

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.394 of 2015**

Arising Out of PS.Case No. -176 Year- 2009 Thana -BHAGWANPUR District-
VAISHALI(HAJIPUR)

=====

Laxman Sahani, son of Sri Bhikhari Sahani, resident of village -Laxmi Ram Asoi,
P.S. Bhagwapur, Distt- Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi-Amicus Curiae

For the Respondent/s : Mr. Binod Bihari Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 23-06-2017

As learned counsel for the appellant is not present, on account thereof, Mr. Arun Kumar Tripathi has been requested to assist the Court as an Amicus Curiae.

2. Vide judgment of conviction dated 06.02.2015, the sole appellant Laxman Sahani has been found guilty for an offence punishable under Section 376, 323, 342 of the I.P.C., accordingly been directed to undergo rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.500/- and in default thereof, to undergo simple imprisonment for one month additionally under Section 376 I.P.C., six months under Section 323 I.P.C. and six months under Section 342 I.P.C. with a further direction to run the sentences concurrently vide order of sentence dated 11.02.2015 by the Additional Sessions Judge-3rd, Vaishali at Hajipur in Sessions Trial



No.211 of 2011.

3. Victim (name withheld), PW-8 gone to Police Station on 28.09.2009 and gave her fard-bayan which, as is evident from the evidence of PW-12 Raj Kumar Sah(I.O.) to be in writing of Chaukidar alleging inter alia that in the preceding night i.e. (27.09.2009) at about 10.00 p.m., she accompanied daughter-in-law of her neighbour Nagendra Sahani along with their children to visit Durga Puja Mela at Asoi Chowk where Laxman Sahani met. Laxman Sahani happens to be her Fufera bhai (cousin brother). He disclosed that her son is weeping and so, her mother is calling upon. She accompanied him. When they both came near Janera field of Ram Ikbali Singh, Laxman Sahani, all of a sudden, caught hold of her, dragged her to Janera field, threw her on ground, assaulted her over her mouth and then, committed rape after lifting her Sari and petticoat. After commission of rape, Laxman Sahani gone towards Mela. She came out from Janera field where she found her co-villager Munna Sahani (PW-1), Shivchandra Sahani (PW-4), Prasad Sahani (PW-7), Devsharan Sahani (PW-6), Jitendra Sahani (PW-5), whom she disclosed regarding the occurrence. They carry her to her house where she also disclosed to her mother Meena Devi (not examined) as well as grand father Shivmangal Sahani (PW-9). Furthermore, on account of assault as well as feeling some sort of abnormality, she was locally treated by Dilip Jha (PW-11).



4. Bhagwanpur P. S. Case No.176 of 2009 has been registered followed with an investigation and after concluding the same, chargesheet was submitted whereupon trial commenced and concluded in a manner, the subject matter of instant appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been suggested that victim and the appellant both were lovebirds and she was inclined to marry, but as the appellant declined to marry, got him implicated in this false case. However, neither any DW nor any kind of document has been adduced on behalf of defence.

6. In order to substantiate its case, prosecution had examined altogether 13 PWs, out of whom, PW-1 Munna Sahani, PW-2 Sona Devi, PW-3 Kiran Devi, PW-4 Shivchandra Sahani, PW-5 Jitendra Sahani, PW-6 Devsharan Sahani, PW-7 Prasad Sahani, PW-8 Bibha Devi, Pw-9 Shiv Mangal Sahani, PW-10 Dr. Meera Verma, PW-11 Dilip Jha, PW-12 Raj Kumar Sah and PW-13 Anil Tiwari. Side by side, had also exhibited injury report Exhibit-1, endorsement over written report Exhibit-2, written report as Exhibit-3.

