

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 257 of 2013

Against the judgment of conviction dated 15.03.2013 and order of sentence dated 19.03.2013 passed by Shri Arun Kumar Srivastawa, 4th Additional Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 566 of 2011 arising out of Garkha P.S. Case No. 237 of 2011.

Rakesh Singh @ Rakesh Kumar Singh, Son of Ganesh Dutt Singh, Resident of Village – Rampur, Police Station – Garkha, District – Saran (Chapra)

.... Appellant

Versus

The State of Bihar

.... Opposite Party

Appearance :

For the Appellant : Shri Krishna Prasad Singh, Sr. Advocate
Mrs. Meena Singh, Advocate
Mr. Manoj Kumar, Advocate

For the Opposite Party: Mrs. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

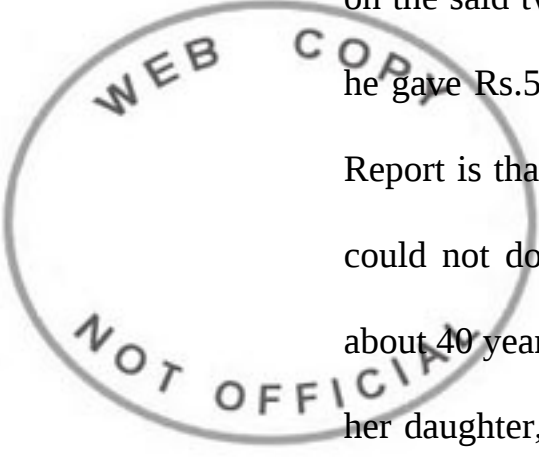
ORAL JUDGMENT

Date: 08-10-2015

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

2. The appellant has been convicted under Section 376(2)f of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case, as alleged in the First Information Report by the informant Chamali Devi, the mother of the victim, is that on the last Monday (25.10.2010) at about 6:00 P.M. her daughter Soni Kumari aged about 10 years was coming out from the poultry farm of the appellant and at that time she was weeping. The informant asked from the victim why she was crying then she disclosed that the appellant took her in the poultry farm, gave Rs.10/- and committed wrong (rape). She



further disclosed that earlier the appellant had done illicit work twice and on the said two occasions once he gave Rs.10/- and on another occasion he gave Rs.5/-. The reason for delay in lodging of the First Information Report is that the villagers had assured to do justice in Panchayati but it could not be done. Hence, the informant claimed that the appellant, aged about 40 years, son of Ganesh Singh has committed rape on the person of her daughter, namely, Soni Kumari. However, it has further been stated that though the occurrence is of Monday (25.10.2010), but the fardbeyan has been recorded on 29.10.2010 for the reasons mentioned above. The fardbeyan was recorded on 29.10.2010 at 11:00 A.M. at the house of the informant by the Sub-Inspector of Police, Kamta Prasad, Garkha Police Station.

4. On the fardbeyan of the informant, First Information Report was lodged, investigation was proceeded and during investigation the Investigating Officer inspected the place of occurrence which is village Rampur, the poultry farm of the appellant. The Investigating Officer has given the boundary of the said poultry farm in paragraph 4 of his deposition and recorded the statement of the victim as well as the other witnesses. Thereafter, the Investigating Officer got the statement of the victim recorded under Section 164 Cr.P.C. and took permission of the Court. The victim was medically examined. In her statement under Section 164 Cr.P.C. she has stated that the appellant asked her to provide

water to the hen and when she went inside the poultry from, the appellant pushed her on the floor and then removed her undergarments and untied her clothes and also unclothed himself and thereafter committed rape. The victim was medically examined and the doctor opined that no injury was found on her body and private part. No mark of violence in or around her private parts. Hymen old, torn, admits two fingers. However, the doctor also opined that the age of the victim has been found to be 9 to 10 years and there is no evidence of recent intercourse but the possibility of intercourse in past cannot be ruled out. The Investigating Officer after investigation submitted charge-sheet on which cognizance was taken, case was committed to the Court of Sessions and after commitment, charge was framed under Section 376 of the Indian Penal Code and thereafter trial proceeded. During trial, six witnesses were examined by the prosecution.

