

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.163 of 2014

Arising Out of PS.Case No. -7 Year- 2010 Thana -BARSOI District- KATIHAR

- =====
1. Mulin Das @ Molin Das, son of Late Dhanman Das
 2. Baya @ Baya Chunnari, son of Late Baikunth Chunari, Both residents of Village-Jalkumore, P.S.-Barsoin, District-Katihar.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. J.K.Giri, Advocate

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 31-07-2017

This appeal is directed against the judgment dated 10.3.2014 and order dated 12.3.2014 passed by Sri Harindra Nath, Adhoc Additional Sessions Judge, 1st. Katihar in Sessions Trial No. 131 of 2011, by which he has convicted both the appellants under Sections 363, 366A and 376-G of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for five years and fine of Rs.2000/- under Section 363 IPC and five years R.I. and fine of Rs.2000/- under Section 366A and they were further awarded sentence to undergo R.I. for ten years and fine of Rs.2000/- each under Section 376-G of the Indian Penal Code and in default of payment of fine they were further directed to undergo simple imprisonment for two months and the sentences were directed to run



concurrently. The judgment further shows that by the said judgment other two accused Maya Devi and Sandhaya Devi have been acquitted from the charges under Sections 363, 366A and 120B of the Indian Penal Code.

2. The prosecution case, in short, is that P.W.4 Chhobi Kumari filed a complaint case No. 3081 of 2009 in the court of Chief Judicial Magistrate, Katihar on 27.11.2009, which was sent to the police for institution of case under Section 156(3) Cr.P.C. and on the basis of the same, Barsoi P.S. Case No. 7 of 2010 dated 5.10.2010 has been instituted under Sections 120B, 323, 364, 366 and 376 of the Indian Penal Code.

3.. As per complaint case the prosecution case is that on the day of occurrence, i.e., 3.10.2009 at about 5 P.M. while complainant was returning along with her mother, the appellants came on a motorcycle in drunken condition and forcibly lifted her on the motorcycle, pointing knife on her mother and fled away carrying her. Further case is that the complainant tried to raise alarm but she was gagged by handkerchief inside the mouth of the complainant and she became unconscious. It is also her case that intoxicated cotton was put on her mouth and thereafter she became unconscious and when she regained her consciousness, she found herself in a room and unable to move because she was feeling pain in whole body, due to rape committed on her during whole night and blood was oozing from her



private part. It is also the prosecution case that she came to know that she was at Silliguri. This is also the case of the complainant that thereafter appellants got her to Barsoi Railway Station and left her there and fled away. Thereafter she returned to her house with the help of a tempo driver and narrated the story to her father and mother. It is also the prosecution case that the victim went to complain about the same to the wife of appellant Molin Das, namely, Sandhya Devi and Maya Devi but they abused her and assaulted by fists and slaps. According to the complainant, she was under treatment of a private Doctor, as such, the complaint was filed with delay. Further case is that accused persons had committed the occurrence due to prior enmity.

4. After investigation police has submitted charge-sheet against the appellants and Maya Devi and Sandhya Devi under Sections 363, 366A, 376 and 120B of the Indian Penal Code, thereafter cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the court of Sri Harindra Nath, Adhoc Additional Sessions Judge, 1st, Katihar for trial and disposal. Charges have been framed against the appellants under Sections 363, 366A, 120B and 376 IPC.

5. During trial it appears that nine witnesses have been examined on behalf of prosecution, they are P.W.1 Sawariya Chunari (father of the victim), P.W.2 Kedar nath Mahant, P.W.3 Deepali



Devi(mother of victim), P.W.4 Shobhi Kumari (the prosecutrix), P.W.5 Naresh Chunari, P.W.6 Bhupendra Chunari, P.W.7 Dr. Jyotish Saha, P.W.8 Panna Kumar Singh and P.W.9 Atulbir Singh (Judicial Magistrate 1st Class, Katihar). Out of the aforesaid witnesses P.W.8 is the Investigating Officer and P.W.9 is Judicial Magistrate, who has recorded statement of the victim girl under Section 164 Cr.P.C. and P.W.7 is Doctor, who has examined the victim girl.

