

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.892 of 2012

Arising Out of PS. Case No.-102 Year-2010 Thana- BAUNSI District- Banka

Mantu Yadav S/O Kamal Yadav Resident Of Village- Aamgachi, Kali Tola,
P.S.- Bounsi, District- Bhagalpur

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant	:	Mr. Shivendra Kumar Sinha, Advocate Mr. Ranjit Patel, Advocate Mr. Dixit Vinod, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)

Date : 30-10-2024

The present appeal has been preferred against the judgment of conviction and order of sentence dated 31.07.2012 and 07.08.2012 respectively passed by learned Additional Sessions Judge-Ist, in Sessions Trial No. 49 of 2011/ Tr. No. 5 of 2011, arising out of Baunsi P.S. Case No. 102 of 2010, whereby the sole Appellant has been acquitted of charge under Section 3(1)(x) of the SC & ST Act, but convicted under Section 376 I.P.C and sentenced to undergo imprisonment for life.

Prosecution Case

2. The prosecution case as emerging from the *fardbeyan* of the victim/informant as recorded by S.I.



Chandeshwari Prasad Yadav, S.H.O. of Baunsi Police Station on 13.06.2010 at 14:15 hours at Baunsi Police Station is that one day ago, i.e. on 12.06.2010 at about 11:00 AM, the victim/informant had taken her cow to a pond situated about half kilometer to east of her village where co-villager Mantu Yadav, who is appellant herein, already had brought his cow at the pond for drinking water. Seeing the victim alone, the appellant came near her and forcibly tried to commit rape upon her which was resisted by the victim. But thereafter, the appellant put her down forcibly on the ground and gagged her by pressing her mouth and committed rape upon her after lifting her *petticoat*. Whenever she tried to raise voice, he used to press her mouth and beat her. He committed rape upon her about half an hour and thereafter, he threatened her not to disclose the occurrence to anybody otherwise, she was threatened to be killed. Being fearful, she did not utter any word. After the occurrence, she went to the family members of the appellant by walking slowly and complained to them, but they did not listen to her. Her husband was not at his home and that is why, she could not go to Police Station yesterday.

Factual Background

3. On the basis of the *fardbeyan*, Baunsi P.S. Case



No. 102 of 2010 was registered on 13.06.2010 against the appellant under Section 376 of the Indian Penal Code.

4. After investigation, charge sheet bearing no. 177 of 2010 dated 31.12.2010 was submitted against the appellant/ Mantu Yadav for offence punishable under Section 376 of the Indian Penal Code and Section 3(i)(x) of the SC & ST Act. Thereafter, learned Chief Judicial Magistrate, Banka took cognizance of the offence and committed the case to the Court of Sessions and charges against the appellant were framed under Section 376 of the Indian Penal Code and Section 3(i)(x) of the SC & ST Act. The charges were read over to the accused/appellant which he pleaded not guilty and claimed to be tried.

5. During trial, the following seven witnesses were examined on behalf of the prosecution:

- (i) **P.W. 1** :- Malik Kisku (brother of the informant)
- (ii) **P.W.2** :- Shanti Murmu (co-villager of the informant)
- (iii) **P.W. 3** :- Shyamlal Besra (Father-in-law of the informant)
- (iv) **P.W. 4** :- Kanhu Besra (husband of the informant)
- (v) **P.W. 5** :- Victim/Informant
- (vi) **P.W. 6** :- Baaldev Besra (brother-in-law of the informant)
- (vii) **P.W. 7** :- Dr. Kumkum Azad (who conducted microscopic examination of vaginal swab of the informant)



6. The prosecution also brought on record the following documentary evidence:

(i) **Ext. 1** :- Clinical Pathology report

Statements under Section 313 Cr.PC.

7. After closure of the prosecution evidence, the accused/appellant was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination, he admitted that he had heard the evidence of the prosecution witnesses against him. But he did not explain any circumstance, though he claimed that the prosecution evidence is false and he is innocent.

Defence witnesses at the Trial

8. The appellant had examined the following three witnesses in his defence:

- (i) **D.W. 1**- Triveni Mandal (co-villager of the appellant)
- (ii) **D.W. 2** - Kamlakant Mandal (co-villager of the appellant)
- (iii) **D.W. 3**- Dinesh Yadav (co-villager of the appellant)

9. The defence also brought on record the following documentary evidence:

- (i) **Ext. A**:- Signature of Triveni Mandal on the panchayti paper
- (ii) **Ext. A/1** :- Signature of Sona Muni Marandi,



Mukhiya, Village-Saruwa Baunsi on the panchayti paper

(iii) **Ext. A/2** :- Signature of Anil Kumar, Panchayat Member, Panchayat-Saruwa Baunsi on the panchayti paper

