

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.224 of 2019

Arising Out of PS. Case No.-15 Year-2016 Thana- MAHILA P.S. District- Nalanda

Rajballabh Prasad

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjeev Sehgal, Advocate

Mr. Gopal Bohra, Advocate

For the Respondent/s : Mr. Shyameshwar Dayal, Senior Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

9 19-05-2022

I.A. No.01 of 2021

The instant interlocutory application under Section 389(1) of the Code of Criminal Procedure has been preferred by the appellant for suspension of sentence and grant of bail during the pendency of appeal. He has been convicted for the offences punishable under Sections 376 of the Indian Penal Code and Sections 4 and 8 of the Protection of Children from Sexual Offences Act and sentenced to undergo imprisonment for life and a fine of Rs.50,000/- for the offence punishable under Section 376 of the Indian Penal Code and rigorous imprisonment for five years and a fine of Rs.10,000/- for the offence punishable under Section 8 of the Protection of Children from Sexual Offences Act. The trial court has not awarded any



separate sentence for the offence punishable under Section 4 of the Protection of Children from Sexual Offences Act.

2. The prosecution case is based on the written report submitted by the victim, who has been examined as P.W.2 during trial. In her written report, she has stated that she along with her two elder sisters and a younger brother was residing in the house of Bisundeo Kumar on rent at Garhpar (Professor Colony). Smt. Sulekha Devi was also residing in the same mohalla with whom she has good relation. On 06.02.2016, at 4 P.M., said Sulekha Devi requested her to join a birthday party near Bharao Chowk. She took permission from her elder sister and went along with Sulekha Devi and her daughter Chhoti. They took her firstly at Ramchandrapur Bus Stand and from there they took bus of Bhakhtiarpur. When she inquired that where they were going, Sulekha Devi told her that she would take her mother also for participating in the birthday party. Thereafter, they reached at Bakhtiarpur where a Bolero vehicle was parked from before. After staying there for sometime, she along with Sulekha Devi and her mother sat in the Bolero vehicle. They reached at Giryak in between 11:00 and 11.30 P.M. As it was pitch dark, she could not read the name of the occupant of the building in which she was taken. It was a four



storied building at Giriyak. After sometime, a person aged about 40-50 years came there and started taking wine along with Sulekha Devi. She was also offered to drink, but she refused. There were 4-5 persons guarding the said house. After drinking, Sulekha Devi unclothed her, pushed her on bed, caught her hand, inserted cloth in her mouth and the man, who was taking wine raped her. Thereafter, Sulekha Devi took her to another room and in the morning, she dropped her at her house. She stated that she saw Sulekha Devi receiving Rs.30,000/- from the man, who had committed rape upon her.

3. After the victim came back to her house, she disclosed about the incident to her elder sister who informed her father. After coming to know about the occurrence, her father came and took her to the police station where she submitted her written report. She alleged that she would identify the person who committed rape upon her and the persons who were guarding the house.

4. On the basis of the aforesaid written report, Nalanda Mahila Police Station drew up a formal first information report and registered Mahila P.S. Case No.15 of 2016.

5. On completion of investigation, charge-sheet was



submitted against the appellant and five persons under Sections 366A, 376, 370, 370A, 212, 420, 109, 120B of the Indian Penal Code and Sections 4, 8 and 17 of the Protection of Children from Sexual Offences Act and Sections 4, 5 and 6 of the Immoral Traffic Act.

6. In support of its case, the prosecution has examined twenty witnesses. The prosecution also proved documentary and electronic evidence as well as material exhibits in support of the charges.

7. The defence also examined altogether 15 witnesses in support of its case. It also proved several documents to prove innocence of the accused persons.

8. Mr. Sanjeev Sehgal, learned counsel appearing for the appellant submitted that the impugned judgment passed by the learned Special Judge, MP, MLA & MLC Court is erroneous. He submitted that the impugned judgment suffers from perversity of approach. The testimony of the prosecutrix was not one of sterling quality and unimpeachable character so as to form the basis of a conviction. The investigation of the case was perfunctory. The investigating authorities did not ask the prosecutrix to point out the place of occurrence where actually the alleged occurrence had taken place. They did not



seek to verify in which vehicle the prosecutrix was taken to the place of occurrence and in which vehicle she was dropped at her house. He contended that in medical examination, no injury on the private part of the prosecutrix was detected and the swab of the private part of the prosecutrix was taken and examined in which spermatozoa was not found. He contended that the prosecutrix was medically examined within 60 hours from the alleged occurrence by the doctor and the doctor did not find any injury either on external part or private part of the body of the prosecutrix rather it was found that she was habitual to sexual intercourse.

9. According to him, the medical evidence completely rules out the prosecution case. He contended that the witnesses examined during trial are not consistent. He lastly contended that by now the appellant has remained in custody for over six years and the appeal is not likely to be taken up for hearing in near future.

10. A written objection to the application preferred under Section 389(1) of the Code of Criminal Procedure has been filed on behalf of the State.

11. Mr. Shyameshwar Dayal, learned Senior Counsel appearing for the State vehemently opposed the prayer for bail



made on behalf of the appellant. He submitted that during trial, the appellant was granted bail by this Court vide order dated 30.09.2016. The order passed by the High Court was challenged by the State before the Hon'ble Supreme Court vide Special Leave Petition (Crl.) No.7787 of 2016 corresponding to Criminal Appeal No.1141 of 2016 and vide order dated 24.11.2016, the Hon'ble Supreme Court set aside the order passed by the High Court granting bail to the appellant. He contended that the appellant is an influential person. At the relevant time, he was a member of the Legislative Assembly of the area in question. He submitted that the witnesses examined during trial have fully supported the prosecution case. He contended that co-convict Sandeep Suman @ Pushpanjay had moved before this Court for suspension of sentence and grant of bail earlier. His prayer for suspension of sentence and grant of bail was rejected by this Court vide order dated 13.07.2021. He submitted that Sandeep Suman @ Pushpanjay was an accomplice of the appellant, who is the main culprit.

12. He contended that the alleged victim, a minor, has fully supported her case during trial. The oral testimony of prosecution witnesses and the electronic evidence brought on record would clearly suggest that Sulekha Devi brought the



victim to the house of the appellant where after consuming liquor he raped her. He submitted that it is well settled that in case the medical evidence is contrary to oral testimony of the victim in a case of rape the oral testimony would prevail. Moreover, in the present case, the rape was committed upon the victim on 06.02.2016 and her medical examination was done by the Medical Board on 17.02.2016. Furthermore, P.W. 8 Dr. Shailendra Kumar stated in his testimony that the victim was aged between 16 and 17 and rape could not be ruled out.

13. We have heard learned counsel for the parties and carefully perused the record.

14. Regard being had to the gravity of the offence, the role played by the appellant, an ex-MLA, in the commission of the offence upon a minor girl and the person against whom there is a lesser charge has been refused bail by this Court, we are not inclined to grant bail at this stage. Accordingly, the prayer for bail of the appellant is hereby rejected.

15. Interlocutory application stands dismissed.

(Ashwani Kumar Singh, J)

(Harish Kumar, J)

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