

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.81 of 2014

Against the judgment of conviction, dated 21.12.2013, and order of sentenced dated 03.01.2014, passed by Mr. Abhay Kant Jha, Additional Sessions Judge, I, Khagaria, in Sessions Case No. 199 of 2012 arising out of Pasrata P.S. Case No. 17 of 2012

1. Navin Kumar @ Natu Sharma S/O Shibu Sharma, Resident Of Village- Chhoti Malia, P.S.- Gogri, District- Khagaria Appellant

Versus

1. The State Of Bihar Respondent

Appearance :

For the Appellant : None

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

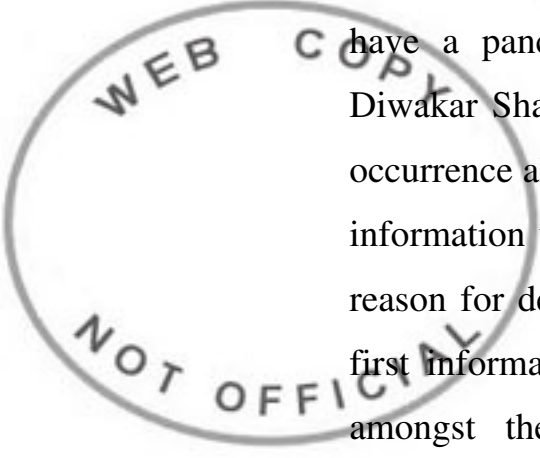
ORAL JUDGMENT

Date: 22-12-2015

Heard the learned counsel for the State. No body appeared on behalf of the appellant.

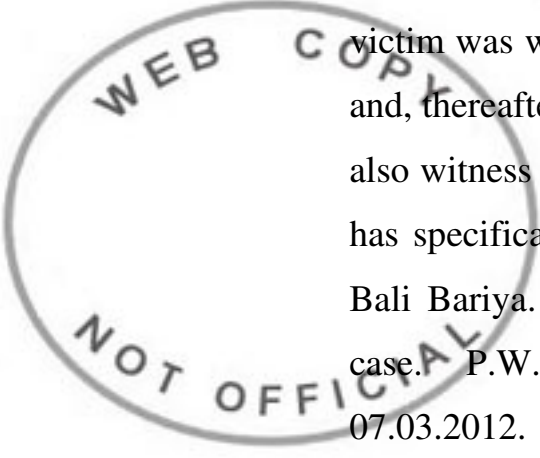
2. The appellant has been convicted under Section 376 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.10,000/- and in default of payment of fine shall undergo rigorous imprisonment for one years.

3. The prosecution case, as alleged in the first information report by the informant, Diwakar Sharma, P.W. 4 alleging therein that Renu Kumari, aged about three years, is the daughter of Diwakar Sharma. On 22.03.2012 at about 10.00 P.M., Renu Kumari, the victim, was playing in her court-yard. In the meantime, the cousin brother of the informant, Navin Kumar @ Natu Sharma, aged about 27 years, came to his house to give the marriage card and took the victim in the pretext to provide her chocolate. He took the victim to the north of the village at Bara Chowk and raped her. The informant on the sound of weeping of his daughter went to Bara Chowk along with some co-villagers, saw the ghaghra of his daughter besmeared with blood and she was lying in unconscious state and, then, he took the victim to Dr. Pramod Kumar



Singh, where the doctor treated his sister. The, further, case is that the reason for delay to going to the Police Station was that they wanted to have a panchayati amongst themselves. On the written report of Diwakar Sharma, a first information report was lodged. However, the occurrence alleged to have been taken on 05.03.2012 at 10 P.M., but, the information was given to the police on 07.03.2012 at 11.30 A.M. The reason for delay in lodging the first information report, itself, is in the first information report that the informant wanted to have panchayati amongst them. After lodging the first information report, the investigation proceeded and the investigating officer recorded the statement of the informant and the witnesses, inspected the place of occurrence in village Satish Nagar. The place of occurrence is 50 yards north-west of the house of the informant, which is a lonely place, to the east of the place of occurrence there is land of Udai Sharma, in west Dumraghat in north Pulo Sharma and in the south maize field of Manoj Sahni. During investigation police also seized ghaghra and panty, produced by the mother of the victim, which were besmeared with blood and then seizure list prepared and has proved the production-cum-seizure list, marked Exhibit 1. The ghaghra has already been produced for which seizure list prepared. The informant was referred to Sadar Hospital at Khagaria for examination and the victim was examined medically and police, after investigation, submitted charge sheet, on which cognizance taken, after submission of the charge, case committed to the Court of Session and during trial six witnesses examined by the prosecution.

