

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.372 of 2002

Arising Out of PS.Case No. -81 Year- 1997 Thana -Sahkund District- Bhagalpur

- =====
1. Sanjay Singh, Son of Puna Singh.
 2. Foken Singh, Son of Karmu Singh.

All resident of village – Banama, P.S.-Sahkund, District-Bhagalpur.

.... Appellants

Versus

State of Bihar

.... Respondent

With

=====

Criminal Revision No. 588 of 2002

Arising Out of PS.Case No. -81 Year- 1997 Thana -Sahkund District- Bhagalpur

=====

Sunaina Devi, Wife of Kilash Rao, Resident of Village – Pananpur, P.S.-Sahkund,
Distt-Bhagalpur.

.... Petitioner

Versus

1. State of Bihar.
2. Sanjay Singh, Son of Pena Singh
3. Foken Singh, Son of Karan Singh
4. Ram Singh, Son of Chaturbhuj Singh.
5. Tuntun Singh, Son of Asdo Singh.

All residents of village – Banama, P.S.-Sahkund, Distt-Bhagalpur.

.... Respondents

=====

Appearance:

(In CR. APP (SJ) No.372 of 2002)

For the Appellant/s : Mr. Bijoy Kant Mishra, Advocate.

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

For the Informant : Mr. Animesh Kumar Mishra, Amicus Curiae.

(In CR. REV. No.588 of 2002)

For the Petitioner/s : Mr.
Mr.

For the Respondent/s : Mr. Bijoy Kant Mishra, Advocate.

=====

**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 04-08-2017

This appeal has been preferred against the judgment



and order of conviction dated 04.06.2002 and order of sentence dated 13.06.2002 passed by the learned Additional District and Sessions Judge-VII, Bhagalpur in Sessions Trial No. 362 of 1999 arising out of Sahkund P.S. Case No. 81 of 1997, whereby convicting the appellants for the offence punishable under Section 376/34 and Section 457 of the Indian Penal Code and sentencing them to undergo R.I. for five years and slapping with fine of Rs. 1,000/- each and in default of payment of fine to further undergo R.I. for six months and no sentence was awarded under Section 457 of the Indian Penal Code. While the Criminal Revision has been filed by the informant against the judgment and order of acquittal of accused Ram Singh and Tuntun Singh and quantum of punishment awarded to the accused Sanjay Singh and Fokan Singh.

2. The factual matrix of the case is that Sahkund P.S. Case No. 81 of 1997 was instituted under Sections 376 and 323/34 of the Indian Penal Code against the accused persons, namely, Sanjay Singh, Fokan Singh, Ram Singh and Tuntun Singh on the basis of the written Statement of Sunaina Devi, wife of Shri Kailash Rai, Village-Parmanpur, P.S.-Sahkund, District-Bhagalpur recorded by S.I. Haradhan Marandi of Sahkund Police Station on 01.11.1997 at 10 A.M., with the allegation, in succinct that, in the past night, while the informant was sleeping in her *Osara* at around 9 P.M., she heard



sound of intruding some person in her courtyard. She woke up and in the light of earthen lamp witnessed Sanjay Singh opening the door of the courtyard. Thereafter, three persons, namely, Ram Singh, Fokan Singh and Tuntun Singh entered in her courtyard. Sanjay Singh and Fokan Singh came closer to her. Ram Singh was standing in the courtyard while Tuntun Singh on the door of the courtyard. With intention to outrage her modesty, Sanjay Singh and Fokan Singh tried to shove her on the cot. On making alarm by her, Fokan Singh assaulted on her face and below the eye by means of but of the pistol and caught hold her hands and thereafter, Sanjay Singh forcibly committed rape against her. Following the *halla*, Sanjay Singh dragged her towards the well located near the Hillock, Fokan Singh gagged her mouth and Ram Singh was pushing her from back side while Tuntun Singh was standing on watch. They forcibly took her near the well of Bhanu Singh close to the hillock and shoved her on the ground. Thereafter, Fokan Singh committed rape against her. Thereafter, they left her extending threatening of dire consequences in case of divulgence of the occurrence to the police or to the people and also assured to give her Rs. 1,000/- for treatment and left the scene. Thereafter, she regressed to her house, but she did not divulge the occurrence to anyone in the night scaringly rather divulged the same to her brother Munna Rai on the following morning.



3. The aforesaid case was investigated by the I.O. and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons, namely, Sanjay Singh, Fokan Singh, Ram Singh and Tuntun Singh under Sections 452, 341, 323, 376 and 364/34 of the Indian Penal Code.

4. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions and on transfer the case came in the *seisin* of the learned lower court.

5. Charge against accused persons, namely, Sanjay Singh and Fokan Singh were framed under Sections 457, 341, 366, 323 and 376 of the Indian Penal Code and charge against accused persons, namely, Ram Singh and Tuntun Singh was framed under Sections 457, 341, 366 and 376/109 of the Indian Penal Code. Charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

6. To substantiate its case, in ocular evidence, the prosecution has been able to examine altogether nine prosecution witnesses namely, Munna Rai (PW-1), Dasarath Bind (PW-2), Chamak Lal Bind (PW-3), Sikander Bind (PW-4), Ramdeo Bind (PW-5), Gurudeo Bind (PW-6), Sunaina Devi (PW-7), Dr. Jaya



Padma Sindhu Tigga (PW-8) and S.I. Haradhan Marandi (PW-9). Out of the aforesaid witnesses, PW-6 happens to be tendered witness. Prosecution also filed several documents by way of documentary evidence.

7. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming to have been falsely implicated in this case due to land dispute. In buttress of the case, in ocular evidence accused persons have examined three defence witnesses, namely, Ramdeo Thakur (DW-1), Ramdeo Mandal (DW-2) and Balli Thakur (DW-3).

8. After hearing the parties and perusing the record, the learned trial court convicted the accused Sanjay Singh and Fokan Singh for the offence punishable under Sections 376/34 and 457 of the Indian Penal Code and sentenced them as detailed in the earlier paragraph, while acquitted the accused Ram Singh and Tuntun Singh.

9. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, convict Sanjay Singh and Fokan Singh have filed this Criminal Appeal, while being aggrieved with the aforesaid order of acquittal of Ram Singh and Tuntun Singh and quantum of sentence awarded to the convicts, the informant has filed the aforesaid Criminal Revision.



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 appellants beyond all reasonable doubts or not.

11. It is submitted by learned counsel for the appellants that PW-1, PW-2, PW-3, PW-4 and PW-5 do not happen to be the eye witness of the occurrence. Though the said witnesses have claimed to have arrived at the place of occurrence responding *halla* made by the victim and witnessed the accused persons dragging away the victim from her house, but none of them had informed the occurrence to the police in the night albeit out-post Pachrukhi is located 1 or 1½ Kilometer away from the place of occurrence. The aforesaid aspect of the case happens to be against natural course of conduct and rules out witnessing of the occurrence by the aforesaid witnesses. As if the said witnesses had witnessed the occurrence, they would have informed the occurrence to the police which was not far away from the place of occurrence. It is further submitted that the victim is a questionable character lady. She had left her house in the night along with her paramour, but on *halla* made by her brother and others finding her absent in the house, she regressed to her house and slept at night without informing anyone about the reason of leaving the house. On the following morning, she lodged this false and frivolous case against the accused persons due to animosity over land



dispute and to save her skin from chiding by her parents. The victim is the only material witness of the case, but the statement of the victim is full of vital contradictions with the evidence of other witnesses as well as with the prosecution case. In view of the aforesaid contradiction, the evidence of victim is not worth credence and reliable and no conviction can be made on the basis of the said contradictory statement of the victim. Doctor did not find any sign of rape against her. The said aspect of the case also rules out any occurrence of rape against the victim.

12. On the other hand, learned counsel for the State defending the impugned judgment and order of conviction and sentence submitted that PW-1 and PW-2 have supported the case as eye witnesses of the occurrence and the victim has also supported the occurrence *in toto*. Though there is some contradiction in the evidence of the victim but that is immaterial and does not shatter the prosecution case. The learned trial court correctly appreciating the evidence, facts and law involved in the case has rightly convicted the accused Sanjay Singh and Fokan Singh and acquitted the accused Ram Singh and Tuntun Singh. The impugned judgment and order of conviction does not suffer from any impropriety and illegality and this appeal has no merit and liable to be dismissed.

