

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 765 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- Aurangabad

Vishavanath Mushahar, Resident of village-Maniyara Rampur, P.S. Nabinagar
District Aurangabad (Bihar)

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

For the Appellant : Mr. Shailesh Kumar Singh, Adv.

For the State : Mr. A.K. Sinha, APP

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 14-01-2016

1. The Appellant has been convicted under Section 376(2) (g) 1 and 396 of the Indian penal Code and sentenced to Rigorous Imprisonment for life under both cases by judgment and order dated 4/9.06.2011 passed by the Additional Sessions Judge, Fast Track Court III, Aurangabad in Sessions Trial No. 49 of 2006/27 of 2010.

2. The case of the prosecution, according to the informant Lakshman Girl P.W. 5 is that on the date of occurrence some unknown dacoits entered his house and started assaulting them. In this transaction, his daughter Urmila Kumari P.W. 19 aged about 15 years was dragged towards west of the house and rape was committed upon her. His wife Rajdhani Devi was also brutally assaulted on account of which she died. A case against unknown persons was instituted. During investigation, the present Appellant was arrested much late

since he remained absconding even while the rest of the accused were put on trial. For this reason some documents which were used in the previous trial have been exhibited in the present case.

3. During trial the prosecution examined 24 witnesses out of whom P.W. 1 Nagendra Bharti, P.W. 2 Brijdeo Paswan, P.W. 4 Radhey Shyam Giri, P.W. 8 Radheshyam Giri, P.W. 9 Girija Bharti, P.W. 10 Parma Bharti, P.W. 11 Binay Bharti, P.W. 12 Sudarshan Bharati, P.W. 14 Ram Nath Bharati, P.W. 18 Bhim Bharti, P.W. 20 Pramod Giri and P.W. 22, Munna Giri, are hearsay witnesses who have supported the factum of dacoity, murder and rape having been committed by the unknown dacoits. P.W. 15 Hansnath Singh the first Investigating Officer, P.W. 16 the 2nd Investigating Officer and P.W. 24 are all formal in nature. P.W. 3 Laukesh Sharma and P.W. 13, Kripali Bharati are hostile witnesses.

4. The relevant witnesses in the present case are P.W. 5 Laxman Giri the informant, P.W. 19 Urmila Devi the prosecutrix, P.W. 6 Dr. Dharendra Narain Singh who conducted the post-mortem of the deceased Rajdhani Devi, P.W. 17 Dr. Veena Bhatia, a lady Doctor who examined the prosecutrix.

5. On going through the evidence of the witnesses, we find that P.W. 5 the informant while supporting the factum of dacoity, rape and murder did not identify the Appellant in the dock. He also stated that all the accused persons had covered the faces while committing

the crime.

6. P.W. 19 Urmila Devi stated that on the night of occurrence some dacoits, 10-15 in number, entered her house and started assaulting her father. They were demanding information with regard to money kept in the house and when he and her mother tried to intervene, they assaulted her mother on the head and dragged her to a distance and committed rape upon her on account of which she became unconscious. She identified the Appellant in the dock. In cross-examination, she stated that even while the dacoits had not covered their face but they had painted their faces. She also stated that the Investigating Officer had got identified the accused persons at the Police Station and she had attended the Test Identification Parade.

7. P.W. 6 Dr. Dhirendra Narain Singh who performed the post-mortem found death of Rajdhani Devi having been caused on account of assault on the head with hard and blunt substance.

8. P.W. 17 Dr. Veena Bhatia, stated that she had examined the prosecutrix on the date of occurrence and found her age to be about 15 years. She found some marks of violence on the back of the prosecutrix but she could not say definitely with regard to commission of rape.

9. P.W. 15 Hansnath Singh, the 1st Investigating Officer merely stated on the point of recording the fard beyan but he did not do any further investigation in the matter.

10. P.W. 16 Awadesh Thakur, the Police Officer had done the actual investigation and found corroborated material to suggest that indeed a case of dacoity with murder had been committed by the unknown accused person.

11. We find that there is no challenge with regard to factum of dacoity. The only point is to consider whether the Appellant was involved in the same. We find as per discussion above that apart from the prosecutrix who has identified the Appellant in Court first time only on 23.05.2011 i.e. around 9 years after the occurrence, none has identified the Appellant.

12. In such circumstances, in our opinion, this sole material against the Appellant cannot be treated as conclusive proof and thus, giving benefit to the Appellant, the Appeal is allowed and the order of conviction and sentence dated 4/9.06.2011 passed by the Additional Sessions Judge, Fast Track Court III, Aurangabad in Sessions Trial No. 49 of 2006/27 of 2010, is set aside. The Appellant, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Prakash/-
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