

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.421 of 2011

(Against the judgment of conviction and order of sentence dated 31st of January, 2011 and 2nd of February, 2011, respectively passed by the learned Additional Sessions Judge, Fast Track Court-II, Madhubani in Sessions Trial No.356 of 2009 arising out of Madhubani Town P. S. Case no.63 of 2009.)

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Raja Sah @ Kanha, son of Ram Sah, resident of Mohalla-Surat Ganj (Lohapatti), Ward No.16, P.S. and District- Madhubani.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi-Amicus Curiae

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 12-08-2015

Sole appellant Raja Sah @ Kanha, who has been found guilty for an offence punishable under Sections 450 and 376 of the I.P.C. vide judgment of conviction dated 31.01.2011 and sentenced to undergo R.I. for seven years, under Section 450 of the I.P.C., R.I. for seven years with a further direction to run the sentences concurrently vide order dated 02.02.2011 rendered by the Additional Sessions Judge, Fast Track Court-II, Madhubani in Sessions Trial No.356 of 2009 has challenged the same by way of instant appeal.

2. PW-8 Navin Kumar, who happens to be the son of victim Bauan Devi, aged about 70 years, had filed written report on 09.03.2009 at about 8.30 p.m. disclosing therein that he along with his mother resides at Suratganj (Lohapatti). On the same day at 5.30 p.m. while he had returned from market after taking medicine, he heard sound of crying raised by his mother. He gone inside and in the mobile light, he had seen Raja Sah, his neighbour indulged in committing rape over his mother Bauan Devi. He caught hold him, however, the accused indulged in scuffle. During course of which, he assaulted him with stone

particle. In course of fleeing, he (Raja) fell down inside the room over which, he, after locking the room, began to raise alarm attracting neighbours. He disclosed the occurrence. As soon as the room was opened, Raja Sah came out and ran away subsequently thereof, he lifted his mother to hospital where police came, before whom he submitted written report.

3. On the basis of the aforesaid written report, Madhubani Town P. S. Case no.63 of 2009 was registered under Sections 450 and 376 of the I.P.C. whereupon investigation commenced and concluded by way of submission of chargesheet. Accordingly, cognizance was taken. On account of offences being triable by the Court of Sessions, committed the case and then thereafter, trial commenced and concluded, the subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial as well as of false implication on account of animosity. However, neither any DW nor any kind of document has been exhibited on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, out of whom, PW-1 Dr. Rama Jha, PW-2 Jagarnath Mahto, PW-3 Jitendra Kumar, PW-4 Sudama Devi, PW-5 Leela Devi, PW-6 Rani Devi, PW-7 Surendra Lal Dev and PW-8 Navin Kumar as well as also exhibited the documents as Exhibit-1 injury report, Exhibit-2 written report.

6. The learned Amicus Curiae assailing the judgment of conviction and sentence has submitted that on account of non-examination of the victim, the prosecution case is found suffering from gloominess and that being so, the conviction and sentence recorded by the learned lower Court is fit to be set aside.

7. Then, it has been submitted that majority of witnesses have not supported the case of the prosecution and on account thereof, they were



declared hostile. It has also been submitted that prosecution story whereunder the informant claimed himself to be an eye witness to occurrence is not at all found acceptable in the background of the fact that had there been presence of appellant inside the room, must have closed the room from inside as he had gone with an intention to commit rape and in that situation, would not have allowed entrance of the PW-8/ informant. Not only this, it has also been submitted that even accepting that the room was not closed from inside, presence of PW-8/ informant inside the room must have adverse impact at that very moment whereupon the appellant must have tried himself to hide and that being so, the claim of informant that he had seen the occurrence being committed by the appellant is quite unbelievable. So far other witnesses are concerned, more particularly PW-2 and PW-3, they have reiterated what informant had stated.

8. Then, it has been submitted that had there been presence of appellant inside the room, instead of opening the door, the prosecution would have informed the police officials to facilitate apprehension of appellant inside the room in presence of neighbours. Not only this, even accepting the prosecution case that door was opened by the informant in presence of witnesses and on account of presence of so many persons would not have provided an opportunity to the appellant to run away. Therefore, the prosecution case suffers from improbability. On account thereof, became unreliable and is fit to be rejected.

9. On the other hand, learned Additional Public Prosecutor opposed the submission and while supporting the finding recorded by the learned lower Court, it has been submitted that there happens to be no occasion for the prosecution to falsely implicate the appellant that too, under the present manner of occurrence whereunder victim happens to be the mother of informant aged about 60-70 years old lady having his leg hanging in grave, weak and ailing personality having no strength to desist and on account thereof, fallen prey at the lecherous

intention, desired of the appellant. That being so, appellant did not deserve any sort of leniency.

10. From the evidence of PW-8 as well as PW-7 Surendra Lal Dev, I.O., it is apparent that victim had died on 09.06.2009 just three months after the alleged occurrence. It is also apparent from the evidence of PW-1 that victim was of weak physical structure and was under treatment since long. Therefore, resistance as canvassed rightly found absent in the present case. Furthermore, the non-examination of the victim as disclosed above happens to be on account of her death. That being so, will not give an adverse impact upon the prosecution case independently.

