

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.726 of 2018**

Arising Out of PS. Case No.-143 Year-2013 Thana- KHAJEKALA District- Patna

Sanjeev Kumar S/o Late Badri Narayan Prasad , R/o Pakki Goraiya, Mahavir
Sthan, P.S.- Khaje Kalan, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ajit Ranjan Kumar, Advocate.

For the Respondent/s : Mr. Dilip Kumar Sinha, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 07-11-2023

1. We have heard Mr. Ajit Ranjan Kumar, the learned Advocate for the appellant and Mr. Dilip Kumar Sinha, the learned APP for the State.
2. The appellant stands convicted under Section 376 of the IPC and Section 6 of the POCSO Act, 2012 and has been sentenced to undergo R.I. for life, to pay a fine of Rs.1,00,000/- and in default of payment of fine, to



further suffer S.I. for one year for the offence under Section 6 of the POCSO Act, 2012 vide judgement and order dated 10.04.2018 and 13.04.2018 respectively passed by the learned Additional Sessions Judge-1st, Patna-cum- Special Judge, POCSO, Patna, passed in Special Case No. 33 of 2015 arising out of Khaje Kalan P.S. Case No.143 of 2013. Eighty percent of fine amount has been directed to be deposited in the bank account of the victim, which shall be utilized by her for her future education. In view of the provisions contained in Section 42 of the POCSO Act, 2012, no separate sentence has been awarded under Section 376 of the IPC.

3. The appellant is the father of the victim (P.W. 4) who has alleged that the appellant had been molesting her and had also committed rape with her on 04.07.2013 in the early hours. She could any how save herself and got out of his stranglehold and came to the police station to report about the occurrence. She had been



accompanied by her grandmother (P.W. 1), her aunt (P.W. 3) and her cousin (P.W. 5) who are witnesses to the FIR. The younger brother of the victim (P.W. 2) also claims to have seen the appellant making attempts to disrobe and rape the victim. He was aware that the appellant had behaved like that with his sister a number of times in the past. Because of such beastly act of the appellant, the mother of the victim had committed suicide about few months ago.

4. On the basis of the written report by the victim, a case was registered against the appellant vide Khaje Kalan P.S. Case No. 143 of 2013, dated 04.07.2013 under Section 376 of the IPC. Later, Section 6 of the Protection of Children from Sexual Offences Act, 2012 was also added.

5. The Trial Court, after having examined seven witnesses on behalf of the prosecution including the victim, the I.O. and the Doctor and five persons on



behalf of the defence, convicted and sentenced the appellant as aforesaid.

6. Mr. Ajit Ranjan Kumar, the learned Advocate for the appellant has urged that though the look of the case is bad but the prosecution has not been able to prove the case beyond all reasonable doubts. He has submitted that there have been glaring lapses on the part of the prosecuting agency which goes to the root of the matter and thereby makes the evidence fall short of a full proof case against the appellant. Though the victim was examined medically but there was no conclusive opinion regarding rape. The appellant but was never subjected to any medical examination. No evidence was brought on record apart from the deposition of the family members of the victim and victim herself about the earlier action of the appellant of molesting his own daughter.

7. According to the prosecution case, it has been argued that the mother of the victim had committed suicide few



months ago. She chose to end her life only because she could not control her husband in raping his daughter. It has been contended that if the mother of the victim had committed suicide and if no case by her family members was filed, for sure a U.D. case would have been lodged. It further appears, it has been contended, that the mother of the victim remained alive for few days before she succumbed to the burn injuries. Was she in a position to talk during that period is again a factor which should have been taken into account by the investigating agency. If she had committed suicide out of exasperation in not preventing the appellant from raping her daughter, she would have, for sure, stated that when she was expecting death. No person of the neighbourhood has come to support the prosecution case; on the contrary, all the five defence witnesses who reside in the neighborhood of the appellant have completely negated the prosecution story and have instead alleged that the victim and her mother had



bohemian ways, which was no appreciated and liked by the appellant and which he always protested. This was the reason for the strained relationship between the appellant and his wife and his children.

8. Taking the argument further, the learned Advocate has submitted that the aunt of the victim (P.W. 3) while deposing before the Court had accidentally made a statement that it was agreed by the appellant on a stamp paper of Rs. 500/- denomination that he shall part with his property and cash kept in the house in favour of his children and mother-in-law. However, in the next breath, P.W. 3 expressed surprise whether such arrangement could have been made.

9. Does it suggest that there was any pressure on the appellant to part with his house as bargain for not being prosecuted in a false case?

10. The parties come of a poor background. The house of the appellant is a one room quarter situated in a densely populated area. The appellant does not have



any gainful employment. On the contrary, the mother of the victim, i.e. the wife of the appellant was gainfully employed in a printing press.

11. It has been submitted that it cannot be expected of a working mother to remain quiet about such action of her husband.

12. Committing suicide was no answer.

13. The mother of the victim may perhaps have committed suicide for other reasons as well. Attributing the act of committing suicide by the mother of the victim only for the reason of the appellant raping his daughter, therefore, is only an assumption without any basis. Apart from this, it has been urged that the wearing apparel of the appellant *viz.* his shorts and a blanket, which were seized by the police immediately on the report of the case was never sent for any forensic examination.

14. Lastly, it has been submitted that even the medical evidence is absolutely tentative with respect to the



victim having been subjected to any sexual act either in the remote or immediate past.

15. On these grounds, it was urged that the Trial Court hurriedly come to the conclusion that the appellant is guilty of raping his daughter and sentenced him under Section 6 of the Protection of Children from Sexual Offences Act, 2012, which opinion his highly assailable.

