

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.928 of 2013**

Arising Out of PS. Case No.-31 Year-2013 Thana- MOHIUDDIN NAGAR District-
Samastipur

Parwez Ansari S/o. Jakir Ansari Resident of Village- Terhi Bazar, P.S.
Mohiuddin Nagar, District- Samastipur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Singh, Advocate
Mr. Kumar Dwijendra Pratap, Advocate
For the Respondent/s : Mrs. S.B.Verma, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 29-06-2022

By this appeal, appellant/convicted accused Parwez Ansari is challenging the judgment and order dated 01.06.2013 and 07.06.2013 respectively passed by the learned 1st Additional Sessions Judge, Samastipur, thereby convicting him of the offences punishable under Section 376(2)(i)(j) and Section 354A of the Indian Penal Code as well as under Section 3(1)(xi) and Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. For the



offence punishable under Section 376(2)(i)(j) of the Indian Penal Code, he is sentence to suffer imprisonment for life apart from imposition of fine of Rs. 50,000/- and default sentence of five years. No separate sentence was imposed on him for the offence punishable under Section 354A of the Indian Penal Code. For the offence punishable under Section 3(1)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, the appellant/accused is sentence to suffer rigorous imprisonment for fiver years. For the offence punishable under Section 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989, he is sentence to suffer imprisonment for life. Substantive sentences are directed to run concurrently by the learned trial Court. 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). Accused Parawez Ansari is resident of village Terhi Bazar falling under Police Station Mohiuddin Nagar of district Samastipur. First informant Ramdev (PW 4) is also resident of the same village. The incident in question allegedly took place after 6:30 PM of 03.03.2013. Six years old daughter



of PW 4 Ramdev is stated to be the victim of the crime in question.

(B). According to the prosecution case, at about 6:30 PM of 03.03.2013, the PW 5 - the minor female child, aged about 6 years had gone to neighbouring shop for purchasing. She did not return in due time. Therefore, her father PW 4 Ramdev started searching her. He heard her cry emanating from the bank of river Sursar, adjacent to the Aanganwari. PW. 4 Ramdev, therefore, rushed to the spot of the incident followed by Umesh Kumar (PW 2), Devilal, Dharmendra, Ashok Paswan (PW 3) as well as other villagers. They saw the accused committing rape on 6 years old daughter of PW 4 Ramdev. The accused came to be apprehended. The victim female child (PW 5) became unconscious. She as well as the accused were then taken to the hospital at Mohiuddin Nagar by PW 4 Ramdev as well as the co-villagers.

(C). The doctor at the Mohiuddin Nagar Hospital telephonically informed the Police Station Mohiuddin Nagar regarding the incident. Thereafter, PW 10 Lal Keshwar Prasad Singh, Police Station Officer, rushed to the hospital. The accused came to be handed over to him and was arrested by him. PW 4 Ramdev then submitted the written FIR and



accordingly Crime No. 31/2013 came to be registered at the Police State Mihiuddin Nagar.

(D). During the course of investigation, PW 10 Lal Keshwar Prasad Singh, I.O., seized the half part of the accused vide seizure memo Exhibit-8. Similarly, the Panty of the victim came to be seized vide seizure memo Exhibit-9. The spot came to be inspected. Statement of the witnesses came to be recorded. On completion of routine investigation, the accused came to be charge sheeted.

(E). The learned trial Court framed the charge and explained the same to the accused. He pleaded not guilty and claimed trial.

(F). In order to bring home the guilt to the the accused, the prosecution has examined as many as 13 witnesses. The defence of the accused as gathered from the line of cross-examination of prosecution witnesses as well as from his statement under Section 313 of the Cr.P.C. is that of total denial.

(G). According to the defence version, initially a mob of 50-60 persons entered in the locality where muslims from the village resides. They apprehended Jawed and extracted money from him. He was then let off and for extracting more



money, the accused came to be abducted by the mob and, thereafter, he was falsely implicated in the subject crime. The defence has examined two witnesses, namely, DW 1 Md. Mushtaque and DW 2 Md. Nayim.

(H). After hearing the parties, the learned trial Court by the impugned judgment and order was pleased to convict the accused and to sentence as indicated in the opening para of this judgment.