5. P.W. 1 Punam Devi, is Bhabhi of the victim. P.W. 2 is Dr. Pratima Gupta who examined the victim on 02.11.2010 and found that no injury was found on her body and private part. No mark of violence in or around on her private parts. Hymen old, torn, admits two fingers.

6. P.W. 3 Dheeraj Kumar is the brother of the victim. He deposed in his evidence that on hearing the cry of the victim, he reached poultry farm and saw the appellant committing rape over the body of the victim. However, this witness stated in his cross-examination that prior

to reaching the place of occurrence four persons had already reached there who were Chamali Devi, Punam Devi, Mukesh Kumar Sah and Dhiraj Kumar.

7. P.W. 4 Soni Kumari is the victim herself. She in her evidence has stated that on the date of occurrence while she was playing at her Darwaza, the appellant called her to provide water to the hen and when she went inside the poultry farm and the appellant pushed her on the ground and thereafter closed her mouth and then appellant committed rape and when she cried then her brother, mother and Bhabhi came. Thereafter the appellant got up and fled away. However, in her evidence in cross-examination she has stated that as her mother said so this case was filed and his father is alive and a great emphasis has been made on her evidence where she stated that she did not disclose anything to her mother but simultaneously has stated that crime was committed with her and she has further stated that she gave statement to the police as disclosed by her mother and father and in Court also she gave the same statement as tutored by the Government Pleader and a private Pleader.

8. P.W. 5 Chamali Devi is the informant and mother of the victim. However, she in her evidence deposed that on hearing the cry of the victim she came out then saw towards the poultry farm and saw wrong by the appellant over the body of the victim and thereafter her son and daughter-in-law came then the appellant fled away. However, in her

cross-examination in paragraphs 7 and 8 of her evidence she has stated that when she reached at the poultry farm on hearing the cry of the victim then at that time he did not see anyone there and thereafter she came back to her house and when she reached at the house she had a talk with the victim and then she took the victim to the police station. She has also stated in her cross-examination that the frock and the panty of the victim were besmeared with blood and blood has also fallen down in the courtyard on the land. P.W. 6 is the Investigating Officer.

9. The defence has also adduced five witnesses and the defence case as per the defence witnesses, their evidence and the suggestions made, is that no occurrence as alleged occurred and the appellant has falsely been implicated in this case and the witnesses have deposed due to prior enmity.

10. However, the witnesses examined on behalf of the defence had only come to depose that the appellant has not committed rape and the charge has been false and the witnesses have also given the affidavit to the Court. However, the evidence adduced on behalf of the defence are D.W. 1 Kamta Singh, D.W. 2 Shafique Mian, D.W. 3 Chhatho Devi, D.W. 4 Sushila Kuar, D.W. 5 Madan Mohan Tiwari and D.W. 6 Supan Ram.

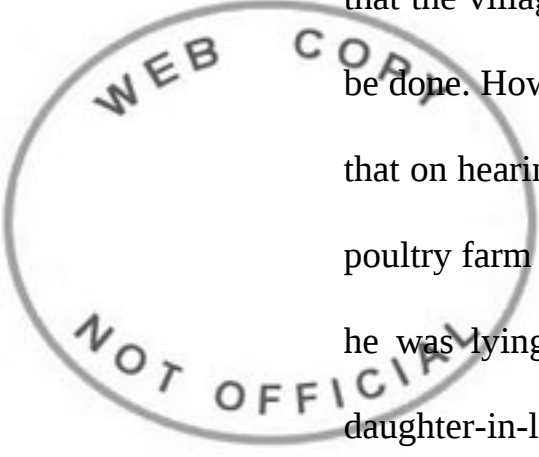
11. Taking into consideration the evidence of the witnesses, the trial Court passed the judgment of conviction and order of sentence upon

the appellant as mentioned above.

12. Learned counsel for the appellant, however, contended that the witnesses are claiming to be the eye-witnesses, but their evidence are not as such and further submitted that there is contradiction in the evidence of the witnesses with their earlier statements. He further submitted that their evidence are not worthy of credence and suffer from contradiction and as such are not to be believed and the appellant has falsely been implicated.

