

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 77 of 2014

Against the judgment of conviction dated 23.01.2014 and order of sentence dated 28.01.2014 passed by Sri Anil Kumar Jha, learned Ad hoc Additional Sessions Judge-III, Purnea in Sessions Trial No. 163 of 2010, T.R. No. 593 of 2012 (CIS No. 1926 of 2013) arising out of K. Nagar P.S. Case No. 44 of 2009 corresponding to G.R. Case No. 391 of 2009

Ugresh Mehta, S/O Ramesh Prasad Mehta, Resident of Village - Garhiya Balua, Diyara Tola, P.S. - K. Nagar, District - Purnea

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Vikramdeo Singh, Advocate
Mr. Dharmender Kumar Singh, Advocate
For the Respondent : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 30-10-2015

Heard learned counsel for the appellant and learned counsel for the respondent.

2. The sole appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.5,000/- and in default of payment of fine to undergo rigorous imprisonment for one year.

3. The prosecution case, as alleged in the First Information Report by the informant Amita Devi (the victim) is that she is aged about 24 years and in the night of 14.02.2009 her husband and her brother Gopal Kumar had gone to watch the potato crop. When her

husband and her brother did not return till 9:00-10:00 P.M., she went to sleep in the room without locking the door so that when her husband and her brother came, they did not require knocking the door. At about 10:00 P.M. when she slept, her neighbour Ugresh Mehta (appellant) entered into her house and tried to lift her Sari so as to commit rape. She woke up and tried to make hulla then the appellant Ugresh Mehta pressed her mouth and committed rape with her forcibly and she raised alarm upon which her Mami and Dewar (Baidhyanath Mehta) woke up and then the appellant fled away. In the meantime, husband and brother of the informant arrived there then she disclosed about the occurrence to them. Due to night, she did not go to the police station and in the next morning she went to the police station and lodged the First Information Report on 15.02.2009 at 7:00 A.M.

4. On the basis of the statement of the informant, First Information Report was lodged and investigation proceeded. The police during investigation got the informant examined by the Doctor. The police inspected the place of occurrence which is one pucca room of the victim facing east with Varandah in the eastern side followed with a courtyard and thereafter semi constructed house of the accused is also in the western side of the house of the victim. He also found a cot in the room and also found a cot in the Varandah. The police after investigation, submitted charge-sheet and after submission of the charge-sheet, cognizance was taken and case was committed to the

Court of Session. After commitment, the charge was framed under Section 376 of the Indian Penal Code. During trial ten witnesses were examined on behalf of the prosecution. One witness has also been examined on behalf of the defence. The witnesses examined by the prosecution are P.W. 1 Bhola Kumar Mehta who has been declared hostile and not supported the prosecution case and deposed that he did not know about the occurrence.

5. P.W. 2 Meena Devi is Sautan of the victim. However, she has come to depose that on the date of occurrence she was at her Naiher and came to her Sasural after one day of the occurrence and then the victim disclosed about the occurrence. Hence, the evidence of this witness is hit by hearsay.

6. P.W. 3 Gopal Kumar is the brother of the victim. He has come to depose that he is brother-in-law of the husband of the victim and went to watch the potato crop and on hulla he reached the place of occurrence and the victim disclosed about the occurrence.

7. P.W. 4 Lalita Devi is the Mami of the victim. She has come to depose that on Hulla from the room of the victim she woke up and went there then the victim disclosed that the appellant had committed rape while she was sleeping.

8. P.W. 5 Gulabchand Mehta is the brother of the husband of the victim. He has come to depose that his brother disclosed that the appellant has committed rape with his wife and fled away. In his cross-

examination he has stated that regarding the murder of his wife a case has been instituted against him and has further stated that with regard to the murder of his daughter-in-law a case has been filed against his son and the elder brother i.e. the husband of the victim, in which appellant was helping his opponent.

9. P.W. 6 Amita Devi is the victim herself. She has supported the prosecution case regarding the rape as stated in the First Information Report and has proved her signature on the First Information Report.

10. P.W. 7 Dr. Anuradha Sinha is the Doctor who examined the victim on 15.02.2009 and has proved the medical examination of the victim after rape. However, she opined that spermatozoa had not been found and no sign of rape was found at the time of examination of the victim. She has further opined that the possibility of rape could not be excluded.

11. P.W. 8 Badri Mehta is the husband of the victim. He has supported the prosecution case to the effect that he had gone to watch the potato field along with his brother-in-law and when he returned at about 11:00 P.M., he saw that several people had collected at his house and when he inquired from his wife then she disclosed about the rape by the appellant while she was sleeping and then on the next day he went along with his wife to the police station and reported the matter and on the statement of his wife the case was lodged.

12. P.W. 9 Chandra Bhushan Prasad is the Investigating Officer of the case and he visited the place of occurrence and got the victim examined by the police and after completion of the investigation, submitted charge-sheet.

