

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.9 of 2016

Arising Out of Complaint Case No. -122 Year- 2004 Thana -null District- SAMASTIPUR

Narmada Mishra, wife of Uma Kant Jha, resident of village- Hasanpur Surat, P.S.-
Patori, District- Samastipur.

.... Petitioner

Versus

1. Dr. Nagendra Prasad I/C Medical Officer, P.H.C. Patori, P.S. Patori, District-
Samastipur. At present I/C Medical Officer, P.H.C. Jandaha, Block Jandaha,
District- Vaishali.
2. The State of Bihar
3. Kaushal Kishore Sharma, son of Ram Sanjeevan Sharma, resident of village
Jandaha Bazar, P.S. Jandaha, District- Vaishali.

.... Opposite Parties

Appearance :

For the Petitioner : Mr. Hare Krishna Prasad, Adv.
For the Opp.Parties : Mr. Satyendra Nr. Singh, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 18-10-2016

Learned counsel for the petitioner seeks leave to make
necessary correction in the cause title of the present application.

2. Leave is granted. Let corrections be made in the course
of the day.

3. The present application under sub-section (4) of Section
378 of the Code of Criminal Procedure (for short 'Cr.P.C.') has been
filed by the petitioner seeking leave to appeal against the judgment
dated 20th November, 2015 passed by the learned A.C.J.M.-2,
Samastipur in C.R. No. 122 of 2004 corresponding to Tr. No. 60 of
2015, whereby the learned Magistrate had been pleased to acquit the

accused opposite party nos.1 and 3 from the charges under Sections 323, 354 and 34 of the Indian Penal Code.

4. The petitioner-complainant, who is A.N.M. at Primary Health Centre, Chaksaha, filed a complaint petition bearing C.R. No. 122 of 2004 before the learned Chief Judicial Magistrate, Samastipur on 05th October, 2002 alleging, inter alia, that she had gone to Primary Health Centre, Patori after finishing her duty to submit her explanation to accused no.1 Dr. Nagendra Prasad in reply to the show cause asked from her. When the complainant reached the office of accused no.1, he was alone in his chamber. He took her explanation and tore the same and asked her to sit and relax on the bench. Thereafter, the accused no.1 tried to ravish her. The complainant raised alarm on which accused no.2 Kaushal Kishore Sharma came there and on the instructions of accused no.1, he slapped the complainant and tried to snatch her gold chain, which was protested by her. The accused no.1 took out the revolver from his pocket and on the point of revolver, snatched her gold chain, ear ring and rupees 575/- from her purse. On alarm being raised by her, some people gathered there and witnessed the occurrence. Thereafter, the complainant went to Patori Police Station to lodge case but the police did not register the case and thereafter, the present complaint case was filed in the court.

5. In course of inquiry, the complainant was examined on solemn affirmation. After inquiry, the learned A.C.J.M. finding a prima facie case to be made out against the opposite parties under Sections 323, 354 and 34 of the Indian Penal Code, took cognizance of the offence and summoned them to face trial.

6. After appearance, the substance of the charges under Sections 323, 354 and 34 of the Indian Penal Code was explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. In course of trial, the complainant examined two witnesses. C.W.1 Ravindra Rai appeared for his examination-in-chief. But he did not turn up for cross-examination. C.W.2 is the complainant herself.

8. Since C.W.1 did not turn up for his cross-examination, the trial Magistrate did not take into account his evidence.

9. C.W.2 the complainant has supported the complaint case in her examination-in-chief. She has stated that when she had gone to the accused no.1 for the purpose of submitting her explanation to the show cause asked from her, the accused no.1 not only tore her explanation but after molesting her also tried to ravish her. In her cross-examination, she has stated that no departmental proceeding has been initiated against her. She had further stated that accused no.1



had lodged an FIR against her husband making allegation of loot of public money but the police found the case not true. The complainant further stated in her cross-examination that the accused doctor had wrongly issued show cause notice against her but she did not report it to the Civil Surgeon or any other higher authority. She has also stated that she had not sustained any injury in the assault caused by the accused persons.