11. Now, coming to the status of the witnesses, it is apparent that PW-4 Sudama Devi, PW-5 Leela Devi and PW-6 Rani Devi have been declared hostile as they have not come forward to support the prosecution case. PW-1 is a doctor, who was one of the members of the Board by which the victim was examined on the alleged date of occurrence i.e. on 09.03.2009 itself. PW-2 is the witness of material point, PW-3 is the under hearsay category while PW-8 is the eye witness/ informant while PW-7 is the I.O.

12. Medical Board had examined the victim and found following injury:-

(i) Laceration on posterior part of vagina around ½". Injury bleeds on touch. Age of injury within 24 hours.

The doctor had opined the aforesaid injury to be an outcome of attempt to commit rape. During cross-examination, the defence had suggested that if finger is pressed, such kind of injury may be possible. From the cross-examination itself, it is also apparent that victim was very weak and unable to move.



13. PW-8 is the informant, who stated that on the alleged date and time of occurrence, when he returned back from market after purchasing medicine and came at his house, he found his mother crying. As darkness had slightly fallen on account thereof, he switched on mobile and had seen Raja Sah committing rape over his mother. He tried to escape there from, but fallen down in the room itself and on account thereof, he shut the door from outside and raised alarm attracting his neighbours in whose presence, he opened the door. Raja Sah slipped after having scuffle with him. Thereafter, he took his mother to hospital for treatment where police came and he handed over the written report. During cross-examination, it is evident that this witness has been tested over occurrence as well as over his stand as an eye witness. From Para-5 of his cross-examination he had categorically stated that when he saw, he found the accused indulged in committing rape upon his mother. At that very moment, none others were present. After raising alarm by him, neighbours came. In Para-7, he had stated that on account of such incidence, his mother was unable to speak. He had further stated that he is not recollecting whether police had recorded statement of his mother or not.

14. PW-2, Jagarnath Mahto is local resident, who had stated that Navin Kumar was residing in the house along with his mother on rent. He had further stated that he heard alarm raised by Navin Kumar whereupon he along with others came, he found the room closed. Then, door was opened and boy came out from the room whom he identified in dock, though did not name him. It has also been disclosed that female members have gone inside the room and then stated that the victim was bleeding. At that very time, he was standing outside the room. Then they have directed the informant to carry the victim to hospital. Police had come on next day before whom he had made statement. During cross-examination, he had stated that he had not tried to apprehend or chase the

accused.

15. PW-3 is Jitendra Kumar, who had stated that he came to know regarding commission of rape with the mother of Navin Kumar over which he had gone to hospital. He found the victim in semi-conscious state. He came to know that Raja Sah had committed rape. During cross-examination, nothing substantial has been elicited from him save and except, the victim was suffering from ailment since before.

16. PW-7 is the Investigating Officer. He had stated that after receiving O.D. Slip from the hospital, he rushed and found the victim being provided medical facility. Her son Navin Kumar was present, who scribed the written report and handed over to him. He further stated that rape has been committed over his mother by the accused. He tried to take the statement of the victim, but was unable to speak at that very moment. On the basis of the aforesaid written report, substantial case was registered and then, investigation commenced. He was immediately informed that accused has been apprehended by the local inhabitants whereupon he had gone to arrest the accused. He had seen the place of occurrence, the rented house wherein prosecution party was residing. He had detailed the same. He had also stated that he had taken statement of the victim. After receiving medical report as well as examination of the witnesses, submitted charge sheet. He had further stated that victim is dead. During cross-examination, he said that he had not found semen over the cloth of accused. He had further stated that accused was not examined by the doctor. He had further stated that he had not mentioned in the case diary regarding seizure of cloth of alleged victim as well as examination of cloth of victim. He had further admitted that in Para-19 of the case diary, he had mentioned the fact that no spot was found over bed.

17. From the evidence available on the record, as detailed herein above, it is apparent that injury over private part of victim was found. The cause

for presence of aforesaid injury is found duly explained from the evidence of PW-8, the informant. As stated above, during course of cross-examination of this witness, PW-8 stood firm with regard to his status as an eye witness to occurrence whereunder the appellant had indulged himself in committing rape over the victim. Furthermore, the defence could not be able to place any cogent reason whereupon the version of the informant could be discredited. Furthermore, the evidence of PW-8 is found corroborated with the evidence of other PWs that means to say PW-2 as well as PW-3. Apart from this, defence also failed to cross-examine PW-7, the I.O. on the score when he disclosed that he came to know his apprehension by the local inhabitants whereupon he had gone and took control over appellant.

18. In the aforesaid facts and circumstances of the case as well as giving anxious consideration to the material available on the record, instant appeal is found meritless and is accordingly, dismissed. Appellant is under custody whereupon he will suffer the remaining part of sentences.

19. First page and last page of the judgment should be given to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Patna High Court,
Dated-12.08.2015,
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