(iv) **Ext. A/3** :- Signature of Dinesh Yadav on the panchayti paper

(v) **Ext. B** :- Original sale deed dated 08.03.1933

(vi) **Ext. C** :- C.C. of Order of settlement officer

(vii) **Ext. D** :- C.C of order of Cr. Rev. Case No. 44 of 70-71

Finding of the Trial Court

10. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment acquitting the appellant under Section 3(i)(x) of the SC & ST Act holding that the prosecution had failed to prove that the alleged offence under the SC & ST Act has been committed under public view. However, by the impugned judgment, the appellant has been convicted under Section 376 of the Indian Penal Code finding that the prosecution has proved its case under Section 376 IPC beyond all reasonable doubts against the appellant.

11. We have heard learned counsel for the appellant and learned APP for the State.

Submission of the Parties

12. Learned counsel for the appellant has submitted that the impugned judgment of conviction and order of sentence



passed by learned Trial Court are not sustainable in the eye of law or on facts. Learned Trial Court has not properly appreciated the evidence on record and erroneously convicted the appellant under Section 376 IPC.

13. To substantiate his submissions, he has submitted that amongst the non-official witnesses, only informant has been projected as eye-witness and rest are only hearsay witnesses. Moreover, the report of the medico legal examination of the informant/alleged victim has been withheld by the prosecution. The same has not been brought on record. P.W.-7/Dr. Kumkum Azad has only examined the vaginal swab of the informant and as per this examination, no spermatozoa was found in the vaginal swab. He has further submitted that the learned Trial Court has failed to appreciate the evidence on record that there was land dispute between the family of the appellant and that of the informant and there is all chance of false implication of the appellant on account of such dispute. Learned trial Court has also failed to appreciate the evidence adduced by the appellant in course of trial that in the local panchayati, the allegation leveled by the informant was found to be false. As per the finding of the panchayat, there is no truth in the allegation of the informant and allegation was made only on account of old land



dispute and dirty politics. As per the panchayatnama, Mukhiya has stated that he himself had inquired into the allegation and after examining co-villagers, he had found that there is no truth in the allegation and allegation has been made only on account of land dispute and dirty village politics. The panchayatnama has been signed by about 29 villagers including tribal people.

14. He has also submitted that there is delay of one day in lodging the FIR which shows that the prosecution case was lodged after deliberation and concoction on account of land dispute.

15. He has also submitted that in view of the aforesaid facts and circumstances, there is serious doubt in the prosecution case and the appellant is entitled to get the benefit of such doubts.

16. Investigating Officer of the case has been also not examined on behalf of the prosecution causing prejudice to the appellant. The place of occurrence is also not proved.

17. *Per contra*, learned counsel for the State has submitted that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence. The prosecution has proved its case against the appellant beyond all reasonable doubts.



Prosecution Evidences

18. The **informant/victim** has been examined as **P.W.-5**. She has supported the prosecution case deposing in her **examination-in-chief** in consonance with her *fardbeyan*. She has also deposed that the police had sent her to Banka hospital for treatment and wherefrom she was sent to Bhagalpur. In her **cross-examination**, she has deposed that on the day of occurrence, she was menstruating and she handed over her clothes which she was wearing at the time of menstruation. She is not in love with the appellant. She is married. She has no dispute with the family of the appellant. On the day of occurrence, many cows of the co-villagers were in the forest. She was examined at Banka and from Banka, she had gone to Bhagalpur. There was no injury on her body. She does not understand what is rape. She has denied the suggestion that she has filed this false case to harass the appellant and his family. Learned Trial Court has noted that the witness is illiterate and rustic and belongs to tribal community. She has deposed time and again that the appellant had raped her by lifting her *petticoat*. Learned Trial Court has again noted that by gesture she explains the rape committed upon her.

19. P.W.-1 is **Malik Kisku**. He is brother of the



informant and he is a hearsay witness. He has deposed as stated by her sister to him. He has supported the prosecution case on the basis of hearsay.

20. P.W.-2 is Shanti Murmu. She is a co-villager. She is also a hearsay witness. In her **examination-in-chief**, she has also deposed that the appellant is a very bad man. She has no blood relationship with the informant/victim.

21. P.W.-3 is Shyamlal Besra. He is also a co-villager of the informant/victim and in relationship, he is father-in-law of the informant. He is also a hearsay witness. He has deposed as stated by the informant to him.

22. P.W.-4 is Kanhu Besra. He is husband of the informant and also a hearsay witness. He has deposed as stated by his wife/informant.

