

(2023) 11 PAT CK 0024

Patna High Court

Case No: Criminal Appeal (DB) No. 206 Of 2022

Satyamanu Kumar Singh

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 8, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 376, 376(2)(f), 377
- Code of Criminal Procedure, 1973 - Section 161, 164, 313
- Protection of Children from Sexual Offences Act, 2012 - Section 4, 29

Hon'ble Judges: Chakradhari Sharan Singh, J; Gunnu Anupama Chakravarthy, J

Bench: Division Bench

Advocate: Bindhyachal Singh, Parijat Saurav, Vipin Kumar Singh, Shasi Bala Verma

Judgement

Criminal Appeal (DB) No. 206 of 2022,,,,

Appellantâ€™s

Name", "Convicted

under

Section", Sentence,,

,,Imprisonment, Fine(Rs.), "In default

of fine

Satyamanu

Kumar Singh", "376(2)(f) of

the I.P.C.", "Imprisonment for

life", "1,00,000/-", "S.I. for 1

year

, "377 of the

I.P.C.", R.I. for 10 years., "50,000/-", "S.I. for 6

months

, "4 of the

POCSO Act", R.I. for 20 years, "1,00,000/-", "S.I. for 1

year

corroboration and contradiction. In a case where the Magistrate has to perform the duty of recording a statement under Section 164 CrPC," ,,,,

he is under an obligation to elicit all information which the witness wishes to disclose, as a witness who may be an illiterate, rustic villager" ,,,,

may not be aware of the purpose for which he has been brought, and what he must disclose in his statements under Section 164 CrPC." ,,,,

Hence, the Magistrate should ask the witness explanatory questions and obtain all possible information in relation to the said case." ,,,,

29. During the investigation, the police officer may sometimes feel that it is expedient to record the statement of a witness under Section 164" ,,,,

CrPC. This usually happens when the witnesses to a crime are clearly connected to the accused, or where the accused is very influential," ,,,,

owing to which the witnesses may be influenced. (Vide Mamand v. Emperor [(1946) 59 LW 138 : AIR 1946 PC 45] , Bhuboni Sahu v. R." ,,,,

[(1948-49) 76 IA 147 : AIR 1949 PC 257] , Ram Charan v. State of U.P. [AIR 1968 SC 1270 : 1968 Cri LJ 1473] and Dhanabal v. State of" ,,,,

T.N. [(1980) 2 SCC 84 : 1980 SCC (Cri) 340 : AIR 1980 SC 628])â€" ,,,,

13. On the other hand, Learned Additional Public Prosecutor for the State of Bihar contended that there is no error and irregularities in judgment of" ,,,,

conviction and order of sentence passed by the Sessions Court and specifically contended that 164 statement of the victim clearly disclose that the ,,,,

accused has committed rape on the victim, therefore, prayed to confirm the judgment." ,,,,

14. We have perused the judgment of the Trial Court and also the record, given a thoughtful consideration of the rival submissions of both the parties." ,,,,

15. The point for determination in this appeal is that whether the prosecution was able to prove the guilt of the accused for the offences punishable,,,,
under sections 376(2)(f) and 377 of the I.P.C. and under section 4 of POCSO and whether the trial court has rightly convicted the appellant for the,,,,
said offences.,,,,

16. In order to reappraise the evidence, the first and the foremost aspect which requires to be addressed by this Court is that whether the medical",,,,
evidence supports oral evidence of the prosecution witnesses.,,,,

17. As stated (supra), the informant is the father of the victim girl who was examined as P.W.-7. P.W.-1 is the mother of the victim. It is testified by",,,,

the P.W.-1 that the victim was subjected to anal rape on 12.07.2013 at 06:00 P.M. But in the cross-examination P.W.-1 admitted that she informed,,,,

the inspector that she saw blood oozing out of the genitals of the victim. Further, the evidence of the P.W.-1 clearly disclose that the accused took the",,,,

victim into his house, removed her pant and raped her from behind and the victim came home limping her leg. She further testified that she removed",,,,

off the pant of victim, and noticed blood and semen on it. In the cross-examination, it is specifically admitted by the P.W.-1 that there was no blood on",,,,

the victim's leg and also admitted that she stated to the Inspector that when she removed the pant of the victim, she saw blood coming out of",,,,

genitals of the victim and later, the victim went to the Police Station with the same pant/underwear.",,,,

18. P.Ws. 2 and 3 are the parental aunt and grandmother of the victim respectively. P.W.-2 testified that on 12.07.2013 between 06:30 PM to 07:00,,,,

P.M., she saw the victim crying and coming out of the house of the accused. Further, when she questioned as to what has happened, the victim did",,,,

not inform her anything but she followed the victim up to her house, where the victim informed about the incident to P.W.-1. She also testified that",,,,

P.W.-1 removed the pant of the victim, then she noticed blood stains and sperms present in the genitals of the victim girl.",,,,

19. P.W.-3 who is the grandmother of the victim also testified about observing the blood and semen on the panty/pant of the victim, on the date of",,,,

occurrence and considerable swelling on the anus of the victim girl. The evidence of P.W.-3 only disclose about the accused calling the victim to his,,,,

house and later coming to know about the incident through P.Ws.-1 and 2.,,,,

20. P.W.-4 is the aunt of the victim. His evidence disclose that he noticed women shouting and weeping at the house of P.W.-1 on the date of incident.,,,

and he also noticed on the private parts of the victim, smeared with blood semen and the back of the victim being scratched and swollen." ,,,

