

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 625 of 2014

Against the judgment of conviction and order of sentence dated 14.11.2014 passed in Session Trial No. 1080 of 2008 arising out of Dhanarua P.S. Case No. 257 of 2007 by Shri Prem Kumar Prasad, learned Ad hoc 4th Additional Sessions Judge, Patna Sadar, Patna

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1. Madan Mahto, S/o Late Sita Ram Singh
 2. Sahodri Devi, W/o Madan Mahto
 3. Anil Kumar, S/o Madan Mahto, all Resident of Village Mahamadpur Pavera, P.S. Dhanarua, District Patna

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : Dr. Amrendra Kumar, Advocate
Mr. Manish Rai Sharma, Advocate
Mr. Ravi S. Pankaj, Advocate
For the Informant : Mr. Ashok Kumar, Advocate
For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 30-03-2016

Heard learned counsel for the appellants and the State.

2. The appellant nos. 1 and 2 have been convicted for the offence punishable under Sections 323/34 of the Indian Penal Code and sentenced to undergo simple imprisonment for one year and the appellant no. 3 has been convicted under Sections 376 and 504 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years with fine of Rs.10,000/- for the offence punishable under Section 376 of the Indian Penal Code and simple imprisonment for six months for the offence punishable under Section 504 of the Indian Penal Code. However, it has been ordered that both the sentences shall

run concurrently.

3. The prosecution case, as alleged by the informant Minta Devi (P.W.5) in the First Information Report, is that on 13.11.2007 at about 10:00 A.M. she went from her house for cutting grass in south side of her village and when she was cutting grass nearby well of Ramnandan Mahto, at about 11:30 A.M. villager, namely, Anil Kumar, (appellant no. 3), came to her and started gossiping with her, who was nearby watering paddy fields and during gossiping the appellant no. 3 with bad intention started to talk filthy languages, therefore, the victim took bundle of grass on her head and proceeded towards her home, but when she proceeded for 5-6 steps then the appellant no. 3 came and caught hold of both hands of the victim and brought her forcibly nearby ditch of a well and forcibly after laying down the victim, he raped her. Thereafter the victim picked-up her bundle of grass upon her head and came to her home crying and weeping and narrated all story of rape to her mother-in-law. Thereafter her both mother-in-law and father-in-law of the victim along with the victim proceeded towards the place of occurrence and in the way near boring of Subhash Mahto, above-named accused Anil Kumar met with them. Her father-in-law, mother-in-law and the victim caught hold of the appellant no. 3 (Anil Kumar), but his parents, namely, Madan Mahto (appellant no. 1) and Sahodri Devi (appellant no. 2) forcibly pushed them on the ground and took away the

appellant no. 3 to flee away.

The occurrence is alleged to have taken place on 13.11.2007 at about 11:30 A.M. However, the matter was reported to the police on the same day at about 3:00 P.M., when the police reached at the Darwaza of the informant (Minta Devi P.W.5) and the said statement was recorded as fardbeyan by Sri B.P. Singh, Sub-Inspector of Police, Dhanarua Police Station.

4. On the fardbeyan of the informant, First Information Report was lodged on 13.11.2007 at about 04:30 P.M. and the investigation proceeded. The further case of the prosecution, as would appear from the evidence of the Investigating Officer (P.W.6), is that on 13.01.2007 the police received an information in the Police Station itself on the wireless that at village Mohammadpur, Pavera a rape has been committed with a lady and the villagers caught hold of the accused. The said information was recorded at the Police Station bearing Station Diary No. 379 of 2007 and the police proceeded for necessary action to village Pavera at 15 hours (3:00 P.M) and reached in the house of the informant and recorded his fardbeyan. The said fardbeyan was recorded and the Left Thumb Impression of the informant was taken. The said fardbeyan has been marked as Ext.1/1. Thereafter, the investigation proceeded and the clothes of the victim were seized and seizure list was prepared. The Investigating Officer

recorded the statement of the witnesses, inspected the place of occurrence which is situated at village Mohammadpur Pavera, in south side near old well of Ramnandan Singh, Son of Late Jagdish Singh and nearby said old well there was a ditch, situated in 5-6 hands in the eastern side of the well. The grass was present near the ditch and this witness narrated the boundary of said place of occurrence as follows: East Ramji Singh's mustered fields, west Satnarain Singh's fields and tress, north Lal Singh's mustered field, south one new Pipal tree and afterward fields of Raj Kishore Singh.