3. We heard the learned counsel appearing for the appellant/accused. He vehemently argued that though the incident is stated to have been witnessed by number of people, the prosecution has not examined any independent witnesses residing in the houses located near the house of the victim. It is further argued that the victim, according to the prosecution case, had taken medical treatment at the hospital at Mohiuddin Nagar. However, papers of that medical treatment are not produced and the Medical Officer of that hospital is not examined. The medical evidence regarding medical examination of the accused is not favouring the prosecution. It is further argued that the doctor, who informed the incident to the police station is not examined by the prosecution. It is further argued that the place of the occurrence is not proved as



different witnesses are pointing it out differently. According to the learned Advocate for the appellant, case of the prosecution is not reliable as witnesses who were sitting at the Aanganwari were not knowing anything about the incident and even PW 4 Ramdev has stated name of the accused as 'Awed.' It is further argued that the evidence of the victim female child is contrary to her version found in her statement under Section 164 of the Cr.P.C. As against this, the learned Additional Public Prosecutor supported the impugned judgment and order.

4. We have gone through the record and proceedings. We have also carefully perused the oral as well as documentary evidence.

5. According to the prosecution case, the accused is stated to have committed rape on a minor female child aged about 6 years. It is the prosecution case, that the child belongs to the scheduled caste and, therefore, the accused has also committed the offence punishable under Section 3(1)(xi) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution is resting its case on the eyewitness account of the incident given by the alleged eyewitness such as PW1 Ramlal Paswan, PW 2 Umesh Paswan, PW 3 Ashok Paswan, PW 4 Ramdev - the first



informant as well as on the version of the victim female child is who was examined as PW 5. The prosecution is also relying on medical evidence coming on record from the mouth of PW 6 Dr. Lalita Singh, Medical Officer working with the Sadar Hospital, Samastipur, and PW 7 Dr. Shyam Mohan Das, the Deputy Superintendent and Chairman of the Medical Board of the Sadar Hospital Samastipur. Contemporaneous report of medical examination of the victim which is at Exhibit-4 is also being pressed in service. Similarly, the prosecution is also seeking to rely on forensic evidence coming on the record from the mouth of Serologist, PW 8 Nitu Pandey working at the Forensic Laboratory at Patna and PW 9 Das Ashok Kumar, Senior Scientific Officer and the Chemical Analyzer working at the Forensic Science Laboratory, Patna. Report of the Serologist Exhibit-5 and CA report Exhibit-6 are also pressed in service. Let us, therefore, examine whether the prosecution is successful in bringing home the guilt to the accused.

6. PW 4 Ramdev is the victim's father who had lodge the First Information Report. He had submitted the written First Information Report to PW 10 Lal Keshwar Prasad Singh, the Investigating Officer at the hospital at Mohiuddin Nagar. It is in his evidence that his Six years old daughter had been to



the shop of one Paras for bringing the articles at about 6:30 PM of the day of incident. PW 4 Ramdev further testified that his daughter did not return and, therefore, he started searching her. He heard her cry and, therefore, ran towards the bank of the river. PW 4 Ramdev Paswan claimed that PW 1 Ramlal, PW 2 Umesh, PW 3 Ashok as well as Dhirendar and Devlal followed him. At the bank of river Sursar, he caught hold of the accused and at that time the accused was committing rape on his daughter. As per version of PW 4 Ramdev, his daughter was crying. He lifted her and took her to the hospital at Mohiuddin Nagar; where she was treated. According to him, his brother Vidya wrote the FIR and he put his thumb impression and gave the same to the police. He identified the accused while in the dock.

7. PW 4 Ramdev Paswan withstood the searching cross-examination. He had stated in the cross-examination that the shop of Paras is at Nawada town, and that town starts from the north of his house and that shop is at the distance of 4-5 houses away from house of Kadir of his village. He further stated that he had searched his daughter by visiting shop of Paras and also by visiting Aanganwari. It has come in his cross-examination that Anganwari is just one field away from



Sursar river and upon hearing the cry he went to that river, followed by the co-villagers. From his cross-examination, it is brought on record that he had handed over the rapist to the co-villagers who were standing behind him and then he took his unconscious daughter to the hospital. In cross-examination, PW 4 Ramdev Paswan confirmed that there was injury of rape on his daughter and some blood on her cloth. He denied that for extorting money initially Jawed came to be apprehended and then the accused was falsely implicated in the crime in question.

8. Perusal of evidence of PW 4 Ramdev Paswan shows that in a clear manner he has spoken about the incident. His evidence shows that Sursar river is very near to the Aanganwari and at Aanganwari he heard the cry of his daughter and therefore rushed to the bank of that river and apprehended the accused while the accused was performing the act. In cross-examination, evidence of this witness is cemented and it is seen from his cross-examination that the accused came to be apprehended from the spot of the incident itself and since then the accused was in custody of the co-villagers. There is nothing in the version of this witness to disbelieve the same.