21. P.W. 5 and 6 are the panch witnesses to the seizure list dated 12.07.2013. The seizure is with respect to the bed-sheet which was found in the.,,,

house of the accused. They both turned hostile and did not support the case of the prosecution.,,,

22. As stated (supra), P.W. 7 is the father of the victim. His evidence disclose that he was not present at the time of incident and came to know about" ,,,

this incident through his wife. He further testified that the written application was written by his sister, on which he signed which is Exhibit " P2. In" ,,,

the cross examination it is specifically admitted by P.W. 7 that he had not spoken with his daughter, after the alleged incident." ,,,

23. P.W. 8 is the victim girl. The Sessions Judge has initially asked simple questions to the victim in order to ascertain capability of the witness for.,,,

giving rational answers and after getting satisfied that the witness was capable of understanding and answering he proceeded with recording of the.,,,

evidence. But P.W. 8 did not state anything about the incident, therefore, she was declared as hostile." ,,,

24. P.W. 9 is the grandfather of the victim and he did not support the case of prosecution and was declared as hostile. But, his evidence disclose that" ,,,

on the date of incident he was at Ranchi along with his wife and other daughters. Therefore, the presence of P.W. 2 and 3 at the scene of offence is" ,,,

highly doubtful.,,,

25. P.W. 10 is the doctor who examined the witnesses twice within a gap of three days from the date of occurrence. Initially she examined the victim.,,,

(P.W. 8) on 12.07.2013 at mid-night. She did not find any injury on the vulva and vaginal wall of the victim. It is stated by the P.W.- 10 Vagina of.,,,

P.W. 8 did not admit tip of the finger. However, P.W.-10 determined the age of the victim as between seven to eight (7-8) years as per the" ,,,

radiological findings and opined that rape has not been committed on the victim. It is pertinent to mention that P.W. 8 turned hostile. However, the" ,,,

medical evidence also did not support the case of prosecution in any manner.,,,,

26. Further the victim was medically re-examined after three days i.e. after recording of Section 164 of Cr.P.C. statement of the victim girl/P.W.-8.,,,,

P.W. 10 examined the anus of the victim and opined that there was no injury or scratch mark found on the anus of the victim girl and further there is.,,,,

no sign of anal penetration.,,,,

27. As per the evidence of P.W. 1 there is an anal rape but as far as the evidence of P.W. 2 and 3 is concerned it is a rape of genitals/vagina. The.,,,,

evidence of P.W. 1 is inconsistent with the evidence of P.W. 2 and 3.,,,,

28. On the other hand, the evidence of P.W. 4 is contradicting with the medical evidence as he specifically stated that the back of the victim was",,,,

scratched and the anus of the victim was swollen.,,,,

29. Further, P.W. 11, the doctor examined the accused on 13.07.2013. On examination, he found that accused was mentally and physically normal and",,,,

also testified that no injury was present on the body of the accused and he is capable of doing sexual act.,,,,

30. Though, accused is capable of doing sexual act, that itself cannot prove the guilt for the charged offences. In the absence of the substantive oral",,,,

evidence corroborated with medical evidence, it can be construed that the appellant shall presumed to be innocent of the charged offences. The",,,,

decision relied upon by the Learned counsel for the appellant squarely applies to the facts of the case. The statement of victim recorded under Section.,,,,

164 of the Cr.P.C. can be used for corroboration or contradiction, but cannot be a sole basis for conviction.",,,,

31. P.W. 12 is the Investigating Officer and P.W. 13 is the Judicial Officer, who recorded the 164 Cr.P.C. statement of the victim.",,,,

32. On perusal of the entire evidence, it is evident that there are no eye witnesses to the incident. The victim herself has turned hostile and did not",,,,

support the case of the prosecution. Furthermore, the presence of the other witnesses is doubtful. P.W. 7 the father of the victim himself stated that",,,,

he did not speak with the victim after the alleged incident. Furthermore, the medical evidence is not corroborated with the oral evidence, therefore",,,,

benefit of doubt has to be extended to the appellant. Therefore, we are of the considered view that the prosecution has miserably failed to prove that",,,,

the accused have committed sexual assault/rape on the victim girl either on her genitals or of anal penetration on the victim who was aged below 7,,,,

years. Further, the medical evidence do not reveal about the unnatural offence in order to attract the punishment under Section 377 of the I.P.C.",,,,

33. There is no iota of evidence on record to prove that the appellant has committed the offences punishable under section 376(2)(f) or 377 of the,,,,

I.P.C.,,,,

34. Further, the appellant's conviction for the offence punishable under Section 4 of POCSO Act applying Section 29 thereof also cannot be",,,,

sustained. Further, the finding of the trial court that the accused committed rape on the victim solely relying upon the 164 statement cannot be",,,,

sustained. Therefore, the conviction of the appellant for the offence punishable under Section 376(2)(f), Section 377 of I.P.C. and under Section 4 of",,,,

POCSO Act are not sustainable and the judgment and conviction and the order of sentence dated 07.02.2022 and 09.02.2022 respectively are hereby,,,,

set aside. The record reveals that the appellant is in jail since 07.02.2022, hence, shall be released from the jail forthwith, if not required in any other",,,,

case.,,,,

35. The appellant stands discharged of the liabilities of the bail bonds and sureties, if any.",,,,