

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.54 of 2015

Arising Out of PS.Case No. -48 Year- 2001 Thana -NIMACHANDPUR District- BEGUSARAI

1. Hare Ram Mahto Son of Ram Sundra Mahto Resident of Village - Parna, P.S-
Nima Chandpura, District - Begusarai.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Mr. Md. Imteyaz Ahmad, Adv.
Mr. Nilesh Kumar, Adv.
For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-04-2015

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

2. This appeal is directed against the judgment dated 16th
December, 2014 and the order dated 17th December, 2014 passed in
Sessions Trial No.26 of 2002 by the learned Additional Sessions
Judge IV, Begusarai, whereby and whereunder the sole appellant has
been convicted under sections 448 and 376 of the Indian Penal Code
and sentenced to undergo R.I. for ten years and to pay a fine of Rs.
5,000/- for the charge under section 376 of the Indian Penal Code,
and in default thereof, to undergo simple imprisonment for two
months. However, no separate punishment has been awarded for the

proved charge under section 448 of the Indian Penal Code.

3. The prosecution case is based on the fardbeyan of one Ram Balak Singh, P.W.8, recorded by one Devendra Prasad, an Assistant Sub Inspector of Police on 13th September, 2001 at 1.00 a.m. in village Parna. The informant Ram Balak Singh has alleged in the F.I.R. that on 13th September, 2001 at about 12.15 in the night while he was fast asleep at his outhouse, his nephew Pappu Singh son of Umesh Singh woke him up and told that the appellant Hare Ram Mahto has entered into the house. Thereafter, he went to his house and found that the appellant was confined inside the house. The two sons of the informant, namely, Munna Singh and Mintu Singh told him that the appellant was having sexual intercourse with his wife and therefore both of them were confined inside the house. Thereafter, when the door was opened, the appellant tried to flee away but the informant, his two sons and some other co-villagers captured him after pursuit. The appellant was then brought to the house of the informant and was confined inside the house. The informant's son Munna Singh along with some neighbours went to the police station to inform the police. The informant has further stated that the appellant committed rape upon his wife after forcibly entering into his house.

4. On the basis of the said fardbeyan, Neemachandpura



P.S.Case No.48 of 2001 was registered and investigation was taken up. On conclusion of investigation, the police submitted charge sheet against the appellant for the offences punishable under sections 376 and 448 of the Indian penal Code. Accordingly, charges were framed. The appellant denied those charges and claimed to be tried. In course of trial, altogether 11 witnesses were examined on behalf of the prosecution. Apart from the oral testimony, certain documents were also exhibited in order to prove the charges. On conclusion of the evidence on behalf of the prosecution, statement of the appellant was recorded under section 313 of the Code of Criminal Procedure (hereinafter referred to as 'the Code'). The defence did not lead any evidence in order to prove innocence of the accused and after hearing arguments advanced on behalf of the parties, the trial court convicted and sentenced the appellant in the manner indicated herein above. Hence, this appeal has been filed.

5. Learned counsel for the appellant has submitted that as a matter of fact it is a case of no evidence. In course of trial, no witness has come forward to support the prosecution case as alleged in the F.I.R. He has submitted that even from the F.I.R. it would appear that at best it was a case of consensual sexual relationship between the appellant and the wife of the informant. However, there is no evidence in course of trial even in this regard. He has stated that in

the light of evidence collected in course of trial, the trial court ought to have acquitted the accused under section 232 of the Code instead of delivering a judgment under section 235 of the Code.

6. On the other hand, learned counsel for the State has heavily relied upon the evidence of P.W.1 to support the case of the prosecution. He has half-heartedly contested the matter. He has submitted that at least there is evidence of P.W.1 on the basis of which a finding of guilt could have been arrived at.

7. I have heard the parties and with their assistance gone through the record.

8. It would be apparent from the F.I.R. that it was one Pappu Singh, nephew of the informant, through whom the informant came to know about presence of the appellant inside his house. However, in course of trial he has not been examined by the prosecution.

9. One Chandra Shekhar Singh, who has identified the First Information Report, has been examined as P.W.6. He has proved his signature on the fardbeyan and the seizure list, which have been marked as Ext.-3 and Ext.2/2 respectively. He has completely denied to have any knowledge about the alleged incident. He has been declared hostile by the prosecution.

10. The two sons of the informant, namely, Munna Singh and Mintu Singh were examined as P.W.9 and P.W.10 respectively.



P.W.9 Munna Singh has stated that he was not present at the time of occurrence but later on he came to know that the appellant Hare Ram Mahto had entered into his house and the police had arrested him. He has stated that his statement under section 161 of the Code was never taken by the police in course of investigation. In cross-examination, he has stated that he cannot say as to who disclosed him about the alleged occurrence. He also admits that the appellant was on inimical terms with his father and in the year 2000 proceedings were initiated between them under sections 107 and 144 of the Code. Apart from being a hearsay witness, P.W.9 has not spoken a word regarding any sexual intercourse or rape committed by the appellant with his mother on the relevant night. He has created a new story by saying that the police had apprehended the appellant from his house.

11. P.W.10 Mintu Singh has flatly denied to have any knowledge about the occurrence. He has also stated that his statement under section 161(3) of the Code was never recorded by the police. In cross-examination, he also admits that enmity existed from before between his father and the appellant. P.Ws. 9 and 10 have not been declared hostile by the prosecution and as such the prosecution would be bound by the evidence led by them.