9. PW 2 Umesh Paswan claimed to have followed



PW 4 Ramdev Paswan to the spot of the incident. As per version of this witness, at 6:30 PM of the day of the incident, he was returning to the house after purchasing potato and at the Aanganwari he heard shout and, therefore, with 6-7 persons he rushed towards the bank of river Sursar. PW 2 Umesh further stated that there he saw the accused committing rape on the victim who was shouting and PW 4 Ramdev pulled the accused by holding his collar. PW 2 Umesh further testified that PW 4 Ramdev handed-over the accused to them and lifted his daughter in his arm. At that time, the victim pointed a finger at the accused and became unconscious. PW 2 Umesh also stated that then the victim as well as the accused were taken to the hospital at Mohiuddin Nagar. There the accused came to be handed over to the police. This witness is a witness to the FIR Exhibit-1 lodged by Ramlal. He stated that the victim was just six years old and she was belonging to Dusadh caste. In cross-examination, this witness has confirmed the fact that the spot of the incident was on eastern side of the bank of river Sursar. He stated that while going back to his house after purchasing the potato, he has seen the incident. PW 2 Umesh in his cross-examination has fairly stated that initially PW 4 Ramdev reached on the spot of the incident and in quick succession they



all reached at the spot. Cross-examination of PW 2 Umesh revealed that the victim was lying on the ground and her clothes were stained with blood.

10. Perusal of evidence of PW 2 Umesh goes to show that evidence of PW 4 Ramdev is fully corroborated by version of this witness. There is nothing in cross-examination of this witness which may show any reason with him to falsely implicate the accused in the crime in question. He has duly identified the accused standing in the dock. His evidence seems to be natural as while returning to the shop, he heard shouts and therefore rushed to the spot. We see no reason to disbelieve the version of this witness.

11. PW 3 Ashok Paswan is another co-villager and his evidence shows that when he was sitting at Aanganwari, he heard shout and therefore rushed to the spot. As per version of PW 3 Ashok, the accused was committing rape on the victim female child and then PW 4 Ramdev pulled the accused and gave his custody to the co-villagers. PW 3 Ashok stated that the accused was held by him as well other co-villagers. Then the victim female child and the accused were taken to hospital at Mohiuddin Nagar. He has spoken about lodging the FIR by PW 4 Ramdev and handing over the accused to the police.



This witness also identified the accused. To discredit this witness, the defence has cross-examined him. However we see no material from cross-examination of this witness, to disbelieve him. His cross-examination shows that when he as well as others were near the Aanganwari, chit-chatting with each others, shouts of a girl came to be heard by them and, therefore, they rushed to the river. This witness has also confirmed that PW 4 Ramdev reached first on the spot and they all reached immediately thereafter. Cross-examination of this witness shows that when he reached on the spot, the victim female child was lying on the ground and her clothes were pulled down below her waist. Thus, evidence of this witness also shows that he had seen the accused in company of the victim female child and at that time clothes of the victim were pulled down to her knee. Evidence of this witness as such fully corroborates version of PW 4 Ramdev and is consistent with the prosecution case. No motive is attributed to this witness for falsely implicating the accused in the subject crime.

12. Next witness is PW 1 Ramlal Paswan, another co-villager, had reached the spot after the accused was separated from the victim. This witness has stated that PW 4 Ramdev was searching his daughter and ran towards the spot



after hearing the cry of his daughter. This witness and others followed them. As testified by PW 1 Ramlal, at the bank of river Sursar, the accused was committing rape on the victim female child and PW 4 Ramdev Paswan caught hold of the accused from behind. He claimed that thereafter the victim and the accused were taken to the Hospital at Mohiuddin Nagar. This witness has also went to that hospital and is a witness to the FIR lodged by PW 4 Ramdev. This witness had acted as a Punch witness to the seizure memos Exhibits-8 and 9 whereby half pant of the accused and the panty of the victim female child was came to seized. This witness has proved both the seizure memos and has also identified the accused while in dock. His evidence thus shows that he was someone behind the others while rushing to the spot of the incident as when he reached on the spot, he saw the victim female child in the arms of PW 4 Ramdev. As per his version in the cross-examination, the spot was on the eastern bank of the river Sursar. This witness has also identified the accused. Thus, clear evidence of this witness shows that though he reached on the spot after others had reached there, he saw the accused on the spot of the incident in company of the victim female child. Evidence of this witness is also clear and is corroborating the case of



prosecution.

