

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.770 of 2010

[Against the judgment and order of conviction dated 05.06.2010 and 09.06.2010 respectively passed by the 1st Additional Sessions Judge-cum-Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, Aurangabad, in Sessions Trial No.328 of 2008/ G.R. No.830 of 2008 arising out of Haspura P.S. Case No.45 of 2008]

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Jasim Ansari, son of Abdul Rahim Ansari, resident of village-Haspura Dih, Police Station-Haspura, District- Aurangabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Pd. Singh, Sr. Advocate with
Mrs. Meena Singh, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 29-10-2015

1. The sole Appellant has been convicted under Section 376 Indian Penal Code and 3(i) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for life under Section 376 Indian Penal Code and two years under section 3(i) (xii) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act with fine of ₹5,000/- (five thousand) and in default of which further simple imprisonment for six months by judgment and order

of conviction dated 05.06.2010 and 09.06.2010 respectively passed by the 1st Additional Sessions Judge-cum-Special Judge, Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, in Sessions Trial No.328 of 2008/G.R.No.830 of 2008/Tr. No.25 of 2008.

2. The case of the prosecution, according to PW 3 Raj Kumar Ram, by way of written report dated 03.04.2008, is that on 28.03.2008, his minor daughter was lured into the house of the Appellant, who committed rape upon her. Initially, information was given to the Officer-in-Charge, Haspura, on 30.03.2008, but the Officer-in-Charge, Haspura, merely called the Appellant, detained him for a day and on the next day let him off. He then sent information to the Superintendent of Police, Aurangabad, with a fresh written report in this regard upon which a case was instituted belatedly.

3. During trial, the prosecution examined ten witnesses and the defence examined three witnesses.

4. PW 1, Rita Devi, is the mother of the victim, who stated that on 28.03.2008, at about 1.00 PM, her daughter had gone to graze the goats when the Appellant called her into the house, raped her and whereafter gave her sweets and *Mehandi* and threatened her not to disclose this incident to any one. However, she



came and told her about the occurrence. She saw that the public area was blood stained and swollen at which she washed it with warm water. When the daughter disclosed the incident to her, her husband and father-in-law were not at home. She stated that she had complained to the father of the Appellant about the occurrence but he had instead scolded her. Her daughter, who is about 7 years of age, had been examined by the Doctor at Aurangabad Hospital and initially the case was not instituted by the Officer-in-Charge but when they complained to the Superintendent of Police, Aurangabad, then the case was instituted. In cross-examination, she stated that the Appellant was about 30 years of age and a married man and she had disclosed about the occurrence to rest of the villagers and witnesses Girija Singh (DW 2), Surajmal (PW 6) and Md. Saleem Khan (DW 1) were on the side of the Appellant. She stated that when this information was disclosed to the co-villagers, they stated that it was false allegation. She did not know about any land dispute between the Appellant and Kadir Ansari, father of PW 5. It was suggested to her that the case had been instituted against the Appellant at the instance of Kadir Ansari.

5. PW 2, Dudheshwar Ram, is the grand father of the victim, who stated that on 29.03.2008, when he returned home, he was informed by PW 1 about the occurrence. He then went to the



house of the Appellant and complained to the father of the Appellant, but instead he was scolded taking his caste name and driven out from there. In cross-examination, he stated that he did not know about any land dispute between the Appellant and Kadir Mian, father of PW 5, and that it was at his instance that the case has been instituted. It was suggested to him that fact of the matter was that the victim had uprooted some garlic plants which had given rise to an altercation.

6. PW 3, Raj Kumar Ram, is the father of the victim and the Informant, who stated that on 28.03.2008 at about 12.00 noon when his daughter had gone to graze the goat, the Appellant lured into her *Gausala* and raped her. This information was given by the victim to his mother, who told him about the same. He also stated about the first aid that his wife had given to his daughter and it was only on 29.03.2008, when he returned home he learnt about this occurrence. He then went to complain to the father of the Appellant, but instead he was scolded and driven away. On 30.03.2008, he had gone to the Haspura Police Station and told the Officer-in-Charge about the occurrence and he was sent home on the assurance that the Appellant would be arrested. However, the Appellant was detained only for a day and then let off. Then, he once again went to the Officer-in-Charge to complain about the