6. Apart from the above oral evidence, the following documents have been admitted into evidence on behalf of prosecution they are Ext.1 Medical certificate of the victim, Ext.2 endorsement on the complaint petition, Ext.3 is formal FIR, Exts. 4 and 5 are charge-sheet and Ext.6 is statement under Section 164 Cr.P.C.

7. No oral or documentary evidence has been adduced on behalf of defence.

8. As per statement of appellants under Section 313 Cr.P.C. as well as their cross examination defence of the appellants is total denial of the occurrence and of false implication in the present case.

9. Learned trial court after completion of trial convicted the appellants under Sections 363, 366A and 376-G IPC and sentenced them, as stated above and acquitted the other appellants Maya Devi and Sandhya Devi from the charges framed against them and also acquitted the appellants from the charge under Section 120B



IPC.

10. From perusal of the judgment it appears that learned trial court has relied upon the evidence of prosecutrix (P.W.4) with regard to kidnapping and rape and it has found corroboration of the evidence of P.W.4 by the evidence of P.Ws. 1 and 2 and on the basis of that he convicted the appellants under Sections 363, 366A and 376-G IPC.

11. Submission of learned counsel for the appellants is that the very initiation of the prosecution case appears to be doubtful because as per prosecution case, she was kidnapped on 3.10.2009 and taken on motorcycle and her evidence shows that at that time P.W.3, mother of the victim and P.W.1 were present but there is absolutely nothing on record that they have approached the police with regard to kidnapping of girl or made any search of the girl, rather evidence available on record shows that even after her return after two days of occurrence no steps were taken to approach the police or to file complaint and complaint case was filed after more than 50 days after her return to her house. It has also been submitted that there is no independent witness to the occurrence of kidnapping and though P.Ws. 2, 5 and 6 have themselves claimed to be independent witnesses but P.W.6 has been declared hostile as he has not supported the prosecution case and so far P.Ws. 2 & 5 are concerned, both appear to be hearsay witnesses and P.W.2 has admitted in his



evidence in cross examination that his statement was recorded after more than one year of the occurrence of kidnapping of the prosecutrix by the appellants and had occurrence been true, natural conduct of P.Ws. 1 and 3 would have been to approach police and lodge a case before the police or made a complaint petition before the court of Chief Judicial Magistrate.

12. Further submission of learned counsel for the appellants is that the prosecutrix has alleged that she was subjected to rape at Silliguri but her evidence as well as earliest version of the prosecution in the complaint petition shows that when she regained her consciousness, she came to realize that she was raped by the appellants and though she has stated about commission of rape in her evidence but no independent witness was examined by prosecution to show her presence at Siliguri, even medical report does not show that any rape was committed on her. It has also been submitted that FIR shows that she was examined by a private Doctor and she was taken to her home from the Railway Station by a tempo driver but neither the treating Doctor nor the tempo driver has been examined by the prosecution nor there is anything to show the Investigating Officer has recorded their statement and the above facts also show that the prosecution story is a manufactured story which has been filed as the prosecutrix and her family members were on inimical terms with the appellants.



13. It has also been argued that defence has suggested that there was love affairs between Mulin Das (appellant No.1) and the prosecutrix (complainant) and a suggestion has also been given to that effect, though the same was denied by the prosecution witnesses but that also creates a reasonable shadow of doubt about the prosecution story. Submission is that the complainant in her evidence disclosed that she was taken to Silligury and from Silliguri the accused persons had taken her to Barsoi Railway Station but she raised no alarm and not informed any person. It has also been argued that the above circumstances clearly falsify the prosecution story and, as such, conviction of the appellants under Section 363, 366A and 376-G IPC appears to be doubtful and is not sustainable in the eye of law.