4. P.W. 1 is Dr. Pramod Kumar Singh. P.W. 2 is Prem Lata Devi, the wife of the informant and the mother of the victim and has supported the prosecution case. P.W. 3 is Gore Lal Sharma, grand-father of the victim, supported the prosecution case. P.W. 2 has stated that the victim was playing in her court-yard, then, the appellant came, took her



on the pretext of giving chocolate and took her in the bushes where he committed rape and on the cry of the victim she went to that site, the victim was wearing ghaghra and her ghaghra was besmeared with blood and, thereafter, the victim was taken to Dr. Pramod Kumar Singh. She is also witness of the seizure list, regarding the seizure of ghaghra. P.W. 3 has specifically stated that accused is his nephew and there he lives at Bali Bariya. P.W. 4 is the informant, also supported the prosecution case. P.W. 5 is Dr. Ashok Prasad, who examined the victim on 07.03.2012. However, he found that no mark of injury any where on the body, as per vaginal examination hymen was intact and there was slight tear in the lower portion of valve and oozing of fresh blood. Vaginal swab taken and sent for microscopic examination and opinion reserved. The medical report has been marked as Exhibit 3. However, the spermatozoa were not found. The doctor opined that it is difficult to say that that rape has been committed or not. P.W. 6 is the investigating officer and has proved the endorsement on the written report, marked as Exhibit 4, and has also proved the formal first information report, marked as Exhibit 5 and has inspected the place of occurrence, prepared the seizure list of blood stained panty and ghaghra and the production-cum-seizure list has been prepared as Exhibit 6 and also produced the material Exhibit 1, the ghaghra, which was said to have stained with blood.

5. The trial Court taking into consideration the evidence of the witnesses, convicted the appellant and sentenced as mentioned above.

6. However, no one appeared on behalf of the appellant.

7. The learned counsel for the State, however, assisted.

8. I also perused the record and gone through the record of the case and the evidence of the witnesses.

9. The defence of the accused person, as apparent from the trend of the cross-examination and the suggestion that there was a

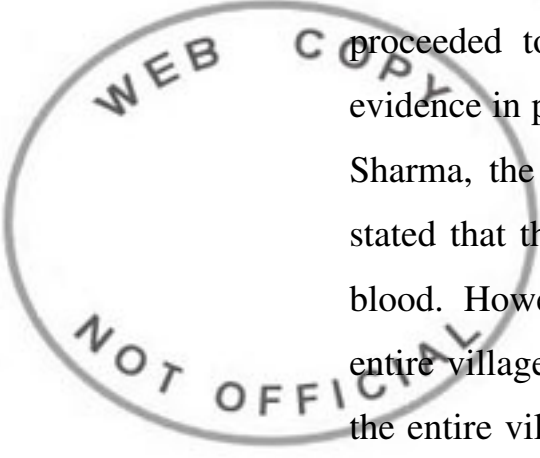
disputed between the parties since prior to the occurrence and the case has been lodged due to enmity and the police case has been filed prior to the marriage of sister of the appellant.

10. The, further, defence of the accused that no rape has been committed and the accused person has falsely been implicated for land dispute as there was prior enmity between the accused and the informant who are goitas. The, further, case of the defence that the informant and his father have no good relation with his brother and there was land dispute and so he has come to Satish Nagar to live there.

11. However, the trial Court, taking into consideration the evidence and the defence of the accused, convicted the appellant as mentioned above.

12. However, going through the entire record and hearing the learned counsel for the State, the question for consideration that the prosecution has been able to prove the charges beyond reasonable doubt or not.

13. The prosecution case, as alleged in the first information report, is that while the victim Renu Kumari was playing in the court-yard on 05.03.2012 at about 10.00 P.M. in the night, the appellant, who happens to be the cousin brother of the informant, came to his house on cycle to give the card of marriage. The, further, case is that he took the victim on pretext of giving chocolate and took her in the northern Bara Chowk and committed rape. The, further, case that on cry of the victim the informant along with the villagers went to Bara Chowk and saw the victim's ghaghra besmeared with blood and was taken by the informant in the state of unconscious stage to Dr. Pramod Kumar Singh where the doctor treated the victim. However, the evidence of P.W. 2, who happens to be the mother of the victim that it was ten in the night and she had been to the neighbouring house to sing-song on the occasion of marriage while her daughter was playing in her court-yard. However,

