IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 691 of 2010

Arising out of PS.Case No.-254 Year-2007 Thana-Sourbazar District- SAHARSA

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Sanjay Kamat, Son of Chhotkan Kamat, Resident of Village Bishanpur, P.S. Sour Bazar, District Saharsa.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Smt. Meena Singh, Advocate

For the State : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 06-07-2015

Appellant Sanjay Kamat appeals against the judgment of conviction dated 10.02.2010 and order of sentence dated 15.02.2010 passed by the learned Additional Sessions Judge-II, Saharsa in Sessions Trial No. 17 of 2008. By the impugned judgment, the appellant was held guilty of committing an offence under Section 376 of the Indian Penal Code and he, after being heard under Section 235 Cr.P.C., was directed to suffer rigorous imprisonment for life.

2. We do not disclose the name of the victim. The gist of the allegation was that while playing, she was lured into visiting the village fair where she could be getting some balloons from the appellant. The victim was taken away by him in absence of

her mother (PW4) who was labouring in the field of one Harbans Singh. The grandmother of the victim (PW5) opposed the taking away of the victim but the appellant succeeded in his act. It was evening and dark and the little child of about 6-7 years as per the evidence of Dr. Bibha (PW8) did not come back. Her mother PW4 had returned home and DWs. 1 and 2 brought the victim to her mother to tell her that it was this appellant who had handed the injured and bleeding little child to them to be handed over to her mother (PW4).

3. The incident had occurred at about 5.00 P.M. on 20.10.2007 but as may appear from the very *fardbeyan* (Ext.1/1) in an anxiety to stop the pleading and get the child treated, PW4 her mother, rushed her to a quack in the village.

Some how or the other, the police had some clue about the commission of the offence and the Officer-in-Charge of Patarghat out post of Sourbazar police station in the district of Saharsa reached village Biganpur and recorded the fardbeyan of PW4 at about 9.00 A.M. On that basis the First Information Report of the case (Ext.1) was drawn up at about 10.30 P.M. on that very day.

4. The non-examination of the investigating officer does appear creating some sort of handicap for us as we do not have any inkling as to how the investigation had proceeded. However, what we find from the evidence of Dr. Bibha (PW8) is that the little

girl child was referred to Saharsa hospital for her medical examination by the investigating officer and on being examined by PW8, she was found bearing no external injury on her body but there was a perennial tear present and it was bleeding from the private parts of the child. As appears from paragraph-6 of PW8, she had found hymen of the victim ruptured and bleeding and in her further opinion it appeared to her that the injury had been caused on account of sexual intercourse with the child.

5. In spite of the non-examination of the investigating officer, what we further find from the record is that the investigation was completed and the solitary appellant was sent up for trial which ended in the impugned judgment.

5 A. The defence of the appellant was of innocence, non-participation and also of false implication.

6. Out of nine witnesses examined by the prosecution, PWs. 1 and 2 were formal in character who brought on record the *fardbeyan* and First Information Report of the case while Yogendra Yadav (PW6) had testified to the endorsement on the *fardbeyan* being in the hand of one Ashok Kumar, the then Officer-in-Charge of the concerned police station. PW3 was the victim of the case, PW4 being her mother PW5 was the grand mother of the victim being the mother of PW4. Ramdeo Kamat (PW7) had also been declared hostile with Fulo Devi (PW9).

7. The two defence witnesses stated that while grazing goats, the little child was attacked by a goat and the injury which was found by PW8 had indeed resulted by a blow received from the horns of the goat.

8. After considering the evidence of the prosecution and the defence, the learned judge was of the view that the prosecution had succeeded in bringing the charge home to the accused and the defence was not tenable and as such, proceeded to convict the appellant and sentenced him as noted by us at the very outset of the present judgment.

9. Smt. Meena Singh, the learned counsel appearing on behalf of the present appellant took us through the evidence of the witnesses and stated that PW3, the victim of the offence was tutored by PW4 as per her own admission and there was some serious contradictions between the evidence of PWs. 4 and 5 as regards the institution of the First Information Report or lodging of the report. Submission was that patent contradictions appearing from the record rendered the judgment fit to be set aside and thus, entitled the present appellant to an order of acquittal from this Court.

10. Shri D.K. Sinha, the learned Additional Public Prosecutor appearing for the State has submitted that the contradictions which were pointed out by Smt. Singh were very much on matters at the fringes and the material central part of the

prosecution story had been narrated by the victim and the same had been supported by as competent witnesses, like, PWs. 4 and 6. The evidence of the victim has been supported by Dr. Bibha (PW8) and thus, the judgment of conviction and order of sentence do not require any interference from this Court.