10. Having appreciated the evidence of the complainant and the materials available on record, the trial Magistrate disbelieved the case of the complainant on the ground that her evidence is not trustworthy. The incident had taken place in broad day light but none of the persons including the staff of the hospital, who were present there, protested and none of them came forward to depose in the case. Even the husband of the complainant did not come to depose in the court in favour of the complainant. The complainant did not report the matter to the higher authorities of the Hospital or the Deputy Superintendent of Police, who was at a distance of only one and half kilometer. The trial Magistrate held that the complainant has failed to prove her case beyond all reasonable doubts.

11. The findings of the trial court are recorded in paragraph nos. 7 to 10 of the judgment dated 20th November, 2015, which are as under :

“7. Before appreciating the evidence at hand, it is worth to note that on the above facts an F.I.R. was lodged at the instance of Id C.J.M. and the incident was thoroughly investigated by police but police did not find the incident true and final form was submitted. The present complaint has been initiated at the instance of protest petition.

8. CW-1 Ravindra Rai has supported the case of the prosecution but this witness did not turn up for his cross-examination. Vide order dated 06.04.2009, defence admitted that the CW-1 may be cross-examined at any time during prosecution evidence. Complainant was directed to adduce other witnesses but the complainant did not produce CW-1 for his cross-examination. Since the CW-1 was not cross-examined as the witness did not turn up for his cross-examination, the examination-in-chief of CW-1 can't be looked into.

CW-2 who is the complainant herself has supported the complainant and has stated that the incident took place at about 5 years and 2 ½ months ago at 11.00 A.M. when she had gone to submit her explanation to the accused No.1. CW-2 has stated that accused no.1 took the explanation and torn it away and asked the complainant to sit on the bench and relax. CW-2 has further stated that accused no.1 came and touched her breast and pushed her on the bench and pulled her saree and saya. CW-2 has further stated that on hulla being made accused no.2 came. Accused No.1 directed accused no.2 to assault and accused no.2 assaulted the complainant. Accused No.1 took out revolver and threatened the complainant. Accused No.2 snatched gold chain ear ring and Rs. 575/-. CW-2 has specifically stated that the incident was witnessed by Raghunandan Yadav, Sanjay Mishra, Ram Prit Rai, Ravindra Rai, Raghunandan Paswan etc. CW-2 has stated that she went to Police Station to lodge F.I.R. which was not lodged then she came to Samastipur to file complaint. CW-2 has identified her signature on the complaint which has been exhibited as Ext-1. CW-2 has stated that the complaint was sent to Police Station u/s 156(3) Cr.P.C. and F.I.R. was lodged. CW-2 has also identified her signature on the complaint which was sent to Police Station u/s 156(3) Cr.P.C. Signature of CW-2 has been exhibited as Ext-1/1. CW-2 has identified the accused in the dock.



However, in her cross-examination CW-2 has stated that no proceeding was initiated against her by the department. CW-2 has in the very next line stated that she had come to submit her explanation in view of the departmental proceeding. CW-2 has admitted that the doctor who is accused no.1 here had lodged F.I.R. against her husband on 02.07.2002 with charges of loot of public money. CW-2 has stated that police found her case as not true. CW-2 has specifically stated that some of her witnesses were from that office and some were outside of the office. CW-2 has also stated in her cross-examination that the accused no.1 and she was working at P.H.C. Patori since last five years but accused no.1 did not do any action like the present one. CW-2 has also stated that M.O. had wrongly show caused her but she did not report it to Civil Surgeon or any other higher authority. CW-2 has stated that the office of the Dy.S.P. is at a distance of 1½ km from P.H.C. but she did not inform the Dy.S.P. At para 10 CW-2 has stated that no one else except the doctor was present. CW-2 has also stated that she did not sustain any injury.

9. On appreciating the evidence at hand it transpires that there is only one witness who has supported the complaint and that witness is the complainant herself. CW-2 who is the complainant has stated in her complaint that she went to the P.H.C. Patori after doing her duty at P.H.C. Chaksaha. The incident alleged to have been taken place at 11.00 A.M. In my opinion the work of a public servant never finishes at 11.00 A.M. or before. Since the incident is of 11.00 A.M. then CW-2 must have completed her duty by at least 10.30 A.M. then only could she reach P.H.C. Patori by 11.00 A.M. This alone leads me to think either the complainant was not on duty on that day or the alleged incident was fake. Further CW-2 who is the complainant has stated in her complaint that the accused no.1 pressed her breast and pulled her saree and saya whereas in her evidence CW-2 has stated that accused no.1 touched her breast and pulled her saree. Further CW-2 in her complaint has stated that accused no.1 tried to snatch her gold chain but in her evidence CW-2 has not stated it at all. CW-2 has stated that accused no.2 took out revolver from his person whereas in her evidence CW-2 has stated at her examination in chief that accused no.1 took out the revolver and threatened her. It also transpires