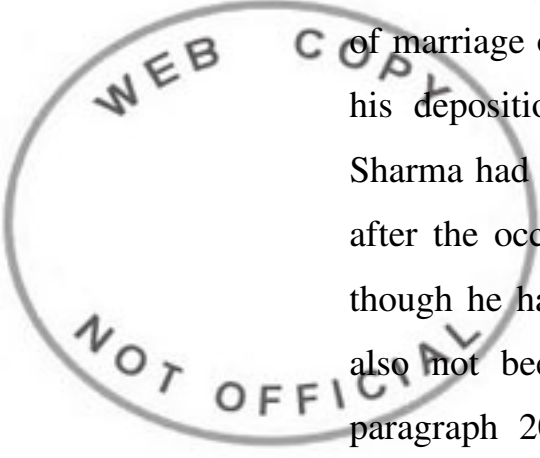


this witness, in her examination-in-chief, has stated that she heard the sound of weeping of the victim from the neighbouring and then she proceeded towards the site and saw the victim weeping as per her evidence in paragraph 4 of her deposition and then it is stated that Navin Sharma, the appellant, fleeing away on seeing her. She has, further, stated that the victim was wearing ghaghra which was besmeared with blood. However, the case was instituted after one day of the occurrence, entire villagers were aware of the occurrence and she has not intimated the entire villagers about the occurrence. However, this witness, in her cross-examination, in paragraph 18 has stated that accused took the victim and after one and half hours of taking the victim by accused, she heard the sound of weeping, but, she reached at the place near her child-victim, she found her daughter lying in unconscious state and no one was there. She has, further, stated that she and her nanad (husband's sister), Vidya Kumari, has reached near the victim girl together, but, nine was there, hence, her evidence in examination-in-chief that when she went near the child after hearing the sound of weeping she found the victim-child was weeping and saw Navin Sharma fleeing away, after seeing her, which is the evidence in paragraph 4, while her evidence in examination-in-chief that at the time of occurrence she had been to the neighbouring house to sing-song on the occasion of marriage and, further, her evidence in paragraph 18 that she heard sound of weeping of the victim after one and half hours of taking away of the victim and after making out the search when she reached near the victim, the victim was unconscious and none was there, hence, the two evidences, in examination-in-chief and cross-examination, are contrary. P.W. 3 is the grand-father of the victim. However, this witness stated that while her grand-daughter, Renu Kumari, was three years' old and was in the courtyard, Navin Sharma, took him on the pretext on providing chocolate and, thereafter, raped her. However, this evidence stated that on the sound of

weeping of Renu Kumari, his son, Diwakar Sharma and daughter-in-law went there and then they took the victim. However, his attention has been drawn with regard to the statement before the police and has stated that she has not given any statement before the police that Navin Kumar Sharma @ Nattu took the victim to the north of the house in Bara Chowk on the pretext of providing chocolate. However, the fact that taking the victim for providing chocolate, itself, finds place in the first information report and he has, further, stated that he has stated before the police that accused person has thrown the janghia of the victim. However, this witness has, further, stated that the accused is his own nephew and the accused person used to live at Bari Balia. However, this witness claimed that she has seen the occurrence. In further cross-examination, in paragraph 21, it has been stated that the victim was brought by his daughter-in-law. Hence, from the evidence, it is apparent that he is not the eye witness to the rape though from his evidence it appears that he is not the witness to the occurrence.

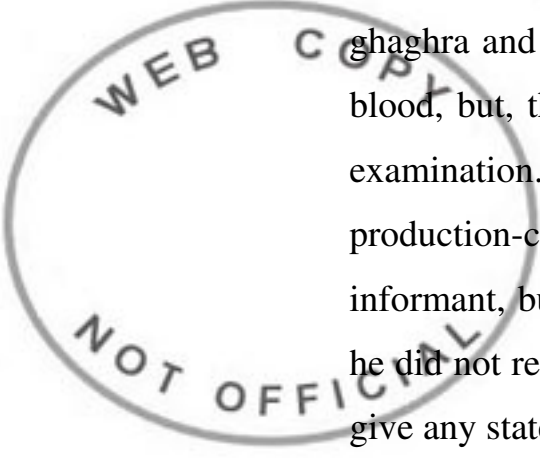
14. P.W. 4 is the informant and he in his evidence stated that Navin Kumar @ Navin Sharma has come to his house along with the card of marriage. He has, further, stated that Navin Kumar @ Navin Sharma took the victim in his lap and went towards the north side of house on the pretext giving her chocolate. He has, further, stated that on the sound of weeping of Renu Kumar, they went there and then the appellant flee away and he along with his wife and neighbours found Renu Kumari in unconscious state and blood has been found stained on the ghaghra and then she was taken to Dr. Pramod Kumar Singh, P.W. 5. However, this witness has, further, stated in paragraph 27 of his deposition that when he reached at the place of occurrence, at that time his daughter was unconscious, she was along there. P.W. 5 is the doctor and P.W. 6 is the investigating officer.