same and also sent registered letter to the Superintendent of Police, Aurangabad, on 01.04.2008. He had gone to *Janta Darbar* of the Superintendent of Police, Aurangabad, along with his wife and daughter and gave information at which a case had been instituted which is Ext.1. He stated that his daughter had been treated at Aurangabad Hospital. In cross-examination, he stated that his village is small having about fifty houses of Harijan. House of Jasim Ansari is next to the house of Kabir Ansari (PW 5) but he did not know about any land dispute between them. He denied that he had told Kabir Ansari about the occurrence but had informed rest of his caste people. He denied that the father of the Appellant had told him that his daughter had uprooted plants of garlic. It was suggested to him that the case had been foisted at the instance of Sabir and Kadir, brother and father respectively of PW 5 (Kabir Ansari).

7. PW 4, Shankar Ram, is a co-villager, who stated that he heard that on the date of occurrence the Appellant had committed rape with the victim. In cross-examination, he stated that a *Panchayati* had been held in the village, but for what reason it had been held he did not know. He also stated that some land dispute was going on between Kabir and the Appellant and both of them were in leather business. He denied that the Informant used to work in the house of Kabir. However, he conceded that he had never been

examined before the police.



8. PW 5, Md. Kabir Ahmad, is also a hear say witness, who stated that the victim told him about the occurrence in presence of his mother and when they went to complain to the father of the Appellant, they were driven off. He stated that he had contested for election in Zila Parishad and was a leader but it was not in that capacity that the victim had complained to him. He denied that any *Panchayati* had taken place but accepts that he had had not been examined by the Investigating Officer. However, his attention was drawn to the earlier statement given presumably before the Dy. Superintendent of Police but not on any relevant point. He admits personal land dispute between the family of the Appellant and himself but denied the suggestion that the Informant was his person and it was on his goading that the present case had been instituted.

9. PW 6, Surajmal Ram, stated that on the date of occurrence while he was in his house the victim had been uprooting garlic plants of the Appellant which was disliked by the Appellant, who scolded her and snatched away the garlic plants, abused and assaulted her. He stated that there was land dispute between Kabir (PW 5) and the Appellant and that a *Panchayati* had been held with regard to the victim's uprooting garlic plants in which he was also

present but the parties had not honoured the compromise and the terms of *Panchayati* ruling.

10. PW 7 is the victim herself, who was eleven years old on the date of deposition and probably 8 years at the time of occurrence. She stated that on the date of occurrence while she was grazing the goats the Appellant had called her and told her that he would give her some *Mehandi* leaves at which she went there. The Appellant then took her inside the house, locked the door and unbuttoned his trouser and committed rape upon her. When she screamed, the Appellant closed her mouth. When she came back home, she told her mother about the occurrence who reported the same to her father. She also went to the hospital where she was medically examined. During cross-examination, she stated that she had not seen the house of the Appellant and that the occurrence had taken place inside the house. She stated that when this occurrence took place, the mother had gone to the fields and it was only when she returned, she disclosed about the occurrence. She stated that no *Panchayati* had taken place in this regard nor did *Mukhiya* come in enquiry. It was suggested to her that the case had been foisted by PW 5 by goading her parents. It was not true that she was in school on that day and had not gone to graze the goat.

11. PW 8, Dr. Nisha Singh, had examined the victim



on 04.04.2008. Apart from opining that no external or internal injury was found on her person, she supported the fact that vaginal opening was mildly inflamed and hymen ruptured. On the basis of such examination, she stated that even though no spermatozoa was found but factum of rape could not be denied. She assessed the age of the victim being between 5-8 years.

12. PW 9, Dr. Arun Kumar Sinha, stated that physical examination of the victim had taken place in his presence on 04.04.2008 being a member of the Board of Doctors and he also supports the reports which are Ext.2/4 and 2/5.

13. PW 10, Vinesh Prasad Singh, was the Investigating Officer, who stated that on 03.04.2008, a case was instituted by the Informant on the basis of a written report. He then proceeded in investigation and examined the place of occurrence. He found it to be a three room house meant for keeping cattle but there was a Chauki also kept there as also some implements. He also found a *Mehandi* plant there as also some plants of onion, garlic, peas, chilly, etc. He stated that he examined the witnesses including PW 1, Rita Devi, PW 2, Dudheshwar Ram, PW 3, Raj Kumar Ram, PW 4, Shankar Ram, PW 6, Surajmal Ram and PW 7, the victim, DW 1, Salim Khan, DW 2, Girija Singh. He proved the written report Ext.3. In cross-examination, he stated that he did not

make any enquiry with regard to family of the victim having any goats and there was some statement that, in fact, the occurrence took place on account of dispute over uprooting of garlic plants but the same is not admissible in law.

