

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 509 of 2016

Arising out of P.S. Case No. -67 Year- 2014 Thana -MAHILA
P.S District- SUPAUL

=====

Rina Kumari, D/o Mohan Sah, Resident of Village - Sukhpur, P.S.
Supaul, District – Supaul.

.... Appellant.

Versus

1. The State of Bihar.

2. Baijnath Sah @ Baidh Nath Sah, Son of Rameshwar Sah, Resident
of Village - Sukhpur, P.S. Supaul, District – Supaul.

... Respondent.

=====

Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate.

For the Respondent/s : Dr. Mayanand Jha, APP.

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

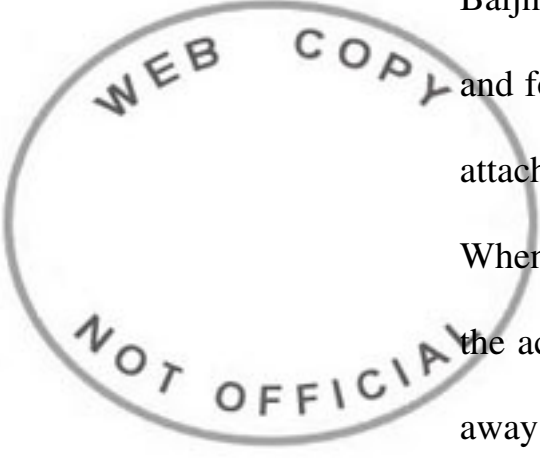
ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 28-09-2016

This appeal is directed against the judgment and order,
dated 09.03.2016, passed by the District & Sessions Judge,
Supaul, in S.Tr. No. 204 of 2014, arising out of Supaul Mahila
P.S. Case No. 67 of 2014, corresponding to G.R. No. 1072 of
2014, by which the accused-Respondent No. 2 has been
acquitted of the charge under Section 376 of the Indian Penal
Code and has been discharged from the liabilities of bail bonds.

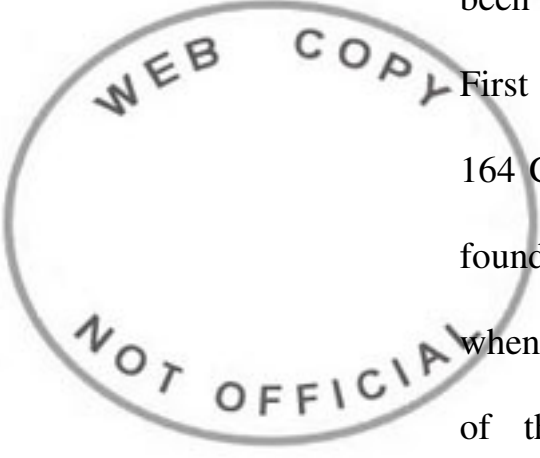
The case of the prosecution is that on 20.06.2014, at
11.30 P.M., when the informant was returning to her house from



her aunt's house after watching television, Respondent No. 2, Baijnath Sah @ Baidh Nath Sah, in the way, gagged her mouth and forcibly took her to "Bari," which is a small type of orchard attached and adjacent to the house and committed rape upon her. When her younger brother and sister came there looking for her, the accused, Baijnath Sah @ Baidh Nath Sah, seeing them, fled away.

During trial, the prosecution, in all, examined nine witnesses. Out of them, P.W. 1, Sukhdeo Ram and P.W. 2, Narayan Jha have been declared hostile. P.W. 3, Anar Devi, who is the aunt of the appellant, P.W. 4, Dinanath Sah, who is the brother of the appellant, P.W. 5, Nirmala Devi, who is the mother of the appellant, P.W. 6, Dr. Ragini Bhushan, P.W. 7, Jhuna Kumari, who is the sister of the appellant, P.W. 8, Rina Kumari, the appellant, P.W. 9, Premlata Bhupashree who is the Investigating Officer have supported the prosecution version as per the appellant. On behalf of defence, five witnesses have been examined, i.e., D.W. 1, Randhir Singh, D.W. 2, Navin Kumar Chaudhary, D.W.3, Girdhari Pandey, D.W. 4, Umesh Yadav and D.W. 5, Baban Sah.

