

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.269 of 2014

Arising Out of PS.Case No. -287 Year- 2011 Thana -PAROO District- MUZAFFARPUR

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Bahadur Sahni @ Gulten Sahni Son of Ram Janam Sahni Resident of
Village Deluya (Dehuya), P.S- Paroo, District- Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Pradhan Murli Manohar
Mr. Raju Kumar

For the Respondent/s : Mr. Bipin Kumar (APP)

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

7 25-05-2017 This Appeal is directed against the judgment dated 3.5.2014 and order dated 8.5.2014 passed by Sri Subodh Kumar Srivastava 5th Addl. Sessions Judge, Muzaffarpur in Session Trial No.277 of 2013, by which the sole appellant has been convicted under Section 376 of the Indian Penal Code (hereinafter to be referred as the 'I.P.C'.) and sentenced to undergo R.I. for ten years and also sentenced fine of Rs.25,000/- payable to the victim as compensation to her.

2. The prosecution case in short is that one Guriya Kumari daughter of Shyam Babu Sahni lodged a typed written report before the S.P., Muzaffarpur on 20.12.2011 that on 18.12.2011 at 07:00 P.M. she was at her door, when the accused-appellant, Bahadur Sahni @ Gulten Sahni came and asked about



her father and she answered that he is coming, thereafter, he gagged her mouth and lifted and took her to bamboo clump and thrashed her on the ground and committed rape upon her. Further case, as per the written report is that she cried and then her father and other villagers came there and then he left her and fled away from there.

3. The aforesaid written report was sent to the police for institution of the case and the S.P., Muzaffapur also directed for supervision by the Dy.S.P., Muzffarpur. On the basis of aforesaid direction of the S.P., Muzaffapur, Paroo P.S.Case No.287 of 2011 was registered on 21.12.2011 under Section 376 IPC and she was sent for medical examination and after completion of the investigation, the police submitted charge-sheet against the appellant. It further appears that the cognizance of the offence was taken and after commitment, the case ultimately came for trial and disposal to the court of Sri Subodh Kuamr Srivastava 5th Additional Sessions Judge, Muzaffarpur.

4. In this case the charge has been framed against the appellant under Section 376 IPC.

5. The defence of the appellant is total denial of the allegation and false implication at the instance of the father of the victim girl and due to previous enmity.



6. The learned trial court vide judgment dated 3.5.2014 and order dated 8.5.2014 in Session Trial No.277 of 2013 has convicted the appellant under Section 376 IPC as stated above.

7. Being aggrieved by the aforesaid judgment and order, this appeal has been filed and main submission of the learned counsel of the appellant is that there is inordinate delay in lodging the F.I.R. and further there is contradiction between the written report and the evidence of the prosecutrix as in the written report, she has stated that on '*hulla*', her father and other villagers came there, however, in her statement she has stated that on '*hulla*' her mother and aunt came there and furthermore, the aforesaid written report has not been brought on the record as exhibit.

8. Further submission of the appellant is that there are vital contradiction in the evidence of the witnesses and in that view of the matter, non-examination of the I.O and the Doctor creates serious prejudice to the appellant in his defence as had he been examined, he would have been asked about the contradiction from the I.O.

9. Further submission of the learned counsel for the appellant is that even medical report, has not been brought on record and in spite of the aforesaid fact, the learned trial court has convicted the appellant under Section 376 IPC without proper



application of judicial mind.

10. On the other hand, learned A.P.P. has submitted that the prosecutrix has been examined as P.W.2 in this case and she has supported the prosecution story of rape and that has been corroborated by the other witnesses and that clearly shows that the rape has been committed on the prosecutrix, as such conviction of the appellant under Section 376 IPC is just and proper and it does not require any interference by this Court.

11. In the above background, let me examine the evidence brought on record on behalf of the prosecution.

12. P.W.2 is the prosecutrix in this case and in examination-in-chief she has stated that while she was at her door, the appellant-accused enquired about her father and she stated that he is coming, he lifted her and gagged her mouth and thrashed her in the bamboo clamps (*Bansbitti*) and committed rape. Her further examination-in-chief is that on her '*hulla*', her mother (Kunti Devi) and aunt (Sheela Devi) came there and they brought her to her house where she narrated the story to her father and aunt. The aforesaid evidence of the prosecutrix is contradictory to the written report as in her written report, the prosecutrix has stated that on her '*hulla*', her father and other villagers assembled there.



13. From the examination-in-chief of this witness, it also appears that in the morning of next day, she had gone to the police station and police enquired about the same and thereafter she was taken for medical treatment whereas as per the written report, it appears that the written report has been filed after three days of the occurrence, as such considering the same, it appears that there is contradiction between written report and the evidence of the prosecutrix so far date of occurrence is concerned.

14. It further appears from the cross examination of this witness that the learned trial court enquired about meaning of 'rape' but she could not answer the same and kept quit. Para 10 of her cross examination further shows that her father had chicken business and the appellant has invested Rs.5,000/- in that business and as the appellant has demanded money, so this false case has been lodged against the appellant. Para 21 of her cross examination further shows that she has not stated before the police that due to fear she sat in the field of Mustard of Bhuneshwar Sahni.

