

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.81 of 2015**

Arising Out of PS.Case No. -137 Year- 2003 Thana -KRITYANAND NAGAR District- PURNIA

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Madhusudan Yadav, son of Sri Narayan Yadav, resident of Village- Kajha,
Baniyapatti, P.S. K. Nagar, District- Purnea

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Vikramdeo Singh-Advocate

For the Respondent/s : Mr. Bipin Kumar-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT**Date: 16-10-2017**

Sole appellant, Madhusudan Yadav, has been found guilty for an offence punishable under Section 313/ 511 of the I.P.C. and sentenced to undergo R.I. for five years vide judgment of conviction dated 29.01.2015 and order of sentence dated 31.01.2015 passed by the 2nd Additional Sessions Judge, Purnea in Supplementary Sessions Trial No.05 of 2005/ 149 of 2014.

2. Before delving upon the merit of the case, certain feature, which is visualizing from the L. C. Record has to be taken note of. Victim (name withheld) filed Complaint Petition bearing No.904C.A./ 2003 before the learned lower Court arraying seven persons namely Sri Narayan Yadav, Hari Prasad Yadav, (since deceased), Sachidanand Yadav, Ghanshyam Yadav, Pashupati Yadav, Bhola Yadav, Madhusudan Yadav, which was sent to local police for



registration and investigation of the case as a result of which, Purnea K. Nagar P. S. Case No.137 of 2003 was registered. During course of investigation, presence of all other accused persons were procured, save and except appellant Madhusudan Yadav, whereupon trial was bifurcated and the original trial proceeded against six accused persons, who were found guilty under respective heads and accordingly, sentenced vide judgment of conviction dated 06.09.2007, order of sentence dated 07.09.2007 passed by the Additional Sessions Judge, Fast Track Court No.1, Purnea in Sessions Trial No.05 of 2005/ 244 of 2006 and for that, Cr. Appeal (S.J.) No.949 of 2007 as well as Cr. Appeal (S.J.) No.143 of 2008 have been preferred. Subsequently thereof, appellant, Madhusudan Yadav has been apprehended and on account thereof, he was proceeded solely under above Supplementary Sessions Trial No.05 of 2005/ 149 of 2014 and has been convicted as a result of which, instant appeal has been filed on his behalf. Because of the fact that all the appeals relate with common Police Case Number, though have been proceeded independently, so in the aforesaid facts and circumstances of the case, have been taken up together. However, are being decided separately, but on the same day.

3. PW-3 had filed complaint petition against seven accused persons namely Bhola Yadav, Sri Narayan Yadav, Pashupati Yadav, Hari Prasad Yadav, Ghanshyam Yadav, Madhusudan Yadav, Sachidanand Yadav alleging inter alia that on 16.03.2003 at about



12.00 noon while she was alone in her house, accused Bhola Yadav made house trespass, caught hold her, threw her on the bed and then, committed rape after gagging her mouth. On her protest as well as while she was about to shout, he volunteered to marry. It has also been alleged that on the aforesaid pretext, he continued to commit rape whenever got an opportunity. After sometime, she developed some sort of ailment and for that, she was taken to Purnea where she was examined by Dr. Smt. Poonam Raman, who had disclosed about pregnancy and the same was confirmed by way of ultra-sound to be about three and half months. Her parents enquired, whereupon she disclosed the whole event. In light thereof, there was Panchayati wherein Bhola Yadav undertook to marry, but he resiled subsequently at the instance of his parents. Then thereafter, it has been alleged that on 27.07.2003, all the remaining accused except Bhola Yadav, came at her place and directed her to consume one tablet. On query, they disclosed that it is for abortion, whereupon she refused. Then thereafter, all the accused persons caught hold her and on an order of Hari Prasad Yadav, Ghanshyam Yadav, put two tablets in her mouth, Sri Narayan Yadav poured water, but she did not engulfed. After departure of the accused persons, she threw the tablets from her mouth. Then thereafter, it has also been stated that brother Suman Yadav had gone to the place of Ghanshyam on 06.08.2003, whereupon he was caught hold up and assaulted and was confined in a



room.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither any DW nor any kind of documentary evidence has been adduced on behalf of appellant.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, who are PW-1 Umesh Yadav, PW-2 Sumitra Devi, PW-3 victim herself, PW-4 Dinesh Prasad, PW-5 Radhey Krishna, PW-6 Dr. Punam Raman, PW-7 Dr. Usha Rani Jaiswal and PW-8 Ranvijay Kumar. Although the certified copy of the complaint petition/ written report has been placed on record, but has not been made an exhibit. As stated above, defence had not examined any DW nor adduced documentary evidence.

6. Admittedly, from the evidence, it is apparent that appellant is not the rapist, his appearance happens to be along with others at subsequent stage that to say on 27.07.2003, on which date, appellant along with others have gone to the place of victim in order to administer tablet to facilitate abortion.

