

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 523 of 2013

Against the judgment of conviction dated 29.05.2013 and order of sentence dated 01.06.2013 passed by Md. Shahid Rais, learned Ad hoc 2nd Additional District & Sessions Judge, Jehanabad in connection with S. Tr. No. 153 of 2010/226 of 2010 arising out of Parasbigha P.S. Case No. 50 of 2005

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Vijay Manjhi, S/O Raghuni Manjhi, Resident of Village - Kalupur, Police Station - Paras Bigha, District - Jehanabad

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Umesh Kumar, Advocate

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 09-10-2015

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

2. The appellant has been convicted under Section 376(g) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine has further been sentenced to undergo rigorous imprisonment for six months.

3. The prosecution case, as alleged in the First Information Report by the informant Bishun Manjhi (P.W.4), is that on last Holi he brought his sister-in-law, Anita Kumari (P.W.2), aged about 10-12 years, for domestic work to his village Kalupur, since then she was living with him. It is further alleged that on 19.05.2005 in the village a Barat had come in the house of Bahart Manjhi in which the informant

was busy and his sister-in-law was also watching Barat at about 9:00 P.M. near the well of the village. In the meantime, his villagers Yogendra Manjhi and Vijay Manjhi came over there and enticed away the victim in the orchard of Bhuj Jee and both committed rape as well as unnatural offence upon her and fled away from the scene. After the occurrence, the victim came weeping and disclosed about the offence. The further case is that since it was night, the informant could not go to the police station. He reported the occurrence to the police at 9:30 A.M. on 20.05.2005. The fardbeyan of the informant (P.W.4) was recorded by the Sub-Inspector of Police, Ahmad Ali, Officer-in-Charge, Paras Bigha Police Station at Laxmipur (not examined) on 20.05.2005.

4. On the fardbeyan of the informant, First Information Report was lodged and investigation proceeded. During investigation, the statement of the victim was recorded under Section 164 of the Cr.P.C. The victim was medically examined. Thereafter seizure list was prepared regarding the seizure of a panty with mark of semen which was borne by the victim, marked as Ext.1 and the panty was sent for chemical examination to the Forensic Science Laboratory and report of the Forensic Science Laboratory regarding the panty was marked as Ext.3 and the serological report was marked as Ext. 3/1 and the police after investigation recorded the statement of the witnesses and submitted charge sheet on which cognizance was taken, case was

committed to the Court of Sessions and after framing of charge for the offence under Sections 376 and 377 of the Indian Penal Code, trial proceeded.

5. During trial, four witnesses were examined who are P.W.1 Dr. Neelam Kumari, P.W. 2 Anita Devi, the victim , P.W. 3 Jawahar Manjhi who is the seizure list witness who proved his signature on the seizure list which was marked as Ext.1 but has been declared hostile as he had not supported the seizure before him and deposed that he heard that something happened with the girl. P.W. 4 Bishun Manjhi is the informant and has stated that the victim disclosed him that appellant and Yogendra Manjhi have committed rape upon her. However, the Investigating Officer of the case has not been examined. The documentary evidence examined as Ext.I is the signature on injury report of the victim, Ext.2 is the signature on the seizure list, Ext.3 is the Forensic Science Laboratory report regarding the panty (Kachhia), Ext. 3/1 is the serological report and Ext. 4 is the statement under Section 164 Cr.P.C.

6. The defence has also adduced one witness who is D.W.1 Mathura Manjhi. He had come to depose the case of the defence to the effect that Bishun Manjhi is his cousin and there is enmity between Bishun Manjhi and the appellant since last eight to ten years and Bishun Manjhi had threatened to implicate him in false case. He has further

stated that on 20.05.2005 he was in mango orchard, watching the mango and no occurrence took place. The defence of the accused is that no occurrence as alleged occurred and the witnesses have deposed falsely.

7. The trial Court taking into consideration the evidence of the witnesses convicted the appellant under Section 376(g) of the Indian Penal Code and awarded sentence as mentioned above, but acquitted the appellant under Section 377 of the Indian Penal Code taking into consideration the fact that prosecution has not produced any positive evidence regarding the carnal intercourse with the victim, but convicted the appellant for the offence under Section 376(g) of the Indian Penal Code.