14. On the other hand, learned APP has submitted that the delay in lodging the case has properly been explained by the prosecutrix as well as P.Ws. 1 and 3, who are father and mother of the prosecutrix, stating that when she came back she went to complain about the same to the wives of appellant Nos.1 and 2 they abused and assaulted her and further the prosecutrix has stated in her complaint petition itself that she was under treatment of a private Doctor and also stated in her evidence that she was under domestic treatment, as such, she could not earlier lodge the case. Further submission of appellants is that the evidence of prosecutrix or in the evidence of



P.Ws. 1 and 3, who are father and mother, are consistent and there is no contradiction in their evidence and their evidence found corroborated by the evidence of P.W.2 and P.W.5 also, though they are hearsay witnesses but they have stated about the kidnapping. So far conviction under Section 376-G IPC is concerned, in cases of rape the evidence of prosecutrix itself is sufficient for conviction unless it has been found unreliable or unbelievable. It has also been submitted that medical report also supports the prosecution case and as hymen was found old ruptured. Further submission is that evidence of P.W.7, who is Doctor, shows that the girl was minor at the time of occurrence and the aforesaid evidence is supported by the evidence of P.Ws. 1 and 3 also, who are her father and mother, in support of the prosecution case, as such, the conviction of the appellants under Sections 363, 366A and 376-G IPC is just and proper, which does not require any interference by this Court.

15. On the above background this Court is going to examine the evidence available on record. P.W.4 is the prosecutrix in this case and as per her evidence in chief while she was coming with her mother at 5 P.M. in the evening, the appellants came on a motorcycle pointing knife on her mother, have taken her away on motorcycle. Her evidence further shows that she tried to raise alarm but they have put cotton on her mouth and due to that she became unconscious. Her evidence also shows that her father was also there at



Chowk. The aforesaid evidence found corroboration from the allegation made in the complaint petition. However, there are some omissions in her evidence as in her complaint petition she has stated that she tried to raise alarm but appellants closed her mouth by putting handkerchief and in the court, she has not stated so. P.W.1 is the father of the victim who has stated in his evidence that while he was at Barsoi Raschowk Bazar he saw that her daughter was lifted in the motorcycle by the appellants and her daughter was crying and they have searched for her but she was not found. P.W.3, who is mother of victim, in her evidence in chief has stated that pointing knife on her neck the appellants have lifted the prosecutrix. P.W.2 is an independent witness and he claims himself to be an eye-witness to the occurrence of kidnapping but his cross examination shows that his statement was recorded by the police after one year eight months. P.W.5, who is also an independent witness, has stated in his evidence that appellant Mulin Das had taken away the prosecutrix. However, in his cross examination he has stated that he had not seen the occurrence. P.W.6, who is also an independent witness, has not supported the prosecution case and has been declared hostile.

16. From the discussions made above, it appears that story of kidnapping is concerned, there are evidences of P.W.4, the prosecutrix, which found support from the complaint petition as well as the evidence of P.Ws. 1 and 3, who are father and mother of the



prosecutrix and also found support from the evidence of P.W.2. However, in view of evidence of P.W.2 that his statement was recorded after 20 months of the occurrence, it creates a shadow of doubt about the credibility of his evidence being an eye-witness. Apart from that P.W.4 has also been cross examined and in her cross examination in paragraph-4 she has stated she was knowing the appellants for the last 6-7 years and further admitted in paragraph-4 that appellants do not have motorcycle and also stated that three persons came on motorcycle and who was the third person she does not know. This piece of evidence of P.W.4 makes her evidence contrary to her evidence in chief or earlier version. Further she has stated in paragraph-5 that before raising alarm she was made unconscious. Similarly, P.W.3 has also stated in her cross examination that she knows the appellants for last 15-20 years and in paragraph-5 she has stated that prosecutrix has raised alarm. P.W.1 has also stated in his evidence that she was crying. The above evidence of P.Ws. 1 and 3 is contrary to the evidence of P.W.4 (prosecutrix) It also appears from the evidence of P.W.1 that she cannot say the colour of the motorcycle, as it was dark night but according to prosecution case, occurrence is of 3.10.2009 and the time was 5 P.M. in the evening. P.W.1 has also been cross examined and he has stated that he could not say the number of motorcycle. On the other hand, P.W.4 had stated that the appellants have no motorcycle. There is nothing



available on record to show that the Investigating Officer has ever tried to seize the said motorcycle. The above evidence clearly creates doubt about the prosecution story of kidnapping by motorcycle.

Evidence of P.W.1 also discloses that on his “hullah”, people came and thereafter he came to his house. His evidence in paragraph-5 shows that two days after recovery of the girl he went to police station. The above evidence shows that though prosecutrix was kidnapped in front of P.W.1 and P.W.3 and P.W.2 claims that he had seen the occurrence but no step has been taken by them to inform the police or any active search was made to find out the girl and even, they had not tried to approach any high official or lodge a complaint case.