13. Mr. Animesh Kumar Mishra, learned Amicus



Curiae for the informant in Criminal Revision has submitted that five witnesses PW-1 to PW-5 happens to be the eye witnesses of the occurrence and they have totally supported the prosecution case. The victim has also supported the prosecution case of committing rape against her twice i.e. at her house and near the well of Bhanu Singh located near the Hillock. There is no material contradiction in the testimony of the witnesses to discard it. I.O has also supported the place of occurrence. The injury sustained by the victim also stands corroborated by the medical evidence. The learned lower court wrongly acquitted the accused Ram Singh and Tuntun Singh and on the same set of facts convicted Sanjay Singh and Fokan Singh. It is further submitted by him that the offence is of gang rape and the sentence awarded by the court taking lenient view is not sustainable rather in case of gang rape, severe and exemplary punishment must be given. Though the accused Sanjay Singh and Fokan Singh have been convicted under Section 457 of the Indian Penal Code, but they have not been awarded any sentence for the said offence.

14. Heard learned counsel for the appellants, learned counsel for the State, learned Amicus Curiae and perused the record.

15. From perusal of the testimony of PW-1, PW-2, PW-3, PW-4 and PW-5, it appears that the aforesaid witnesses have stated in their respective examination-in-chief that they arrived at the



house of the informant at the time of occurrence responding halla made by her and witnessed the accused persons armed with fire arms taking the informant with them on protest made by her brother, namely, Munna Rai. They extended threatening of dire consequences to him. But the said witnesses have not witnessed the occurrence of committing rape on the informant by the accused persons either at her house or near the well of Bhanu Singh located near the Hillock rather explicitly stated that when the victim regressed to her house after the occurrence of rape against her near the well of Bhanu Singh and releasing her by the accused persons, she divulged entire occurrence of rape on her by the accused persons in the night of the occurrence to them. Though the victim has also stated in her examination-in-chief about the divulgence of the occurrence of committing rape against her by the accused persons both at her house and near the well of Bhanu Singh to the aforesaid witnesses in the night of the occurrence itself, but the aforesaid statement of the said witnesses as well as of victim appears to be in quite contradiction with the prosecution case as alleged in the written statement of the victim, as in the written statement, she has candidly stated that when she regressed to her house after the occurrence of rape against her by the accused persons in the night and releasing her by the accused persons, villagers and her family members were sitting on her door,



but she did not divulge the occurrence to them in the night rather to his brother Munna Rai on the following morning.

16. Though the witnesses PW-1 to PW-5 in their statements recorded before the court have stated that they had divulged to the police the factum of witnessing occurrence of taking away the victim by all the accused persons forcibly and on regression at her house, victim had divulged committing of rape against her by the accused persons both at the house and near the well of Bhanu Singh, but from the perusal of the testimony of the I.O. examined in this case as PW-9, it appears that I.O. has denied giving such statement by the aforesaid witnesses to him under Section 161 of the Code of Criminal Procedure. Thus, the aforesaid statement of the said witnesses given before the court happens to be in contradiction with that given to the I.O. under Section 161 of the Code of Criminal Procedure and creates serious doubt about the sanctity and truthfulness of their statements. Moreover, the I.O. in Para-14 of the cross-examination has also stated that the witness Ramdeo Bind (PW-5) is not the eye witness of the occurrence.

17. So far as the testimony of the informant (PW-7) is concerned, she also appears to have deposed before the court in quite contradiction to the prosecution case as alleged in the written statement. As as per the written statement, she has explicitly stated



that only Sanjay Singh had committed rape against her at her house and thereafter following *halla* in the village, all the accused persons forcibly took her near the well of Bhanu Singh located near the Hillock and Fokan Singh committed rape against her. In the said statement, she has not taken the name of Ram Singh and Tuntun Singh in committing rape on her, though at the foot of the written statement, she has claimed that all the four accused persons committed rape against her at the house as well as near the well but the said claim appears to be not specific rather general and omnibus in nature. The specific allegation as discussed by me hereinabove has been made by her in the body of the written statement, but in her statement recorded before the court, she has stated that all the four accused persons committed rape on her at her house and also near the well of Bhanu Singh. In her written statement, she has candidly stated that she did not divulge the occurrence to his family members and villagers in the night on regression at her house after the occurrence of committing rape against her by the accused persons near the well, but in quite contradiction to the aforesaid statement, she has stated before the Court that she had divulged the occurrence of committing rape against her by the accused persons at her house and near the well to her family members and villagers on regression to her house after the occurrence in the night itself. Though in her