PWs. 4 and 5 are indeed not witnesses to the real part of the occurrence. In fact in an offence of the nature as we are handling presently, it could be the victim only and the perpetrator of the offence who could be real witnesses to the real part of the offence. Other persons who depose in such cases are generally family members or persons from near neighbourhood who learnt from the victim as to what had been perpetrated upon her. As such, their evidence falls in the category of witnesses who could have heard words spoken about things done from the very mouth of the victim and as such, could be said to be giving admissible evidence under Sections 6 and 60 of the Evidence Act to facts which are part of res gestae. While we were considering the evidence of PWs. 4 and 5, i.e., the mother and grandmother of the victim, we found that after being anxious not to find their little child having returned to her house, they could at last get her from DWs. 1 and 2 who very well stated to them that it was this appellant who had handed the victim to them to hand over her in turn to PW4. This one fact which is stated in the very initial story and which appears testified by the witnesses

also, PWs. 4 and 5 both stated that they found the victim bleeding through her under garment and on removing the cloth, what could they find was that she was bearing an injury. The little girl on enquiry divulged that it was this appellant who perpetrated the offence the detail of which was narrated by her. They were indeed not present but the facts were related to them as quickly as it could be under the circumstances of the case and there does not appear any distance in time between the occurrence having taken place and the facts being related to the close family members, like, PWs. 4 and 5. In spite of not being eye witnesses, PWs. 4 and 5 were witnesses who could have naturally learnt about the manner in which the girl child had been seriously assaulted and the manner in which the bleeding injury had been caused to her private parts. The injury was appearing on the private part of PW3 gets concluded from the evidence of Dr. Bibha (PW8) who had examined her and while examining she found that the wound was still bleeding. That could probably give an indication as to how serious the injury was and as such, we could very well fathom the seriousness of the act which was perpetrated on the girl of 6-7 years.

11. It was contended by Smt. Singh that the child was tutored and in that connection our attention was drawn to paragraph-8 of her cross-examination in which she stated that she was told by her mother to narrate things and she stated facts which were told by her.

The learned judge before proceeding to record the evidence of PW3, the victim of the occurrence, had put certain questions to her in order to judging her competence of appreciating wordly things and thus, her competence to retain facts so as to relate them at a later stage. The retention of the victim of facts relating to the incident and thus, her capacity to reproduce those facts appear quite mature from the answers she had given to the preliminary questions which had been put to her. We refrain ourselves from putting those words in this judgment on account of the privacy reasons, but we may note that the victim had indeed narrated the real facts concerning the commission of the offence with her. She had narrated the manner as to how she was ravished and what the appellant had done in that connection. That these two lines we put down only to convey the facts which were stated by PW3 and whatever she had stated or whatever the learned counsel who had appeared during trial on behalf of the appellant had elicited, appear to us quite an unequal a dual between the little child who could be not knowing the crafts of the court and the competence and ingenuity of a counsel in such matters. The questions which were put to the little girl could be as nauseating and disturbing as they could have been, we wish the trial court ought to have prohibited them from being put to the child. Those were words which could impart a sense of shame to anyone, but the counsel was as ruthless in putting those words to the little child during her cross-

examination as appears from paragraph-9 and onwards of her deposition sheet. At any rate, the judges have very limited resources and power to intervene in matters of restraining cross-examination and the answers to those questions further confirm us in our view that it could be the appellant only who had committed the offence.

12. The examination of the investigating officer could have given only one evidence as to what was the place of occurrence. His non-examination or the non-examination of the persons of the neighbourhood to us do not appear material inasmuch as when a little child of 6-7 years was giving evidence forthrightly in court to the incident, it was immaterial for the court to look for any other evidence.

13. PWs. 4 and 5 could have given some statements which could be not consistent between them as regards the lodging of the report to the police and the drawal of the First Information Report, but the fact remains that those things are matters at the fringes and again, when we were looking to the deposition sheet of PW5, the grandmother of the victim, we could find that she was a 60 year–old–illiterate–rural–lady who had an unequal dual with a competent, crafty advocate in the court room which atmosphere could have very well put the old lady into an upsetting environment as regards her mental equilibrium. As appears from the *fardbeyan*, which is a document recording the official acts of a public servant,

that a report was lodged with the Officer-in-Charge of the police station at 9.00 A.M. at the house of the informant (PW4) and on that basis the case had been registered and the matter had been investigated into. We do not find the conflicting evidence of PWs. 4 and 5 as substantial as to throw out the whole prosecution charge.

14. After apprising the evidence of witnesses, we come to the conclusion that the learned trial judge was perfectly justified, in face of the evidence available to him, to hold that the prosecution had succeeded in bringing the charge home to the present appellant and he appears appropriately passing the order of sentence.

15. In the result, the appeal fails and the same is dismissed.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Sanjay/Anand Kr./NAFR

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