

**Prabhat Kumar Singh Vs. the State of Bihar**

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**SooperKanoon Citation :** [sooperkanoon.com/140731](http://sooperkanoon.com/140731)

**Court :** Patna

**Decided On :** Sep-25-2006

**Judge :** Chandramauli Kr. Prasad and Rekha Kumari, JJ.

**Acts :** Indian Penal Code (IPC) - Sections 225, 302, 307 and 376

**Appeal No. :** Criminal Appeal No. 211 of 2001 (D.B.)

**Appellant :** Prabhat Kumar Singh

**Respondent :** The State of Bihar

**Advocate for Def. :** Lala Kailash Bihari Prasad, Additional Public Prosecutor

**Advocate for Pet/Ap. :** Surendra Kishore Thakur, Adv.

**Disposition :** Appeal dismissed

**Judgement :**

**Chandramauli Kr. Prasad, J.**

1. Sole appellant, being aggrieved by his conviction under Section 302, 307 and 376 of the Indian Penal Code and sentence of rigorous imprisonment for life on the first count and ten years each on other counts, by judgment dated 20th of February, 2001 passed by the Sessions Judge, Samastipur in Sessions Trial No. 121 of 1997 has preferred this appeal.

2. Prosecution commenced on the basis of a statement given by Ganga Prasad Singh (P.W.5) at Government Hospital, Mohiuddinnagar on 16.2.1995 at 8.15 P.M. before the Assistant Sub Inspector of Police, Birendra Prasad Singh (P.W.5).

3. The mother of the victim must be cursing herself in asking her to purchase articles from the market, while returning from the School. She must be thinking, had she not asked her, she would have returned with other girl-students and not fallen prey to the crime, but that was not to be.

4. According to the informant his daughter Baby Kumari, aged about thirteen years happened to be a student of Class X and studying at Girl's High School, Baluahi and used to go to her school from the village alongwith 3-4 other girl students. According to the First Information Report, on 16.2.1995 she went to the School at 9 A.M. and she was asked by her mother to purchase some articles from the market, while returning from the School. On account thereof, according to the informant she was not expected to return alongwith other girl students. However, when she did not return till 4.30. P.M. informant made inquiry and was informed that his daughter had gone to the market to purchase articles. According to the informant when his daughter did not return till 5.p.m., anxiety rolled in and he went in her search towards Mohiuddinnagar market alongwith Bhartendu Singh alias Karu Singh (P.W.1) and Sita Ram Singh (P.w.6). It has been alleged that the informant alongwith the other witnesses reached village Bakarpur they heard groaning-sound from the maize field, near the Middle School and when they rushed there, they saw the informant's daughter Baby Kumari and the appellant naked and later strangulating her while mounted on her body. Informant found her to be unconscious and swelling on her neck. On chase, appellant was apprehended.

5. The informant further alleged that while the appellant was being taken away, another accused Upendra Singh (since acquitted) alongwith three other persons came and forcibly freed him, whereupon the informant and other witnesses raised alarm and the villagers apprehended him.

6. According to the informant, the pant of victim was littered with stool and she was taken to the Government Hospital Mohiuddinnagar where she was admitted for

treatment but ultimately succumbed to the injury on 3.3.1995. On the basis of the aforesaid report, Mohiuddinnagar P.S. case No. 8 of 1995 was registered under Section 376, 307 and 225 of the Indian Penal Code later on the injured dying Section 302 of the Indian Penal Code was also added.

7. Police after investigation submitted charge sheet and ultimately the case was committed to the Court of Sessions. During the trial appellant was charged for committing rape on Sashi Kumari alias Baby Kumari punishable under Section 376 of the Indian Penal Code and also for attempting to murder and murder aforesaid Sashi Kumari punishable under Section 307 and 302 of the Indian Penal Code. Accused Upendra Singh (since acquitted) was charged for committing offence under Section 225 of the Indian Penal Code for rescuing the appellant from the lawful custody.

