

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.115 of 2015

Arising Out of PS.Case No. -50 Year- 2012 Thana -BARUN District- AURANGABAD

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1. Rinku Chaudhary son of Shyam Nandan Chaudhary resident of Village-
Khemda, P.S. - Barun, District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mr. Meena Singh, Advocate

For the Respondent/s : Mr. Z. Hoda , A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 15-09-2017

The sole appellant, Rinku Choudhary, has been found guilty for an offence punishable under Section 323 of the Indian Penal Code and sentenced to undergo Simple Imprisonment for 6 months with a fine of Rs. 1000/- and in default thereof, to undergo Simple Imprisonment for 75 days, Rigorous Imprisonment for 2 years under Section 354 Indian Penal Code with a fine of Rs. 2000/- and in default thereof, two months Simple Imprisonment and 3 years



Rigorous Imprisonment for the offence under Section 457 of the Indian Penal Code with a fine of Rs. 2000/- and in default thereof, two months Simple Imprisonment with a further direction to run the sentences, concurrently vide judgment of conviction dated 03.02.2015 and order of sentence dated 04.02.2015, passed by the learned Ad-hoc Additional Sessions Judge-IV, Aurangabad in Sessions Trial No. 150 of 2012 and 25 of 2012 arising out of Barun P.S.Case No. 150 of 2012.

1) P.W.-5, Mamta Kumari, the informant, aged about twelve years had filed a written report on 20.03.2012 alleging therein that in the preceding night while she had slept along with her younger sister, Puja Kumari, all of sudden, one person made house trespass, came near to Chauki and caught hold of her neck whereupon, she raised an alarm. On this, he tried to press her mouth. On her cry, her mother as well as her sister, Puja Kumari awoke. Her mother,



Shakuntala Devi came inside her room and all of them caught hold the aforesaid miscreant and then identified him to be her neighbour, Rinku Choudhary, son of Shyam Nandan Choudhary who, at that very moment lifted a danda, which was kept in the room and gave a danda blow over the head of the mother of the informant whereupon he succeeded in fleeing. It has also been divulged that he had entered into his house with ulterior motive. It has also been disclosed that during course of escape, Rinku Choudhary sustained injury. After investigation of the case, charge sheet was submitted, whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

2) The defence case, as is evident from cross-examination as well as statement recorded under Section 313 of the Cr. P.C. is complete denial. It has also been suggested that prosecution party was apprehensive that there was some sort of relationship in between appellant with the informant,



Mamta Kumari and on account thereof, while he was going to meet natural call in the night, he was assaulted by the prosecution party for which a case has been instituted, however, nothing has been adduced on behalf of the defence to substantiate the same.

3) In order to substantiate the case, the prosecution had examined altogether seven P.Ws. who are P.W.1, Nanhak Choudhary, P.W.-2, Krishna Choduhary, P.W.-3, Shankuntala Devi(mother of the informant and injured), P.W.-4, Puja Kumari, P.W.-5, Mamta Kumari, P.W.-6- Dr. Vinod Sarin and P.W.-7, Lallan Singh. Side by side also exhibited documents as Exhibit-1- Written report, Exhibit-2- Injury Report and Exhibit-3- formal F.I.R.

After going through the evidence adduced on behalf of prosecution, it is evident that they have admitted presence of injury not appellant, Rinku Choduahry.

4) From the evident of P.W.-7, Investigating



Officer, it is evident that Rinku Chodhary was apprehended from his house and then was remanded to judicial custody. During cross- examination at para-12, he had admitted that at that time when Rinku Choudhary was apprehended, he was injured but he had not prepared injury report relating thereto. He took Rinku Choudhary to Barun Police Station and then was sent to Barun Hospital, through Choukidar for treatment. At that time, he had prepared memo of arrest against the aforesaid Rinku Choduary. In para-13, it is further evident that he had not obtained injury report relating to Rinku Chodhary.

