

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1631 of 2018**

Arising Out of PS. Case No.-3 Year-2012 Thana- FALKA District- Katihar

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1. Sk. Sobrati, son of Late Yakub.
 2. Sk. Ishaque, Son of Late Sk. Khoutar.
Both resident of Village- Pawai, P.S.- Korha, District- Katihar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Md. Musowir,Advocate

For the Respondent/s : Mr.Zeyaul Hoda, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT**

Date :09-04-2021

1. The appellants, above named, have challenged their conviction, in S.Tr. No. 291 of 2013 arising out of Falka P.S.Case No.03 of 2012 corresponding to G.R.No.33 of 2012, by learned 3rd Additional Sessions Judge, Katihar. By the impugned judgment and order of sentence dated 04.04.2018, the appellants were convicted under Sections 376/511 I.P.C. and were sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.10,000/-. In default of payment of fine, six months imprisonment was imposed.

The appellants are in custody since 04.04.2018, as such, have completed three years of imprisonment, out of total four years as awarded by the impugned judgment.



2. Initially, P.W.4, the prosecutrix filed a complaint case before the learned C.J.M., Katihar vide Complaint Case No.3250 of 2011 on 12.12.2011 for the act allegedly committed on 08.12.2011 at 6.30 P.M. On the same day, the learned Chief Judicial Magistrate, Katihar forwarded the complaint petition in exercise of power under Section 156(3) Cr.P.C. to Falka Police Station for registration of an FIR. Accordingly, the aforesaid Falka P.S.Case No.03 of 2012 was registered. After investigation, the police submitted chargesheet under Sections 323, 341,376/511 and 504/34 I.P.C. Accordingly, the appellants were put on trial for all the offences whereunder chargesheet was submitted. However, conviction has been recorded as aforesaid.

3. The prosecution case as disclosed in the complaint petition is that the complainant was working on her field which was taken on mortgage at Lalia Pawai Road. The complainant was bundling the paddy crops. The husband had left the field for taking food after harvesting the crop and the complainant alongwith her nine years daughter Parveena Khatoon (P.W.1) was completing the bundling of the crops. It was about 6.30 P.M. on 08.12.2011, when the two appellants came there, appellant-Sk. Ishaque took away to the child of the complainant to some hidden distance and appellant-Sk. Sobrati, on the point of firearm, forcibly ravished to



the prosecutrix. The specific act committed by Sobrati is mentioned in the complaint petition. On alarm of the complainant, the appellants fled away. Thereafter, a Panchayati was convened on 09.12.2011 in the village but the appellants did not participate. Hence, the Panches advised complainant to go to the court. Accordingly, complaint case was filed.

In the complaint petition, five persons including the husband of the complainant are named as witnesses but none has been produced by the prosecution during the trial.

4. P.W.1 Parveena Khatoon deposed that she alongwith her mother was working in the field, both the appellants tied the legs and hands of the mother. Appellant-Sk. Ishaque took P.W.1 to some distance and appellant-Sk. Sobrati torn the cloths of the mother with intent to ravish her. On alarm, witnesses Gopi Prasad Sharma (P.W.3) and Mojahid (P.W.2) as well as Gulshan came there and the appellants fled away.

P.W.2 deposed that he saw that appellant-Sk.Sobrati was committing rape on the prosecutrix and appellant-Sk. Ishaque was keeping hold on her child. In the cross-examination, this witness stated that he was coming alongwith witness-Gopi Prasad Sharma (P.W.3). He further admitted that wife of this witness had also



lodged a case against appellant-Sk.Sobрати about two years back. However, nature of the case is not disclosed.

P.W.3 Gopi Prasad Sharma deposed that when he reached at the place of occurrence, he saw the hands and legs of the prosecutrix tied. The witness opened the ropes and the prosecutrix disclosed what had happened against her.

Thus P.Ws.2 and 3 are not consistent as to what both had seen though both claim to accompany each other at the place of occurrence.

P.W.4 the prosecutrix has deposed that at the time of occurrence, the appellants came and asked from her daughter about whereabouts of her father. The daughter disclosed that he had gone to drive vehicle. Then they asked whether anyone else is there. The daughter said that only the two i.e. mother and daughter, are there. Thereafter, appellant-Sk. Sobрати caught her hand. Thereafter, tied her hands with rope and on the point of pistol, ravished her. Thereafter, witnesses Gopi Prasad Sharma and Mojahid came and untied the rope. Then she phoned to her husband. They went before Sarpanch-Awadhesh for Panchayati. For two or three days, Panchayati continued but the Panches asked for money. Then the informant went to the police station. The



police also demanded money. Then she returned back to the village and on the advice of the villagers, filed complaint before the court.

P.W.5 Dr. S.M. Thakur does not say anything regarding the allegation levelled by the complainant.

The Investigating Officer was not examined in this case.

D.W.1 Sk. Farik and D.W.2 Bibi Jubera Khatoon have deposed that they were also working nearby the field where the complainant was working on her mortgaged land. Husband of the complaint was also there. No such occurrence as alleged ever took place nor any Panchayati was convened. There is nothing in the cross-examination of these defence witnesses to suggest any strong motive for making such statement against the prosecution case.

5. Learned counsel for the appellants contends that the prosecutrix is not consistent with what she stated in the complaint petition in material particular. In the complaint petition, she stated that husband had gone to take meal after harvesting the crops whereas as prosecution witness she stated that husband had gone to drive vehicle. The husband of the prosecutrix, who is a cited witness in the complaint petition, was not produced without any reason for non-production. The prosecutrix is not consistent in the manner of occurrence as alleged in the complaint petition and as presented before the court as P.W.4. Two new witnesses P.W.2



and P.W.3 were set up for the first time while P.W.1 and P.W.4 made their deposition before the court. P.W.2 and P.W.3 are not consistent as to what they had seen at the place of occurrence. Therefore, testimony of these witnesses are not wholly reliable in absence of any corroborative and trustworthy evidence. Due to non-examination of the Investigating Officer, the defence of the appellants, has seriously prejudiced as the Investigating Officer could have been tested by cross-examination what he objectively found during investigation.

6. Learned counsel for the respondent contends that the prosecutrix is consistent that she was ravished by one of the appellants and another appellant facilitated the commission of crime by removing her child so that she could not make any alarm and there is no strong motive on the part of the prosecutrix to make such allegation against the appellants which would be a statement against own chastity of the prosecutrix.

7. On careful consideration of the material on the record, I find substance in the submission of learned counsel for the appellants.

The prosecutrix is not consistent with her previous statement in the matter of manner of occurrence. Husband of the prosecutrix, who was attending the trial, was not produced as a



prosecution witness and different reason was disclosed in the complaint petition and before the court regarding absence of the husband. Moreover, other witnesses cited in the complaint petition were also not examined and the witnesses examined did not fully corroborate the statement of each other as to what they had seen at the time of occurrence. The reason for delay, in lodging the complaint, is not acceptable, as a different reason has been assigned in the complaint petition and a quite different reason in the evidence before court for not reporting the matter at the earliest. No Doctor was produced nor there is evidence that the victim was medically examined. The Investigating Officer was not produced by the prosecution to have opportunity to the appellants to test by cross-examination regarding the objective finding which came to the notice of the Investigating Officer for or against the prosecution.

8. Due to different material infirmities noticed above, in my view, the prosecution case is not free from doubt. Hence, benefit of doubt must go in favour of the appellants. The learned Trial Judge has not considered the aforesaid infirmities in correct perspective.



9. Accordingly, the impugned judgment of conviction and order of sentence are hereby set aside and this appeal is allowed. Let the appellants be set free at once.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
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