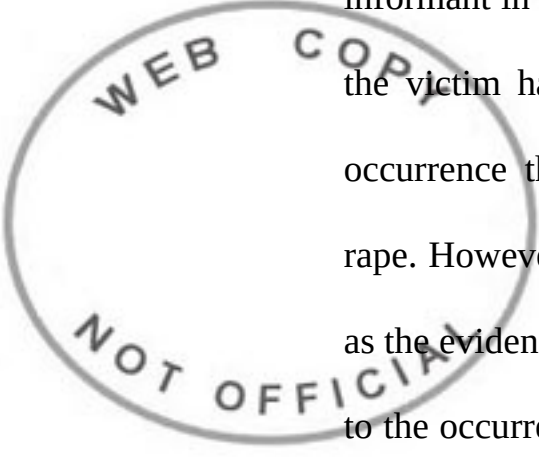
8. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence passed by the learned trial Court upon the appellant. It has been submitted that the informant in his evidence had deposed that he did not disclose to the police as to who committed the rape. It has further been submitted that the victim herself in her evidence stated that prior to the occurrence she had not been to the house of her elder sister and the victim was not identifying the appellant since before. The informant is not the eye-witness to the occurrence rather has deposed that he learnt about the occurrence from the victim and hence, the identification of the appellant is doubtful and

hence, the appellant is entitled to get the benefit of doubt. It has also been contended that the doctor has not found any specific evidence of rape as the spermatozoa has not been found and no external injury was found on the body or private part.

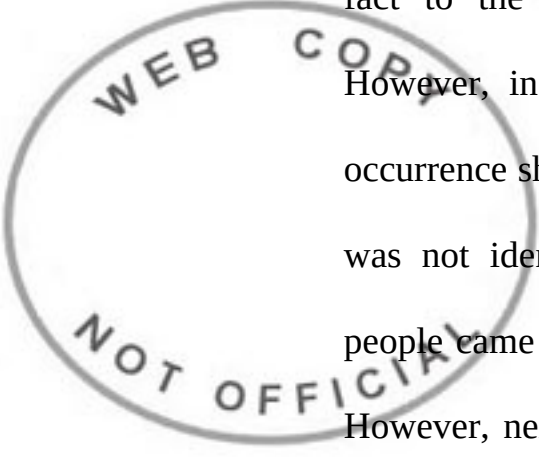
9. Learned counsel for the State, however, contended that the victim has supported the prosecution case and has specifically stated the name of the appellant and even identified the appellant in Court and the Doctor has also found abrasion on the private part and has opined that the possibility of rape cannot be ruled out and has proved the injury report marked as Ext.I and hence, there is nothing to disbelieve the evidence of the victim to record judgment of conviction.

10. Hence, taking into consideration the respective submission, I proceed to consider the evidence of the witnesses in the light of the submissions made by the parties.

11. The prosecution case as alleged in the First Information Report by the informant is that the victim had not herself come to the village of the informant rather she was brought to the village by the informant for the domestic work to look after the child of her elder sister in her Sasural. In the night of the occurrence while she was watching Barat in the house of Bharat Manjhi from the well of the village, the informant was engaged and busy in the marriage then the appellant enticed away the victim and committed unnatural offence as

