

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2060 of 2017**

Arising Out of PS. Case No.-337 Year-2014 Thana- DIGHA District- Patna

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Nagina Choudhary, son of Late Keshwar Chaudhary, Resident of Mohalla
Ramjeechak Digha, P.S.- Digha, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 2521 of 2017

Arising Out of PS. Case No.-337 Year-2014 Thana- DIGHA District- Patna

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Lallu Rai, Son of late Sidani Rai, Resident of Mohalla- Ramjichak, P.O.
Bataganj, P.S. Digha, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 2060 of 2017)

For the Appellant/s : Mr.Alok, Advocate.

For the Respondent/s : Smt. Abha Singh, APP.

(In CRIMINAL APPEAL (SJ) No. 2521 of 2017)

For the Appellant/s : Mr.Jitendra Kumar Rai, Advocate.

For the Respondent/s : Mr.Zeyaul Hoda, APP.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V JUDGMENT

Date : 26-04-2021

Both the appellants aforesaid faced trial in
connection with Digha P.S. Case No. 337 of 2014 corresponding



to POCSO Case No. 76 of 2014 before learned Special Judge, Patna and both were sentenced to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.25000/- for offence under Section 4 of the POCSO Act. Three months further imprisonment was ordered in default of payment of fine. The appellants were acquitted of the charge under Section 376 (D) of the Indian Penal Code. The Judgment of conviction dated 13.06.2017 and order of sentence dated 15.06.2017 are under challenge in these appeals.

2. When the matter was taken up for final hearing on 16.04.2020, Mr. Jitendra Kumar Rai, learned counsel for appellant Lallu Rai informed the Court that Lallu Rai has already died while serving out the sentence. His legal heirs are not ready to prosecute the matter.

Mr. Zeyaul Hoda, learned APP for the State concedes that in the aforesaid circumstance, the appeal may be dismissed as infructuous.

Accordingly, Cr. Appeal (SJ) No. 2521 of 2017 stands dismissed as infructuous.

3. Prosecution case as disclosed in the written report dated 27.12.2014 of Phul Kumari Devi (PW-4) is that on 20.12.2014, a Saturday at 5 AM, both the appellants lifted to the



minor daughter of the informant from the house and took to the brick kiln near Ganga Bank and both ravished her. At the time of occurrence, the informant was at her vegetable shop near Digha ghat. In the evening at 3 PM, neighbour informed about the occurrence. Then the informant rushed to her house and found her daughter in semi-unconscious condition. There was injury and bleeding from the private parts of the victim. On the basis of the statement aforesaid, Digha P.S. Case No. 337 of 2014 was registered under Section 376(2)(f)/34 IPC as well as 4 and 6 of the POCSO Act.

4. After investigation of the case, the police submitted chargesheet as aforesaid, however charges were framed, during trial, under Section 376 (D) IPC and 4 of the POCSO Act.

5. The prosecution examined altogether six witnesses. PW-1 Yogendra Rai deposed that he knows nothing about the occurrence. PW-2 Subodh Kumar Pal was declared hostile by the prosecution. PW-3 is the victim girl. PW-4 Phul Kumari Devi, is mother of the victim and informant of the case. PW-5 Kanchan Sinha is the Investigating Officer of the case. PW-6 Dr. Pushpa Prakash had clinically examined the victim.

According to PW-3, she was at her house at the



time of occurrence. Both Lalu and Nagina Chaudhary came and lifted her and took her near a bridge and Lalu ravished her. Both the appellants allegedly threatened her not to disclose to anyone, otherwise they would kill her and both fled away. Thereafter the victim came to her house. In the cross-examination, there is nothing to doubt the trustworthiness of her testimony. She has denied any dispute between the two families leading to false implication.

PW-4 has supported the prosecution case as hearsay witness from the victim girl (PW-3) and has denied that any dispute with the accused was reason for false implication.

PW-5 the Investigating Officer has supported the investigation done by her.

PW-6 Dr. Pushpa Prakash examined the prosecutrix on 17.01.2015. No spermatozoa was found on examination of the vaginal swab. However, the doctor noticed a case of vaginal penetration. Hymen was ruptured. There was vaginal swelling and injury over vulva, redness and bleeding. The age of the victim was less than 14 years.

