

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.682 of 2015

Arising Out of PS. Case No.19 Year- 2014 Thana -MAHILA P.S. District- BHAGALPUR

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MD. SAJID ALAM, S/O MD. INSUL, R/O VILLAGE-UJANI (MUKHIYA MOHALLA), P.S- NAUGACHHIA, DISTRICT-BHAGALPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Shardanand Mishra, Adv.
Mr. Dhananjay Kumar Gupta, Adv.
Mr. Deepak Kumar, Adv.
For the informant : Mr. Ashok Kumar Malliak, Adv.
Mr. Murlidhar, Adv.
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 14-09-2017

Sole appellant Md. Sajid Alam has been found guilty for an offence punishable under Section 341 IPC and sentenced to undergo S.I. for one month, under Section 376 IPC and sentenced to undergo R.I. for seven years as well as also slapped with fine appertaining to Rs.10,000/-, in default thereof, to undergo S.I. for six months, additionally vide judgment of conviction dated 15.09.2015 and order of sentence dated 19.09.2015 passed by Third Additional District & Sessions Judge, Naugachia, Bhagalpur in Sessions Trial No.591/2014.

2. Name withheld PW.7 filed written report on 29.04.2014 disclosing therein that she happens to be orphan and on account thereof, is living at her house alone. Today, i.e. 29.04.2014 at about 04:00 PM while she was alone at her house, her neighbour Md. Sajid Alam made house trespass, gagged her



mouth and then, putting her under threat of murder, torned her cloth, broken string of her Salwar and then committed rape inside a room where she was lifted. Anyhow, she managed to raise alarm whereupon, after breaking ventilator he managed to escape. On her hue and cry, her sister Bibi Meharbano, brother-in-law Md. Gulam Rabbani as well as persons of the locality came during midst thereof, brother of Md. Sajid, namely, Md. Manovar Alam, Sanouvar Alam, Kousar Alam, Md. Insul armed with lathi, danda came and threatened her as well as her sister, brother-in-law that in case of institution of any kind of prosecution will cost them dearly. During course thereof, Md. Manovar Alam gave two blows of danda. She, having been accompanied by her sister, brother-in-law and others came at P.S. got the written report scribed by Tawarej on her dictation and then presented the same about 10:10 PM.

3. On the basis of the aforesaid written report, Naugachia (Mahila) P.S. Case No.19/2014 was registered followed with an investigation as well as submission of charge sheet whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

4. 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 of the occurrence. It has also been pleaded that at an earlier occasion there was an effort at the end of the prosecution for getting marriage of victim with the



appellant and for that, prosecution took effort by entering into negotiation but, on account of denial at the end of parents of the appellant, could not materialized, which happens to be the reason behind institution of this false case.

5. In order to substantiate its case, prosecution had examined altogether nine PWs who are PW.1-Dr. Rubi Singh, PW.2-Sahana Pravin @ Sahana Khatoon, PW.3-Chanda Khatoon, PW.4-Md. Gulam Ravani, PW.5-Lela Khatoon, PW.6-Tawarej, PW.7-Soni Khatoon (Victim), PW.8-Sipat Paswan, formal who produced Chhapal in court allegedly that of appellant and PW.9-Swayam Prabha, the Investigating Officer. Side-by-side also exhibited Ext.1-Injury report, Ext.2-Signature of PW.6 Tawarej over written report, Ext.2/A-Signature of informant over written report, Ext.2/B-Signature of informant over statement recorded under Section 164 Cr.P.C., Ext.3-Written report, Ext.4-Formal FIR, Ext.5-Endorsement over written report, Ext.6 Series-Production-cum-Seizure List. Chhapal is Material Ext.1. On the other hand, nothing has been adduced in defence at the end of appellant.

6. It has been submitted on behalf of appellant that the judgment of conviction and sentence recorded by the learned lower court happens to be cryptic as well as speaks a lot with regard to non-application of judicial mind. In order to substantiate the same, it has been submitted that witnesses have admitted during course of cross-examination that there was sincere effort at



the end of the prosecution to get the victim married with the appellant and for that, they have indulged in negotiation which was refused by the family members of the appellant over which, instant case has been filed. This event has completely been ignored by the learned lower court. Had there been proper appreciation of the evidence as well as conduct of the prosecution then, in that circumstance, there was every likelihood of acquittal instead of conviction and sentence so recorded against the appellant.

7. It has further been submitted that probability of false implication in the aforesaid background is corroborated with other circumstances. Highlighting the same it has been submitted that victim was examined by PW.1, doctor on the following day who had not found any sign either externally or internally over private part and whereupon she had ruled out rape. Therefore, evidence of PW.1 completely negativates the allegation having attributed on behalf of prosecution.

8. It has further been submitted that there happens to be specific case of the prosecution that victim was taken inside a room alone where she was raped and then, the appellant made his escape after taking out brick from a ventilator but, the Investigating Officer, during course of her objective finding relating to the place of occurrence did not corroborate and so, the story of the prosecution on that very score also happens to be dejected by the objective finding of the Investigating Officer.



9. Apart from this, there happens to be consistent evidence of the PW.7, the victim that she was alone at the time of occurrence at her house while PW.3 had stated that she was present when appellant came inside the house and his activity was resisted by her. That being so, the evidence of prosecutrix that seeing her alone appellant, Sajid entered inside her house and then committed the sin, happens to be unreliable, as well as also cast doubt over her genuine conduct. Apart from this, there happens to be major inconsistency amongst the evidences of the PWs putting severe dent upon the authority of the prosecution hence, appellant is entitled to acquittal.