14. As for defence witnesses, we find that Salim Khan (DW 1) stated that on the date of occurrence a dispute had taken place between the victim and the Appellant for which a *Panchayati* had taken place in which he also participated and a report had been prepared as marked Ext.A. He stated that the Informant used to work in the house of Kabir Ansari (PW 5) and it was at the instance of Kabir Ansari that the case has been instituted. He further stated that an old land dispute was going on between the Appellant and Kabir Ansari and that the story about the rape was completely false. In cross-examination, he stated that Kabir Ansari (PW 5) had instituted a case against him in which the Informant was one of the witnesses.

15. DW 2, Girija Singh, also repeated what DW 1 had to say and proved his signature and others on the *Panchayati* document as Ext. A/1, A/2 and A/3. He stated that he did not see the occurrence of the victim uprooting garlic plants but had seen the Appellants holding the same.

16. DW 3, Shabnam Ara, stated that on 28.03.2008





a dispute had taken place in the village over uprooting of garlic plants between the parties at which a *Panchayati* was held in which he had also participated. However, the *Panchayati* was not honoured by the Informant, who instituted this false case later. She stated that the *Panchayati* for occurrence of uprooting of garlic had taken place on 02.04.2008 and since occurrence of rape had not occurred he cannot say the date of the same.

17. Learned counsel for the Appellant submits that as is evident PW 6, Surajmal Ram, DW 1, Salim Khan, DW 2, Girija Singh, and DW 3, Shabnam Ara, have given different version of the occurrence which makes the prosecution story doubtful. Further submission is that the admitted position is that PW 5, Md. Kabir Ahmad, was in litigation with the Appellant and he was all along present when the case was instituted and hence, it is quite possible that the case was got instituted at his instance. Further, in the statement recorded under Section 313 Cr. P. C., the Appellant has also taken the same plea which should not be disregarded.

18. From the evidence of the witnesses, we find that PW 1 (Rita Devi), PW 2 (Dudheshwar Ram), PW 3 (Raj Kumar Ram), PW 4 (Shankar Ram), PW 5 (Md. Kabir Ahmad) have given consistent hearsay account of what they had heard from PW 7, the victim. PW 7 herself was a minor girl aged about 8 years and she



has fully supported the case of the prosecution without any hesitation. We also find that PW 8 (Doctor) on physical examination found the pubic area inflamed suggesting that some force had been used on the area. In such circumstances, we find that story of rape by the Appellant has been fully corroborated on all material points.

19. As for defence of the Appellant, we find the suggestion to PW 1 is that after the occurrence a *Panchayati* had taken place to which she denied. The reason for *Panchayati* is not specified. And later that it was wrong to say that her daughter had uprooted the garlic plants. And lastly that on goading of Kadir Ansari, this false case was instituted. To PW 2, the grand-father, it was suggested that his grand-daughter had uprooted garlic plants at which a *Panchayati* had taken place. The suggestion does not specify as to whether the said occurrence/*Panchayati* had taken place on the date of occurrence. It was further suggested that his grand-daughter had uprooted the plants at which a dispute had taken place.

20. The defence suggested to PW 3, Raj Kumar Ram, merely that he had instituted the case at the instance of Kadir, father of PW 5.

21. As for PW 7, the victim herself, the defence

merely suggested that the case had been got instituted by Kabir (PW 5), and no such occurrence had taken place and that she had deposed on the prompting of her parents.

22. We, thus, find that it was not suggested to PW 1, Rita Devi, or PW 2, Dudheshwar Ram, or PW 3, Raj Kumar Ram, and most importantly to the PW 7, the victim, that, in fact, an occurrence of uprooting garlic plants had led to institution of present case exaggerating the event. In such circumstances, we are inclined to reject the counter story of PW 6, DW 1, DW 2 and DW 3.

23. In the result, finding no merit in the appeal, the same is **dismissed**.

(Anjana Prakash, J)

AFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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