

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.306 of 2014

Against the judgment of conviction dated 12.05.2014 and order of sentence dated 15.05.2014 passed in Sessions Trial No. 31 of 2013 arising out of Makhdumpur P.S. Case No. 64 of 2012, corresponding to G.R. Case No. 561 of 2012 by Sri Panchanan Sharma, District and Sessions Judge, Jehanabad.

=====

Premchand Yadav, son of Hardwar Yadav, resident of Village - Kafarpur, P.S. - Makhdumpur, District - Jehanabad

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Arvind Prasad Singh, Advocate

Mr. Ajay Kr. Sinha, Advocate

For the Respondent/s : Mr. Abhay Kumar, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 29-03-2016

Heard learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years with a fine of Rs.20,000/- and in default of payment of fine to undergo simple imprisonment for six months.

3. The prosecution case, as alleged in the First Information Report on the basis of a complaint petition filed by the victim Renu Devi (P.W.1), is that on 22.10.2011 at 7.00 P.M. while the informant along with her Gotani Suchita Devi had gone at the diesel pumping set of the appellant Premchand Yadav for irrigation of their respective paddy crop field then Premchand Yadav (appellant) said the informant that he will irrigate her field after irrigating the



field of Suchita Devi. The further case is that after irrigating the field of Suchita Devi, Premchand Yadav (appellant) Suchita Devi that there is nothing to fear and on that assurance Suchita Devi went to her house and thereafter, Premchand Yadav (appellant) started irrigating the field of the informant. At that time, the informant was at a distance of 500 ft. from her field, which was being irrigated by the diesel pump set. In the meantime, Premchand Yadav (appellant) came and threw the victim on the ground and threatened to kill if she will raise hulla and committed rape. Thereafter, the victim went to her house and disclosed about the occurrence to her husband, Gotani and co-villagers. The further case is that Premchand Yadav (appellant) went to the house of the informant and threatened to kill all her family members if she will file any case. The further case is that the informant and her husband reported the matter to the Sarpanch of the Panchayat but the Sarpanch neither took any action nor even informed the Police so the complaint has been filed on 03.11.2011. The said complaint was sent to the Police Station under Section 156(3) of the Code of Criminal Procedure for lodging the First Information Report. However, the First Information Report was lodged on 03.04.2012. After lodging of the First Information Report, the investigation proceeded. The Investigating Officer proceeded to the place of occurrence and recorded the statement of the victim including Suchita



Devi. Thereafter, he inspected the place of occurrence which is situated at Basawan Kuer Khandha at south-western direction of village Kapharpur, at a distance of 500 yards. There is pumping set of accused besides ridge. There is a field of father-in-law of the victim, namely, Ram Jatan Thakur which was being irrigated. However, he did not find any material at the place of occurrence and further after recording the statement of the witnesses submitted charge-sheet. After submission of the charge-sheet, cognizance was taken, case was committed to the Court of Sessions and during trial five witnesses were examined on behalf of the prosecution.

4. P.W.1 Renu Devi is the informant. She in her evidence deposed that on the relevant date and time of occurrence she was irrigating her field. The accused appellant came there and thrown her on the ground and committed rape on her. She came weeping to her house and narrated whole episode to her husband Tapsi Thakur (P.W.3) and her Gotani Sushila Devi (P.W.2) who went to the house of Premchand Yadav who abused them and even attempted to assault. She has further stated that a Panchayati was convened at Mahadeo Asthan in which appellant raised his defence and the Panches prohibited her to lodge any case but the informant stated that her prestige is at stake and said that she will file a case. Thereafter, she came to Jehanabad Court and lodged a case.



5. P.W.2 Sushila Devi is the Gotani of the victim who has supported the prosecution case to the effect that while she was irrigating her field the appellant asked her to go her home and thereafter she went to her home and disclosed that the appellant has threatened her to kill by strangulating her neck if she will raise any hulla. She has further stated that she informed the Sarpanch and the Sarpanch disclosed that information will be given to the Police Station.

6. P.W.3 Tapsi Thakur is the husband of the victim and he deposed to the effect that his wife disclosed about the occurrence thereafter he went to the house of accused to make complain on which his family members abused and made hulla at his house. He came to the police but the police refused to lodge case in collusion with the accused. He approached the Sarpanch who neither took any action nor informed the police. Thereafter he filed the case in the Court.

