

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.59 of 2015

Arising Out of PS.Case No. -19 Year- 2013 Thana -BASOPATTI District- MADHUBANI

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1. Pramod Sah Son of Late Jageshwar Sah Resident of Village - Veerpur, Pashimi Tol, P.S- Basopatti, District - Madhubani.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Mr. Ravi Ranjan, Advocate
For the Respondent/s : Mr. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 07-08-2017

This appeal has been preferred at the instance of appellant Pramod Sah challenging the judgment of conviction dated 09.01.2015 and order of sentence dated 14.01.2015 passed by learned Additional Sessions Judge-II, Madhubani in Sessions Trial 259/2013/38 of 2013 whereby and whereunder has been found guilty for an offence under Section 376 of the Indian Penal Code and sentence to undergo R. I. for 10 years as well as to pay fine appertaining to Rs. 5,000/- in default thereof, to undergo S.I. of three months, additionally.

2. P.W.14, Ramchandra Mandal gave his fardbeyan on 11.02.2013 at about 3.30 P.M. before the A.S.I. of Basopatti Police



Station at P.S.C.Basopatti alleging inter alia that on the same day at about 3.15 P.M. his sister's daughter (Bhagini) aged about five years along with other children were playing over road in front of his house. During course thereof, his neighbour Pramod Sah came near them and lifted the victim and took her away to his house and then, closed the door. Thereafter, the remaining children gave repeated knock at the door without any response whereupon his niece Archana Kumari rushed and informed that victim has been taken away by Pramod Sah, who after closing the door is assaulting. On getting this information, he along with his sister Asha Devi (P.W.6) rushed to the house of Pramod Sah where they found victim lying over bed in unconscious state. Pramod Sah was found absconding. His sister lifted her daughter, seen semi solid substance over her thigh containing some spot of blood which was wiped out. They also disclosed to the villagers regarding the occurrence. Then thereafter, brought the victim to P.S.C. in unconscious condition, where she is being treated. So, he claimed that his sister's daughter (Bhagini) has been raped by the accused Pramod Sah. P.W.6, Asha Devi along with Vijay Mandal, P.W.12, Chhedi Mandal, P.W. 7 stood as a witness thereupon.

3. After registration of Basopatti P.S. Case No. 19 of 2013 investigation commenced and concluding the same by way of submission of chargesheet facilitating the trial, which ultimately



concluded by way of recording verdict of guilt and sentence against the appellant, hence this appeal.

4. Defence case as is evident from mode of cross-examination under Section 313 Cr.P.C. is that of complete denial of the occurrence. Furthermore, it has also been pleaded that on account of land dispute, he has been implicated in this false and concocted case. To substantiate the same also examined D.W.1, his wife Radha.

5. In order to substantiate its case prosecution has examined 15 witnesses out of P.W.1, Dr. Rama Jha, P.W.2, Dr. Gargi Sinha, P.W.3, Dr. Ajay Narayan Prasad who examined the victim, P.W.4, Parmeshwari Devi, P.W.5, Ram Dular Mandal, P.W.-6 Asha Devi is mother of victim, P.W.7, Chhedi Mandal, P.W.8, Jai Kumar Mandal, P.W.9 Sanjay Kumar, part I.O., P.W. 10 Ram Shankar Paswan, main I.O. P.W. 11 Ram Hriday Mandal, seizure list witness, P.W.12, Vijay Mandal, P.W.13, Visheshwar Mandal, P.W. 14, Ramchandra Mandal-Informant, P.W.15, Ram Lakhan Mandal.

6. Side by side prosecution had also exhibited Exhibit-1, medical report, Exhibit 2-signature of P.W.2, Exhibit 2/A- signature of P.W.3. Signature of P.W.6 over the fardbeyan as Exhibit-2/b and signature of informant P.W.14 as Exhibit-2/c. Fardbeyan Exhibit-3, formal F.I.R., Exhibit-4 and F.S.L. report relating to Exhibit-5, relating to Exhibit-5/A.



