

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.469 of 2015

Arising Out of PS.Case No. -89 Year- 2013 Thana -BANMANKHI District- PURNIA

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1. Mritunjay Kumar Mandal Son of Brahmdeo Mandal, Resident of Village- Harpatti, Police Station- Banmankhi, District- Purnea.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Uday Chand Prasad, Advocate
Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 04-04-2017

Appellant, Mritunjay Kumar Mandal has been found guilty for an offence punishable under Sections 376 IPC and sentenced to undergo RI for 10 years and fine of Rs. 10,000/- in default thereof, to undergo imprisonment of two years additionally by the 2nd Additional Sessions Judge, Purnea vide judgment of conviction dated 24.06.2015 order of sentence dated 26.06.2015 in Sessions Trial No. 885/2013/119/2014.

2. Manorama Devi, (PW 5) filed a written report on 09.06.2013 alleging *inter alia* that she had gone to her *Naiher* to visit her ailing mother on 06.06.2013 leaving behind her two daughters. When she returned back on 08.06.2013, her younger daughter (name withheld) aged about seven years disclosed that yesterday, while she was returning after easing herself, Mritunjay Kumar Mandal lifted her



to bamboo cluster where he committed sin act. Whenever, she used to weep, her mouth was thrust with leaves. This occurrence had taken place on 07.06.2013 at about 3-4 PM. So, she alleged that her co-villager, Mritunjay Kumar Mandal had committed rape upon her. Panchyati was convened by the villagers having no solution, on the other hand, Mritunjay Kumar Mandal was threatening.

3. On the basis of the aforesaid written report, Banmankhi PS Case No. 84/2013 under Section 376 of the IPC was registered followed with investigation and after concluding the same, the charge-sheet was submitted under Section 376 IPC whereunder cognizance was also taken and accordingly, trial proceeded which ultimately concluded in the manner, subject matter of the instant appeal.

4. Defence case, as is evident from the mode of cross-examination as well as statement under Section 313 of the CrPC, is that of complete denial of the occurrence and further of false implication.

5. In order to substantiate its case, the prosecution had examined altogether 8 PWs out of whom PW-1 is Raju Patel, PW-2 is Anil Ram, PW-3 is Priyanka Kumari, PW-4 is the victim (name withheld), PW-5 is Manorama Devi, PW-6 is Dr. Shikha Priyadarshi, PW-7 is Krishna Pd. Singh, and PW-8 is Nitish Kumar @



Rajiv Kumar. Side by side, had also exhibited Ext-1, written report in the pen of Raju Patel (PW-1), Ext-2, Medical Report, Ext-3, Formal FIR, Ext-4, endorsement over written report. As stated above, nothing has been adduced in defence.

6. PW-6 is the doctor who had examined the victim on 10.06.2013 at about 1:00 PM and found the following:-

Hymen seems ruptured. Inflammation +++ at anal operturn. (Redness, swelling). Bleeding is not there but the location seems to be fresh. Vaginal— spermatozoa found.

Radiological age (389)— 5-6 years, so according to above clinical finding and report there is evidence of sexual assault on the girl and then is an evidence of forceful penetration in the anal canal.

7. No absurdity has been found relating to finding of the doctor. Consequent thereupon, commission of rape is found exposed. However, the ocular evidence is to be seen whether the witnesses have substantiated the same or not against the appellant.

8. From the written report, it is apparent that PW-5, informant was not at all present at her house while the victim PW-4 was raped. Therefore, first of all the evidence of the victim, PW-4 is to be seen.

9. During examination-in-chief, she had stated that on the alleged date and time of occurrence, Mritunjay Kumar Mandal lifted her and took her to bamboo cluster where she was undressed



and in likewise manner, Mritunjay also undressed himself. She was forced to lie down and then he pounced upon her and committed the sin. She began to weep whereupon, he assaulted her. He shut her mouth with leaves. Then thereafter, he rushed therefrom. She came at her house where she narrated the incident to his sister, Priyanka. Priyanka had also seen her pant and washed. Then she slept. She identified the accused in the dock. During cross-examination, she had stated that accused had concealed his face at the time of lifting her and so, she failed to identify him. In likewise manner, she had stated that she could not identify the rapist at that very moment. She had further stated that she had deposed whatever police had instructed. She had further stated that she had identified the accused as he happens to be her neighbour. She had further stated that Puja had pointed out towards Mritunjay Kumar Mandal to her rapist.