13. P.W. 10 Kamaldeo Yadav (formal witness) has proved the charge-sheet formally.

14. The documentary evidence examined as Ext.1 is the signature of the victim Amita Devi on the First Information Report, Ext. 2 is the medical report of the victim, Ext. 3 is the statement of the victim written by the Station House Officer Md. Janifuddin and his signature on the fardbeyan, Ext. 4 is the charge-sheet of K. Nagar P.S. Case No. 44 of 2002 and the First Information Report of this case.

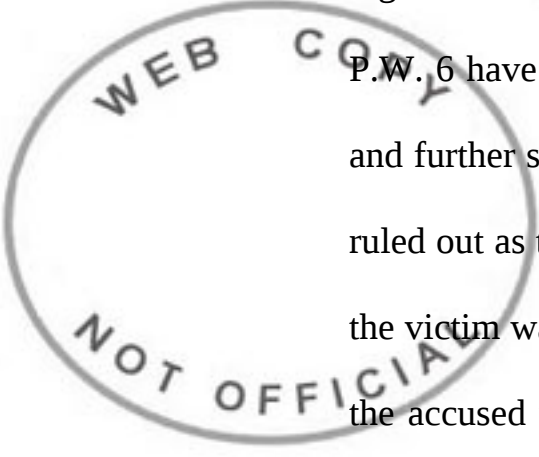
15. The defence has also examined one witness as D.W. 1 Sanjay Kumar Mehta. He has deposed that the husband of the victim/informant and father of the accused are cousin and house of both are adjoining and there was dispute with Badri Mehta and Ramesh Mehta with regard to raising a Tat in which a Panchayati was convened. He has deposed that a paper was also prepared which bears his signature marked as Ext. A and writing of Ramesh Mahto on a petition bearing the signature of Sarpunch marked as Ext.B. However, in his cross examination he has stated that after lodging of this case, the paper of Panchayati was prepared.

16. The defence of the accused as per suggestion is that the

appellant has falsely been implicated in this case due to enmity and land dispute with regard to which a Panchayati was also convened and further at the time of occurrence the appellant was a student and was reading in Purnea and hence, the defence taken is of alibi as well as of the false implication. The further case of the defence is that the case has been lodged by the victim at the instance of her husband.

17. The trial Court taking into consideration the evidence of the witnesses and the submissions made by the parties held that the prosecution has proved the case and hence, convicted and sentenced the appellant as above mentioned.

18. Learned counsel for the appellant has challenged the judgment of conviction and order of sentence recorded by the trial Court and submits that the prosecution, as alleged in the First Information Report, is not acceptable as a lady can not sleep in a room leaving the door open. It has further been contended that though there is allegation that during the rape the victim tried to make hulla and on hulla witnesses rushed but none of the witnesses has seen the appellant fleeing away. It has further been contended that as per the evidence of the victim she has three children and they were sleeping along with her Sautan, whereas, the statement of the Sautan is that she was at her Naiher on the night of occurrence. It has further been contended that the Mami of the victim P.W. 4 was also in the house but she also did not see the accused while he was fleeing away and further the brother

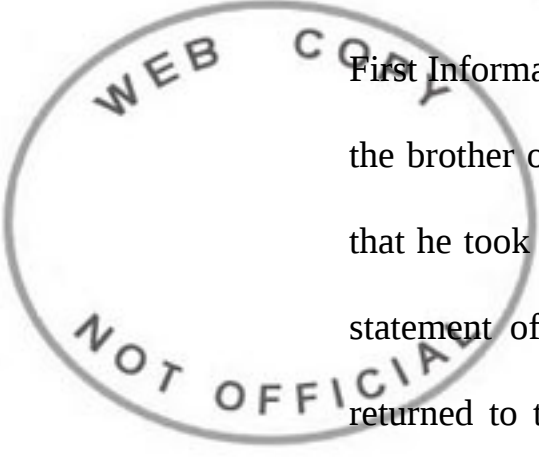


of the victim stated that they went in the police station in the same night itself to report the matter whereas the informant and the witness P.W. 6 have stated that she went to the police station on the next date and further submitted that the probability of the consent also cannot be ruled out as the victim was the second wife of P.W. 8 Badri Mehta and the victim was 24 years old whereas Badri Mehta was 52 years old and the accused was the next door neighbour and the victim slept leaving the door open in the night and the probability was that while both the parties were consenting and having been seen by others, the case has been lodged.

19. Learned counsel for the State, however, submitted that the statement of the victim was specially about the rape and just after the occurrence the victim made Hulla and the witnesses reached the place of occurrence and she disclosed about the occurrence and hence, taking into consideration the evidence of the victim and the witnesses as well as the statement of the Doctor that the possibility of rape cannot be ruled out, so the medical evidence corroborates the prosecution case. So far as the criticism by the learned counsel that element of consent also cannot be ruled out but so far consent is concerned as per Section 114A of the Evidence Act in a case of rape where the sexual intercourse is proved and the question is whether it was with or without consent of the women alleged to have been raped then if such women states in her evidence before the Court that she did not consent the

