

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.226 of 2015

Arising Out of PS.Case No. -61 Year- 2011 Thana -NAUGACHIA District- BHAGALPUR

Against the judgment of conviction dated 10.03.2015 and order of sentence dated 18.03.2015, passed in Sessions Trial No. 732 of 2011, arising out of Naugachia P.S. Case No. 61 of 2011, corresponding to G.R. Case No. 416 of 2011 by Sri Niranjan Singh, 2nd Additional District and Sessions Judge, Naugachia

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Rajan Kumar Bhagat, Son of Late Sri Ram Bhagat, Resident of village - Gajadhar Bhagat Road, Naugachia, Police Station - Naugachia, District - Bhagalpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Suraj Narayan Yadav, Advocate
Mr. Yogendra Prasad, Advocate
For the Respondent/s : Mr. Abhay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 17-05-2016

The sole appellant has been convicted under Section 376 (II) g of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs. 10,000/- and in case of non-payment of fine, to undergo further imprisonment for six months. The appellant has further been convicted under Section 26 (1) of the Arms Act and has been sentenced to undergo rigorous imprisonment for three years. However, it has been ordered that both the sentences shall have run concurrently.

2. The prosecution case, as alleged, in the fardbeyan



given by the informant, Madhu Devi aged about 29 years, wife of Ramesh Sah is that she was residing in the house of Munna Kumar Bhagat as a tenant at Mohalla-Makha Takia, Police Station-Naugachia. In the night of 16th April, 2011 at about 10 P.M. after taking meal, she entered into her room and closed the room and while going to bed to sleep then at once the appellant Rajan Kumar Bhagat came out beneath her bed and took out his pistol and threatened her. Subsequently, he closed her mouth and put his pistol and cartridges below the pillow and committed rape on the person of informant. The further case is that in the meantime, her husband namely Ramesh Sah, who works as confectioner at Tetri Durga Mandir came there and asked her to open the door. In the meantime, Rajan Kumar Bhagat went at the Darwaja with the pistol and asked him to flee away from there and told that today he will sleep here. Thereafter, the husband of the informant went to the Police Station. The further case is that thereafter, Rajan Kumar Bhagat put the pistol and the cartridges beneath the pillow and again committed rape on her. Thereafter, on the information given by the husband, the Daroga Ji came and got the door opened then the appellant fled away and concealed himself near the staircase and then he was arrested by the Police Force and on search, the pistol and the cartridges were seized. The said fardbeyan of Madhu



Devi was recorded by the P.S.I., Gautam Buddha, P.W.7 and he has recorded the fardbeyan, which is Ext. 2/2, on the basis of which, the First Information Report lodged, the seizure list of the pistol and cartridges, which is Ext. 1/1 prepared in the presence of the seizure list witnesses. The seizure list as well as seized articles and accused were produced in the Police Station. Thereafter, on the fardbeyan, the First Information Report lodged and endorsement was made. On the fardbeyan, the case was investigated by Triloki Nath Ram, Court witness no. 1. After the lodging of the First Information Report, the investigation proceeded. During investigation, the police recorded the further statement of the informant as well as the statement of the husband of the informant who got the victim medically examined and procured the verification report of the seized articles and also recorded the statement of the witnesses and subsequently, submit a chargesheet.

3. After submission of the chargesheet, cognizance taken, case committed to the Court of Sessions. During the trial 07 witnesses were examined by the prosecution.

4. Munna Kumar Bhagat (P.W.1) is the landlord of the house, in which, the informant was a tenant and he deposed that on the same day, he heard the sound of weeping of Madhu (informant) and went to the roof where she was living and saw that Rajan

Bhagat was fleeing away and the Police caught hold of him. He has further deposed that Rajan Bhagat has the cartridges in his hand and he had left the pistol in the room from where he fled away. He has also deposed that the victim was his tenant and his house has 16 rooms. Out of 16 rooms, 07 rooms are on the ground-floor and the rest are on the first floor in which the tenant resides.

5. Madhu Devi (P.W.2) is the informant, who supported the prosecution case, as alleged, in the fardbeyan. However, she admitted the entry of case which was filed earlier against the appellant.

6. Sudhir Sahni (P.W.3) has deposed that on hullah, he reached to the house of Parmeshwar Bhagat and saw that the Police had caught hold of Rajan Bhagat.