The defence witnesses DW-1 Suchit Kumar and DW-2 Bholi Rai stated that due to dispute between the informant and the accused persons for non refund of the loan



taken, the false case has been lodged. However, PW-2 is specific that money was not given to the informant by the accused in his presence nor PW-1 is specific that money was paid in his presence.

6. Mr. Alok, learned counsel for the appellant contends that in the statement under Section 164 Cr.P.C., the victim stated that both the appellants had ravished her, however before the Court as PW-3, she stated that only appellant Lalu (since deceased) had ravished her. This one is material contradiction.

Since the victim girl was not confronted with her earlier statement under Section 164 Cr.P.C., the aforesaid argument has no leg to stand and the proved charge against the appellant Nagina Chaudhary is that he was abettor of the offence, as per definition of abetment under Section 16 of the POCSO Act, which is being reproduced below:-

“16. Abetment of an offence.—A

person abets an offence, who-

First.-Instigates any person to do that offence; or

Secondly.- Engages with one or more other person or persons in any conspiracy for the doing of that offence, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing



of that offence; or

Thirdly.-Intentionally aids, by any act or illegal omission, the doing of that offence.

Explanation I.-A person who, by wilful misrepresentation, or by wilful concealment of a material fact, which he is bound to disclose, voluntarily causes or procures, or attempts to cause or procure a thing to be done, is said to instigate the doing of that offence.

Explanation II.-Whoever, either prior to or at the time of commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitates the commission thereof, is said to aid the doing of that act.

Explanation III. Whoever employs, harbours, receives or transports a child, by means of threat or use of force or other forms of coercion, abduction, fraud, deception, abuse of power or of a position, vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of any offence under this Act, is said to aid the doing of that act.”

The prosecutrix is consistent that appellant Nagina Chaudhary and Lalu, both had lifted her from the house and both were present at the time of occurrence of rape, hence appellant Nagina Chaudhary cannot be absolved of his criminal liability as an abettor.



7. Learned counsel for the appellant next contends that the informant has stated in the F.I.R. that the neighbour informed about kidnapping of the victim girl, but that neighbour has not been produced as prosecution witness.

For non-examination of the neighbour, the testimony of the victim cannot be disbelieved. Especially, when her testimony is corroborated by the medical evidence.

8. Learned counsel for the appellant contends that the occurrence allegedly took place on 20.12.2014 and the F.I.R. was lodged on 27.12.2014, however there is no explanation for such delayed information to the police. Moreover, PW-4 stated that on the very next day of the occurrence, she had lodged the F.I.R.

The aforesaid minor contradiction is possible when the F.I.R. was lodged by an illiterate lady and the same was written by some other person. Aforesaid infirmity would be of no consequence when the victim is consistent in the matter of place of occurrence, manner of occurrence and identity of the perpetrators of the crime. It is highly unbelievable and unacceptable that the prosecutrix would make a self-humiliating statement for the alleged dispute between the parties which is itself of shaky nature and cannot take place of strong motive for



making false allegation.

9. Learned counsel for the appellant has placed reliance on the Division Bench Judgment of Uttrakhand High Court in **Puran Singh and Anr. Vs. State of Uttrakhand** disposed of on 17.05.2017.

Puran Singh's case was of rape and murder. There was material contradiction in the testimony of the eye witnesses. The victim was not medically examined and there was no evidence that who had strangulated the victim to death.

The present case is distinguishable as the prosecutrix has come forward to fully support the prosecution case and her testimony is corroborated by the medical evidence. She has withstand the test of cross-examination. Hence, in my view, there does not appear to be any reason to interfere with the judgment of conviction.

10. The appellant Nagina Chaudhary is in custody since 28.12.2014 and has almost completed more than six years of the sentence awarded.

Since charge proved against Nagina Chaudhary is of an abettor, this Court is of the view that if sentence is reduced to period already undergone that would meet the ends of justice.



Accordingly, sentence is reduced to period already undergone and with the aforesaid modification in sentence, the Cr. Appeal (SJ) No. 2060 of 2017 stands dismissed.

Let appellant Nagina Chaudhary be set free.

(Birendra Kumar, J)

mantreshwar/-

AFR/NAFR	NAFR
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