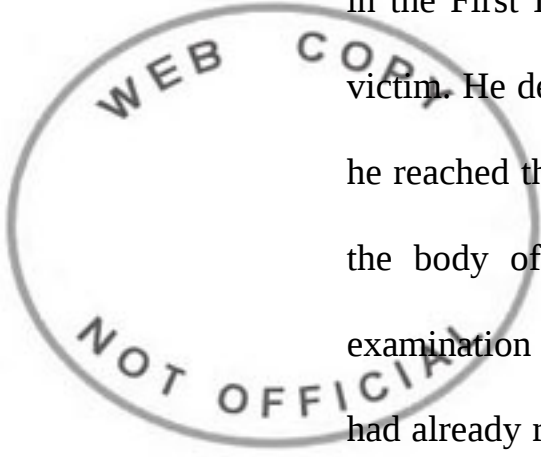
13. Learned counsel for the State, however, contended that the victim in her evidence has supported the prosecution case and her evidence cannot be rejected.

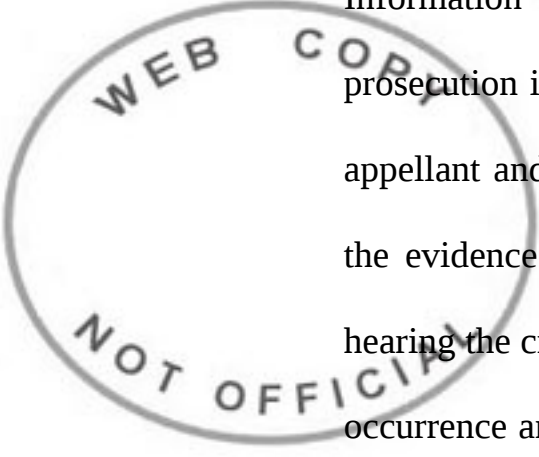
14. However, taking into consideration the respective submission, I proceed to consider the evidence of the witnesses in the light of submission made. The prosecution case, as alleged in the First Information Report by the informant Chamali Devi, is that on the last Monday (25.10.2010) at about 6:00 P.M. her daughter Soni Kumari aged about 10 years was coming out from the poultry farm of the appellant and at that time she was weeping. The informant asked from the victim why she was crying, then she disclosed that the appellant took her in the poultry farm, gave Rs.10/- and committed wrong (rape). She further disclosed that earlier the appellant has done illicit work twice and on the said two occasions once he gave Rs.10/- and on another occasion he gave



Rs.5/-. The reason for delay in lodging of the First Information Report is that the villagers had assured to do justice in Panchayati but it could not be done. However, she in her evidence as P.W.5 Chamali Devi has stated that on hearing the cry of the victim she came out, then went towards the poultry farm and saw the occurrence being committed by the appellant as he was lying over the body of the victim and thereafter her son and daughter-in-law came then the appellant fled away. However, in her cross-examination in paragraphs 7 and 8 of her evidence she has stated that when she reached the poultry farm on hearing the cry of the victim then at that time he did not see anyone there and thereafter she came back to her house and when she reached at the house she had a talk with the victim then she took the victim to the police station. She has also stated in her cross-examination that the frock and panty of the victim were besmeared with blood and blood had also fallen down in the courtyard on the land. However, the evidence of this witness in Court is quite contrary to the earlier statement in the fardbeyan recorded by Investigating Officer, on the basis of which First Information Report was lodged. She has stated in the fardbeyan that she saw his daughter, namely, Soni Kumari coming out from the poultry farm of the appellant and at that time she was weeping then the victim disclosed that the appellant took her in the poultry farm whereas in her evidence in Court she has stated that on hearing the cry of the victim she reached there and

saw the occurrence and hence, her evidence is quite contrary as alleged in the First Information Report. However, P.W. 3 is the brother of the victim. He deposed in his evidence that on hearing the cry of the victim, he reached the poultry farm and saw the appellant committing rape over the body of the victim. However, this witness stated in his cross-examination that prior to reaching the place of occurrence four persons had already reached there who was Chamali Devi, Punam Devi, Mukesh Kumar Sah and Dhiraj Kumar. However, from the evidence of the informant Chamali Devi (P.W.5), it is apparent that though she claims to be the eye-witness of the occurrence but in cross-examination she has stated that when she reached poultry farm she did not see anyone there and then she came back to her house and met with the victim and hence, in view of this evidence the claim of P.W. 5, the informant, who is the eye-witness is contrary to the evidence of P.W. 3 and also contrary to the prosecution case as alleged in the First Information Report. Similarly P.W. 1 is the Bhabhi of the victim. She in her evidence also deposed that when she reached the place of occurrence, she saw the appellant committing rape with the victim. However, her evidence also does not inspire confidence in view of the evidence of P.W. 3 to the effect that when he reached the place of occurrence his Bhabhi had already reached there, but the evidence of the informant P.W. 5 is that his daughter-in-law reached there after her arrival and hence, the evidence of P.Ws. 1, 3