During investigation, the victim was examined medically by the Chief Medical Officer, Patna. The statement of the victim was recorded under Section 164 of the Cr.P.C. The clothes of the victim were sent to the Forensic Science Laboratory, Patna. Report of the X-ray of the victim was procured and during investigation, the police investigated the case and finding the case to be true, submitted charge-sheet for the offence under Sections 376, 504 and 323/34 of the Indian Penal Code. After submission of the charge-sheet, cognizance was taken and the case was committed to the Court of Sessions. After commitment, charges were framed against the appellant no. 1, namely, Anil Kumar under Sections 376 and 504 of the Indian Penal Code as well as the charge was also framed against the appellant nos. 1 and 2, namely, Madan Mahto and Sahodri Devi under Sections 323/34 of the

Indian Penal Code. After framing of the charge, trial proceeded. During trial, eight witnesses were examined by the prosecution.

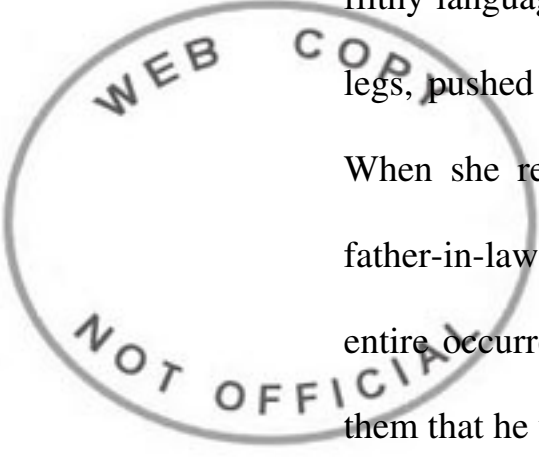
5. P.W.1 Ram Kunwar Devi is the mother-in-law of the victim and her evidence is only to the effect that her daughter-in-law came and disclosed that Anil Kumar (appellant no. 3) laid her down in a ditch and raped her.

6. P.W.2 Pintu Thakur has disclosed that he heard the sound of weeping and voice of cry from the house of the victim at about 12:30 to 1:00 P.M. In course of her weeping, Minta Devi told her mother-in-law that Anil Kumar has raped her.

7. P.W.3 Yadunandan Thakur is the father-in-law of the victim and his evidence is only to the effect that the victim returned back weeping at 01:00 P.M. and when this witness had asked her the cause of weeping, then the victim narrated the occurrence to the wife of P.W.3 that appellant no. 3 has committed rape upon her.

8. P.W.4 Arun Thakur is the Debar of the victim and his evidence is also to the effect that the victim disclosed about the occurrence to her mother-in-law and father-in-law.

9. P.W.5 Minta Devi is the victim herself. She has come to support the prosecution case as alleged in the fardbeyan. This witness stated in her evidence that occurrence is of at about 10:00 A.M. and at that time, she went towards south of village near Ramnandan's well for



cutting grass and after one hour, Anil Kumar came and started talking filthy languages and thereafter Anil Kumar caught hold of her feet and legs, pushed her and raped her near the well of Ramanandan Mahto. When she returned back to her house with weeping and crying her father-in-law and mother-in-law were present to whom she narrated the entire occurrence. When they had asked whereabouts of Anil, she told them that he was at Khanda. Thereafter she along with her father-in-law and mother-in-law proceeded towards Khanda and when they reached near boring of Subhash Mahto, Anil was found there. Whereafter all of them, caught hold of Anil and proceeded to the Police Station. In the meantime, father and mother of Anil Kumar pushed the father-in-law and mother-in-law of the victim and forced Anil to flee away. When the police was informed by phone, the police came at the house of the victim, whereafter she narrated all incident to police and police recorded her statement and after hearing the contents she gave her Right Thumb Impression thereon and she handed over the clothes worn by her at the time of rape, such as, Saya, Sari, for which, police prepared papers and recorded her statement. Even her statement was recorded under Section 164 of the Cr.P.C. also before Masaurhi Court in presence of the Magistrate on which she affixed her Right Thumb Impression and this witness identified all accused persons.