7. Dr. Anita Kumari (P.W.4), who has deposed that she has examined the victim, Madhu Devi and found no external injury on face, chest, arm, hand and all over body and on internal examination no pain and swelling. No injury was found in Vulva inner part of thigh on perineum. No bleeding, any discharge and foreign material was found in vaginal orifice or an internal genitalia. Uterus was found normal size. Vaginal swab sent to the Superintendent of J.L.N.M.C.H., Bhagalpur. According to pathological report, spermatozoa not found and it has been opined

that after all observations and examination, it is difficult to say whether the sexual intercourse was committed or not. It has also been deposed that the victim lady had sign that she had given birth of child.

8. Ramesh Sah (P.W.5) is the husband of the informant and has deposed that he returned at about 10 P.M. to his house and knocked the door then from inside Rajan Bhagat told by showing his gun from the window to flee away from here as he will sleep today in his house. Thereafter, he out of fear came down to the stair and disclosed the fact to the society and the person of the society told him to take help of the Police then he went to Naugachia Police Station and remained stayed at the Police Station for about half an hour to 45 minutes as he was asked to sit here from there. Thereafter, he went to the Superintendent of Police, Naugachia and there he disclosed the fact to the Superintendent of Police, Naugachia. Thereafter, he came to the Police Station and he along with the Police came to his quarter and the Police knocked the door and then Rajan Bhagat concealed himself in the staircase and fled away from the house and then Daroga make out a search in the torchlight and catch hold of him from the staircase. After catching hold of the appellant, a search of the quarter was made and from beneath the pillow, a revolver and two cartridges were seized.

Thereafter, the Daroga took the informant, the wife of this witness and the appellant to the Police Station and the victim was examined at the J.L.N.M.C.H., Bhagalpur.

9. Nasimuddin Khan (P.W.6) is a Havildar of Naugachia Police Station, who has only brought a bag in connection with Naugachia Police Station Case No. 61 of 2011, which contains a pistol and two cartridges. However, as per his assertion neither the pistol nor the cartridges were seized before him and he cannot say whether the said articles were seized in connection with Naugachia Police Station Case No. 61 of 2011 or not. Further, he deposed that the bag, in which, the articles were kept was not sealed, nor contains any signature.

10. Gautam Buddha (P.W.7) is a Police Officer, who recorded the fardbeyan of the husband of the informant. The Investigating Officer has been examined as Court witness No. 1, who conducted the investigation and got the victim examined by the Investigating Officer.

11. The defence of the accused persons is apparent from the fardebeyan that the appellant has falsely been implicated in this case as no occurrence is alleged. It has further been contended that there was prior enmity with the appellant and earlier the prosecution party has lodged several cases in the years 2010 and

2011, which includes the rape case as well as assault and hence, there is motive of false implication and the false case has been instituted to snatch him.

12. The Trial Court after taking into consideration and the evidence, both oral and documentary convicted the appellant as mentioned above.

13. The learned counsel for the appellant submits that the Police Officer, who recorded the fardbeyan of the victim, was known to the informant from before and the husband who went to inform the Police and came along with the Police but there is no mention that any Sanha entry recorded at the Police Station. On the basis of which, the Police Officer recorded the fardbeyan and hence, the initial version has been suppressed and not brought on record. It has further been contended that there was enmity between the informant and the appellant. It has further been pointed out that though P.W.1, Munna Kumar Bhagat has stated that he saw Rajan Bhagat was fleeing away from the southern gate towards the stair in naked stage and the Police caught him and at that time Rajan Bhagat has the cartridges in his hand and he fled away, leaving behind the pistol in the room. However, the informant Ramesh Sah has stated that Rajan Bhagat was arrested near the staircase and thereafter, the Police searched the quarter/room and below the



pillow of the bed of Madhu Devi. The pistol and two cartridges were recovered whereas the seizure list shows the seizure of a country made pistol and two cartridges and hence, submitted that the evidence of Munna Kumar Bhagat regarding the catching hold of Rajan Bhagat and recovery of two cartridges of pistol stand contradicted. It has further been contended that though the victim has stated that semen has fallen on her thigh but the Doctor has neither found any sign of semen nor any injury has been found on her person and it has been difficult whether any rape was committed and no injury has been found on the vagina. It has further been contended that though it is alleged that during the rape, the semen has fallen on her petticoat, Saree and other clothes but the seizure list has not been prepared nor the same has been sent for chemical analysis. It has further been contended that the appellant was arrested on the spot just after the occurrence of alleged rape. As the statement recorded at about 1.30 A.M. and after the arrest of the appellant, it is alleged that the rape continued from 10 P.M. to 1.30 A.M. but the appellant was not examined by a medical practitioner and hence, there is violation of Section 53A of the Code of Criminal Procedure. It has further been contended that the allegation is that the occurrence took place in the naked house and as per the evidence of the land owner, there are 16 rooms in the