13. Next comes the evidence of the victim of the crime in question who is examined as PW 5. She was a toddler aged about 6 years at the time of the incident. Being a child witness her evidence is required to be examined by keeping in mind the broader probabilities of the case of the prosecution by ignoring minor contradictions or insignificant discrepancies in her statement. A child witness as a rule cannot be said to be an incompetent witness. If the child is unable to understand the question and to give a rational answer to such questions in a coherent and comprehensible manner then only one can say that the said child is not a competent witness. In the case in hand, the learned trial Court had asked certain preliminary questions to the victim female child and concluded that she is a competent witness, having capacity to understand the questions put to her. The victim female child (PW 5) in her evidence has stated that she had been to the shop of Paras for bringing potato. The accused took her to the bank of river Sursar by pressing her mouth and made her to lay there. She testified that the accused opened his as well as her pant. As per her version, the accused then penetrated her after making her to lay on the ground. Thereafter, her father and others came and



they took her to the hospital. She stated that the blood was oozing from her vagina. She has also identified the accused.

14. In cross-examination, the victim female child has admitted that her statement under Section 164 of the Cr.P.C. was recorded on earlier occasion. She was cross-examined on her previous statement. She stated that on earlier occasion she had told that her neck was pressed and she had vomited. She stated that she had disclosed on earlier occasion that she had gone to the shop for bringing oil. She admitted that she had not disclosed on earlier occasion that the accused opened his pant as well as her panty.

15. With the aid of this material in cross-examination of the victim, it was sought to demonstrate that the evidence of the victim female child should not be relied upon for basing the conviction. However, as pointed out by us, in such cases of rape on the minor female victim, the Court is to examine the broader probabilities of the prosecution case by ignoring minor contradiction and insignificant discrepancies in statement of the prosecutrix. Ultimately, this teen aged victim was not expected to give details of all incident which took place with her at the time of recording her statement under Section 164 Cr.P.C. What is material is evidence of commission of rape on her and this



act was described by her as per her own understanding, in vernacular language, while in the dock. Such a tiny-tot is not expected to know in detail about sexual activities between the male and female. Evidence of the victim female child has no taint of tutoring. Her evidence regarding commission of rape on her is inspiring confidence and is free from embellishment. There is nothing in her cross-examination to infer that she has been tutored. Moreover the evidence of this victim female child (PW 5) is fully corroborated by his father PW 4 Ramdev as well as that of PW 1 Ramlal, PW 2 Umesh and PW 3 Ashok Paswan.

16. Now let us examine whether evidence of the victim female child is gaining further corroboration by the medical as well as forensic evidence. The victim female child was examined on 04.03.2013 by PW 6 Dr. Lalita Singh and PW 7 Dr. Shyam Mohan Das of the Sadar Hospital, Samastipur. Evidence of PW 6 Dr. Lalita Singh shows that there was irregular lacerated injury over inner part of labia majora and Labia Minora extending up to the forchette of the victim female child. The hymen of the victim female child was also found to be slightly lacerated by this Medical Officer. As seen from the evidence of PW 6 Dr. Lalita Singh, the victim female child



(PW 5) was subjected to the ossification test and she was found to be 6-7 years old. PW 6 Dr. Lalita Singh had opined that examination of the minor female victim (PW 5) and the findings thereupon are suggestive of rape. Accordingly, the medical report Exhibit-4 came to be prepared at the time of examination of the victim and the same is at Exhibit-4. This Medical Officer was cross-examined to demonstrate that it would be difficult to commit penetrative sexual assault on the victim female child of 6-7 years of age considering the fact that opening of her vagina is very small. However, full penetration is not the requirement of the offence punishable under Section 376 and as such no advantage of this fact can go to the accused. Similarly, it was attempted to show that there can be several reasons for injury to the private parts of the victim. However, it was not suggested to the victim that she suffered injury to her private part because of some other reason. Hence, there is no reason to disbelieve version of the Medical Officer which is being corroborated by the contemporaneous medical report at Exhibit-4 as well as by evidence of PW 7 Dr. Shyam Mohan Das. Version of the victim female child that she suffered the penetrative sexual assault committed by the accused is thus gaining corroboration from the medical evidence adduced by



the prosecution on record. Injuries sustained by the victim female child found during her medical evidence including laceration of her labia majora and labia minora as well as to the hymen are indicating that she was subjected to the penetrative sexual assault by the accused.

