

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.615 of 2014

Arising Out of PS.Case No. -3105 Year- 2008 Thana -PURNIA COMPLAINT CASE District-
PURNIA

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Umesh Choudhary Son of late- Nagari Choudhary, resident of Village- Madhav
Nagar, Tirasi Tola, P.S.- Bhawanipur, District- Purnea Appellant.

Versus

The State of Bihar Respondent.

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Appearance :

For the Appellant : Mr. Amit Kumar Anand, Adv.

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 21-11-2017

Heard learned counsel for the appellant as well as
learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred against the
judgment and order of conviction dated 12.11.2014 and order of
sentence dated 13.11.2014 passed by the 2nd Additional Sessions
Judge, Purnea in Sessions Trial No. 255/2011, arising out of
Complaint Case No.3105/2008, whereby the learned trial court
convicted the accused, Umesh Choudhary for the offence
punishable under Section 376 of the Indian Penal Code and
sentenced him to undergo R.I. for ten years and slapped him with
a fine of Rs.10,000/- and in default of payment of fine, to further
undergo rigorous imprisonment for one year.

3. Factual matrix of the case is that Complaint Case No.
3105 of 2008 was instituted under Sections 376, 323 and 447 of



the Indian Penal Code against the accused Umesh Choudhary and Vinod Choudhary on the basis of complaint petition filed by Indira Kumari, daughter of Sri Rudal Choudhary, resident of Madhav Nagar (Tirasitola), P.S. Bhawanipur, District Purnea with the allegation in succinct that in the month of June, 2008 at around 12'o clock, the complainant was cutting grass in her father's sudbharna field, in the meantime the accused Umesh Choudhary abruptly arrived there and after pressing her mouth took her into maize field and disrobed her and shoved her on earth and forcibly committed rape against her and left the scene warning her not to divulge the occurrence to anyone and also giving assurance to perform marriage with her. Further allegation is that accused always made visits to her and alluring to perform marriage with her committed rape against her resultantly she became pregnant. The accused refused to perform marriage with her when she insisted for it divulging that she has become pregnant by him. She gave information of the said occurrence to her parents who rushed to the house of Umesh Choudhary but his brother Vinod Choudhary chided and assaulted her & her parents and thereafter her parents organized panchayati but the accused persons arriving in the panchayati assaulted her parents. Then they approached the police but it did not register the case then, she filed the complaint



case.

4. The aforesaid case was enquired by the learned Magistrate and after making enquiry the learned Magistrate took cognizance of the offence against accused Umesh Choudhary only and committed the case to the Court of Sessions and after transfer the case finally came in the seisin of learned 2nd Additional Sessions Judge, Purnea for trial.

5. Charge against the aforesaid accused was framed under Section 376 of the Indian Penal Code. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

6. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses, namely, Pankaj Choudhary as PW-1, Rudal Choudhary as PW-2, Risiya Devi as PW-3, Madan Kumar Choudhary as PW-4, complainant Indira Kumari as PW-5 and Jeevan Kumar Jyoti as PW-6. Out of the aforesaid witnesses P.W.6 happens to be formal witness. One more witness, namely, Dr. Nusrat Jaha was examined as a Court witness. The prosecution has also filed and proved some documents by way of documentary evidence.

7. Statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is



complete denial of the occurrence claiming himself to be innocent. In buttress of his case, in ocular evidence, the accused has examined one witness, namely, Awdhesh Kumar Choudhary as DW-1 only.

8. After hearing the parties and perusing the record, the learned trial court passed the aforesaid judgment and order of conviction and sentence as detailed in the earlier paragraph.

9. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred this Criminal Appeal.

10. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

11. It is submitted by learned counsel for the appellant that all the material witnesses examined by the prosecution are family members and they are interested witnesses of the case. There is no independent witness of the occurrence. Moreover, barring the the complainant, all the witnesses are hearsay witnesses. It is further submitted that the doctor, who has examined the victim, has also not found the offence of rape committed against her. Thus, the ocular evidence of the prosecution does not stand corroborated by the medical evidence. The occurrence is said to



be of the day of 12'o clock and place of occurrence is at a distance of five minutes from the house of the complainant. The houses of the people are located at one or two field away from the place of occurrence so no one would dare to commit such offence in broad day light at such place. Thus, the prosecution has failed to substantiate its case beyond all reasonable doubt by adducing cogent, reliable and trustworthy evidence. It is also submitted that the appellant is aged about 51 years and has been in custody since 22.02.2011 i.e. for six years and nine month and is facing the rigours of trial for a long span of time of nine years, hence some lenient view may be taken against him.

12. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the victim was minor at the time of occurrence and she was deaf and dumb. She has also given birth to a child which is admittedly in the house of the appellant. The victim in her statement has supported the prosecution case in toto and the doctor in her medical examination has also found a foetus of 30 months in her uterus. The learned lower court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and this appeal has no



substance in it and is liable to be dismissed.

13. The prosecution has examined five material witnesses in the case out of them P.Ws.1, 2 and 3 happens to be hearsay witnesses of the occurrence as P.W.1 has stated in his examination in chief that at the time of occurrence he was at her in law house. He regressed to his house at around 5-6 PM on telephonic information of the occurrence given by his mother. P.W.2-Rudal Choudhary has stated in his examination-in-chief that at the time of occurrence he was in his house, he got information of occurrence by his son but he stayed at his house and on arrival of his daughter Indira Kumari she divulged the occurrence to him by indication. P.W.3-Risiya Devi in para-5 of her cross-examination has stated that her son and daughter arrived at the house around 20 minutes later to occurrence and divulged the occurrence to her.

14. Though P.W.4-Madan Kumar Choudhary, who happens to be the brother of the complainant, claimed himself to be eye witness of the occurrence stating in his examination-in-chief that when he arrived from his school his mother sent him to the complainant to fetch the grass then he rushed there and witnessed the accused Umesh Choudhary committing rape against his sister. He intervened the occurrence. Whereupon Umesh Choudhary assaulted him then he made hulla resultantly the accused left the



scene. Thereafter, he regressed to his house along with his sister but the complainant, who has been examined in this case as P.W.5, has not corroborated the aforesaid statement of P.W.4 regarding his presence at the place of occurrence making interference in the occurrence and assaulting him by the accused etc. Thus, P.W.4 also does not appear to be the eye witness of the occurrence. The only eye witness of the occurrence is the complainant herself who has been examined in this case as P.W.5. From perusal of the testimony of P.W.5, it appears that she has divulged the entire occurrence before the Court with the help of specialist for deaf and dumb Dr. Dhirendra Kumar of Bihar Education Project District Resource Centre, Purnea. She has stated that when she went to the field to cut the grass the accused tying her limbs and gagging her mouth committed rape against her. Though the said witness was subjected to cross-examination but nothing convincing and cogent has been elicited in her cross-examination having potential to shatter her testimony about commission of occurrence of rape against her by the appellant.

15. Dr. Nusarat Jahan, who has medically examined the complainant, has been examined in this case as Court Witness No.1. Though the said doctor has not found any sign of rape on the victim at the time of her examination but has stated that the



possibility of rape could not be excluded. Moreover, the occurrence is said to be of June, 2008 and the said doctor has examined the complainant after five months i.e. on 19.11.2008, so after elapse of such a long span of time of occurrence any sign of rape cannot be expected and would be not found. More so, the doctor has found a foetus of thirty weeks two days in the uterus of the complainant. The said aspect of the case candidly corroborates the occurrence of rape committed against the complainant. Thus, the ocular evidence of the complainant stands corroborated by the medical evidence.

16. It is the case of the prosecution that the appellant committed rape against the complainant several times visiting at her house. In para-9 of her examination-in-chief the complainant has stated that he has committed rape against her four times but barring the complainant none else has supported the aforesaid case of the prosecution. Though, P.W.4 has stated in his examination-in-chief that the accused Umesh Choudhary used to make visit to her house clandestinely and resultantly his sister became pregnant. But in para-18 of his cross-examination, he has stated that he had not seen the accused visiting his sister in his house stealthily rather his sister divulged him the factum of said visiting. But the complainant has not corroborated the factum of divulgence of



aforesaid visiting of the accused to her to P.W.4. Thus, P.W.4 does not happens to be eye witness of the aforesaid occurrence of visiting of the accused to the complainant and committing rape against her and moreover for want of corroboration the aforesaid evidence of the said hearsay witness is not admissible in evidence. Had the accused visited the house of the complainant times and again and established sexual intercourse with her, her family members would have seen the same but none had divulged about witnessing the aforesaid occurrence. Thus, the aforesaid case of the prosecution does not stand substantiated.

17. In the facts and circumstances of the case, I find and hold that the prosecution has substantiated the commission of rape against the complainant by the appellant at the time of occurrence by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the judgment and order of conviction and sentence passed by the learned lower Court does not warrant any interference of this Court and is accordingly upheld.

18. As the appellant has already faced the sentence of around six years and nine months and is facing the rigours of trial for 9 years, hence considering the aforesaid aspect of the case sentence awarded by the learned lower Court is reduced to the



period of custody already undergone by the appellant.

19. Accordingly, this criminal appeal is dismissed with the aforesaid modification in sentence.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NAFR
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