

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.142 of 2012

Arising Out of PS.Case No. -0 Year- null Thana -null District- SUPAUL

1. Lal Bahadur Singh S/O Late Nageshwar Singh R/O/V- Kathara, P.S- Chhatapur,
District- Supaul.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Bibhuti Prasad Pandey, Sr. Adv.
Mr. Arun, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 19-03-2015

This appeal is directed against the judgment of conviction dated 19.01.2012 and order of sentence dated 24.01.2012 passed by the learned Additional Sessions Judge, FTC-1, Supaul in Sessions Trial No.117 of 2007/TR No.87 of 2011, arising out of Complaint Case No.1070C of 2005, whereby the appellant has been convicted under section 376 of the Indian Penal Code and sentenced to undergo R.I. for 7 years and to pay a fine of Rs.5,000/-, and in default thereof, to undergo simple imprisonment for a further period of three months.

2. The prosecution case is based on a complaint filed on 28th December, 2005 in respect of an occurrence which took place on 29th September, 2005. The crux of the prosecution case as disclosed in the complaint petition by the prosecutrix (P.W.2) is that on 29th



September, 2005 while she was harvesting paddy crops in her field and her mother was carrying the said harvested crops to her house, the appellant forcibly laid her down on earth and ravished her, removing her salwar, under the threat of fire arms as well as under the inducement of payment of some money to her. When the prosecutrix raised alarm, the appellant fled away wearing lungi and the witnesses saw him fleeing away. The parents of the prosecutrix gave information to the people of the locality, who advised to file an application in the Police Station and also for holding of Panchayati to resolve the issue. Then a Panchayati was held at the house of one Moti Singh on 30th September, 2005 but the appellant did not attend the Panchayati despite having proper notice in this regard. Thereafter, on the advice of the Panches, father of the prosecutrix submitted a complaint before the Officer-in-Charge of the Police Station, who assured to hold enquiry into the matter but he never turned up for enquiry. The people of the locality again advised the appellant to resolve the issue through Panchayati, and on their advice, a Panchayati was held once again on 8th October, 2005 at the house of one Chamru Singh (P.W.5) and in the said Panchayati it was decided that the prosecutrix should be married to a boy of her community and the appellant would accord financial assistance to her and the parents of the prosecutrix would also support it. The decision of the Panchayati was reduced into writing and the Panches had put their



signatures thereon, but the accused Ballu Singh, brother of the appellant got furious and tried to tear the Panchnama but due to timely intervention of the Panches he could not succeed in the mission. It is then alleged that on 8th October, 2005 at about 7.00 p.m. the appellant, his brother Ballu Singh and one Jago Singh came to the house of the prosecutrix and started beating her parents and told that Panchnama be returned to them failing which the house of the prosecutrix would be set ablaze, and when they got the Panchnama, accused Ballu Singh fled away with a box containing ornaments worth Rs.8000/- and clothes worth Rs.1000/-. The alleged occurrence is said to have been witnessed by the people of the locality and on the advice of the Panches, father of the prosecutrix again went to the Police Station where accused Ballu Singh and Jago Singh were sitting from before and they drove away the prosecutrix and her father from the Police Station.

3. On the basis of the aforesaid allegations, the complaint was filed on 28th December, 2005. The prosecutrix was examined on solemn affirmation and in course of enquiry some witnesses were also examined on behalf of the prosecutrix. On conclusion of enquiry conducted under section 202 of the Code of Criminal Procedure, learned Chief Judicial Magistrate found a prima facie case under section 376 of the Indian Penal Code against the appellant alone and thus he was summoned to face trial.

4. Since the alleged offence under which cognizance was taken by the learned Chief Judicial Magistrate was triable by the court of Sessions, the case was committed to the court of Sessions for trial.

5. The trial court explained the charge under section 376 of the Indian Penal Code to the appellant to which he pleaded not guilty and claimed to be tried. Accordingly, charge was framed and the trial commenced.

6. To substantiate the charge, the prosecution has examined as many as five witnesses. They are P.W.1 Dinesh Singh, P.W.2 the prosecutrix, P.W.3 Dr. Nutan Verma, P.W.4 Tara Devi and P.W.5 Chamru Singh. On behalf of the defence, neither oral nor any documentary evidence was led during trial.

7. After holding trial, the court below held the appellant guilty of the charge under section 376 of the Indian Penal Code and sentenced him in the manner described hereinabove.

8. I have heard Mr. Bibhuti Prasad Pandey, learned senior advocate on behalf of the appellant and Mr. Binod Bihari Singh, learned Additional Public Prosecutor on behalf of the State and with their assistance, perused the lower court records.

9. Learned counsel for the appellant has submitted that it is out and out a false case in which there was no material on the basis of which the court below could have arrived at the conclusion of guilt. According to him, there is inordinate and unexplained delay in filing



the complaint and the witnesses examined on behalf of the prosecution are wholly unreliable. He has submitted that the witnesses contradicted each other on material particulars. The medical evidence does not corroborate the prosecution case and the material exhibits were never produced before the court. He has further submitted that several important witnesses were not examined in course of trial.