17. PW 10 Lal Keshwar Prasad Singh had arrested the accused vide arrest punchnama Exhibit-7. He then seized half pant of the accused vide seizure memo Exhibit-8. As deposed by him, the said seized article was sent to the Forensic Laboratory in sealed condition under the orders of the learned Chief Judicial Magistrate. Exhibits- 12 and 12/1 are those forwarding letters bearing signature of PW 11 Sanjay Kumar Singh, P.S.O. PW 9 Das Ashok Kumar, the Senior Scientific Officer of the Forensic Science Laboratory Patna had conducted chemical analysis of the seized articles including that of the cut portion of the half pant of the accused. His evidence shows that the seized articles in the subject crime were received by him in sealed condition. As per evidence of PW 9 Das Ashok Kumar, half pant of the accused was found to be stained with the blood as well as semen and that accordingly he gave report Exhibit-6. PW 8 Nitu Pandey, the Serologist, upon examination of the half pant of the accused came to the



conclusion that it was stained with blood and semen with antigen A and B. Exhibit-5 is the report of the Serologist.

18. The net result of foregoing discussion makes it clear that the evidence of the victim female child (PW 5) regarding commission of rape on her is gaining full corroboration from other evidence adduced by the prosecution which we have discussed in the foregoing para. Evidence on record unimpeachably makes it clear that at the time of commission of offence, the victim was merely 6-7 years of age. She had not attained the consenting age. As such, the prosecution has established the offence punishable under Section 376(2)(i)(j) of the Indian Penal Code committed by the accused but without giving a firm finding on this aspect one will have to consider the defence version about the incident reflected from evidence of DW 1 Md. Mushtaque and DW 2 Md. Nayim. Both these witnesses are resident of village Terhi Bazar. As per their version, at about 7:30 PM, a mob of 50-60 persons came to the house of Jawed. DW 1 Md. Mushtaque stated that thereafter, the accused came to the house and the mob apprehended him and took him to the police station. As against this DW 2 Md. Nayim has stated that when the mob came, the accused was having dinner. The mob then took



custody of the accused and took him to the police station. The evidence of both these witnesses shows that no report of abducting the accused was lodged either by them or by anybody. The incident of taking the accused was not reported to any law enforcing agency by any of them. Evidence of both these witnesses is inconstant. As such, the defence evidence is not sufficient to cast a shadow of doubt on clear, cogent and consistent version of the prosecution witnesses.

19. When evidence available on record is sufficient to record conviction, non-examination of other witnesses by the prosecution, though such witnesses may be available is of no consequence. Considering the charge levelled by the prosecution and the evidence made available by it, non-examination of the doctor who telephoned the Police Station, as well as non-examination of other witnesses is of no consequence. Similarly, the fact that the private part of the accused was not having any injury is also of no assistance to the defence. There is nothing to point out that in each case such injury occurs. Non-furnishing of papers of medical treatment at the hospital at Mohiuddin Nagar is also not relevant and cannot raise a shadow of doubt on the prosecution case. Evidence of PW 6 Dr. Lalita Singh is available on record



regarding that aspect. Evidence regarding place of occurrence is also consistent and the same is proved to be at the bank of river Sursar. Thus, we have no hesitation in holding that the offence punishable under Section 376(2)(i)(j) of the Indian Penal Code is held to be proved against the prosecution by the cogent and trustworthy evidence adduced by the prosecution.

20. Now comes the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. The prosecution has not placed on record any evidence regarding caste of the victim female child (PW 5). Neither her caste certificate nor her caste validity certificate is placed on record by the prosecution in order to make out the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Oral evidence regarding caste of the victim is hardly sufficient in such matters. The prosecution has not adduced any evidence to show that the victim belongs to either scheduled caste or scheduled tribes. It is not pointed out by the prosecution that the offence was committed on the victim female child on the ground that she is a member of scheduled caste or scheduled tribe. The learned Advocate appearing for the accused has rightly placed reliance on the judgment of the Hon'ble Supreme Court in **Patan Jamal Vali**



Vs. The State of Andhra Pradesh reported in **2021(3) PLJR (SC) 1** and **Khuman Singh Vs. State of Madhya Pradesh** reported in **2019(4) PLJR (SC) 130**. Hence, it cannot be said that these offences are proved by the prosecution.

22. The net result of foregoing discussion requires us to pass the following order:-

I. The appeal is partly allowed.

II. The conviction as well as resultant sentence imposed on the appellant/accused for the offence punishable under Section 376(2)(i)(j) of the Indian Penal Code is maintained.

III. The accused is acquitted of the offences punishable under Sections 3(1)(xi) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Mkr./-

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CAV DATE	23.06.2022
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