7. P.W.4 Srikant Kumar is the nephew of the informant. He deposed that at the time of occurrence he was at his house along with his mother Suchita Devi, uncle Brijnandan Thakur, sister Soni Kumari, brother Anandi Kumar and at that time his aunt Renu Devi came weeping and disclosed about the occurrence of rape and thereafter he along with his uncle Brijnandan Thakur, aunt Renu Devi, mother Suchita Devi and brother Anandi Kumar went to the

house of the accused Premchand Yadav but at that time Premchand Yadav was not present at his house and his inmates abused and threatened them. He further deposed that they returned to their house and after five minutes, the accused Premchand Yadav along with 20-25 persons came at his house and abused, threatened and denied commission of rape.

8. P.W.5 Ranjan Sharma is the Investigating Officer of this case, who after investigation submitted charge-sheet.

9. The defence of the accused persons, as set up by the suggestion, is that no occurrence as alleged took place and the false case has been instituted against the appellant Premchand Yadav in collusion with his enemy Ram Brichh Yadav and the witnesses have deposed falsely being the relative of Renu Devi. The further defence set up is that all the witnesses, except the informant, who is an eye-witness to the occurrence, are hearsay witnesses though the attempt has been made to record contradiction but the same has not been in consonance with Section 145 of the Evidence Act as the statement under Section 161 of the Code of Criminal Procedure has not been brought on record. Neither the statement under Section 161 of the Code of Criminal Procedure has been brought on record nor the attention of the witnesses has been drawn towards the statement made under Section 164 of the Code of Criminal Procedure.

10. The Trial Court after taking into consideration the evidence of the witnesses, convicted and sentenced the appellant as mentioned above.

11. The learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the Trial Court on the ground that the victim is not a virgin lady rather she is mother of four children. The eldest child is 14 years old and the youngest is 4 years old. The occurrence took place at 7.00 P.M. but the victim has stated that she did not make any hulla at the place of occurrence. She further stated that she did not inform about the occurrence to the Police on the date of occurrence and that the information about the occurrence was given to the daughter-in-law of Balkeshwar Yadav and Bhunna Yadav. It has further been contended that the occurrence took place on 22.10.2011 but the complaint has been lodged on 03.11.2011 and there is much delay in lodging the First Information Report. Though the witnesses have stated that they informed the Sarpanch and even the Panchayati was held but neither the Sarpanch nor the members of the Panchayat were examined as a witness. He further submits that except the family members of the informant none of the persons of the village came forward to support the prosecution case when the victim herself has stated that she stated about the occurrence to the daughter-in-law of Balkeshwar Yadav. It



has further been contended that certain discrepancies have been committed by the husband of the victim as alleged in the evidence of the victim herself in cross-examination where she has stated that after 3-4 days of the occurrence she came to the Court and lodged the case and the husband of the victim has stated that after one and half months of the occurrence Police have enquired from her, whereas the Investigating Officer in his evidence has stated that the First Information Report lodged after four months of the occurrence and he investigated the case after four months of the occurrence. He has further stated that he did not record the statement of any person of the family of Balkeshwar Yadav nor he recorded the statement of Bhunna Yadav and, hence, contended that since there is no corroboration either of the medical evidence or the evidence of the victim. Neither the victim has been examined by the medical doctor after the occurrence nor the Saree was produced nor the semen was sent nor any report regarding the same has been received and there is no proper explanation. It is true that there is no rule of evidence nor a rule of law that requires any corroboration to the evidence of the prosecution but in a case of rape on a person of a victim who is an adult lady being the mother of four children, the corroboration is required as a rule of prudence and further when there are materials to suggest corroboration that require to produce. Saree of the victim



stained with the spur has not been produced but there is specific allegation that the appellant raped her and further though the case of the prosecution is that there was Panchayati but none of the witnesses of Panchayat came forward to depose their evidence. Though the husband supports the victim disclosing about the occurrence but at the same time as per his evidence, he was at the market and the only evidence is that when he returned from the market, the victim disclosed about the occurrence and, hence, his evidence is quite hearsay.

