place on 16.02.2014 whereas P.W. 6 Ms. J. was examined medically on 19.02.2014. As such, no over bearing importance can be given to the absence of medical evidence in respect of rape. If version of the victim of sexual offence is found truthful and trustworthy then it can be accepted even if medical evidence is not supporting the case of prosecution. (**Ranjit Hazarika Vs. State of Assam (1998) 8 SCC 635, B. C. Deva Vs. State of Karnataka (2007) 12 SCC 122**).

9. P.W. 3 Paras Paswan is uncle of the victim and the accused is son-in-law of the brother of this witness. Thus he is related to both sides. As per his version he was with other relatives of the victim for searching the victim. He stated that they saw the victim lying in naked condition in the field. This witness has proved the former statement of P.W. 6 Ms. J. to the effect that the accused forcibly caught her, lifted her and committed rape on her. This former statement was made soon after the incident by P.W. 6 Ms. J. and therefore the same is



relevant and admissible under Section 157 of the Evidence Act.

This statement is corroborating the version of P.W. 6 Ms. J.

10. P.W. 4 Mr. R. (identity concealed) is brother of the victim. He has also seen the victim lying unconscious in the Dhania field with torn clothes. This witness has also proved former statement of P.W. 6 Ms. J. made soon after the incident stating that the accused had committed rape on her. Similar is the version of P.W. 5 Mrs. K. (identity concealed) who happens to be mother of the victim. She stated that the victim was found lying unconscious in the Dhania field with torn clothes. This mother has also stated that then P.W. 6 Ms. J. has disclosed that the accused committed rape on her by stuffing her mouth with her clothes.

11. P.W. 1 Mr. S. (identity concealed) is father of the victim. He was one of the member of the search party. In an over enthusiasm, he exaggerated the facts and stated that he saws the accused committing rape on his daughter. Version of this witness is unacceptable because the others who were with him are not supporting him on this aspect.

12. P.W. 7 Krishna Murari, the Investigating Officer who had filed the charge sheet. P.W. 8 Raj Ballabh Ram had recorded the statement of witnesses and conducted the



routine investigation. It is in evidence of this witness that by preparing the seizure memo Ext. 5, he had seized clothes of the victim female child. This witness had sent those clothes for Forensic Examination. The report of the Forensic Science Laboratory Ext. 7 shows that the blood in small quantity was detected on sweater of the victim. However because of small quantity, serological test could not be conducted.

13. Thus from evidence adduced by the prosecution, it is seen that version of the victim of the crime in question is dully corroborated by evidence of other witnesses who had seen her in naked condition lying in the field, clothes stuffed in her mouth. There is no material in cross-examination of the prosecution witnesses including that of the victim to doubt their version about the incident in question. Therefore, no infirmity can be found in the impugned Judgment and order of conviction and resultant sentence. The appeal is devoid of merit and therefore, the same is dismissed.

(A. M. Badar, J)

Bhardwaj/-

AFR/NAFR	NAFR
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