17. Further evidence in chief of P.W.4 is that she was taken to Siliguri and kept her in a room and both the appellants have committed rape upon her causing bleeding to her and appellants had given some medicine to her. Her evidence finds support from complaint petition, her statement under Section 164 Cr.P.C. and evidence of P.Ws. 1 and 3, though they are hearsay witnesses. In complaint petition she has stated that on the next day of the occurrence, when she regained consciousness, she found herself in Siliguri and she was not in a condition to move, as they continued to commit rape upon her throughout night and she was bleeding profusely. As such, P.W.4 has made development of prosecution story



in her evidence in court. There is nothing available on record to show that Investigating Officer ever made any effort to find out place of occurrence of rape or he made any inquiry from the local people.

18. From the discussions made above, it appears that date of occurrence is 3.10.2009 and according to prosecutrix, she returned on 4/5.10.2009 but complaint petition was filed on 27.11.2009 before the court of Chief Judicial Magistrate after more than 53 days of the occurrence. There is no evidence available on record to show that they have either approached the police or lodged any complaint in the court. Though P.W.1 has stated that he searched his daughter but his cross examination in paragraph-5 shows that first he said that he went to police station after two days of the occurrence. Again he said that he went to police station two days prior to recovery of the girl. The above evidence of P.W.1 does not inspire confidence as he is making conflicting evidence regarding going to the police station. Though she had taken plea in her evidence that she was under domestic treatment but her complaint petition shows that she was under treatment of private doctor and that causes delay. Nothing is in her evidence or evidence of P.Ws. 1 and 3 as to what type of domestic treatment was going on and for which ailment and even name of private doctor has not been mentioned.

19. I.O. has been examined in this case as P.W.8 and his evidence shows that place of occurrence is 50 yards from the village



of prosecutrix. There is also no evidence on record that as to whether I.O. has tried to seize the motorcycle used in the occurrence or he ever visited Siliguri to find about the second place of occurrence where rape has been committed.

20. Submission of learned counsel for the appellants is that as the appellants are rustic poor villagers they are not aware of the technicalities or legal complication. On the other hand, there are consistent evidence on the point of kidnapping and there is nothing available on record to doubt about the story of kidnapping, as such, delay in lodging FIR is immaterial in this case. Similarly, so far medical report is concerned, the same shows that she has been used to sexual intercourse since some time and she was also aged 17 years and the evidence of P.Ws. 1 and 3 also shows that she was minor and, as such, the evidence supports the prosecution case of kidnapping of a minor girl and committing rape upon her. Submission is also made by the State counsel that in rape cases, minor contradiction and inconsistencies are immaterial.

21. At this juncture, I would like to discuss few decisions of Hon'ble Supreme Court. Hon'ble Apex Court in a decision in the case of **State of Punjab vs. Gurmit Singh : AIR 1996 SC 1393** has held in paragraph-7 of the judgment that the Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of



the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged and in the said paragraph it has been observed that the testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement is required and the judgment also shows that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It is also stated that it must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were in accomplice.

Further Hon'ble Supreme Court in another decision in the case of **Vijay @ Chinee vs. State of Madhya Pradesh : 2010 (4) PLJR SC 1** in paragraph-15 of the judgment has held that *the law that emerges on the issue is to the effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.*

Hon'ble Supreme Court in the case of **Narender Kumar**



vs. State (NCT of Delhi) : (2012) 7 SCC 171 has discussed in paragraph-20 of the judgment that *“it is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement.”*

On considering the above, in paragraph 29 & 30 it has been held as follows :

“29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witnesses have falsely implicated the accused. The prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. The conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her



testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected."