16. As opposed to the fore-noted contentions, Mr. Dilip Kumar Sinha, the learned APP has submitted that a dabbling in imponderables would only lead to injustice. There is nothing on record which would render the deposition of the victim redolent with any doubt or suspicion. The victim has been consistently alleging that the appellant never behaved like a father to her. His behavior and action towards her further worsened after her mother's death. The mother had committed suicide because of this only. Apart from this, Mr. Sinha has urged that the eleven year old son of the appellant actually saw the appellant in *flagrante delicto* in the



morning of 04.07.2013. He was also aware that his father had been doing this on a regular basis even while his mother was alive. That was actually the reason for dispute between the appellant and his wife.

17. In view of the afore-noted statements of the two witnesses, the lapses on the part of the investigation actually gets reduced to complete insignificance

18. Mr. Sinha, therefore, urges that no interference is required with the judgment of the Trial Court.

19. We have carefully examined the deposition of the prosecution witnesses as also the defence witnesses. We have found that the victim though has made a very short statement at the trial but has not prevaricated at any point of time. After the death of her mother, perhaps on 04.07.2013 there was an attempt by the appellant to sexually assault her. She sought for help and came out to the room. That was the nemesis of the appellant. She never complained about her father before, except to her mother, who did not take any



positive action against him. But this attempt of the appellant in the morning of 04.07.2013 was the last straw in the camel's back when the victim decided to report the matter to the police. She took the help of her grandmother, the aunt and her cousin who all along with the victim went to the police station to report the matter.

20. We have also found that the afore-noted three persons who accompanied the victim to the police station have appended their signature, in token of their affirmation, on the FIR.

21. During the cross-examination, the victim very candidly admitted that the relationship between her grandmother and father (appellant) was not cordial but she never pressurized the appellant to part with his property. She completely denied that the allegation has been raised at the instance of her grandmother and others, who wanted to have the property of the appellant in their name or in the name of the victim.



22. The brother of the victim (P.W. 2) neither appears to be precocious or non-compos when he deposed before the Trial Court. He had seen his sister in a state of complete dishabille and the appellant stroking her at wrong places. He knew about the habit of his father from before and also had gained some knowledge that his mother had committed suicide because of that. Though an attempt was made by the defence to elicit some statement which would have put the victim and her late mother in bad light, but the credibility of P.W. 2 could not be shaken. He and not his sister used to take the tiffin for his mother. There was some suggestion that the victim had also come in contact with the some persons in the work place of his mother and her intimacy with such person was not to liking of the appellant.

23. Such suggestions, it appears to us, are absolutely without any foundation or basis.



24. The grandmother of the victim admitted that during the life time of the wife of the appellant, she did not visit the appellant's house but only after learning about the appellant's deviant ways, especially towards his daughter, she frequently visited his house. Obviously, that was for the protection of the victim. Merely, because she visited the house of the appellant for keeping an eye on the safety of her granddaughter (victim), it cannot be inferred that she was interested in the property of the appellant. Even otherwise, the property of the appellant would have fallen in the kitty of his children.

25. There is nothing on record from either side which would indicate that the appellant was seeing any other woman after the death of his wife. There is no reference of any extended family of the appellant in whom he would have been more interested than his own children.



26. What then would have been the apprehension in the minds of the grandmother and the aunt of the victim?.

27. One cannot only infer evil minds of human beings.

28. If there was any interest of the grandmother (P.W.1) visiting the house of the appellant, it would only be for extending her protective arm towards an unmarried granddaughter, who P.W.1 had learnt, had been violated physically in the past.

29. The Doctor (P.W. 6) who had examined the victim on 04.07.2013 did not find any mark of injury on any part of her body including private parts. The pelvic examination of the victim also did not suggest any habitual / regular sexual intercourse. The microscopic examination of the sealed vaginal smear also does not contain any foreign body and definitely no spermatozoa. Precisely for this reason, P.W. 6 could not give any definite opinion regarding rape. The age of the victim was assessed to be less than 17 years. However, P.W.



6 has admitted that this was only a ballpark assessment and not scientifically formulated assessment.

30. Does this give a clean cheat to the appellant?

31. We do not agree to that.

32. Before any positive damage physically could have been done to the victim, she escaped from the clutches of the appellant and came to the police station.

33. No spermatozoa or foreign body was found in the vaginal smear is also explainable.

34. While forcing himself upon his daughter, the appellant discharged the semen on the blanket and on the wearing apparel of the victim. In such a situation, it cannot be said that the medical evidence is against the oral testimony of the victim. Any past sexual offence would not get reflected in the later examination of the human body. In that event, the opinion of the doctor is of no avail to us.

35. The Investigating Officer (P.W. 7) in his cross-examination has only admitted his folly of not



recording the statements of the persons residing in the neighbourhood.

36. We further find that there was no purpose of his seizing the clothes of the appellant, when it was no sent for forensic examination ever. Perhaps, the Investigator did not consider any one of these to be important while investigating such a serious charge. But as is well settled, merely because an investigation is perfunctory, that is no ground to completely discard the prosecution case, specially in view of the clear and cogent evidence of the victim herself.

37. The defence witnesses though have put the blame on the family of the appellant but they had never made any statement before the police before they deposed before the Trial Court. Hence, their statements may not persuade us to turn our gaze away from the appellant.

38. For these reasons, we find complete justification of the Trial Court for the verdict rendered by it in convicting and sentencing the appellant as aforesaid.



39. The appeal is thus dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

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