7. From the conduct of the prosecution, it is evident that it had taken contrary steps as prescribed under law by way of tendering minority of the witnesses. Under Evidence Act, such kind of activity has not been acknowledged, prosecution ought not to have taken such steps. However, such activity is found due existing on the record. As a result of which, evidence of P.W.4, P.W.5, P.W.7, P.W.8, P.W.12, P.W.13 and P.W.15 pure worthless. During course thereof, at least prosecution could have taken care of P.W.7 as well as P.W.12 who were F.I.R. attesting witnesses. Furthermore, it is also apparent from the record that before examination by Medical Board consisting of P.W.1, P.W.2 as well as P.W.3 victim was examined at P.S.C. Basopatti where fardbeyan of the informant, P.W.14 was recorded. So, the Doctor who had examined victim at P.S.C. Basopatti was the best person who have of great importance as was the competent enough to opine on a rape on account of first hand examination of the victim but the reason best known to the prosecution was given up. After having properly treated at P.S.C. Basopatti, she was taken to and presented before the Medical Board on the following day where she was examined by three Doctors, P.W.1, P.W.2 and P.W.3. So, whatever they have found, happens to be after examination of the victim by a Doctor at P.S.C. Basopatti.

8. As recorded above majority of the witnesses were



tendered including that of the F.I.R. attesting witnesses P.W.7 as well as P.W.2, consequent thereupon the evidence of remaining witnesses have to be seen in order to search out whether the prosecution has succeeded by proving its case. P.W.6, Asha Devi mother of victim deposed that she does know not about the occurrence. Police had not recorded her statement whereupon she was declared hostile. During cross-examination at the end of the prosecution she had stated that victim is her daughter who at the time of occurrence was three years old. Then she admitted in para 3 that she had stated before the Police that on 11.02.2013 at about 3.30 P.M. her daughter along with 3-4 children were playing at her Darwaza but she had not stated before the Police that Pramod Sah came and took her daughter in his lap, taken to his house, closed the door whereupon other children said to open the door. Aforesaid event was informed by her niece Archana who also disclosed that victim was taken away. In para 4, she had further said that she had not made statement that she had gone to house of Pramod where she was lying over bed of Pramod. Pramod was absconding. There was blood as well as semi solid substance over thigh of her daughter, which was wiped away. Victim was taken to P.S.C. in semi conscious state. She also denied to have stated that Pramod had committed rape over her daughter. In para 5, she had admitted that her brother Ramchandra Mandal had recorded his



fardbeyan before the Police over which, she had also put her signature, which she had identified. In para 6, she had stated that she had gone in collusion with the accused and so, had concealed the real occurrence. During cross-examination at para 7, she had stated that she is unaware with the contents of the document over which she had put her signature.

9. P.W.14, informant had deposed that occurrence is about 11-12 months ago. It was 3-3.15 P.M. victim was playing in front of his house. His niece Archana came and informed his sister Asha Devi that Pramod Sah took away the victim. His sister rushed to the house of Pramod Sah raising cry where she saw mother of Pramod Sah having in her lap the victim and was conceding her. Then thereafter, he was declared hostile and during course of cross-examination at para 2 he had stated that he happens to be the informant. After recording of fardbeyan, Police read the same and after finding it correct, he put his signature (Exhibit). In para 3, he had stated that he had not made statement in his fardbeyan that Archana Kumari came and disclosed that Pramod had closed the door after taking the victim inside the house and is assaulting over which, he along with Asha rushed. When they came inside, house of Pramod they found victim lying over bed in an unconscious state. Pramod was absconding. His sister lifted victim in her lap whereupon, had seen the



blood as well as semi solid substance over her thigh, which was removed. He also denied to have disclosed the event to the villagers. Then he said that victim was taken to hospital. In para 4, he denied the suggestion that as he had gone in collusion with the accused, therefore, had concealed the truth.

10. During cross-examination, at para 5, he had stated that he had not seen any occurrence. He had instituted the case on hearsay basis. From whom, he received information, he could not say. In para 6, he had stated that Asha Devi is his cousin sister who had disclosed that during course of search of her daughter, her daughter dashed against Okhal as a result of which she sustained injury. Mother of Pramod lifted her. He had also filed a petition to that effect after coming to know about the same.