house and the house was partitioned in three parts and the other part belong to the father and there are 16 rooms, all having occupied by the tenants living with their family and the occurrence took place at 10A.M. to 1.30 P.M. but it is highly improbable that the rape was committed with full knowledge of all of them being permeated at 10 P.M. to 1.30 A.M. even after arrival of the husband and the people having made aware of the fact appears to be highly improbable. It has further been contended that the daughter of the victim, who is aged about 11 years, was also in the room but she has not come to depose about the occurrence. It has further been contended that the occurrence took place and there was enmity between the parties and several cases have been lodged by the informant against the appellant, which includes the occurrence of rape but the informant did not produce any evidence about the injury as no injury was found on the person though the rape was committed at 10 P.M. to 1.30 P.M. and hence, contends that the allegation made is false due to enmity.

14. Hence, it is submitted that the prosecution case suffers from various infirmities and after due verification the appellant requires to be acquitted.

15. The learned counsel, however, contends that the victim has supported the prosecution case and the arrest of the

accused has been made before the Police for which the witnesses have supported the case.

16. The evidence of the Doctor that it is difficult to say that rape has been committed and so he has not ruled out the possibility of rape.

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

18. However, the prosecution case, as alleged, in the First Information Report that why the informant after taking meal, went to sleep on the bed and she closed the door. In the meantime, the appellant came out to her bed and thereafter, pointed pistol, overpowered the victim and closed her mouth and raped her. However, the further statement is that in the meantime, the husband came and knocked the door and then the appellant came near the Darwaja and threatened him to flee away from here as he has to sleep in the room. However, he, at that point of time, stated that neither the victim made any help nor any protest was made by her and the husband, who was outside the room had ever made any hulla or protest nor got up the owner of the house when the admitted position as per evidence of P.W.1 that the house has 16 rooms, 07 under the ground floor and 09 on the first floor and



further all the rooms were filled up by the various tenants and landlord. Moreover, the case of the prosecution is that the husband went to the Police Station and informed the Police. Thereafter, he went to the Superintendent of Police, Naugachia and then again returned to the Police Station and he followed with the Police but there is no mention that whatever he reported to the Police and what was recorded even as a Sanha and neither a Sanha entry or the statement of the husband of the victim recorded by the Police or Superintendent of Police has been brought on record and hence, it is apparent that the initial version of the prosecution case has been suppressed. Moreover, the informant came along with P.W.7, Gautam Buddha, who is a Police Officer and is a well known to the victim and thereafter, he arrested the appellant, recorded the fardbeyan and took away the victim and the appellant to the Police Station and he has further stated that he seized the pistol and two cartridges from the room of the victim and it is alleged that the same are making to the appellant. However, that articles, which were seized, not kept in a sealed cover even the witnesses have not come to prove the articles seized but the articles i.e. pistol and two cartridges were presented before the Court with a mention of Case Number i.e. Jhola P.S. Case No. 61 of 2011 and M. R. No. 14 of 2011 by P.W. 6 but the same has not been proved that the said



articles were seized by the Police in this case. P.W.7, Gautam Buddha, P.S.I. of Naugachia Police Station though has proved the seizure list but has not proved the articles seized and neither has proved nor produced or deposed to prove the material i.e. pistol and the two cartridges as the material exhibit of the seized articles. However, P.W. 6, Nasimuddin Khan, Havildar who has specifically stated that the two articles were produced before the Court is not in a sealed cover. However, out of the seven witnesses, who were examined in this case. P.W.1, Munna Kumar Bhagat is the owner of the house. However, his evidence is that when he got up then he saw the appellant fleeing away through the staircase but Police arrested him. However, his evidence suffered from a contradiction as he has stated that he saw the accused was fleeing away along with the two cartridges in his hand, which stand contradicted from the evidence of P.W.5, Ramesh Sah, the husband of the informant. P.W.2, Madhu Devi the informant of the case and had supported the prosecution case.