10. Per contra, learned Additional Public Prosecutor has submitted that though there is delay in filing the complaint before the court but the same has properly been explained. He has submitted that the prosecutrix has fully corroborated the prosecution case and the statement of the prosecutrix has duly been corroborated by her mother Tara Devi and an independent witness, namely, Dinesh Singh. He has further submitted that the medical evidence does not rule out the possibility of rape.

11. Having heard the parties and perused the record, I find that as per complaint petition the alleged occurrence took place on 29th September, 2005 in the evening at about 5.00 p.m. but the complaint petition has been filed almost three months thereafter on 28th December, 2005. There is explanation of eight days delay in filing the complaint as some sort of Panchayati was being held in the village to resolve the issue but there is no explanation for the further delay of about two months 20 days in lodging the complaint. I further



find that the prosecutrix has stated in her deposition that it would take 10 minutes to reach her house from the paddy field. According to her, the appellant had ravished her immediately after her mother had left the field with the bundles of harvested paddy. She had admitted in her cross-examination that in the field adjacent to her field several persons were also harvesting paddy crops. I fail to understand as to why the victim failed to raise any alarm when she was being raped so that other persons working in the nearby field would have come forward to save her person and prestige.

12. I further find that the prosecutrix has stated that her father had contacted the Panches immediately after the incident but the Panchayati was held after eight days. None of the Panches, who participated in the Panchayati, has been examined in course of trial on behalf of the prosecution. According to the complaint petition, the first Panchayati was convened at the house of one Moti Singh on 30th September, 2005 in which the appellant failed to turn up but the said Moti Singh has also not been examined in course of trial. The subsequent Panchayati was held at the house of one Chamru Singh, who has been examined as P.W.5, but he has not supported the case of the prosecution and hence the prosecution has declared him hostile.

13. It would be relevant to note here that the prosecutrix has alleged in her deposition that immediately after the occurrence she was admitted into a Government Hospital at Supaul for treatment

whereas her mother, who has been examined as P.W.4, has stated that the prosecutrix was admitted into the Government Hospital at Supaul for treatment after eight days of the occurrence but not a chit of paper has been filed on behalf of the prosecution to show that the prosecutrix was ever admitted into any hospital immediately after the occurrence or even after eight days of occurrence.

14. I further find that the prosecutrix and her mother have denied any relationship with P.W.1 Dinesh Singh but when Dinesh Singh was examined in the court, he has stated that he is cousin brother of the prosecutrix. According to the prosecution witnesses, clothes worn by the prosecutrix at the time of occurrence were stained with semen and blood mark but those clothes were never produced in the court as material exhibits.

15. P.W.3 Dr. Nutan Verma had examined the victim on 24th December, 2005 at 4.30 p.m. at Sub-Divisional Hospital, Supaul. It would appear from the record that the prosecutrix was sent to the doctor by the court after the complaint was filed before it. P.W.3 has opined in her report that the prosecutrix was habitual to sexual intercourse. She has not given any definite opinion in respect of rape. In my opinion, the medical report of P.W.3 is of no help to the prosecution as the victim was examined by the doctor after more than three months of the incident of rape.

16. As noted above the prosecutrix has stated that while she

was harvesting paddy crops several persons were engaged in harvesting their paddy crops in the nearby field but her mother had deposed that none was present at the point of time in the nearby field. I have also noticed that P.W.1 Dinesh Singh has stated in his deposition that on hue and cry raised by the victim when he reached the place of occurrence, five other ladies were present there from before but neither the prosecutrix nor her mother has stated anything in respect of presence of any other lady witness nor any other lady witness has been examined by the prosecution in course of trial.

17. I would like to record here that right from the beginning the case of the prosecution is that the father of the prosecutrix was in know of the offence and it was he, who had contacted the Panches and went to the Police Station for institution of the F.I.R. but he has not been examined by the prosecution in course of trial. I find force in the submission of learned counsel for the appellant that several important witnesses, who would have unfurled the real story, have been withheld by the prosecution. In such circumstance, this Court would draw an adverse inference against the prosecution in terms of section 114(g) of the Evidence Act, which reads as under :-

“114. Court may presume existence of certain acts

The Court may presume—

- | | |
|-----|----|
| (a) | xx |
| (b) | xx |
| (c) | xx |
| (d) | xx |
| (e) | xx |

(f) xx

(g) That evidence which could be and is not produced would, if produced, be unfavorable to the person withholds it.”

18. Regard being had to the quality of evidence led in the court below, I am of the considered opinion that the prosecution has failed to prove its case beyond reasonable doubts. Accordingly, the appeal is allowed. The impugned judgment of conviction dated 19.01.2012 and order of sentence dated 24.01.2012 passed by the learned Additional Sessions Judge, FTC-1, Supaul in Sessions Trial No.117 of 2007/Tr. No.87 of 2011 is set aside and the appellant is acquitted of the charge leveled against him. The appellant, who is in jail, is directed to be released forthwith, if not required in any other case.

(Ashwani Kumar Singh, J)

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