11. P.W.10 is the main I.O. who had deposed that after registration of the case as Basopatti P.S. Case No. 19 of 2013, investigation was entrusted to him and during course thereof, he had examined the witnesses, took further statement of the informant, visited the place of occurrence which happens to be the house of Pramod lying at village Virpur Paschim Tola. He had also gone inside the house more particularly the relevant room where bed was lying. In para 6, he had stated that he had seized full pant of Pramod Sah which was sent to F.S.L. for examination. Then thereafter, he was transferred



and so hand over charge. During cross-examination at para 8 he had stated that first of all victim was examined at P.S.C. Basopatti. Then thereafter, she was referred to Sadar hospital where no treatment was provided. In para 9, he had stated that fardbeyan of victim was recorded at Basopatti. He had not mentioned the fact in the case diary relating to reference of the informant from P.S.C. Basopatti to Madhubani. In para 10, he had stated that he seized the pant which accused was wearing. Another pant was provided by his father which he wore but the same was not mentioned in the case diary. In para 12, he had further stated that he had not found any spot over the full pant otherwise he would have recorded the same.

12. P.W.9 is the part I.O. who had submitted chargesheet against the accused and during midst thereof, he had transmitted the cloth of the victim for F.S.L. examination.

13. P.W.11 had identified his signature over seizure list but had denied any kind of statement having made before the Police and so was declared hostile.

After proper scrutiny of the ocular evidence as stated above, it is manifest that prosecution neither substantiated the occurrence of rape nor properly identified the appellant to be the rapist. However, the F.S.L. report which is available on record, in the facts and circumstances of the case, appears to be of house, as noting



was found over 'Ghagra' while semen was detected over full pant belong to the appellant (Ext. 5 series).

14. At the present moment, the other kinds of deficiency persisting in the prosecution case is also to be taken note of as, though during course of examination-in-chief of P.W.10, it is evident that he had not spoken the date on which appellant was apprehended but, from the record it transpires that he was apprehended on 11.02.2013 itself and so, at least an effort could have been taken on behalf of prosecution in terms of Section 53A of the Code of Criminal Procedure by way of producing the appellant for medical examination. Had there been, then in that circumstance, the recent cohabitation would have been exposed though, appellant on that very score was cautious and that happens to be reason behind of examination of D.W.11., his wife who deposed that they have copulation. Any way mere admission at the end of D.W. 1 who happens to be wife of appellant that she had entered into cohabitation with the appellant on 11.02.2013 at about 2-2.30 P.M. would not exonerate the prosecution to substantiate its case beyond all reasonable doubt. The other infirmities as pointed out is exercise of medical evidence in support of factum of rape (P.W.1, P.W. 2, P.W.3) coupled with non examination of Doctor who had examined the victim at an earliest.



15. That being so, after analyzing the over all situation coming out after minute observation of the materials available on the record it is found and that the prosecution failed to substantiate its case whereupon, the judgment of conviction and sentence recorded by the learned lower court could not survive. Consequent thereupon, is set aside. Appeal is allowed. Appellant is on bail hence, he is discharged from its liability.

16. From close scrutiny of the material, as discussed above, it is evident that prosecution was not at all fair in prosecuting the trial which sealed without any surveillance at the ends of high ups, which ought to have been more particularly, in a situation where a kid had taken victim of passionate activity at an adult. In the similar manner, the conduct of P.W.6 as well as P.W.14 have been P.W.6 mother of the victim happens to be so brazen that in court she had admitted that she had gone into camp of accused and so, she had concealed the truth and in likewise manner the activity of P.W.14, the informant who not only frustrated the trial but also tried to screen the culprit on one pretext or other by deposing falsely.

17. At the present moment, learned counsel for the appellant has submitted that before proceeding with the legal recourse available on that very score in terms of Section 195(1)(b) of the Code of Criminal Procedure commanding Section 193 as well as Section



211 of the I.P.C., an enquiry under Section 340 Cr.P.C. is to be carried out in presence of delinquent which should be entrusted to the learned lower court in terms of Section 340(d) of the Code of Criminal Procedure.

18. Accordingly, the learned lower court is directed to commence an enquiry under Section 340 of the Code of Criminal Procedure after appearance of P.W. 6 as well as P.W.14 and in case of their non-appearance, the personal execution report be taken note of which should be completed within three months from the date of receipt of the judgment as well as L.C. Record and would pass necessary order including filing of complaint in terms of Section 195(1)(b) of the Code of Criminal Procedure. If the circumstances, so necessitates without being influenced by the finding recorded hereinabove.

19. Office is directed to have the record transmitted to the learned lower court at an earliest.

(Aditya Kumar Trivedi, J)

Vats/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	17.08.2017
Transmission Date	17.08.2017