7. Learned Amicus Curiae while challenging the finding recorded by the learned lower Court has submitted that from the material available on the record, it is evident that no rape was committed over the victim. To substantiate such plea, it has been



submitted that doctor had negatived the allegation as, had not found any kind of injury over her genital area as well as over her body, save and except, one bruise over lip that does not co-relate with occurrence. In likewise manner, no spermatozoa has been found in the vaginal swab. Apart from this, it has also been submitted that I.O., PW-12 had visited the place of occurrence, but had not recorded any kind of adverse objective finding at least Janera having been trampled. That being so, the place of occurrence as alleged and the manner of occurrence as suggested is not at all found substantiated by the prosecution itself.

8. With regard to status of the witnesses, it has been submitted that PW-1, PW-2, PW-3 have not supported the case of the prosecution and so, they were declared hostile. PW-4, PW-5, PW-6, PW-7, PW-9 are hearsay witnesses, whereupon their evidences happen to be inadmissible. PW-10, the doctor did not support the allegation and in likewise manner, the PW-12, the I.O. rules out commission of any kind of occurrence in the Janera field of Ram Ikbali Singh. Furthermore, it has also been submitted that there happens to be specific disclosure in the written report that victim was locally examined by local quack Dilip Jha, who has been examined as PW-11 and who during course thereof, disowned the same. Furthermore, PW-8 during course of her evidence did not stand on that very score.



9. The improbability of the case, side by side, the activity of the victim in consonance with her family members is of paramount consideration and for that, referred evidences of the respective witnesses. According to learned Amicus Curiae, PW-5 Jitendra Sahani, who happens to be brother of victim and PW-9 Shiv Mangal Sahani, who happens to be the grand father of alleged victim have deposed that Laxman Sahani, accused/ appellant as well as they are not on talking term as well as visiting term while the victim PW-8 had stated that she knew Laxman Sahani since before. If the evidence of PW-5 and 9 is accepted, then in that event, appellant had no occasion to talk with PW-8, and in likewise manner, PW-8, victim had got no occasion to put reliance upon the disclosure made by the appellant that her child was weeping and so, her mother was calling her as accused/ appellant had no opportunity since before on that score. Under the garb of aforesaid improbability, it has been submitted that both of them might have been seen by the villagers in awkward position as a result of which, to save her own skin, this false case has been instituted. In an alternative, it has also been submitted that from the medical evidence, it is not clear that it happens to be a case of rape and such finding is found more probable as per objective finding of the I.O., which did not support the P.O. and so, it may be in terms of outraging modesty of PW-8 or an attempt of rape and for that, it has been submitted that appellant remained under custody till



having been granted bail by this Court on 01.09.2015, that means to say, from 29.09.2009 to 01.09.2015.

10. The learned Additional Public Prosecutor controverted the grounds having been raised on behalf of learned Amicus Curiae and submitted that so far Indian continent is concerned, chastity of a woman happens to be like valuable security. Furthermore, it has also been submitted that commission of rape not only happens to be a physical violence rather it happens to be a Scar which the victim carries till her last day of her life whereupon such eventualities should not be lightly considered. Furthermore, the learned Additional Public Prosecutor also submitted that it happens to be the reason behind keeping the testimony of victim at highest pedestal without requiring corroboration. Unless and until, there happens to be some sort of flaw visualizing there from, the conviction and sentence recorded therefor, should not be interfered with.

11. It goes without saying that in a rape case, the evidence of the victim happens to be at upper pedestal and it should be accepted, admitted, relied upon unless some sort of abnormality is found from her conduct whereupon, apart from corroboration being sought for, the impact of improbability is also to be seen. In the aforesaid background, now the status of the record is to be seen. The learned Amicus Curiae is right in stating that PW-10, doctor, who examined the victim on the following day of the occurrence, had not