12. P.W.2 Nageshwar Singh, P.W.3 Bijoy Shankar Singh and P.W.5 Tuntun Rai are seizure list witnesses. P.W.3 Bijoy Shankar



Singh has stated that one Gamchha and a pair of shoes were seized by the police. He has proved his signature on the seizure list, which has been marked as Ext.-2. In cross-examination, he has stated that no seizure of article was made in his presence and on the instruction of the Investigating Officer of the case, he had put his signature. Similar is the statement of P.W.2 Nageshwar Singh. He has identified his signature on the seizure list, which has been marked as Ext.-1. P.W.5 Tuntun Rai has simply identified his signature over the seizure list, which has been marked as Ext.-2/1. In cross-examination, he has stated that he had put his signature over a blank sheet of paper. Thus, I find that none of the seizure list witnesses produced on behalf of the prosecution had actually witnessed the seizure of any incriminating articles. Moreover, the alleged seizure of articles is of no consequence in the facts and circumstances of the case.

13. P.W.4 Ram Bilash Singh has denied to have any knowledge about the occurrence and has been declared hostile. P.W.7 Surya Shakher alias Sokho Singh, father of the informant, has stated that he is not living in jointness with his son Ram Balak Singh and at the time of occurrence, he was not at his house. He has stated that he came to know that his daughter-in-law was raped by the appellant. In cross-examination, he has stated that he cannot say as to who disclosed him about the occurrence.



14. Now, I would like to examine the evidence led by the informant of the case, who has been examined as P.W.8. He has stated that on 13th September, 2001 while he was asleep at his outhouse, he heard that the appellant had entered into his house and on seeing him he ran away. He was overpowered near the Handpump and was handed over to the police. His fardbeyan was recorded by the police. He identified his signature over the fardbeyan, which has been marked as Ext.-3/1. In cross-examination, he has admitted that he never saw the appellant inside his house and for the first time when he saw him he was near the handpump, adjacent to his house. He has also admitted previous enmity with the appellant. Thus, I find from the evidence that the informant has not uttered a word in relation to rape having been committed upon his wife by the appellant. He has completely forgotten the story narrated in the F.I.R. According to the F.I.R. the appellant was seen inside the house having sexual relationship with the wife of the informant and when he tried to run away, he was apprehended after hot chase, whereas, in the deposition, the informant has stated that the appellant was never seen inside the house and he was apprehended at a place which was away from his house near the Handpump.

15. I find from the record that the only witness, who has tried somehow to support the case of the prosecution, is P.W.1 Shiv



Balak Singh. Learned counsel for the State has also placed much reliance on his evidence to support the impugned judgment passed by the trial court. Indeed, P.W.1 has supported the fardbeyan. He has claimed that he was one of the persons, who had chased and caught hold of the appellant when he was trying to run away. He has stated that his nephew Munna Singh and Mintu Singh had told him that the appellant had committed rape upon their mother and they had confined him inside the house. In cross-examination, he has tried to improve his version by saying that he also saw himself that the appellant was having sexual intercourse with the wife of the informant. However, in cross-examination, he has admitted that the wife of the informant was also killed in the same night for which a police case was registered and the informant Ram Balak Singh and his two sons Munna Singh and Mintu Singh were sent to jail.

16. When the Investigating officer was examined as P.W.11, a contradiction was taken from him in respect of the previous statement made by P.W.1 Shiv Balak Singh. The Investigating Officer has categorically admitted that Shiv Balak Singh had never stated before him that he had seen the appellant having sexual intercourse with the wife of the informant. Thus, I find that P.W.1 Shiv Balak Singh is a hearsay witness, who came to know regarding the occurrence from his nephew Munna Singh and Mintu Singh

(P.Ws. 9 and 10), who themselves have not corroborated the prosecution case. Under such circumstance, no reliance can be placed on the deposition of P.W.1.

17. Now, coming to the evidence of P.W.11 Devendra Prasad Singh, the Investigating Officer of the case, I find that he has stated in his deposition that he recorded fardbeyan, prepared seizure list, recorded the statement of the witnesses in course of investigation, inspected the place of occurrence, seized the clothes of the victim and sent those clothes to the Forensic Science Laboratory for examination and on conclusion of investigation, submitted charge sheet in the case. He has proved the fardbeyan, his endorsement on the fardbeyan, and the seizure list, which have been marked as Exts.-4, 5 and 6 respectively. It would appear from the evidence of P.W.1 and P.W.11 that the victim was killed inside her house on the date of occurrence itself in the night and in that case her husband and her two sons were made accused and they were also sent to jail.

18. Regard being had to the evidence led by the prosecution in the present case in course of trial, I fail to understand the reasonings assigned by the trial court for holding the appellant guilty of the charges. The reasonings assigned are not only erroneous but perverse too. The trial court has given undue importance to the report of the Forensic Science Laboratory in respect of petticoat worn by the

victim, which has been taken into evidence under section 293 of the Code and marked as Ext.-9 by the trial court. It simply discloses that the petticoat sent for test contained semen. In absence of any evidence of rape, the forensic test report is of no consequence. The trace of semen on the petticoat of the wife of the informant would by no stretch of imagination be construed to be the reason for holding the appellant guilty of the charges under sections 376 and 448 of the Penal Code. Learned counsel for the appellant has rightly contended that it is a case of no evidence.

19. For the reasons assigned herein above, I allow this appeal and set aside the judgment of conviction dated 16.12.2014 and order of sentence dated 17.12.2014 passed by the learned Additional Sessions Judge, IV, Begusarai in Sessions Trial No.26 of 2002. The sole appellant Hare Ram Mahto is acquitted of the charges leveled against him. The appellant, who is in custody, is directed to be set at liberty forthwith, if not required in any other case.

(Ashwani Kumar Singh, J)

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