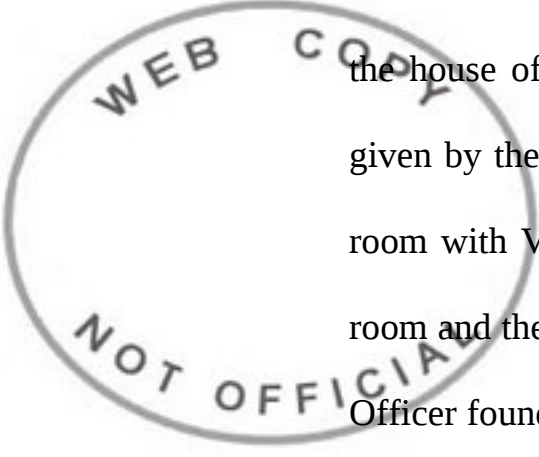
Court shall presume that she did not consent. Moreover the defence of the accused itself has not set a defence of consent. There is neither any suggestion nor is there any material to suggest that any such defence was taken.

20. Hence, having regard to the respective submissions of the parties, the question for consideration is whether the prosecution has been able to prove the charges against the appellant beyond reasonable doubt. However, the prosecution case, in the First Information Report by the informant is that while her husband and her brother had gone to watch the potato field and when they returned at about 11:00 P.M. then she slept in the room leaving the door open and the appellant came and raped her by lifting her Sari and when she tried to make hulla then her mouth was pressed and after the rape he left her and fled away then her Mami and Dewar came and subsequently her husband and brother came and she disclosed about the occurrence. She has supported the prosecution case in her evidence. However, the criticism has been raised regarding her evidence in her cross-examination that at the time of occurrence her younger son was sleeping along with her elder mother (Sautan). However, the elder mother who is the Sautan of the victim has deposed as P.W. 2 that in the night of the occurrence she was at her Naiher and she returned after one day then victim disclosed about the occurrence. Further the victim stated that after the occurrence in the night due to darkness she did not go to the police station and she



went to the police station on the next day along with her husband, brother and Mami and then she made statement on the basis of which First Information Report was lodged. However, P.W. 3 Gopal Kumar is the brother of the victim. He in his evidence at paragraph 9 has stated that he took his sister itself in the night to the police station where the statement of the sister recorded in the police station and then they returned to their house. He has further stated that Daroga Jee in the next morning came to the house of the victim. The criticism has been made to the effect that these two evidences suffer from infirmity that her statement is contrary to the statement of P.Ws. 2 and 3 to the effect that his younger son was sleeping along with her Sautan then she reported the matter to the police station on the next day in the morning. However, the contradiction to the effect that the statement of P.W. 3 that he went to the police station in the night is in contradiction to the statement of the victim that due to night she did not go to the police station. However, from perusal of the First Information Report itself, it appears that the place of occurrence and police station is about ten kilometers. The occurrence took place at about 10-12 in the night and the possibility of going to the police station to record the statement does not appear to be probable. However, P.W. 6 the victim and P.W. 8 the husband of the victim have supported the prosecution case that they went to the police station in the next morning of the occurrence.

21. The contention of the learned counsel for the appellant



that Mami P.W. 4 has stated that on hulla she woke up and then the victim disclosed. It has been submitted that the Mami was sleeping in the house of the victim itself. However, the description of the house given by the Investigating Officer that the house constitutes north one room with Varandah adjoining the room which was to the east of the room and the exit of the room was also in the east and the Investigating Officer found a cot in the room as well as a cot in the Varandah but the Investigating Officer did not inquire who was sleeping in the Varandah. It is contended that Mami who was in the room must have slept but did not see the accused fleeing away when she woke up.

22. However, the case of the prosecution is that during the occurrence the appellant has pressed her mouth and when he left her and fled away then she made Hulla and in such circumstances when the witness woke up he may not have seen the accused as the accused has already fled away. However, it is submitted that there was enmity between the parties. The infirmity has been suggested but the enmity as disclosed is not as such that the appellant will falsely implicate for the enmity with the husband or in the Indian context making a false implication by the victim itself does not appear to be probable. However, the plea was taken that both the parties were consenting party. However, this is not the case nor the defence set up and the argument advanced by the appellant regarding the consent of the parties is altogether making out a third case which has neither been

considered nor has been whispered in the evidence.

23. Hence, taking into consideration the entire facts and circumstances of the case, I find and hold that the prosecution has able to prove the charge and I do not find any merit to interfere with the judgment of conviction dated 23.01.2014 and order of sentence dated 28.01.2014 passed by Sri Anil Kumar Jha, learned Ad hoc Additional Sessions Judge-III, Purnea in Sessions Trial No. 163 of 2010, T.R. No. 593 of 2012 (CIS No. 1926 of 2013) arising out of K. Nagar P.S. Case No. 44 of 2009 corresponding to G.R. Case No. 391 of 2009. However, taking into consideration the fact that the age of the victim was 24 years and age of this appellant was 20 years on the date of occurrence, the ends of justice shall meet by convicting and sentencing the appellant to undergo rigorous imprisonment for seven years instead of sentencing the appellant for ten years. With this modification in sentence, the appeal is dismissed.

(Gopal Prasad, J.)

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