8. Appellant refuted the charge and claimed to be tried.

9. During the trial, prosecution in support of its case had examined altogether 11 witnesses out of whom P.W.1 Bhartendu Singh alias Karu Singh and informant P.W.2 Ganga Prasad Singh claimed to be eye witnesses to the occurrence. P.W.3 Shiv Sharan Singh, P.W.6 Sita Ram Singh, P.W.7 Ram Naresh Singh and P.W.9 Basudeo Singh have been declared hostile by the prosecution and cross examined. P.W.4 Dr. Amar Nath Jha is a Medical Officer, who had conducted the post mortem examination on the dead body of Sashi Kumari alias Baby Kumari. P.W.5 Birendra Prasad Singh, at the relevant time was an Assistant Sub Inspector of Police, who had recorded the statement of the informant, investigated the case and during that recorded the statements of the witnesses. P.W.8 Vidyarthi Singh does not claim to be the eye witness to the occurrence and has been examined to corroborate the case of the prosecution. P.W.10 Dr. Anjani Kumar Gupta at the relevant time was posted as Civil Assistant Surgeon at the Sadar Hospital and attended to the victim at the first instance, admitted her as an indoor patient and referred her for specialised treatment to P.W.11 Dr. Malti Sharma. P.W.11 Dr. Malti Sharma is another Civil Assistant Surgeon posted at Sadar Hospital and she had attended to the victim on reference by Dr. Anjani Kumar Gupta (P.W.10).

10. The defence of the appellant is denial simplicitor and false implication. However no defence witness has been examined.

11. The trial Court on appreciation of evidence came to the conclusion that although prosecution has not been able to bring home the charge against accused Upendra Singh beyond all reasonable doubt, but placing reliance on the evidences of P.W.1 Bhartendu Singh alias Karu Singh, P.W.2 Ganga Prasad Singh, P.W.4 Dr. Amar Math Jha, P.W.8 Vidyarthi Singh, P.W.10 Dr, Anjani Kumar Gupta and p.W.11 Dr. Malti Sharma came to the conclusion that prosecution has been able to prove its case beyond all reasonable doubt so far as this appellant is concerned and accordingly held him guilty, convicted and sentenced as above,

12. P.W.1 Bhartendu Singh alias Karu Singh in his evidence stated that on 16th of February, 1995 at about 5 p.m. his co-villager P.W.2 Ganga Prasad Singh came to his house and informed her that his daughter Baby Kumari alias Sashi Kumari had not returned from the school and requested him to accompany him, According to this witness he alongwith P.W.2 Ganga Prasad Singh proceeded to search her and reached a little ahead village Bakarpur, heard groaning from inside a maize-field and when he entered inside the maize field, saw the appellant strangulating the victim mounted on her body lying flat and her frock pushed above and pant below and his pant pushed down. According to this witness the appellant seeing them tried to flee away but after a chase, he was apprehended. He had also stated that from there victim was taken to the Mohiuddinnagar Hospital, then to Samastipur Hospital, where during the course of treatment she died.

13. He has also stated that the appellant was kept confined in a room of the Primary School of the village and when the Police came on information, he was handed over.

14. P.W.2 Ganga Prasad Singh is the father of the victim girl and the informant in the case. He has stated in his evidence that on the alleged date of occurrence his daughter aged about thirteen years and studying in Class X had gone to the School and her mother had asked her to bring some articles from Mohiuddinnagar Bazar, while returning from the school. According to this witness when her friends had returned from the School, he inquired from them at about 4.30.P.M. as to why

his daughter had not come back, whereupon he was informed that she had gone to the market to purchase some articles. On being told that she had gone to the market, this witness waited and when the victim did not return till 5 p.m. he alongwith co-villager P.W.1 Bhartendu Singh alias Karu Singh and P.W.6 Sita Ram Singh proceeded towards Mohiuddinnagar Bazar in her search. According to this witness when they reached near village Bakarpur from a maize field near the Primary School heard groaning-sound coming and proceeded in that direction. There he saw the appellant mounted on her body and her private parts and that of the appellant were uncovered. According to this witness seeing them, appellant tried to flee away but was apprehended. He found his daughter unconscious and removed her to Mohiuddinnagar State Hospital and the appellant was brought to Primary School in the village and confined in a room. Villagers collected were keeping watch on him. According to this witness on information Police came and the appellant was handed over to them.