and 5 are quite contrary to the prosecution case as alleged in the First Information Report. In the First Information Report the case of the prosecution is that they saw the victim coming from poultry farm of the appellant and then the victim disclosed about the occurrence. However, the evidence adduced by the prosecution is that P.Ws. 1, 3 and 5, on hearing the cry of the victim, went to the place of occurrence and saw the occurrence and they claimed to be the eye-witness to the occurrence and this theory of the prosecution and their evidence are quite contrary to the prosecution case as alleged in the First Information Report, where the prosecution case is that the victim came weeping and disclosed about the occurrence. P.W. 4 in her evidence has stated that on the date of occurrence while she was playing at her Darwaza the appellant called her to provide water to the hen and when she went inside the poultry farm the accused pushed her on the ground and thereafter he closed her mouth and then appellant committed rape and then after she cried then her brother, mother and Bhabhi came. Thereafter the appellant got up and fled away. However, her evidence under Section 164 of the Cr.P.C., which is on the record, is quite contrary to her evidence made in Court. There is no whisper in the statement under Section 164 of the Cr.P.C. that she made any cry because of which the witnesses came to the place of occurrence and saw the appellant fleeing away. Though the evidence of the witnesses is that the appellant called the victim to provide water to

the hen, however, the First Information Report drawn on the statement of the mother of the victim discloses that the appellant took her to the poultry farm. However, there is no whisper that she was taken to provide water to the hen nor is there any theory developed and these two facts have been introduced for the first time in the evidence of the prosecution. It is true that in case of rape if the evidence of the prosecutrix inspires confidence, it is not required for any corroboration as the corroboration of evidence is not a rule of law but a rule of prudence.

15. However, when the prosecution story in the First Information Report is being given go-by by the prosecution witnesses and different story has been developed then in that circumstances the evidence of the prosecutrix appears to be doubtful and in such a situation corroboration is required to the evidence of the witnesses. However, the victim though has stated that rape was committed on her person but she developed a story that she was called to provide water to the hen and on the said cry her brother, mother and Bhabhi came, saw the occurrence or fleeing away the appellant from the place of occurrence. However, there is no such case in the First Information Report though the informant (P.W. 5) stated that the victim was coming from the poultry farm of the appellant and she was weeping and when she was inquired, victim disclosed about the occurrence, but it is strange that she has not specifically stated what the victim had specifically disclosed in the

evidence of P.W. 5, the informant. However, she has given a totally different story claiming to be the eyewitness to the occurrence but the First Information Report does not mention or whisper about the informant being an eye-witness to the occurrence.

16. Having regard to the fact that the prosecution has changed the story from stage to stage and given a go-by to the initial version as disclosed in the First Information Report, it is not safe to convict the appellant on the basis of evidence of the prosecution witnesses as the witnesses claimed to be the eye-witnesses but in fact they were only hearsay and hence, the appellant is entitled to get the benefit of doubt as the prosecution has not been able to prove the charge against him beyond all reasonable doubts. Therefore, I acquit the appellant of the charge and set aside the judgment of conviction dated 15.03.2013 and order of sentence dated 19.03.2013 passed by Shri Arun Kumar Srivastawa, 4th Additional Sessions Judge, Saran at Chapra in connection with Sessions Trial No. 566 of 2011 arising out of Garkha P.S. Case No. 237 of 2010. As the appellant is in jail, he is ordered to be released on bail forthwith if not required to be detained in any other case. Accordingly, the appeal is allowed.

(Gopal Prasad, J)

Kundan
N.A.F.R.

U		T	
---	--	---	--