5) Furthermore, from the order dated 21.03.2012, it is evident that when Rinku Choudhary was produced for remand in this case, he was injured and the injury was duly bandaged. Prosecution also had not denied presence of injury over Appellant and for that, it has been disclosed that during course of fleeing, he dashed against door frame, but now the



witness became able to see in absence of light, is a circumstance, which has to be seen from the evidences adduced on behalf of the prosecution.

6) Apart from this, P.W.-1, para-6, P.W.-2 para - 7, P.W.-3 para-5, P.W.-4 para-9 have admitted presence of Rinku Choudhary at the hospital for the treatment. P.W.-2 as well as P.W.-3 had admitted that there was a complaint lodged by the Uncle of Rinku Choudhary namely, Manoj Choudhary. P.W.-2 had gone to the extent that Mar-pit took place in between both the parties and case and counter case had been filed on behalf of both the parties is another circumstance which needs proper consideration while analyzing the evidence.

7) It is not an obligation on the part of the prosecution to explain the injury, having sustained by the accused, more particularly, when it happens to be simple in nature, however, could not exonerate the prosecution to



prove the case. To adjudge the same evidence in detail to be taken note of P.W. 1 also, who is neighbor of the informant.

After going through his Examination-in –Chief, it is evident that he had deposed to the extent that in the night of 19/20-03-2012 while he was sleeping in his house, accused entered in the house and caught throat of informant and tried to press her mouth, on raising alarm, he came out and gone to the Darwaza where he saw people having apprehended Rinku Choudhary. Rinku Choudhary had attempted to commit rape upon Mamta on account there of, he was apprehended. Rinku Choudhary lifted danda and gave a danda blow over the mother of the informant as a result of which, she sustained injuries over her head. Thereafter, he returned back to his house. During cross-examination at para-4, he stated that after hearing cry of the mother of the informant, who had received injury on her head, he came to know about the occurrence. In para-11, he had stated that he had not



disclosed to any body about the occurrence.

8) P.W.-2 had deposed that when after hearing hue and cry, he rushed to the place of Mamta Kumari on the alleged date and time of occurrence, he saw the mother of Mamta Kumari in an injured condition having injury over her head. Then he deposed that Rinku Choudhary after making house trespass attempted to commit rape. On cry, when mother came in rescue, Rinku Choudhary assaulted her with lathi and then he fled away. At para-5, he had stated that when he reached at the place of occurrence, there was large number of people present there but he is unable to disclose the name of any of them. He had not done any thing. Then, thereafter, he returned back.

9) P.W.-3 is the mother of victim Mamta, injured and she had deposed that on the alleged date and time of occurrence, she was sleeping in different room, while her daughters were sleeping in different room. After hearing cry



of both the daughters, she rushed and caught hold of Rinku Choudhary. Her daughter had disclosed that Rinku Choudhary, after pressing her neck, had attempted to commit rape upon her. Accused fled away after assaulting her with lathi as a result of which she sustained injury over her head. Then he went to Police station with her daughter, where fardbeyan was recorded and, thereafter, she was shifted to hospital. In the cross examination at para-4, she had deposed that she had gone to Police Station in the night itself. The Sub Inspector, Barun P.S. had recorded fardbeyan where upon her daughter put her signature. She also put her thumb impression. Then, he had denied the suggestion in para-6, that it is wrong to say that she had not gone to the Police station in the night. In para-9, she had stated that she had gone to Police Station in the night itself along with her daughter. Again they both visited Police Station on the following morning and the case was registered in the



morning. In para-10, she had stated that her house has Northern front. Her daughter slept over Chouki at western side room. The main gate was closed with lock but lock was not broken. After hearing cry of her daughter, she also raised alarm. Then at para-11, she had shown houses in her boundary, but she failed to say whether those persons came or not.