found any kind of injury over the genital area of the victim as well as over other parts of the body, save and except, minor abrasion was found on the left side of the upper lip. Furthermore, she had also opined regarding absence of spermatozoa. Right from the initial version, the status of appellant being Fufera (cousin) brother of victim is found admitted. PW-5, who happens to be brother of victim, though had corroborated the statement of the victim, however, during his cross-examination at Para-6 had stated that he is not on inimical term with Laxman Sahani. His house lies 200 feet away from his house. He is not on visiting term and in likewise manner, the victim was/ is also not on visiting term. PW-9, who happens to be grand father of victim, though in examination-in-chief had reiterated, claiming himself to be an hearsay witness. In cross-examination at Para-7 had stated that Laxman Sahani is not on visiting term. If really such situation prevails, then there was any occasion for victim to put reliance upon the disclosure made by the appellant at Mela that as her child is weeping, therefore, her mother is calling. The evidence of victim, PW-8, is also to be taken into consideration in the present context, who in Para-6 had deposed that she is knowing Laxman Sahani since 10-12 years. However, she declined suggestion that she was willing to marry with him. PW-5, PW-9 and victim, PW-8 have declined the suggestion on that very score, but the fact remains that when appellant Laxman Sahani was not on visiting term, then in that event, was it



probable for the victim, PW-8 to rely over the disclosure made by the appellant that her child was weeping and for that, her mother is calling her. This conduct of the victim is indicative of the fact either she was inclined towards Laxman Sahani since before or all of them were lying, because of the fact that in such situation, either informant would not have accepted the appellant's version or they were making an effort to disown their actual affair going on in between informant and appellant, as she was married, mother of a child.

12. Now, coming to other aspect, it is evident that an initial stage, victim had alleged that she had gone along with daughter-in-law of Nagendra Sahani as well as their children which, during course of evidence, she gave up and that happens to be purposely otherwise, she would not have been in a position to justify her allegation against appellant. Because of the fact that on that very score, the non-examination of daughter-in-law of Nagendra Sahani would have adverse impact, more particularly, in the background that none of the witnesses have claimed to have seen the victim in the Mela, daughter in-law of Nagendra Sahani.

13. Furthermore, from the initial version of the victim, she has shown her brother to be coming along with others from Mela, but during course of her evidence, she had not shown her brother, PW-5 to have accompanied the others. She had further kept mum with regard to her disclosure regarding the occurrence to her mother,



brother and grand father during course of her evidence.

14. Furthermore, PW-4, PW-6, PW-7 though claimed that while they were returning from Mela, they have seen victim in disorderly manner, but surprisingly enough they have not shown presence of each other. In likewise manner, PW-6 had stated that while he was returning, he had seen Laxman Sahani, coming towards Mela, which is not at all found corroborated by PW-4 Shivchand Sahani as well as PW-7 Prasad Sahani. Although, victim PW-8 had shown presence of all of them conjointly.

15. Now, coming to activity of victim, PW-8 during course of occurrence, it is evident that in examination-in-chief, she had not disclosed that she ever protested, resisted, at the other end, she claimed that accused had put soil in her mouth. During cross-examination at Para-8, she had said that when accused caught hold her hand, she raised alarm, but none came. She could not say about height of Janera plant. In Para-9, she had stated that at the time of rape, she had raised alarm. She also tried to escape. In Para-10, she had stated that at the time of rape, she was lying flat on the back and her hands were on back of accused. She had shown chest to doctor where there was scratch, which was not at all found by the doctor.

16. Having proper scrutiny of the evidences available on the record as discussed above, it is crystal clear that prosecution has suppressed the real genesis of occurrence and in likewise manner,



the evidence of victim herself suffers from infirmities and in likewise manner, putting belief thereupon by the victim, who on account thereof, proceeded from the Mela and in the aforesaid facts and circumstances of the case, the finding recorded by the learned lower Court is not at all found duly substantiated.

17. That being so, the same is set aside. Appeal is allowed. Appellant is on bail. Hence, is discharged from its liability. The first and last page of the judgment be handed over to the learned Amicus Curiae for needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.06.2017
Transmission Date	29.06.2017