10. P.W.6 Bhuwneshwer Prasad Singh is the Investigating

Officer of this case and P.W.7 is Dr. Vivbha Rani, Medical Officer who examined the victim Minta Devi (P.W.5). This witness has proved the injury report marked as Ext.3. However, it has been reported that there is no sign of violence. Vagina admits two finger easily. Vaginal swab was sent for biological examination and it has further been reported that as per the PMCH report, the age of the victim was 45 years.

11. P.W.8 Das Ashok Kumar has come to prove the report of the Forensic Science Laboratory, which has been marked as material Exts. A and B.

12. The documentary evidence proved in the case are; Ext.1 is the signature of Arun Thakur on the fardbeyan, Ext.1/1 the fardbeyan, Ext.1/2 signature of Rajesh Ranjan, Ext.2 is the formal First Information Report, Ext. 3 is the injury report, Ext.3/1 is the report of the radiologist and Ext.4 is the Forensic Science Laboratory report.

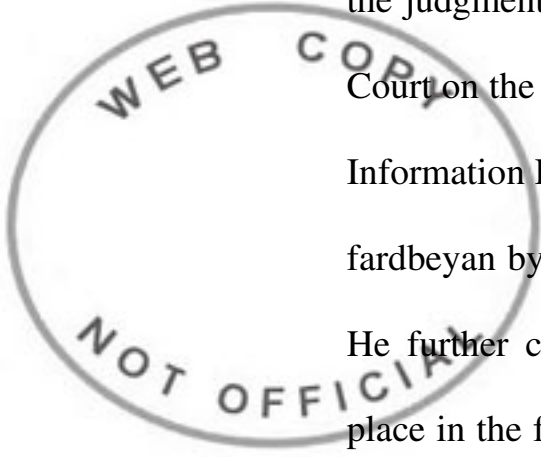
13. The defence has also adduced three witnesses. D.W.1 Murari Singh has come to depose that on 13.11.2007 at about 12:00 P.M. he was watering his fields and at that time one grass cutting lady was cutting grass from the field of Anil. Thereafter Anil came and abused grass cutting lady and when her Tokri was checked, paddy crops were found in it. Anil abused and forbade her. He further stated that Anil had not raped the said lady and this case against Anil is false one.

14. D.W.2 Srikant Singh and D.W.3 Suman Kumar have also

deposed to the same effect that on 13.11.2007 at 12:00 P.M. they were at their fields and watering paddy crops and there was an altercation between the informant (Minta Devi) and the appellant no. 3 (Anil Kumar) with respect to cutting of paddy which was witnessed by them. They further stated that only act of abuse was done but, Minta has filed this false rape case. The defence of the accused persons, as set up by the defence, as per their suggestions as well as the defence witnesses adduced in the case is that the accused persons have falsely been implicated in the case as no rape was committed. They further stated that since the victim was cutting the paddy crop from the field of Anil Kumar and when he protested and abused, Anil and his family members have falsely been implicated in the case and further the police party or the Investigating Officer did neither investigate the case properly nor being impartial and a false charge-sheet was submitted.

15. The trial Court taking into consideration the evidence of the witnesses that the prosecutrix supported the prosecution case regarding her rape and further the witnesses disclosed that the victim intimated about the occurrence just after the occurrence and further the fact that Sari and Saya of the victim were seized and in the Saya the sign of semen was found as per the report of the Forensic Science Laboratory, convicted and sentenced the appellants as mentioned above.