In another decision in the case of **Mohd. Ali alias Guddu vs. State of Uttar Pradesh : (2015) 7 SCC 272** the Hon'ble Supreme Court after considering the delay in lodging FIR has held in paragraphs 21, 27 and 29 of the judgment which reads as follows :

"21. It is apt to mention here that in rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstance is not of significance. The authorities of this Court have granted adequate protection/allowance in that aspect regard being had to the trauma suffered, the agony and anguish that creates the turbulence in the mind of the victim, to muster the courage to expose oneself in a conservative social milieu. Sometimes the fear of social stigma and on occasions the availability of medical treatment to gain normalcy and above all the psychological inner strength to undertake such a legal battle. But, a pregnant one, applying all these allowances, in this context, it is apt to refer to the pronouncement in *Rajesh Patel vs. State of Jharkhand* wherein in the facts and circumstances of the said case, delay of 11 days in lodging the FIR with the jurisdictional police was treated as fatal as the explanation offered was regarded as totally untenable. This Court did not accept the reasoning ascribed by the High Court in accepting the explanation as the same was fundamentally erroneous.

27. Be it clearly stated here that delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered



by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW 2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the scene. It is the mother who was required to inform the police about missing of her grown-up daughter. In the absence of any explanation, it gives rise to a sense of doubt.

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had traveled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of



the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.”

22. Considering the settled principle of law laid down by the Hon'ble Supreme Court in the above judgments and catena of decisions it appears that no doubt it is true that infirmities in the investigation will not make prosecution case unbelievable as investigation is not under the control of the prosecutrix or her family members. It further appears that for conviction under Section 376 IPC, no corroboration as a rule is required of the evidence of prosecutrix as prosecutrix shall not be compared to a accomplice rather her evidence is on higher degree than the injured witnesses and general reliance shall be placed on the evidence of prosecutrix unless there are not free from embellishment or in totality of the prosecution case, her evidence does not inspire confidence and does not appear to be believable.

23. As discussed above, in this case there is delay in lodging FIR of almost 53 days and the delay has not been properly explained rather cause of delay was as she was under domestic treatment is contrary to complaint petition when she has stated that she was under treatment of a private doctor and the name of the doctor has not ever been disclosed. According to prosecution case the



occurrence took place at 5 P.M. in the evening and they have disclosed that other persons were also present there and P.Ws 1 to 4 and 5 & 6 shown as eye-witnesses have been examined but P.W.6 has been declared hostile stating that he has not seen the occurrence and P.W.2 though claims himself as an eye-witness but has stated that his statement was recorded after one year 8 months of the occurrence by police. That creates a serious doubt about his credibility. P.W.5 is only hearsay witness. So far P.Ws. 1 and 3 are concerned, they are father and mother of the prosecutrix and they were aware about kidnapping rather claim to be eye-witnesses but in spite of that they have not raised alarm nor they have filed complaint to the court or have gone to the police. There is also nothing to show that they approached the Panchayat or any Panchayati was held and kept waiting for prosecutrix and even when she returned the case was lodged after 53 days of her return. Above facts coupled with the fact that the prosecutrix has stated in her cross examination that three persons came on motorcycle, which is contrary to her evidence in chief and P.W.1 though claims to be eye-witness, could not disclose the number of motorcycle and P.W.3, mother of victim, and even could not state about colour of motorcycle. Further evidence of P.Ws. 1 and 3 disclosed that she was raising alarm, whereas the evidence of P.W.4 does not show that. The above contradiction, which are minor and in normal circumstances, can not be of much importance. But



where all the circumstances, i.e., there is inordinate delay of 53 days, not being properly explained, coupled with the conduct of P.W.3 for not approaching police or any other authority or Panchayat are considered together, they certainly create a serious doubt about the prosecution case.

24. On the other hand, suggestion has been given to P.W.4 that there was love affairs between appellant Mulin Das and the victim and as he has not married her, as such the false case has been filed implicating the appellants in this case. Further evidence of P.W.3 shows that there was enmity between the appellants and family members of the informant from before.

25. Hon'ble Supreme Court in the case of **Raju and others vs. State of Madhya Pradesh : (2008) 15 SCC 133** it has been held in paragraph-11 of the judgment as follows :

“11.It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”



All the above circumstances, as stated above, create reasonable shadow of doubt about the prosecution case and thus appellants are entitled for benefit of doubt.

26. Considering the entire discussions made above, this appeal is allowed. Impugned judgment and order are set aside. As the appellants are in custody, they are directed to be released forthwith, if not required in any other case.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
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