23. P.W.-6 is Baaldev Besra. He is brother-in-law of the informant. He is also a hearsay witness.

24. P.W.-7 is Dr. Kumkum Azad. She had conducted the microscopic examination of vaginal swab of the informant. As per this examination, she did not find any spermatozoa in the swab. However, she has not done any medico legal examination of the informant/victim.



Defence Evidences

25. D.W.-1 is Triveni Mandal. He is not aware whether rape was committed upon the informant. He has deposed in his **examination-in-chief** that a panchayati was held on complaint of the informant. One document was prepared by the panchayat on which he had also put his signature.

26. D.W.-2 is Kamlakant Mandal. He has deposed in his **examination-in-chief** that his family had land dispute with maternal grandfather-in-law of the informant. In regard to that dispute, even there was litigation in the Banka Court and in the Court, maternal grandfather-in-law of the informant had lost the case. A panchayati was held on complaint of the informant regarding rape. But allegation was found to be false by the panchayat.

27. D.W.-3 is Dinesh Yadav. In his **examination-in-chief**, he has deposed that a panchayati was held on complaint of the informant regarding rape and he was one of the panchas and he has put his signature on the panchnama and the panchas came to know that a false case has been filed by the informant against the appellant on account of land dispute between the family of the informant and that of the appellant. He has also deposed that the appellant is a family man.



Appreciation of the evidences and finding of this Court

28. From the evidence on record, we find that out of seven prosecution witnesses, six witnesses are non-official witnesses. P.W.-5 is informant herself. P.W.-4 is husband of the informant. P.Ws. 1, 3 and 6 are also family members of the informant because P.W.-1 is brother of the informant, P.W.-3 is father-in-law of the informant and P.W.-6 is brother-in-law of the informant and P.W.-2 is a co-villager of the informant. Only official witness is P.W.-7, Dr. Kumkum Azad, who had conducted the microscopic examination of vaginal swab of the informant. We further find that the Investigating Officer of the case has not been examined, nor medico legal examination's report of the informant/victim is on record.

29. We further find that only informant/victim (P.W.-5) is eye-witness and all other non-official witnesses are only hearsay witnesses and it is settled principle of law that hearsay evidence has no evidentiary value. One may refer to the following judicial precedents in this regard:-

- (i) **Neeraj Datta Vs. State (NCT of Delhi)**
(2003) 4 SCC 731
- (ii) **Rajendra Prabhu Chikane and Anr. Vs. State of Maharashtra and Ors;** (2007) 13 SCC 511

30. We further find that the informant/victim (P.W.-5) is the only eye-witness to the alleged occurrence and she has



supported the prosecution case. But we find that there is no medico legal examination's report of the informant on record. For want of such report, it is difficult to rule out false implication of the appellant. More so, when the informant was examined by doctors at Banka and Bhagalpur hospital withholding the medico legal examination's report raises adverse presumption against the prosecution case. Investigating Officer of the case has been also not examined. Moreover, as per P.W.-7/Dr. Kumkum Azad, there was no spermatozoa found in the vaginal swab of the informant.

31. We further find as per the defence witnesses that there was panchayati held on complaint of the informant regarding rape. But as per the panchayat comprising Mukhiya and other panchas, the allegation of the informant regarding rape was found to be false and the panchayati had also found that false complaint has been filed by the informant on account of land dispute between the family of the informant and that of the appellant. Such evidence of the defence witnesses has not been assailed in their cross-examination by the prosecution. Even suggestion of non-holding of the panchayat or falsity of the finding of the panchayat was not given.

32. Hence, we find that reasonable doubt is created in



the prosecution case against the appellant and on such evidence of the prosecution, it is very difficult for this Court to uphold the impugned judgment of conviction and order of sentence passed against the appellant. The appellant is entitled to get benefit of doubts.

33. In Narender Kumar Vs. State (NCT of Delhi), (2012) 7 SCC 171, Hon'ble Supreme Court has held that however great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

34. In Dilawar Hussain Vs State of Gujarat, (1991) 1 SCC 253, it has been also held by **Hon'ble Apex Court** that there is also no place for sentiments or emotion in the Court of Law. Acquittal or conviction depends on proof or otherwise of the criminological chain which invariably comprises why, where, when, how and who. Each knot of the chain has to be



proved, beyond shadow of doubt to bring home the guilt. Any crack or loosening in it weakens the prosecution. Each link, must be so consistent that the only conclusion which must follow is that the accused is guilty.

35. Accordingly, the impugned judgment of conviction and order of sentence are set aside. The appellant stands acquitted of the charge leveled against him.

36. The appeal stands allowed.

37. Since the appellant is in jail, he is directed to be released forthwith if he is not required in any other case.

38. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

39. The record of the case be returned to the Trial Court forthwith.

40. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

chandan/shoaib

AFR/NAFR	NAFR
CAV DATE	08.10.2024
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