The learned trial Court, upon appreciation of material on record, has found major contradictions in the versions of the



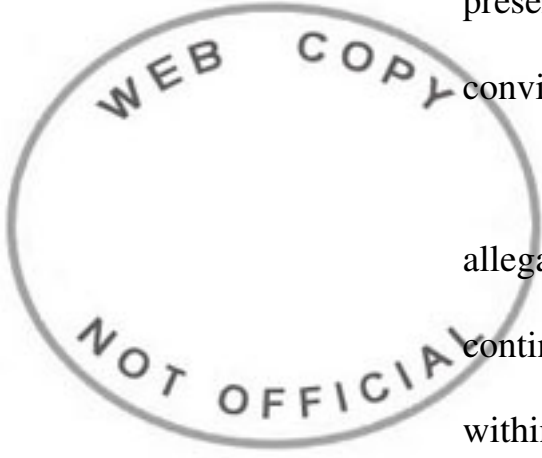
witnesses produced on behalf of prosecution. Variation has also been found in the version of the informant as recorded in the First Information Report, her statement recorded under Section 164 Cr.P.C. as well as her evidence during the trial. It has also found contradiction in the version of the prosecution witnesses, when compared to one with the other and also from the version of the prosecutrix. After consideration of the aforesaid contradictions and variations coupled with the fact that the medical report does not support the allegation of rape, which has proved to be fatal, the learned trial Court has come to the conclusion that the prosecution has miserably failed to prove the charges. Apart from the above, the witnesses, appearing on behalf of the defence, have stated that the allegations were false and were outcome of petty family dispute as the Informant and the accused are cousin brothers.

Learned counsel appearing for the appellant has tried to impress upon this Court that though the prosecution witnesses have proved the case beyond all reasonable cloud of doubt, the learned trial Court has erroneously come to the said conclusion.

However, when questioned during the course of hearing, learned counsel has completely failed to explain as to how the contradictions in the version of the victim, as noticed by

the learned trial Court, could have been ignored and even in presence of such contradiction, how the trial Court could have convicted the accused.

The learned trial Court has noticed that though there is allegation of rape in the First Information Report and that continued for a period of one hour and there were several houses within the vicinity of the place of occurrence, yet it is surprising that even after alarm having been raised by the victim, the neighbours did not, immediately, come to save her. It has further been noticed that in her statement recorded under Section 164 Cr.P.C., the prosecutrix has stated that the accused, Baijnath Sah @ Baidh Nath Sah, gagged her mouth and took her to the “Bari,” which is a small type of orchard adjacent to the house, and asked her for sexual favour or else, threatened her with dire consequences. However, when her younger brother and sister came, the accused fled away, but she has further stated in the concluding part that the accused had committed rape upon her, which appears to be in contradiction to her earlier part of the statement. In her evidence, she has also stated at one place that Anar Devi, Dina Nath Sah and Jhuna Kumari were present, when Baijnath Sah @ Baidh Nath Sah gagged her mouth and forcibly took her to the small orchard and when Baijnath Sah @ Baidh



Nath Sah saw all of them, he fled away, but just contrary to the aforesaid statement, Anar Devi, Dina Nath Sah and Jhuna Kumari have stated, in their respective evidence, during examination as witnesses, that the accused had committed rape, which could not generate confidence of the learned trial Court. It is also stated that the medical report does not support the description of the occurrence and the torch or the emergency light, with the help of which the witnesses claim to have identified the accused, was never produced.

Learned counsel for the appellant utterly failed to demonstrate before us as to how, on the materials, which are available on record, the judgment of conviction could have been passed by the learned trial Court.

In view of above discussion, we could not be persuaded to admit this appeal. Accordingly, the same is dismissed.

(I.A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	08.10.2016
Transmission Date	08.10.2016