15. Taking into consideration the entire evidence the only



evidence is to the fact that the appellant came at the house of the informant on bicycle and it is stated that he came to give invitation card of marriage of his sister. P.W. 4 though have stated in paragraph 18 of his deposition that on the date of occurrence, the appellant, Navin Sharma had come to his house at about 02.00 P.M. and, thereafter, flee after the occurrence, he had come by bicycle and had left his bicycle though he had not shown the bicycle to the police and seizure list has also not been prepared of the bicycle. He has, further, stated in paragraph 20 that Navin Sharma had stayed in his house, but, the informant had not asked him to stay there, he, on his own, stayed. It has, further, been stated that the place of rape is about 20 steps to the north.

16. However, going to the entire evidence, it is apparent that there is no witness to the actual rape. However, the only evidence transpired that appellant took the victim to the north Bara Chowk on the pretext of providing her chocolate and as per the evidence of P.W. 2, she heard the sound of weeping after one and half hours of taking away the victim by the appellant and, then, he heard the sound of weeping, but, has stated that when he reached there, he found the victim in unconscious state. P.W. 4, the informant, in his evidence, has also stated in paragraph 27 that when he reached at the place of occurrence, at that time his daughter was unconscious and was alone there. Hence, evidences of P.Ws. 2 and 4 though have stated in their examination-in-chief that when they went on the sound of weeping found the victim there, but, the appellant has fled away. However, in the cross-examination they have stated that when they reached at the place of occurrence they found victim in unconscious state and she was alone there, however, he has stated that thereafter he took the victim to P.W. 1, the doctor of village who treated her and though she stated that she written statement treated there and injection was given to her. However, P.W. 1 has not supported that he gave any treatment to the victim though



it is stated that the chaddi and the ghaghra was besmeared with blood and seizure list of the same was prepared, on it's production, and the said ghaghra and chaddi was given to the police which was besmeared with blood, but, the investigating officer has not sent the same for chemical examination. The investigating officer has stated that he prepared the production-cum-seizure list and he asked name of the villagers from the informant, but, the name was not disclosed. He has, further, stated that he did not record the statement of the villagers as they were not ready to give any statement.

17. Hence, having regard to the fact that the appellant came to the house of informant at about 02.00 P.M. in the day, remained there in the house though it is stated that he was not asked to say, but, he remained there on his own, and it is stated that he took the victim in the dead of night at 10.00 P.M. for providing her chocolate and then on sound of weeping they went there and in the examination-in-chief he stated that the appellant flee away and found the victim in unconscious state and there was none as per the evidence in cross-examination, however, the witnesses, examined, are the father, mother and grandfather of the victim.

18. Hence, having regard to the nature of evidence there is no eye witness to the occurrence. The evidence regarding the fact that the victim was taken by the appellant or the evidence that when the witnesses reached to the place of occurrence, then, the accused person flee away also suffers from contradiction in view of the evidence of P.Ws. 2 and 4 that when they reached at the place of occurrence where the victim was lying unconscious, there was none, moreover, there is delay in lodging the first information report as the occurrence occurred on 05.03.2012 and the first information report recorded on 07.03.2012 and a plea has been taken of panchayati. However, it has come in evidence that the accused was the cousin brother of the informant (the

father of the victim) and they were residents of Chhoti Malia, P.S. Gogri, and this has come in the evidence of P.W. 3, the grand-father of the victim, that it is about five kilometer away and there is no evidence of any attempt of panchayati and none of the villagers has come forward to support the prosecution case.

19. Hence, in the facts and circumstances of the case, the appellant is entitled to benefit of doubt and I give the appellant benefit of doubt and hold that the prosecution has not been able to prove the charges beyond reasonable doubt. I acquit the appellant of all the charges and consequently the order of conviction and sentence recorded by the trial Court recorded **is set aside**. The appeal is **allowed**.

20. Since, the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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