10. PW-3 is Priyanka, her sister. She had completely disowned with regard to the occurrence and on account thereof, she was declared hostile, even then, prosecution could not be able to extract anything favourable.

11. PW-5 is the informant. She had stated that when she returned back from her *Naiher*, she came to know that her daughter was raped by Mritunjay whereupon, she had gone to PS where written report was scribed by Raju, her brother whereupon Raju and Rajiv



also put their signatures. She had further stated that Prinyanka and the villagers have narrated regarding the occurrence and further, Priyanka had stated that when she (victim) returned back, she had washed away her pant. She had identified the accused in the dock. During cross-examination, she had stated that what Raju had scribed, she is not aware. Police had also not narrated the application. Police had not recorded her statement. What was written in the application, she does not know. Furthermore, she had stated that she was not informed by anybody regarding commission of rape upon her daughter. Who committed rape, she does not know.

12. PW-2 also did not support the case of the prosecution and on account thereof, was declared hostile.

13. PW-1 is Raju Patel who had stated that informant, his sister called him at the police station where he came. His sister Manorama had disclosed the incident before the police officials whereupon, the police directed him to scribe. He scribed as per direction of the police officer. In his presence, Manorama had put LTI whereupon he also had signed. Also exhibited the same. He had not identified the accused in the dock although was present. In cross-examination, he had stated that his sister had arrived prior to his arrival at the police station and so, he is unaware what kind of talk was in between the police officer and his sister. When he reached at



the police station, Manorama disclosed with regard to his identity as her brother, whereupon the police officer directed him to take dictation which he did. He had further stated that he had got no information with regard to the occurrence.

14. PW-8 is another witness who had simply shown his presence over the written report. He had not stated with regard to occurrence.

15. PW-7 is the Investigating Officer. In his examination-in-chief, he has stated that after registration of the case, he was entrusted with the investigation by the O/C. He took statement of the victim. Also recorded the statement of another daughter of the informant as well as witnesses. Inspected the place of occurrence and the objective finding relating thereto suggests commission of the occurrence at that very place. The leaves were found there and the place was found trampled. Further identified the place of occurrence by specific boundary. Took the victim along with her mother for medical examination. Received medical report and then thereafter, after completing investigation, charge-sheet was submitted. During cross-examination, he had stated that he had not seized apparel of the victim nor he sent for chemical examination. He had not seized the apparel of the accused. Accused was not medically examined. Apart from deficiency of the Investigating Officer in terms of Section 53 A



of the CrPC whereunder accused was also to be medically examined being an accused of rape, no explanation has been offered at the end of the Investigating Officer, PW-7. Although, from the medical evidence, it is apparent that rape was committed over PW-4, the victim and further, from the evidence of PW-7, the Investigating Officer, the objective finding of the place of occurrence substantiates the same but from the ocular evidence including that of PW-4, the victim, it is apparent that they have, reason best known to them, not come forward to substantiate.

16. From the judgment impugned, it is apparent that in para-12, the learned lower court had concluded its finding but failed to appreciate the conduct of the witnesses including that of victim which they have shown during course of cross-examination. Evidence means, examination-in-chief, cross-examination as well as re-examination if any. That means to say, in a way to appreciate the evidence, the examination-in-chief, cross-examination of a witness is to be taken in its entirety and on the basis thereof, any kind of inference could be gathered whether, the allegation as alleged has been proved or not. Brushing aside, the cross-examination while appreciating the evidence only on the basis of examination-in-chief is not permissible in the eye of law. As stated above, the learned lower court completely ignored the principle while appreciating the



evidence, hence suffers from legal deficiency.

17. Consequent thereupon, the judgment of conviction and sentence impugned is set aside. The instant appeal is allowed.

18. Since appellant is under custody, he is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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