15. P.W.1 is mother of the prosecutrix and she has stated in her chief about commission of rape by the appellant and in para 21 of her statement she has stated that on '*hulla*' she along with Sheela Devi and Shyam Babu Sahni went there and saw the



appellant Gulten Sahni fleeing. This evidence is clearly contradictory to the prosecution case as alleged in the written report. She has further stated that the blood was oozing and she was writhing in pain and her evidence in chief further shows that thereafter she was taken for medical examination and the police was also informed, however, as per the written report, the F.I.R. was lodged after three days. At para 27 of the examination in chief, her attention has been drawn towards the statement made before the police that at 7.30 in the night when the prosecutrix was not in the house and her husband was sleeping after taking meal and she informed to Sheela Devi and thereafter they searched the prosecutrix and thereafter she informed her husband about the same. Her above evidence is contrary to the prosecution story in written report and evidence of prosecutrix, as she has stated in her evidence that the appellant came and enquired about her father and she told that he is coming, however, the above evidence shows that father of the prosecutrix was in the house when she was lifted. Her cross examination in Para 32 also discloses that her husband was doing business of Chicken with appellant Gulten Sahni but she has denied that there was any dispute with regard to the money. Her attention has been drawn towards the statement made before the police and she had stated that she had not disclosed



before the police that during search her daughter was found sitting at a '*Dhecha*' near the hosue of Bhuneshwar Sahni and thereafter she was brought at her '*darwaza*' and enquired about the same. She has also denied the suggestion that the appellant Gulden Sahni has invested Rs.5,000/- in the chicken business of her husband and the appellant was demanding the same, as such to put pressure on the appellant, the present case has been lodged.

16. Considering the discussions as made above, it appears that there are several contradictions from earlier statement of P.W.2, but in absence of examination of the I.O., the veracity of the same can not be tested.

17. P.W. 3 is the father of the prosecutrix and he has stated in his evidence-in-chief about commission of rape and also stated that when he returned from the market and called his wife, she was not present at the house and when his wife came, he enquired about the same, she told about missing of the prosecutrix, thereafter they started searching her. He had also stated that they heard some sound from the '*Banswari*' and saw that the appellant was fleeing from there and the girl was crying there and she told that the appellant has committed some wrong with her and according to his examination-in-chief he went to the S.P. along with the prosecutrix and lodged complain before the police and



thereafter he was sent to the police station and medical examination of the girl was also made. Para 18 of his cross examination discloses that he had business relation with the appellant but he has denied that the appellant has invested Rs.5,000/-. A suggestion had also been given to this witness which he has denied that as he is not interested in returning Rs. 5,000/- of the appellant as such the present case has been lodged.

18. P.W.4 is Ram Babu Sahni, is uncle of the prosecutrix and he has stated in his chief that the appellant took her in '*Banswari*' and thereafter they started searching her and when they went to *Banswari* , the appellant fled away from there and she was brought back to the house and she narrated about the occurrence. Para 7 of his chief also shows that there was some business relation between the father of the informant and the appellant and Para 13 of his cross examination further shows that he saw the girl writhing with pain in the '*Rai*' field and Para 18 discloses that he had not seen the occurrence in his own eyes rather when she raised '*hulla*' he saw the appellant fleeing from the place of occurrence. He has denied the suggestion that he has falsely implicated the appellant and story of rape, is only a hearsay.

19. As stated above in this case, neither the I.O. has been



examined nor written report has been brought on record and from the evidence of the witnesses especially P.W.1, 3 & 4, it appears that their attention had been drawn towards the statement made before the police, in such a situation non-examination of the I.O. has caused serious prejudice to the appellant.

20. Further so far evidence of prosecutrix is concerned, there is contradiction in the evidence of the prosecutrix as she has stated in her evidence in court that on '*hulla*', her mother came while as per the written report, father and other villagers came on her '*hulla*' and apart from that though the F.I.R. has been lodged after three days of the occurrence but the evidence of P.W. 1 as well as P.W.2 discloses that they went to the police station after the occurrence and the medical examination has been made. Hence the above evidence of P.W.1 & 2 creates a doubt about lodging of F.I.R. and in such a situation also non-examination of the I.O. is a serious lapse on the part of prosecution.

21. Furthermore, in this case, neither the Doctor has been examined nor medical report has been brought on the record and as such there is no corroboration of evidence of P.W.2 prosecutrix. No doubt conviction can be made on the basis of sole testimony of prosecutrix even in absence of corroboration by medical evidence, but when there are vital contradictions in the evidence of



prosecutrix as well as in the evidence of other witnesses also, placing reliance on sole testimony of prosecutrix is not safe.

22. Considering the entire discussions as made above, to my opinion, the prosecution has failed to prove the charges under Section 376 IPC beyond all reasonable doubts and hence, the appellant is entitled for benefit of doubt.

23. Hence, the conviction of the appellant under Section 376 IPC is not sustainable in the eye of law.

24. Accordingly, this appeal is allowed and conviction and sentence of the appellant under Section 376 IPC is set aside and as the appellant is in custody, he is directed to be released forthwith.

(Vinod Kumar Sinha, J)

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