16. Learned counsel for the appellants, however, challenged the judgment of conviction and order of sentence recorded by the trial Court on the ground that there is delay of five hours in lodging the First Information Report and there is further delay of two days in sending the fardbeyan by the Investigating Officer to the Chief Judicial Magistrate. He further contended that the occurrence was alleged to have taken place in the field, but none was present there and there is no witness to the occurrence except the prosecutrix. No objective evidence is found at the place of occurrence. It has further been contended that as per the allegation, the place of occurrence is the ditch, but there is no sign of any injury on the person of the victim nor the Doctor found any sign of rape on her person. It has further been contended that though sign of semen was found on the Saya and from Forensic Science Laboratory report, it has been found that the Saya bears the sign of Semen, but it has not been proved that the said semen belongs to appellant no. 3 Anil Kumar and further the Saya has also not been brought on the record as material Exhibit and it cannot be said that there is corroboration about the occurrence. The attempt has been made to show that there is contradiction in the statements of the witnesses and even attempt has been made to record contradiction though not well within the ambit of the provision contained under Section 145 of the Evidence Act and hence, it is contended that there are materials to suggest contradiction in



the statements of the witnesses and hence, submits that the order of conviction and sentence, recorded by the trial Court, is not sustainable and the appellants are entitled for acquittal.

17. Learned counsel for the informant, however, submits that the prosecutrix has stood the test of the cross-examination. There is nothing in her evidence to disbelieve her testimony. It has further been contended that the clothes of the victim were seized by the Investigating Officer. Seizure list was prepared and even the clothes were sent to the Forensic Science Laboratory for chemical examination and the report of the Forensic Science Laboratory itself indicates that the sign of semen was found on the Saya of the victim and hence, the occurrence about the rape stands corroborated and hence, it is submitted that the prosecution has been able to prove the charges levelled against the appellants beyond all reasonable doubts as corroboration is not a rule of law, but rule of prudence. It has further been submitted that if, the evidence of the prosecutrix is found to be reliable, trustworthy and inspire confidence, then conviction can be recorded even without any corroboration and has placed reliance upon a decision in the case of Aslam v. State of Uttar Pradesh.

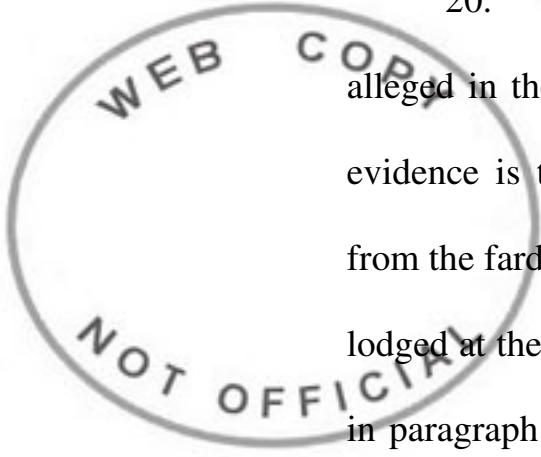
18. On the respective submissions of the parties, the question arises for consideration is, whether the prosecution has been able to prove the charges, levelled against the appellants beyond all reasonable

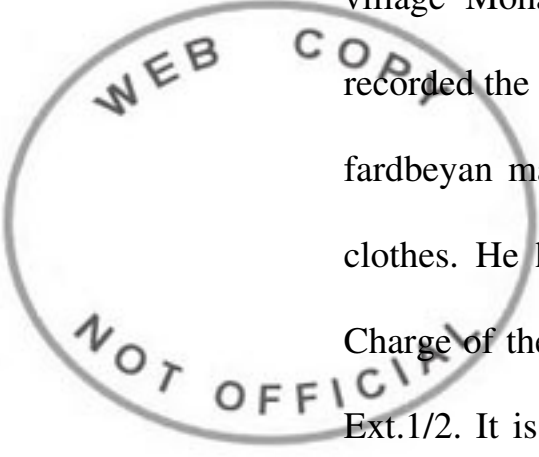
doubts.