12. The learned counsel for the State, however, contends that the informant has supported the prosecution case as she has firstly stated that after the occurrence she came to her house and disclosed about the occurrence to the husband and other inmates. They have come to support the prosecution case and there is nothing in the evidence of the victim to disbelieve and if the evidence of the witnesses and the prosecutrix inspire confidence then the conviction can be recorded on the sole testimony of the victim and no corroboration is required.

13. Having regard to the respective submissions of the parties, I proceed to consider the evidence of the witnesses in the light of the submissions made above.

14. However, going through the entire evidence that the



witnesses have supported the prosecution case. P.Ws.1 and 2 are the Gotanies and P.W.3 is the husband of the victim and they have supported the prosecution case about the occurrence. They further deposed that they went to the house of the accused but they did not find Premchand Yadav at his house and the inmates of the house protested, abused and ousted the prosecution witnesses. They further deposed that after five minutes of the arrival at the house of the victim, accused Premchand Yadav along with 20-25 persons came, abused and threatened that he has done nothing and no any act like rape. The case of the prosecution is that the Sarpanch was informed and even the Panchayati convened, the villagers were aware of the occurrence but neither the Panches were examined nor the Sarpanch was examined as a witness nor any attempt was made for their evidence. The Investigating Officer in his evidence has stated that he recorded the statement of the Sarpanch but the prosecution has not brought any witness nor from perusal of the record, it appears that any attempt was made for examination of Sarpanch and any other witness. The victim was not examined medically and the explanation given regarding the Panchayati by the informant to the Sarpanch and even the case has been made out that a Panchayati was convened but none of the members of the Panchayat has examined as a witness. The further case of the prosecution is that the victim was raped and even



during the rape secretion of the semen of the appellant took place but the clothes of the victim were not produced before the Police. Moreover, the victim is a 30 years old lady being the mother of four children. The eldest one is above 14 years old, however, her evidence is that at the time of occurrence, she did not make any hulla, came to her house and disclosed about the occurrence. However, having regard to the situation for not reporting the matter to the Police and not lodging the case on the date of occurrence or subsequently thereafter, the delay of 13 days in reporting the matter may not be itself a ground unless a proper explanation is given.

15. A Panchayati was convened but the members of the Panchayat have not been examined nor any steps for their evidence has been taken and further the clothes were also not produced and, hence, no evidence has been brought on record to lend assurance about the occurrence except the evidence of the family members. However, it is stated that in the case of rape a corroboration is not required as a rule of law but to ask for the corroboration is rule of prudence, at least in a case in which the victim is a grown up lady, the mother of four children, moreover, when there was member for proving the corroboration by producing the clothes and examining the Panches and, hence, non-production of the clothes and non-examination of the Panches gives an opportunity to cast a reasonable



doubt about the prosecution case and, hence, I find that the prosecution has made out a case of reasonable doubt has not been able to bring the charges beyond all reasonable doubts. The Trial Court did not go into the question that why the clothes were not produced and the Panches were not examined or even the Sarpanch has not been examined as a witness and moreover, there are discrepancies in the evidence of the witnesses that they deposed that the informant went to the Court just three days of the occurrence and explanation given is that they went to Sarpanch and even Panchayati was convened but neither the Panches nor Sarpanch were examined or the witnesses stated that their statements recorded about a month of the occurrence but the fact remains that the First Information Report itself lodged after four months. It is true that the argument advanced that there cannot be mathematical precision in the deposition made about the time of occurrence or the days when their statements recorded and when the victim reported the matter, who appears to be a rustic lady and is well grown up.

16. Hence, having regard to the facts and circumstances of the case, I find and hold that the prosecution has not been able to prove the charges levelled against the appellant beyond all reasonable doubts and give the appellant benefit of doubt and acquit the appellant of the charges levelled against him. The judgment of conviction dated

12.05.2014 and order of sentence dated 15.05.2014, passed in Sessions Trial No. 31 of 2013, arising out of Makhdumpur P.S. Case No. 64 of 2012, corresponding to G.R. Case No. 561 of 2012 by Sri Panchanan Sharma, District and Sessions Judge, Jehanabad is set aside and the appeal is allowed. Appellant, namely, Premchand Yadav, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Vats/-

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