10) P.W.- 4, Puja Kumari happens to be sister of the informant, aged about 10 years. From her deposition, it is not clear whether the Court had exercised to identity her of normal understanding. However, she had deposed that on the alleged date and time of occurrence, she slept along with her sister. Rinku Choudhary made house trespass, came near her sister, pressed her mouth and then entered into scuffle with an intention to commit rape. On her cry, her mother came inside the room and caught hold Rinku Choudhary, over which he gave lathi blow and then fled away. During course



of cross-examination at para-5, she had stated that it was awaken since before but she had not seen Rinku Choudhary while entering inside her room due to darkness. When her sister cried, then she understood that some body is there and then, she rushed making alarm. She rushed to her mother and awaken her. In para-7, she had spoken that she and her mother became afraid of. There was darkness in her room. Her mother came in her room and caught hold the accused Rinku Choudhary, who fled away after assaulting her on head and then they all had gone to sleep.

11) P.W.-5 is the informant, who had deposed that on the date of occurrence and time of occurrence, she slept with Puja Kumari. At that very time, one boy came inside room whom she identified as Rinku Choudhary. He came and then pressed her mouth and made effort to commit rape. She raised alarm. The accused tried to untie the string of her salwar. Till then, her mother came and tried to caught



hold him. Accused lifted lathi, have blow and then fled away. She along with her mother had gone to Police Station where she lodged a case. Identified the accused police sent her mother to Hospital for treatment.

12) During cross-examination at para-6 she had stated that it was dead of night. There was pitch dark. Then said at para-7 that on account of darkness that they have not raised alarm. None of neighbors came. She along with her mother had gone to the Barun Police Station at night itself. From Police Station, they were sent to hospital. Thereafter, they returned back to the house and slept. In the morning they have gone to the neighbors and disclosed with regard to the occurrence. In para-8, she had stated that she did not know the accused. For the first time, she had seen the accused. She was not knowing his name since before. After, having been disclosed by her mother, she came to know about his name.



13) P.W.-6 is the doctor, who examined the mother of informant and found one lacerated wound $\frac{3}{4}$ " x $\frac{1}{4}$ " x $\frac{1}{6}$ ", simple in nature.

14) P.W.-7 happens to be I.O. of the case, who recorded the F.I.R. proceeded with the investigation, arrested the accused and then, thereafter, submitted chargesheet. During cross examination at para-9, he had admitted that it was dark night and he had not found any source of light at the house of the informant.

15) From the evidence, as discussed herein above, it is evident that conduct of P.W.1 and P.W.-2 happens to be abnormal. P.W.-1 had claimed that when he reached at the P.O. , the accused was already apprehended by so many persons and during course thereof, accused inflicted danda blow over the head of Shakuntla Devi. How it materialized, it is the matter of concern, as the Appellant was apprehended by others, not by Shankuntala. In like wise



manner the conduct of P.W.-2, who just after visiting the place returned back without any activity.

16) Now coming to the evidences of P.W.-3, 4 and 5, none of them had deposed that Court yard happens to be duly fenced though P.W.-3 had deposed that main gate was locked and aforesaid lock was not broken, at the other end, the Investigating Officer had not found during course of his objective finding relating to P.O. that the Court yard was duly fenced and the main gate was affixed. In like wise manner, neither P.W.-3, P.W.4, P.W.5 had deposed that door was present with the room, nor the I.O. had dislodged the same, whether room was closed or opened, the witnesses also did not say. None of the witnesses had disclosed that they chased the appellant then how they came to know about the injury sustained by the appellant.

17) As held above, the prosecution is not under the obligation to explain the injury sustained by the accused



but in the present facts and circumstances of the case, when the evidence of prosecution witnesses, as is evident, found disjunct on account thereof, admitting injury as well as presence of counter version by way of counter case, appears to be fatal to the prosecution case.

18) Consequent thereupon, the judgement of conviction and sentence recorded by the learned lower Court, did not find favour. The same is set aside.

19) The Appeal is accordingly, allowed. The appellant is on bail, hence he is discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

Sudha/-

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