19. The prosecution case, as alleged by the informant Minta Devi (P.W.5) in the First Information Report, is that on 13.11.2007 at about 10:00 A.M. she went southern from her house for cutting grass and, when she was cutting grass nearby well of Ramnandan Mahto, at about 11:30 A.M. her villager, namely, Anil Kumar, (appellant no. 3) came to her and started gossiping with her, who was nearby watering paddy fields and during gossiping, the appellant no. 3 with bad intention, started using filthy languages. The victim took bundle of grass on her head and proceeded towards her home, but when she proceeded for 5-6 steps, then the appellant no. 3 came and caught hold of both hands of the victim and, brought her forcibly nearby ditch of a well and after laying her down, he raped her. Thereafter, the victim picked-up her bundle of grass on her head and came to her home by crying and weeping where she narrated the story of rape to her mother-in-law. Thereafter, both her mother-in-law and father-in-law along with the victim, proceeded towards the place of occurrence and in the way near the boring of Subhash Mahto, above-named accused Anil Kumar met with them. Her father-in-law, mother-in-law and the victim caught hold of the appellant no. 3, but his parents, namely, Madan Mahto (appellant no. 1) and Sahodri Devi (appellant no. 2) forcibly pushed them on the ground and to set him free from their clutches and,

similarly, helped him in fleeing away.

20. P.W.5 Minta Devi has supported the prosecution case, as alleged in the First Information Report. However, the criticism of her evidence is that fardbeyan was recorded by the police, as is evident from the fardbeyan, on the basis of which, First Information Report was lodged at the door of the prosecutrix, but in her evidence she has stated in paragraph 7 that she also went to the Police Station along with her father-in-law and mother-in-law. She further stated that she put her thumb impression on the fardbeyan at the Police Station and her father-in-law and mother-in-law have also put their thumb impression. She has further stated that she has put her thumb impression before the Daroga Jee. She further stated that no one was irrigating the land at the boring of Ramanand. The further criticism in paragraph 10 of her evidence is that there was no field of Anil Kumar near the place of occurrence and hence, the prosecution case that he was irrigating his field stands contradicted. The victim has stated in her cross-examination that she had given Saya, Sari to the Daroga Jee and further stated that Daroga Jee came at 4:00 P.M. at her house and she had shown the place of occurrence to Daroga Jee, where she was cutting the grass. The Investigating Officer P.W.6 has stated that he received information about the rape of a lady at village Mohammadpur, Pavera and the villager had caught hold of the accused. The said information was





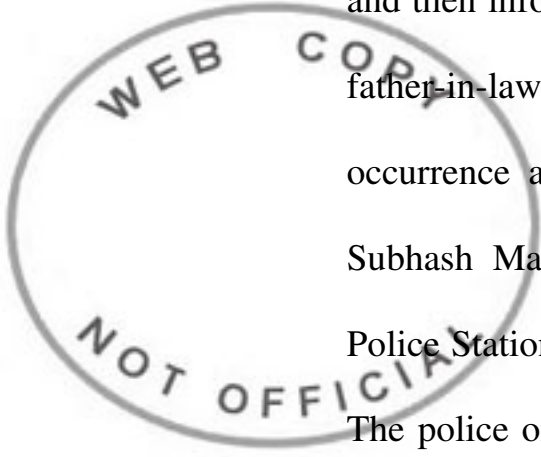
recorded in the station diary entry and thereafter proceeded to the village Mohammadpur, Pavera and reached there at 3:00 P.M. He recorded the statement of the victim and has proved his signature on the fardbeyan marked as Ext.1 and also proved seizure list of the seized clothes. He has also proved the endorsement of the then Officer-in-Charge of the Police Station handing over the investigation, marked as Ext.1/2. It is true that the thumb impressions of the father-in-law and the mother-in-law were not on the fardbeyan, but the fardbeyan bears the signature of Arun Thakur, the dewar (brother-in-law) of the victim and he has deposed that Minta Devi has gone to the village for cutting the grass. He further stated that she returned at about 12:00 noon to 1:00 P.M. and disclosed her father-in-law and mother-in-law about the rape committed by appellant no. 3 in a ditch and on this, he went along with the father-in-law and mother-in-law as well as other villagers. The appellant no. 3 met at the boring of Subhash Mahto and then, his Bhabi, father-in-law and mother-in-law caught hold of Anil Kumar (the appellant no. 3) and, in the meantime, the father and mother of the appellant no. 3 got set his son free and hence, helped him in fleeing away. Having received the informant Police reached his house and recorded the statement of the victim and seized the clothes of the victim. P.Ws.1 and 3 are the father-in-law and the mother-in-law of the victim and have also supported the prosecution case and then, the police

