

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.983 of 2016

Arising Out of PS. Case No.-15 Year-2009 Thana- DHAMDAHA District- Purnia

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Sunna Murmu S/O- Late Bhola Murmu, R/O- Hathia Diara, P.S.- Dhamdaha,
District- Purnia.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Aditya Abhishek, Adv.

For the Respondent/s : Mr. Sri Sujit Kumar Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 25-11-2017

Challenging his conviction ordered by the learned
Ad hoc Additional Sessions Judge-3, Purnea vide judgment dated
25th/28th of February, 2014, passed in Sessions Trial No.1038 of
2009, convicting the appellant to 10 years' R.I. and a fine of
Rs.5000/- holding him guilty of an offence under Section 376 of
I.P.C., this appeal has been filed under Sections 374(2) and 389
Cr.P.C.

Facts, in brief, indicate that a report was lodged by
the prosecutrix herself, who was examined as P.W.3 before the
trial court to the effect that on 10th of March, 2009, at about 3:00
p.m., she along with her younger sister X, P.W.1, was returning
from Bahiyar after cutting grass and when they reached a place
near the Maize field of Sanjay Hansda, the accused herein namely



Sunna Murmu along with co-accused in the trial namely Tallu Murmu caught hold of her, brought her into the Maize field, put her down on the ground and the appellant committed rape on her. On her making a hue and cry, witnesses arrived there. It is stated that the co-accused Tallu Murmu assaulted her sister (X) with fists and slaps. It is stated that on the commotion being made, P.W.2 Chandan Kumari and one Suryamani Kumari, who were also cutting grass nearby, came there. It is stated that Magan Singh and Sanjit Muni also arrived there. On the basis of the said report, the prosecution was launched and the appellant having been convicted, this appeal.

In support of the case, the prosecution has examined P.W.1 (X), the sister of the prosecutrix, P.W.2 Chandan Kumari, who is said to have come to the spot on hearing the commotion. The prosecutrix and informant has been examined as P.W.3, P.W.4 is one Manoj Marandi. P.W.5 is Sanji Devi, P.W.6 Guru Hansda, P.W.7 is one Sunil Murmu, P.W.8 is one Sanjay Hansda, P.W.9 is one Nirmal Hansda and P.W.10 is Dr. Poonam Prabha who examined the prosecutrix and who has given the medical report, Ext 1. Another witness examined is P.W.11 one Ganesh Datt Sharma is a formal witness. In her report, P.W.3, the prosecutrix, narrates the story as told by her in the fardbeyan. The prosecutrix



in her statement does admit that when the incident took place, there were three persons present there, Maize crops were standing in the field and she admits of the offence being committed in the open field just beside the road in the open area at 3:00 p.m. in the afternoon. She speaks about having injuries on her wrist and back portion and blood oozing out. She also speaks about her torn clothes being given to the Daroga who came to meet her. P.W.1, her sister, also supports the story as narrated by the prosecutrix and also speaks about the co-accused Tallu Murmu assaulting her and several persons coming to the place on hearing the commotion. She denies the suggestion of false implication. P.W.2 Chandan Kumari, who is the witness who came on the spot on hearing the commotion, speaks about her going along with the prosecutrix and her sister for cutting grass and she speaks about having heard the appellant to have committed the offence. She is not a witness to the incident. P.W.4 Manoj Marandi is the father of the informant and he narrates the story as told to him by his daughter. P.W.5 Sanji Devi speaks about the incident having been told to her by certain persons. She does not say anything about seeing the offence. P.W.6 Guru Hansda, P.W.7 Sunil Murmu, P.W.8 Sanjay Hansda and P.W.9 Nirmal Hansda do not say anything about the occurrence and they have been declared hostile. P.W.11 is a formal witness who



has testified with regard to recording of the F.I.R.

From the aforesaid facts that have come on record, it is clear that it is only the statement of P.W.1, the younger sister of the prosecutrix, P.W.3 the prosecutrix and P.W.10 Dr. Poonam Prabha which is relevant for considering the case in question. Even though P.W.3 Chandan Kumari in her evidence says that she along with the prosecutrix and her sister had gone to cut grass and they were all together when the incident happened, but she does not say about anything happening in front of her. She says about coming to the place of occurrence after the incident had taken place, on hearing about it. That apart, in the fardbeyan lodged, the prosecutrix, P.W.3, does not speak about P.W.2 being along with her while cutting grass. However, both the prosecutrix and her sister, P.W.1, speak about the incident taking place in the Maize field and P.W.1 sustaining injury on her body in her wrist and in her back and blood oozing from her. However, from the medical evidence that has come on record and in the medical report, Ext 1 the doctor, P.W.10, says that she has examined the prosecutrix, she finds certain marks on her body which are for identification purpose. Thereafter she says that she does not find any external injury anywhere in the body of the prosecutrix including her private parts. She speaks about the rapture of the prosecutrix



which is an old one. Thereafter, she says that on vaginal swab report, no spermatozoa is found on the private part. The doctor clearly states that depending on the finding recorded by her, she is of the opinion that there is no sign of rape found on the body of the prosecutrix.

Now, if the story as narrated by the prosecutrix was correct and if she has sustained injuries as alleged by her, there should be identification of the injury in the person of the prosecutrix in the person of the prosecutrix reported by the doctor in the report, Ext 1. The medical evidence available on record does not support the case of the prosecution. That apart, the prosecutrix speaks about her clothes being taken away by the police authorities, but they are neither produced nor exhibited nor brought on record. Further, there is no medical examination of the appellant herein to establish the allegation made against him. His clothes have not been seized and there is no chemical or medical evidence on record with regard to the offence being committed. It is a case where the appellant has been convicted for an offence under Section 376 I.P.C. He has been sentenced to undergo 10 years' R.I. and the records indicate that he has been in custody for more than eight and a half years as of now and as analyzed and discussed hereinabove, the medical evidence available on record



does not support the case of the prosecution at all and it is a case where the story of the prosecution, as narrated by the informant, has not been proved beyond reasonable doubt. If the story as put forth by the prosecutrix is accepted in its totality, then if the offence was committed in an open Maize field and if the prosecutrix was being raped by the appellant, there has to be signs of struggle, marks of injury and various other medical evidence of injury available on the body which are all missing in the present case and the medical evidence clearly shows that there was no mark of any injury either in the body or the private parts of the prosecutrix.

In view of the above, in my considered view, it is a case where the prosecution has failed to prove the allegations against the appellant. The prosecutrix is a major person and possibility of consensual physical relationship and false accusation on the same being found out by the villagers cannot be ruled out. The benefit of this has to be given to the appellant.

Accordingly, the appeal is allowed, conviction set aside, appellant discharged from the liabilities of bail-bond and be set free.

Before parting, it is to be taken note of that the learned trial court has at various places in the order indicated the



name of the prosecutrix and her sister. According to the judgment of the Hon'ble Supreme Court, this is not permissible. The identity of the prosecutrix and important witnesses in such cases are not to be disclosed. The learned Judge concerned has not taken care to do so.

A copy of this judgment be sent to the officer concerned asking him to be careful in future and ensure that identity of the victims of rape or important witnesses to such incidents are not disclosed in the judgment.

The Registrar General of this Court to take note of the same and issue a Circular to all concerned with regard to the directive of the Hon'ble Supreme Court that identity of the victims of rape or important witnesses should not disclosed in the judgment.

Appellant who is in custody be released and set free forthwith in case he is not required in any other case.

(Rajendra Menon, CJ)

K.C.Jha/-

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