15. P.W.3 Shiv Sharan Singh had stated that although he had not seen the alleged occurrence but heard that some body had raped and murdered the daughter of the informant and was apprehended red handed

16. P.W.4 Dr. Amar Nath Jha is a Medical Officer who held post mortem on the dead body of Sashi Kumari on 3.3.1995 and found the following in injuries:

(i) Discoloured skin patches over knee and legs.

(ii) Swelling of anterior aspect of neck with blackening of skin over hyoid bone size 2'x1', and

(iii) Atrophy of vaginal wall showing infected vaginal cavity,

17. On deep dissection the doctor found neck, larynx, trachea, great vessel walls and oesophagus oedematous and congested.

In the opinion of the doctor death has been caused by asphyxia caused by pressing of neck with hand or with any blunt object. In his opinion the injuries to the deceased were caused within two weeks of the post mortem examination,

18. P.W.5 Birendra Prasad Singh, is a Sub-inspector of police, who had recorded the fardbeyan (Ext.3) of the informant at Mohiuddinnagar Hospital and has proved the same. He had also recorded the formal First Information Report (Ext.4) and in the absence of any senior Officer took up the investigation of the case and recorded the statement of the witnesses during the investigation and visited the place of occurrence. He had seen the mark of trampling and maize plants fallen in the ground at the place of occurrence. He had also stated that the informant has produced victim's pant with stool.

19. P.W.8 Vidyarthi Singh does not claim to be an eye witness to the occurrence but has stated in his evidence that on the date of occurrence at about 5.30 P.M., while he was at his house, he heard from the informant that her daughter has been raped and murdered and the culprit apprehended.

20. P.W.10 Dr. Anjani Kumar Gupta has stated in his evidence that on the date of occurrence, he was posted as Assistant Civil Surgeon at Sadar Hospital, Samastipur and he admitted the victim girl as indoor patient on 16.2.1995. He also stated that the victim was unconscious and he suspected it to be a case of rape. He has also stated that on examination he found sub-conjunctival haemorrhage in both eyes, swelling with echymosis of both upper eye lids, swelling in neck. He also found pulse feeble, respiration irregular and jerky and crepitus and bronchia in the chest. He had also stated that the victim died on 3.3.1995 at 6.30 p.m.

21. P.W.11 Dr. Malti Sharma is another Civil Assistant Surgeon posted at Sadar Hospital, Samastipur and she had stated in her evidence that on 16.2.1995 at 11.40 P.M., she had examined the victim, who was referred to her by P.W.10 Dr. Anjani Kumar Gupta and found the following:

(i) The patient was unconscious, pulse 100 per minute, feeble, respiration irregular and jerky.

(ii) There was dust over hand and feet.

(iii) Swelling over neck, crepts found on auscultation.

(iv) Slight laceration of posterior part of introitus and perinium with bleeding. Hymen ruptured and slight bleeding was found.

(v) Clothes wet with urine and dust particles.

(vi) Vaginal swab was sent for examination.

22. On a Court question as to whether on the basis of symptoms found by her can she say that the victim was subjected to rape, her answer was in affirmative and she has empathically stated that the victim was raped.

23. Mr. Surendra Kishore Thakur, appearing on behalf of the appellant submits that there is vital contradictions in regard to the place where the victim was subjected to rape and strangulated, which clearly show that the prosecution has not come out with true story. He submits that from the evidence of P.W.1 Bhartendu Singh in paragraph 17 of the cross examination it is evident that in the maize field in fact the victim's dead body was found. He points out that this witness in paragraph 17 of the cross examination had accepted that he did not know the name of the owner of the maize field, where the dead body was found. This according to Mr. Thakur clearly shows that the story put forth by the prosecution that the victim was raped in the maize-field and the witnesses saw the appellant mounted on her body and strangulating her is absolutely false.

24. I do not have the slightest hesitation in rejecting this submission of Mr. Thakur. In my opinion, the statement of the witnesses has to be understood in the context it was given. From the evidence of P.W.1 Bhartendu Singh and P.W.2 Ganga Prasad Singh, it is evident that the victim was lying flat in unconscious condition. This finds corroboration from the evidence of P.W.10 Dr. Anjani Kumar Gupta and P.W.11 Dr. Malti Sharma. It seems that in the cross-examination the witness was asked to name the person in whose field the dead body was found, to which this witness pleaded ignorance. In my opinion it was a hidden question, in which the emphasis was in regard to the owner of the field and not the body. Mere not knowing the owner of the land, in no way, discredits his evidence. The Investigating Officer (P.W.5) had found trampling and maize plant fallen, which clearly go to show that the occurrence had taken place there.