that CW-2 has stated in her complaint that many witnesses saw the incident but the complainant has not named any witness, however, the complainant CW-2 has stated in her cross-examination that the witnesses Raghu Nandan Yadav, Sanjay Mishra, Ram Prit Raj, Ravindra Rai and Raghu Nandan Paswan saw the incident. Even if it is believed that the incident was seen by so many people why none of the witnesses have turned up to support the case of the complainant has not been answered. No explanation has come for their non-examination. Moreover, as per the complaint, her gold chain and ear rings were snatched by accused no.2, however, CW-2 herself has stated that there was no injury on her body. It is hard to believe that the complainant was pushed on the bench, some scuffle took place, gold neck chain and ear rings were snatched but there was not even an abrasion on the person of the complainant.

It further transpires that the complainant has herself stated that since five years she was working in the company of accused no.1 but his behaviour in those five years always remained normal, then it is definitely to be seen as to why the behaviour of accused no.1 changed only after handing over show cause notice to the complainant particularly in the light of the fact that on the very date of alleged incident complainant's husband was booked by accused no.1 for looting the money kept for distribution. The veracity of the alleged incident with the complainant could be gauged from these incidents.

It also transpires that the alleged incident took place in broad day light at pick hour of office but no one either official or private person came to save her is hard to be believed. I do not see any reason for the people there not to react to such indecent incident particularly when the office staffs were also known to the complainant.

It is also very hard to digest that if such a kind of incident takes place, the complainant would not visit the office of Dy.S.P. at a distance of 1 ½ km but would come to complain to S.P. Even that complaint copy has not been filed.

In my opinion, if such kind of incidents occur even if no one supports the complainant, complainant's husband does not leave the complainant in lurch. Here is this case even the complainant's husband or children have not supported the case of the complainant. The husband

and the children have not appeared in the dock to support the case of the complainant, as such adverse inference is drawn against the complainant.

Further none of the witnesses who supported the complainant in inquiry have come to support the case of the complainant nor any of the witnesses who as per complainant allegedly saw the incident appeared to support the story of the complainant, as such adverse inference is drawn against the complainant.

It further transpires that there is absolutely no corroboration of the story of the complainant by any other evidence either documentary or oral. Moreover, there are vital contradictions in the statements made in the complaint by the complainant and the statements made by the complainant before court which can't be ignored. Although there is no rule that on the sole testimony of complainant conviction can't be based but for conviction of the accused on the sole testimony of complainant, the evidence of the complainant has to be trustworthy and unimpeachable.

It also transpires that the previous enmity of the complainant with accused no.1 is established as accused no.1 had show caused the complainant as well as it was the accused no.1 who lodged F.I.R. against the complainant's husband and sent him to jail.

As far as allegation of voluntarily causing hurt is concerned, it is not the general allegation of hurt which will suffice the cause rather the complainant has to specifically stated as to who assaulted her by what and at which part of the body. This averment also needs to be corroborated either by documentary evidence or by oral evidence. Here in this case neither documentary evidence in the shape of injury report or any oral testimony of any other witness is present to corroborate the allegations of hurt.

10. Thus, on the basis of discussions made hereinabove and in the light of observations made, I am of the opinion that the complainant has failed to prove her case beyond all reasonable doubts as such the complainant's case for the commission of offences u/s 323/354/34 I.P.C. fails. Consequently, both the accused, namely, Dr. Nagendra Prasad and Kaushal Kishore Sharma are acquitted from all the charges leveled against them. Both the accused are also discharged from the

liabilities of their respective bail bonds.”

12. The findings recorded by the learned Magistrate are well founded. There is no reason to have any different view of the matter. In view of clear, cogent and well founded reasons assigned by the trial Magistrate, who has acquitted the opposite party nos.1 and 3, namely, Dr. Nagendra Prasad and Kaushal Kishore Sharma, leave to appeal is rejected.

13. The application stands dismissed.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	-----
Uploading Date	
Transmission Date	