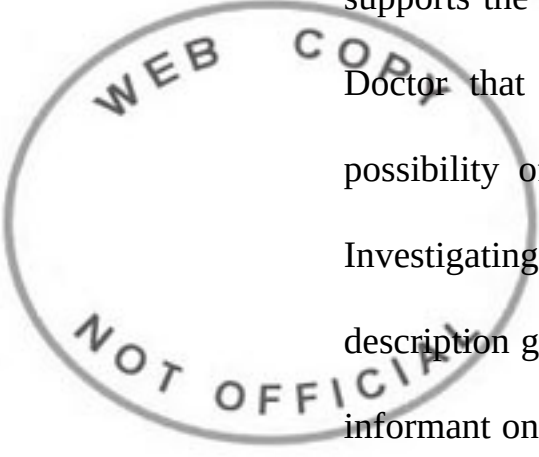


well as the rape by taking her to the orchard of one Bhuj Jee. The informant in his evidence, however, supported the prosecution case that the victim had gone to watch the Barat and she disclosed about the occurrence that the appellant and Yogendra Manjhi have committed rape. However, it is apparent from the First Information Report as well as the evidence of the informant that the informant is not an eye-witness to the occurrence. It is the fact as mentioned in the fardbeyan itself that after the occurrence victim came weeping and disclosed about the occurrence. In his evidence the informant has also stated that the victim came and disclosed about the occurrence. However, the criticism in his evidence is that this witness in the fardbeyan stated that the occurrence took place in night. However, the most important witness is the evidence of P.W.2 the victim herself. The victim in her statement has specifically stated that she had been to her brother-in-law (Bahanoi) to look after the newly born baby of her elder sister. During her stay at Sasural of her elder sister she went to watch a Barat which had come in the village. She has further stated that she went and there she was raped by the appellant and Yogendra Manjhi. She has further stated that there was physical altercation (patka-patki) with the appellant and Yogendra Manjha who untied her clothes and then committed illicit act (rape) and both the appellant and Yogendra Manjha committed the said act (rape) at about 1:00 P.M. and thereafter she came to her house. She has further

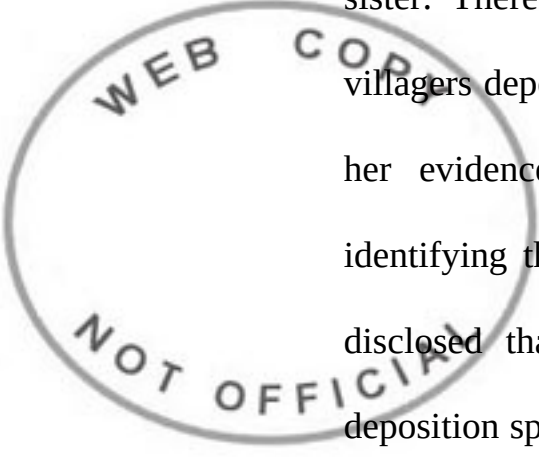


stated that she was examined by the doctor and has also disclosed the fact to the police and identified the appellant present in Court. However, in her cross-examination she has stated that prior to the occurrence she had not been to the house of her sister's Sasural and she was not identifying the accused since before and on hulla several people came and there the people disclosed the name of the appellant. However, neither she disclosed the name of the person who disclosed the name of the appellant nor anyone has come to depose that he identified the appellant rather the case of the prosecution in the First Information Report by the informant is that it was the victim who disclosed the name of the appellant. She has further stated that she did not depose at the instance of someone else but she herself had deposed. She has further stated that it is not only the physical altercation with the accused but they have done the illicit work. However, the criticism has been made regarding her evidence in cross-examination that she was not identifying the accused since before as she has not been to the Sasural of her sister prior to the occurrence/offence and disclosed the name of the appellant by the villagers.

12. However, it is true that the victim has named the appellant in her evidence in chief as well as she has stated the name of the appellant in her statement under Section 164 of the Cr.P.C. but the statement was recorded on 26.05.2005 whereas the occurrence was

