

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1000 of 2009

Arising Out of P.S.Case No.11 Year- 2007 Thana -Konch District- GAYA

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Sanjay Singh @ Malai Singh, son of Hari Narayan Singh, resident of village-Jetia,
P.S. Konch, District-Gaya.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri Binod Kumar, Advocate.

For the Respondent : Sushri Shashi Bala Verma, APP.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 26-08-2015

Criminal cases often present riddles and Judges are required to unfold the riddles after reading the evidence and then to reach the conclusion. Whether the attempt of a Judge to unfold the riddle presented to him through a set of facts ends in an order of conviction or acquittal, every Judge attempts to go to the root of the matter in search of truth so as to imparting justice by resolving the perplexity which is presented by the facts of the case. Consistency of evidence could be misleading in most of the cases and the case in hand appears a case of that class.

2. A lady about 60 year of age, who was married to PW 1 Kameshwar Ram and who had six daughters and two sons, all

daughters being married and living in their matrimonial houses and the daughter-in-law residing with the lady, was complaining of being gagged by the appellant and then raped by him. The incident allegedly had taken place when the lady had gone out of her house at about 8.30 P.M. on 13.01.2007 to attend to call of nature.

3. The lady stated that it was night and her *Samdhi* had visited them and had stayed overnight and, as such, she could not whisper about the incident and could be taken to the police station by PW 1, her husband Kameshwar Ram, for lodging the report only in the morning.

4. The first riddle which confronted us is that there is nothing mentioned in the written report dated 14.01.2007, which appears neatly drafted without there being any error and a correction as such, as to who had authored that particular document.

5. At any rate, PW 5 Shiv Lakhan Ram, the Sub Inspector of Police, who was the Officer-in-Charge of Konch police station in the district of Gaya, was as plainly naïve as to accept the written report without launching himself on a preliminary enquiry which is duly permitted by Section 157 (1) proviso (b) Cr.P.C and went on to register a case and further went on to launch himself on the investigation of the case. He sent the victim PW 3 Bachani Devi to PW 4 Dr. Shyama Rai, who examined her medically and as may



appear from the evidence of the doctor, no external or internal injury could be found by her anywhere on the person of PW 3 Bachani Devi. She was aged above 55 year and she had attained menopause as appears from her evidence. The lady had alleged through her evidence that while she was sitting to discharge herself while attending to the call of nature, the appellant appeared there, seeing whom she got up and immediately thereafter the appellant gagged and dragged her a little away from that place to commit rape. The investigating officer did not find any signs of defecating at any particular place on or around the place of occurrence. This is the clear evidence of the investigation officer PW 5 Shiv Lakhon Ram. The doctor did not find any signs of brutal sexual assault so much so that even no motile or non-motile semen was found in the vaginal swab which was sent for pathological investigation.

6. The suggestion of the defence was that the family was in the habit of filing false case as it was evidently stated by the lady that the appellant had attempted to violate her married daughter earlier and it was the attempt of the appellant again to violate the mother of the girl. The defence pleaded that the earlier incident was false which was reported, so as to extorting money and that fact was admitted by PW 1 Kameshwar Ram in his cross-examination at page - 8 of the paper book and, as such, the lady was again pressing the same

button of exploiting a family who was otherwise affluent as appears from the cross-examination part of PW 1 Kameshwar Ram.

7. The police station was only five kilometers away from the village. It was the cold night of January, 2007 and the lady had ventured out of her house, pointing out to the Court, to attend the call of nature. She had stated that she used to go to attend such calls all alone but her daughter-in-law PW 2 Renu Devi was pointing out that she always used to accompany her mother-in-law for going to attend the call of nature, but incidentally on that night, the lady had all alone gone out of her house for the purpose. The lady stated in her evidence that some traces of feacal matter had stuck up with her petticoat and some trace of semen had fallen on her same undergarment. The doctor did not say that any such trace of those materials could be found by her anywhere on the cloth of the lady. The investigating officer also does not say that any such cloth was presented to him. We have already noted that the doctor PW 4 Dr. Shyama Rai did not find any signs of forcible or consensual sexual intercourse having been committed with her.

8. The quiz appears wrapped under falsehood. The probability indicates that no incident had indeed occurred as the lady herself stated that she had struggled while being put on ground as also while the appellant was attempting to accomplish the act which was

committed by him and again we after considering the evidence of the doctor PW 4 found no trace of any injury on her person. A person may tell a lie, but circumstances do not. That adage appears applicable to the facts of the present case and considering the circumstances indicating non-commission of the offence alleged, we find the case suffering from serious doubt so as to vitiating its veracity.

9. In the result, the appeal succeeds and the same is allowed. The solitary appellant, namely, Sanjay Singh @ Malai Singh is acquitted of the charge he had been held guilty of and sentenced thereafter, setting aside the judgment passed by the learned Additional Sessions Judge, Fast Track Court-V, Gaya, in Sessions Trial No.96 of 2007/ 380 of 2007. The appellant is still in custody. Let him be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

mrl./-Brajesh Kumar.

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