statement before the Court, she has stated that all the four accused persons committed rape against her both at her house and near the well of Bhanu Singh but the I.O. has denied giving statement by the victim before him under Section 161 of the Code of Criminal Procedure regarding committing of rape on her by the accused Ram Singh and Tuntun Singh at her courtyard. He has also denied of giving statement by the informant to him regarding divulgence of the occurrence in the night to anyone. The informant has stated in Paragraphs 12 and 15 of her cross-examination that some blood of her and semen of accused persons were fallen on her attire and she has handed over it to the I.O. who prepared seizure list of the same. But in quite contradiction to aforesaid statement of the victim (informant), I.O. has stated in Para-10 of his cross-examination that the victim had not handed over her attire to him. The informant has stated in Para 12 of her cross-examination that the boundary wall was partly damaged during the course of scaling by the accused persons in the night of the occurrence, but the I.O. in Para 10 of his cross examination stated that he had not found boundary wall damaged. The informant has stated in Para 26 of her cross-examination that during the course of committing rape on her at her house, her entire bangles were broken, but the I.O. in Para-10 of his cross-examination has stated that he had not found any piece of broken bangle at the



courtyard. Thus, there is vital contradiction between the statement of the victim-informant and the prosecution case and between the statement given before the court and that before the I.O. under Section 161 of the Code of Criminal Procedure regarding manner of occurrence, number of accused persons involved in the occurrence of rape on her, time of divulgence of occurrence to her family members and villagers and the person to whom she has divulged the occurrence. In view of the aforesaid vital contradiction, the testimony of the victim does not appear to be convincing, trustworthy and worth credence and does not inspire my confidence to hold conviction of the accused persons basing upon her testimony.

18. Same is the status of testimony of other witnesses. PW-1 to PW-5 is also in vital contradiction to the prosecution case and to the statement given before the I.O. under Section 161 of the Code of Criminal Procedure regarding the persons involved in the occurrence of rape against her, manner of occurrence, time of divulgence of occurrence by the informant and the person to whom she has divulged the occurrence.

19. Thus, in view of the aforesaid contradiction, testimony of the said witnesses also does not appear to be convincing, reliable, trustworthy and worth credence.

20. The prosecution case of committing rape against



the victim by the accused persons also does not stand corroborated by the medical evidence. As as per the prosecution case and account of the witnesses, four accused persons committed rape against her twice i.e. at her house and near the well in turn for around one hour at each place, but the Doctor has not found any external and internal injury on vagina and perineum of the victim. The doctor has also not found any spermatozoa in the vaginal swab of the victim and has failed to opine as to whether any offence of sexual intercourse has been committed against the victim.

21. As per the account of PW-2 and PW-3, out-post Pachrukhi is located at around 1 km to 1½ Km from the house of the informant and as per the account of witnesses, rape at her house was committed against the victim for around 1 hour and number of persons including the brother of the informant had congregated at her house in the night of occurrence, but no information of the occurrence was given by anyone to the police at out-post Pachrukhi which happens to be against natural course of conduct and goes to create serious doubt about the prosecution case.

22. Though the doctor has found swelling and tenderness in the left side of the eye and on left cheek and bruise in the middle left shoulder and sub-conjunctival hemorrhage on the outer canthus of the left eye of the victim. But the said injuries also



do not conclusively indicate to have been inflicted by the accused in the occurrence of committing rape. Moreover, the doctor examined in this case as PW-8 has stated in Paragraphs 10 and 14 of her cross-examination that any infection of the eye too may cause swelling on or around that eye and any disease of the eye may cause conjunctival hemorrhage in that eye.

23. In view of the aforesaid contradictions between the prosecution case and statement of the witnesses and in the statement of the witnesses inter se and between the statement of the witnesses given before the court and that given before the I.O. under Section 161 of the Code of Criminal procedure, the statement of witnesses does not appear to be trustworthy, reliable and worth credence and does not inspire my confidence to hold conviction of appellants relying on the aforesaid testimonies.

24. In the aforesaid facts and circumstances, I find and hold that the prosecution has utterly and miserably failed to bring home the charge levelled against the accused persons beyond all reasonable doubts by adducing convincing, cogent, trustworthy and reliable ocular and documentary evidence. Hence, accused Sanjay Singh and Fokan Singh are entitled to be acquitted from the charges levelled against them. Accordingly, this appeal is hereby allowed and the impugned judgment and order of conviction and sentence passed



by the learned trial court is set aside. As the appellants, namely, Sanjay Singh and Foken Singh are on bail, they are discharged from the liability of their bail bonds.

25. So far as the revision application is concerned, in the facts and circumstances of the case, I do not find any merit in the revision filed by the informant and accordingly, it is dismissed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	23.08.2017
Transmission Date	23.08.2017