19. She has admitted that she knows Rajan Bhagat from 2010 and has also admitted that on the date of occurrence one child was with her and has admitted the enmity and three cases lodged by her. She has stated that she was raped by the appellant in the year 2010 by showing pistol. She has further stated that she has also

assaulted by the appellant. In her evidence, she has stated that her daughter was also there, who is aged about 08 years and she was also sitting there. Out of fear, she has not been examined as a witness and hence, her evidence suffers from various infirmities that in the period between 10 A.M. to 12 P.M. her husband also came and the appellant threatened to her husband but even the victim has neither resisted nor any person was turned up even P.W.1, Munna Kumar Bhagat has not stated about the occurrence at about 10 P.M. and her husband came while the appellant had raped the victim. The evidence of P.W.3, Sudhir Sahni is of medical evidence as the person who is said that when he came and saw that the Police has caught Rajan Bhagat and in the evidence of P.W. 5, Ramesh Sah, her husband suffers from any contradiction and from the evidence regarding the recovery of pistol and two cartridges and further that though he went to the Police Station but as stated that his statement was not recorded there and then he went to the residence of Superintendent of Police, Naugachia. He has further stated that he met the Superintendent of Police, Naugachia and the Superintendent of Police, Naugachia recorded his statement and he signed on those documents and he remained at the residence of the Superintendent of Police, Naugachia for 20-25 minutes and then he came to the Police Station at 12.30 P.M. and immediately from the

Police Station he reached by Jeep at the house. However, this statement given to the Superintendent of Police, Naugachia, which has not been brought on record and hence, the initial version has been suppressed as per his evidence in para 5 of the deposition that there is specific statement that he went to the Superintendent of Police, Naugachia and where his statement has been recorded.

20. The evidence of P.W.6, Nasimuddin Khan is not material. P.W.7, Gautam Buddha who is the Police Officer recorded the fardbeyan and prepared the seizure list.

21. Hence, having regard to the fact that the victim herself, in her evidence, stated that the semen had fallen on her Nighty. It has also fallen on the petticoat. It has also fallen on her thigh. She has disclosed about the falling of semen on the petticoat and on the Nighty to the Police and he had also shown the clothes besmeared with semen to the Police. She has further stated that the Police have not seized the semen stained with clothes. Hence, having regard to the fact that the Doctor in her evidence has stated that he did not find any injury either external or internal. No injury found in Vulva inner part of thigh and perineum and hence, the medical evidence regarding the rape has not been supported and the opinion of the Doctor is that it is difficult to say that whether the sexual intercourse was committed or not.



22. Though the evidence of the victim is that semen has fallen on the cloths but neither the semen was found nor the seizure list prepared and further the evidence of the victim is that though she was arrested on the spot but she was not examined by the Doctor and hence, there is violation of Section 53A of the Code of Criminal Procedure and further the evidence of the victim is that she did not produce any evidence and there is no mark of abrasion found on the body when the age of victim is 29 years and she is the mother of three children and earlier there were several cases lodged against the appellant and, hence, there is no corroboration regarding the evidence. However, though the sole testimony of the victim cannot be the basis for conviction, provided that it is so reliable, worthy of acceptance and reasonable to assume that no woman may falsely implicate a person in sexual offence as the honour and the prestige of the woman also would be strayed. However, the evidence of the prosecution should be cogent and convincing and if there is no supportive material likely to be found to a rule of prudence that the evidence of victim may be supported by such corroborative evidence.

23. However, having regard to the facts and circumstances of this case, the evidence of the victim does not inspire confidence as the evidence is that the appellant came out,



pointed the pistol and the victim did not make any agreement though the circumstances are there that the husband came there and he was threatened by the appellant but he also did not make any attempt whereas the offence did not take place in a lonely place but it is in a house, in which, there were 16 rooms and all occupied by the tenants and hence, the evidence of the victim and her husband do not inspire confidence. Moreover, the earliest version of the prosecution as recorded before the Superintendent of Police, Naugachia has been suppressed and the circumstances, which are available and the supporting materials likely to be available that is the clothes with the semen of the appellant has neither been seized nor a seizure list was prepared nor the semen was sent to the chemical examination for its report nor the appellant, who was arrested on the spot, has been examined by a medical Doctor and hence, in the supporting circumstances, which were there and that material was likely to be available, has not either been brought on record nor any attempt has been made, which could have been established beyond all reasonable doubts. Hence, having regard to the facts of the evidence of the prosecution that there is supporting material likely to be available by chemical examination of the clothes on which the semen, as alleged, has fallen and the examination of the witnesses and the evidence of the victim may be

supported by such corroborative material. However, having regard to the fact that there is no witness to inspire confidence and the supporting material likely to be available has not been brought on record then the rule of prudence requires that the evidence of the victim may be supported by such corroborative material.

24. 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 10.03.2015 and order of sentence dated 18.03.2015, passed in Sessions Trial No. 732 of 2011, arising out of Naugachia P.S. Case No. 61 of 2011, corresponding to G.R. Case No. 416 of 2011 by Sri Niranjana Singh, 2nd Additional District and Sessions Judge, Naugachia is set aside and the appeal is allowed. Appellant, namely, Rajan Kumar Bhagat, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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