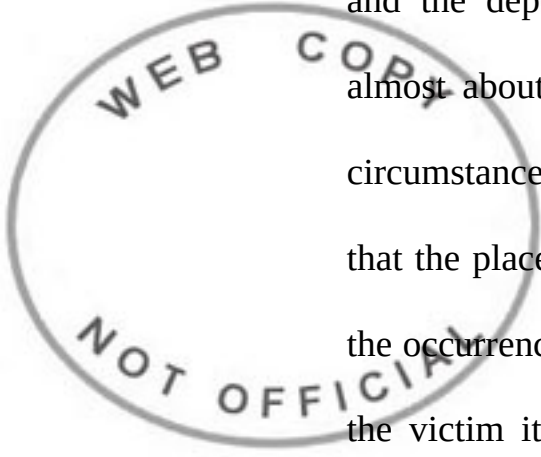


alleged to have taken place on 19.05.2005. The medical evidence also supports the prosecution case about the offence as the evidence of the Doctor that there is abrasion present on the private part and the possibility of rape cannot be ruled out. However, even though the Investigating Officer has not been examined in the case, but the description given about the place of occurrence in the fardbeyan by the informant on the basis of which First Information Report was lodged is the orchard of Bhuj Jee. However, the prosecution case, as alleged in the First Information Report, is that the victim was enticed away by the appellant and Yogendra Manjhi while she was watching the Barat from the well of the village at about 9:00 P.M. who took her to the orchard of Bhuj Jee and committed rape and then the victim came and disclosed about the occurrence. It is not the case of the prosecution that at the time of occurrence there was hulla and victim got the accused identified by villagers and this story is a development. The informant P.W. 4 has also deposed in his evidence that the name of the accused was disclosed by the victim herself whereas the victim in her statement under Section 164 of the Cr.P.C. and deposition before the Court has stated that the two persons including the appellant had raped her and has specifically stated in examination in chief that she had been to watch the Barat and she went to Bhuiatoli where she was raped by the appellant and Yogendra Manjhi and the occurrence took place at about 1:00 A.M. in



the night and then she came to her house and disclosed the fact to her sister. There is nothing on the record to suggest that on hulla the villagers deposed about the identification of the appellant. However, in her evidence in cross-examination she stated that she was not identifying the appellant and on Hulla several people came and they disclosed that they were the accused and in paragraph 4 of her deposition specifically stated that the name was disclosed by her on the disclosure of the villagers. However, the fact as to who were those villagers, who disclosed the name of the accused, has not been mentioned. P.W. 3, though the witness of the seizure of panty, who has already been declared hostile and none else, has come to say about the villagers who disclosed the name of the appellant. However, no Test Identification Parade has been conducted as there is no evidence that any Test Identification Parade was ever conducted. It is not the case that the appellant was apprehended at the time of occurrence nor is there any witness who has come to say about the occurrence and only witness of the rape is P.W. 2 the victim. However, how she knew the name of the appellant, her evidence is that it was disclosed by the villagers which does not inspire confidence and her evidence suffers from credence and not worthy of confidence. She has not stated the names of the villagers, who disclosed the name of the appellant and hence, the identification of the appellant at the time of occurrence has

become doubtful. Moreover, the occurrence took place in the year 2005 and the depositions of the witnesses were recorded on 09.10.2012 almost about 7 years after the occurrence and hence in the fact and circumstances of the case and the nature of the evidence, it is apparent that the place of occurrence varies as per the First Information Report, the occurrence took place at orchard of Bhuj Jee and as per evidence of the victim it was Bhuiatoli and the Investigating Officer having not been examined, it has caused prejudice. The identification in Court with Test Identification Parade is not reliable and permissible identification and only fact remains is that the victim disclosed the name of the appellant at the disclosure of the villagers to the informant and none has come forward to disclose as to who disclosed the name of the appellant. Hence, the identification of the appellant is not on the basis of disclosure of his name by the victim but in view of the evidence of the victim that after the occurrence the villagers collected and disclosed the name of the appellant, without any evidence of any villager to support the prosecution case that the appellant has committed the occurrence the conviction of the appellant is not sustainable and the prosecution has palpably failed to procure the evidence regarding participation of the appellant in the crime and hence, I agree that the appellant is entitled to the benefit of doubt as the identification of the appellant is doubtful.



13. Hence, having regard to the facts and circumstances of the case, the appellant is entitled to get the benefit of doubt. Accordingly, I give the appellant benefit of doubt regarding the identification and the prosecution has not been able to prove the charge beyond all reasonable doubts as the evidence regarding the identification of the appellant is doubtful. The judgment of conviction dated 29.05.2013 and order of sentence dated 01.06.2013 passed by Md. Shahid Rais, learned Ad hoc 2nd Additional District & Sessions Judge, Jehanabad in connection with S. Tr. No. 153 of 2010/226 of 2010 arising out of Parasbigaha P.S. Case No. 50 of 2005 are hereby set aside and the appeal is allowed. Since the appellant is in jail, he is ordered to be released on bail forthwith if not required to be detained in any other case.

(Gopal Prasad, J)

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