7. In order to properly perceive the allegation, when the evidence of witnesses have been gone through, it is evident that PW-1 Umesh Yadav had not supported the case of the prosecution on



account thereof, was declared hostile. I.O. has not been examined and the relevant exercise has been conducted by PW-8, a Constable, on that score. PW-6 and PW-7 are the doctors, who have had examined the victim (PW-3) and had found her pregnant on the date of her examination, while PW-5 is the Judicial Magistrate, who had recorded statement of victim as well as other witnesses under Section 164 of the Cr.P.C. Now, remains the evidence of PW-2, PW-3 and PW-4.

8. PW-2 and PW-4 are the parents of the PW-3. PW-2 had stated that on the alleged date and time of occurrence while she had gone to work leaving behind her daughter (victim) and Kumkum. Ghanshyam, Sachidanand, Madhusudan, Hari Narayan and Sri Narayan came at her house, Ghanshyam had administered tablet in the mouth of victim on an order of Hari Narayan and Sri Narayan while Pashupati Yadav put water. She had further stated that as her daughter was raped by Bhola Yadav repeatedly, on account thereof, she was carrying pregnancy of three and half months. The aforesaid exercise during course of which tablet was administered, was only for the purpose of abortion. Even after giving tablet, no abortion took place. Then thereafter, they became aggressive and coerced them to withdraw the case. They have declined. Her son was assaulted, confined in a room in order to pressurize upon them, however, they have not succumbed. During cross-examination at Para-3, she had stated that she was not present at the time when the accused persons



came to administer tablet. She was working one kilometer away from her house. She returned back there from at about 1.00 p.m. and then thereafter, she was informed by her daughter. In Para-5, she had stated that victim had not swallowed the tablet. In Para-7, she had stated that Madhusudan had not committed rape of her daughter. In Para-8, she had stated that when Suman Yadav had gone to complain, he was apprehended, confined in a room, assaulted.

9. PW-4 is the father of the victim (PW-3), husband of PW-2. He had in his first part of evidence had narrated with regard to rape having been committed over his daughter (PW-3) by Bhola Yadav. In later part, he had stated that on the alleged date and time of occurrence, on an order of Hari Narayan, Sri Narayan, Sachidanand, Ghanshyam, Madhusudan, Pashupati had come to his place to administer tablet in order to facilitate abortion. His daughter refused, whereupon there was uproar as a result of which, all the accused persons escaped there from. All these event were disclosed by his daughter (PW-3) as well as his another daughter. Then thereafter, case was instituted. During cross-examination at Para-3, he had stated that no occurrence took place in his presence. He came to know on the basis of the disclosure having been made by his daughter. In Para-6, he had stated that his daughter has begotten a daughter.

10. PW-3 is the victim. At first part, she had narrated with regard to commission of rape at the end of accused Bhola Yadav.



Subsequently thereof, she had stated that after Panchayati, the accused persons caught hold his brother, confined him in a room and then, had assaulted. Then had stated that Ghanshyam, Sachidanand, Madhusudan, Pashupati, Hari Narayan and Sri Narayan came 10-15 days after Panchayati and tried to administer tablet in order to facilitate abortion. She kept the tablet in her mouth and after their departure spat. Then thereafter, case was instituted at her end. During cross-examination at Para-4, she had stated that when accused persons came to administer tablet, her parents had gone to field to do menial work. She had not raised alarm seeing the accused persons. In Para-5, she had stated that she had not consumed tablet. She had begotten a daughter. In Para-6, she had stated that when her parents came after doing menial work, she had disclosed regarding the event. In Para-8, there happens to be contradiction relating to her previous statement wherein she had not disclosed that Hari Narayan, Sri Narayan, Madhusudan, Ghanshyam, Sachidanand, Pashupati came and forcibly tried to administer tablet. She had denied the suggestion that accused persons are agnate of Bhola Yadav, on account thereof, they have been named.

11. After going through the evidence, it is apparent that no role has been assigned against the appellant even by the victim. Furthermore, the allegation appears to be improbable as had there been presence of accused persons to administer tablet to facilitate



abortion, then in that event, they would have properly taken care of to get the medicine swallowed by her, which the informant spat thereafter. This part creates doubt over genuineness of the allegation. Moreover, another daughter Kumkum, who has been shown to be present at the time of occurrence, has not been examined nor there happens to be plausible explanation relating to her non-examination. Admittedly, PW-2 and PW-4 are not an eye witness to occurrence. In the aforesaid background, when the evidence is taken in its entirety in consonance with the contradictions visualizing from Para-8 wherein the victim had not named appellant along with others so far second incident is concerned in her further statement coupled with non-examination of I.O. did not justify the conviction and sentence recorded by the learned lower Court whereupon, is set aside. Consequent thereupon, appeal is allowed. Appellant is on bail, hence is discharged from its liability.

Vikash/-

(Aditya Kumar Trivedi, J)

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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