reached.

21. The contention of the learned counsel for the appellants is that no one was watering the field and the appellants have no field at the place of occurrence whereas; the case of the prosecution is that the appellant no. 3 was watering his field.

22. The defence of the accused persons, as per the suggestion and the defence witnesses, is that when the victim was harvesting the paddy in the field of the appellant no. 3, the appellant no. 3 came and chided her and so, the false case has been instituted. However, the prosecution party have supported the prosecution case to the effect that just after the occurrence, the victim went to her house, reported the matter to her father-in-law and the mother-in-law and having received the information, they, immediately, rushed to the place of occurrence and caught hold of the appellant no. 3, who was driven away by his parents and then on information received, the Police came and recorded the statement of the victim at her house and seized Saya, Sari, prepared seizure list and sent the same to the Forensic Science Laboratory and the report of the Forensic Science Laboratory is that Saya bears the sign of semen. The further criticism is that there is delay in lodging the First Information Report as the occurrence alleged is of at 11:30 A.M. whereas; the fardbeyan was recorded at 03:00 P.M. and hence, there is delay of three and half hours. However, there is good explanation for

the delay, as after the occurrence the victim returned, came to her house and then informed her father-in-law and mother-in-law. Thereafter, her father-in-law and mother-in-law proceeded towards the place of occurrence and caught hold of the appellant no. 3 at the boring of Subhash Mandal and thereafter while they were taking him to the Police Station, parents of appellant no. 3 pushed and drove them away. The police on information reached the village and then, the fardbeyan was recorded. It is true that there is no injury on the person of the victim as per the report of the evidence of the Doctor. However, the victim is 45 years old and mother of a daughter and hence, the possibility of any injury on the private part is highly impossible. The age of the victim, on examination, has been found to be 45 years. However, Saya and Saree, so seized, were sent to the Forensic Science Laboratory and the report of the Forensic Science Laboratory suggests the sign of rape and semen was also found on the Saya. However, the criticism is that it has not been proved that the semen belongs to the appellant no. 3 and there is no test of the semen of the victim. However, when a circumstance is there that as per the allegation of rape the sign of semen was found on the Saya of the victim, as alleged then it is not worthy to disbelieve the evidence of the victim which is not found to be suffering from material particular and only in the cross-examination that she also went to the Police Station does not disbelieve the



prosecution story.

23. I find and hold that the prosecution has proved the charges, levelled against the appellant no. 3, namely, Anil Kumar and hence, the judgment of conviction and order of sentence, recorded against him for the offence under Section 376 of the Indian Penal Code is sustained. Further the judgment of conviction and order of sentence, recorded against the appellant no. 3 for the offence, under Section 504 of the Indian Penal Code is not established beyond all reasonable doubts and hence, the appellant no. 3 is acquitted for the offence under Section 504 of the Indian Penal Code. So far the offence under Sections 323/34 of the Indian Penal Code, against the appellant nos. 1 and 2 i.e. father-in-law and mother-in-law of the victim, is concerned, the allegation and the evidence are not specific, but are general and omnibus in nature and are not proved beyond all reasonable doubts and hence, the judgment of conviction and order of sentence, recorded against the appellant nos. 1 and 2 are set aside. The appeal is allowed in part. Since the appellant nos. 1 and 2 are on bail, they are discharged from the liabilities of their respective bail bonds.

(Gopal Prasad, J)

Kundan Sharma

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