25. Mr. Thakur, then submits that the earliest information given to the Police in regard to the occurrence has not been brought on record, which clearly shows that the prosecution intended to conceal the real fact from the Court. In this connection Mr. Thakur has drawn our attention to the evidence of P.W.I Bhartendu Singh, in paragraph 26 of his cross-examination, where he had stated that he alongwith informant Ganga Prasad Singh had gone to the Police Station to give information about the incident. He points out that the prosecution has not brought on record any information given to the Police at the Police Station and what has been brought on record is the statement recorded at the Government Hospital.

26. I do not find any substance in this submission of the learned Counsel. In fact his attempt is to place the evidence of this witness isolated with other parts of his evidence. True it is that this witness in his evidence had stated that he alongwith the informant had gone to the Police Station for lodging the report but he had also stated that the Officer present there did not take the statement and advised them to rush to the Hospital for the treatment of the victim girl. He had also stated that the Sub Inspector of Police in fact came alongwith them in the Hospital and recorded the statement of the informant in the Hospital, There is ample evidence on record that the victim was unconscious and in that situation the Sub-Inspector of Police not recording the statement at the police station and advising to rush her to the Hospital and himself accompanying them cannot be said to be anything abnormal, casting any doubt in the prosecution case. In my opinion the advise of the Assistant Sub Inspector of Police to rush the victim to the Hospital seem laudible.

27. Mr. Thakur, submits that the prosecution has not produced the injury report and hence its allegation of rape has not at all been proved. This in my opinion in no way discredits the case of the prosecution. Prosecution has examined P.W.10 Dr. Anjani Kumar Gupta, who had admitted the victim as indoor patient and P.W.11 Dr. Malti Sharma, who treated her on reference had stated, what they found and proved the bed head ticket (Ext.8/1). The evidence of the aforesaid two doctors and the bed head ticket clerly show that the victim was subjected to rape.

28. P.W.1 Bhartendu Singh and P.W.2 Ganga Prasad Singh are the eye-witnesses to the occurrence. They have seen the appellant as also the victim naked, and the appellant mounted on her body and strangulating her. They have also stated that the appellant was apprehended at the spot, confined in a room of the Primary School of the village and handed over to the Police. P.W.8 Vidyarthi Singh has corroborated the evidence of P.W.1 and P.W.2 abovenamed. The doctor who had conducted post mortem examination and treated the victim have found injuries on her person corroborating the evidence of eye witnesses about rape and murder. The doctor who had conducted post mortem examination had clearly stated that death might have been caused by pressing of the neck with hands. P.W.11 Dr. Malti Sharma has categorically stated in her evidence that the victim was raped. There is no earthly reason as to why the informant, who happens to be the father of the victim girl will leave the real culprit and implicate the appellant. No reason at all has been suggested for false implication of the appellant.

29. In my opinion the evidences of P.W.1 Bhartendu Singh and P.W.2 Ganga Prasad Singh are corroborated by the evidence of P.W.8 Vidyarthi Singh and finds support from the evidence of the doctor, PW 4 Dr Amar Nath Singh, who had conducted the post mortem examination and the doctors who had treated her i.e. P.W.10 Dr. Anjani Kumar Gupta and P.,W.11 Dr. Malti Sharma I do not find any reason to discredit their evidence.

30. Accordingly, I am of the considered opinion that the prosecution has been able to prove its case beyond all reasonable doubt.

31. It is relevant here to state that appellant has been charged for attempting to murder and murder Sashi Kumari alias Baby Kumari and has been found guilty on both counts. In my opinion, when he has been held guilty for offence of murder of Shashi Kumari under Section 302 of the Indian Penal Code his conviction under Section 307 of the Indian Penal Code for attempting to murder her is uncalled for. On this ground alone, his conviction under Section 307 of the Indian Penal Code and sentence therefor is set aside.

32. In the result, I do not find any merit in the appeal and it is dismissed accordingly with modification aforesaid.