10. On the other hand, the learned Additional Public Prosecutor while refuting the submission made on behalf of learned counsel for the appellant has submitted that slight penetration is sufficient to constitute rape. That being so, non-presence of injury over the person more particularly, over the private part of the victim as deposed by PW.1, doctor will not adverse fully affect the prosecution case. Moreover, from the evidence of PW.1, it is evident that she had not examined the victim personally otherwise no such kind of incomplete injury report would have been issued at her end. She had not described with regard to physical feature of the victim as well as whether there was presence of hymen or not. In likewise manner, it has also been submitted that from the evidence of PW.9, Investigating Officer, it is evident that she had got no deep knowledge with regard to investigation of a serious nature of criminal case more



particularly rape case as, she blatantly narrated that during course of inspection of the P.O. she had not seen ventilator which was most important part of the investigation in the background of specific allegation by the prosecutrix that accused made his escape after breaking the same. In likewise manner, she would have insisted for procurement of FSL report relating to seized Salwar as well as seized Chhapal, sent for chemical examination.

11. It has also been submitted that the evidence of rustic villagers should be considered in its entirety with some sort of relaxation on account of their mental equilibrium. Furthermore, it has also been submitted that from the evidence it is apparent that there was no reason for false implication, as parties were not on inimical terms. Even if considering that there was talk relating to settlement of marriage, over which the defence did not opt to cross-examine whether it happens to be five years old, ten years old or a recent event and that has purposely been left out as, no talk of negotiation was ever taken place. Furthermore, it has also been submitted that considering the evidence of the victim, PW.7 it should be held that prosecution has succeeded in proving its case whereupon judgment of conviction and sentence is to be affirmed.

12. From the initial version of the victim, it is apparent that her sister Bibi Meharbano along with others had come to the place of occurrence after hearing cry of the victim but she Meharbano has not been examined nor there happens to be any



kind of explanation on that very score. In its continuity, the other witness so named who happens to be her brother-in-law, namely, Md. Gulan Rabbani, has been examined as PW.4 who during course of his evidence, had stated that he was sitting at the place of his Sarhu. He rushed after hearing uproar and reached at his house where he had seen Sajid escaping through ventilator while victim was lying over bed in disorderly manner. Her Salwar was torn. She disclosed that Sajid has raped her. During cross-examination at para-4, he had stated that victim happens to be her step sister-in-law. Victim happens to be three brothers and sister. She has two brothers. Her parents is not alive. She does not reside with her brothers. She resides alone with him in a room adjacent to his room. Then had detailed the family event. In para-8, he had stated that when he reached at his house, people were inside the house. Then thereafter, he had gone inside the room and seen accused fleeing therefrom. He fled away through roof. People have not succeeded to apprehend him. In para-9, he had stated that he had gone alone inside the room. Then at para-16, he had stated that earlier she had threatened him that she will implicate him and on account thereof, he had filed Sanha No.29/2014 on 04.01.2014.

13. PW.5 is Laila Khatoon, she had disclosed that on the alleged date and time of occurrence, she was at her house. On hearing uproar, she rushed to the place of her father where she had seen Chhapal kept there and Sajid coming out through ventilator after breaking the same. She had seen the victim. Her



Salwar and Jumpher were torn. She has disclosed that Sajid has raped her. Then thereafter, other family members of Sajid came who assaulted as well as also threatened not to institute any case. In para-3 she had disclosed that victim happens to be her step sister. She had further stated that there was rumour in the village that Sajid has entered inside the house. When she came, large numbers of persons were assembled since before. At that very time victim was inside the room. When she came, room was closed. She got the room opened and then gone inside. All remained outside. Only she had gone inside. She had seen victim on the bed unconscious. She was taken to hospital where regained sense. She had further stated that she had not gone to hospital. Md. Rabbani had taken away. In para-7, she had disclosed that two persons the victim as well as Rabbani reside at the place of her father. Wife of Rabbani also resides. His son, daughter-in-law reside outside.

14. PW.6 is Tawarej. Victim happens to be his Mausi. He happens to be hearsay witness though he had scribe written report on the dictation of victim who was taken to P.S. by him and others. PW.3, had stated that victim happens to be her Mausi. On the alleged date and time of occurrence she was at her house doing domestic work. Victim was cooking in the Aagan. Md. Sajid came inside, caught hold her, took her to room. She directed him to get out but he declined. Then, he locked the door whereupon she raised alarm attracting so many persons. Father of Sajid, Md.



Manovar, Insul, Md. Kousar came and began to assault her. Then victim opened the door and said that Sajid committed sin. Md. Sajid was present there. Villagers could not apprehend him as he escaped through ventilator leaving behind his Chhapal. During cross-examination she had stated that name of her father-in-law happens to be Rabbani and victim happens to be his sister-in-law (Shali). In para-5, she had further stated that there are two pukka rooms fenced by a boundary wall. Parents of victim are not alive but, Bhabhi there. In one room Rewani, his wife and in another room brother, Bhabhi of victim mode. Victim resides with her brother. Her house happens to be outside the house of the victim. In para-11, she had stated that some sort of dispute arose in between victim and Rabbani before the occurrence whereupon Rabbani had lodged Sanha in court against the victim. In para-12 she had stated that about fifty persons have already assembled before her arrival. In para-13, she had stated that Md. Sajid fled in her presence. There was an attempt to apprehend him but he managed to escape. In para-15, 16 she had disclosed the event of talk for marriage of victim with Sajid at an earlier occasion.

15. PW.2 had stated that on the date and time of occurrence there was uproar in the village that Sajid was in the house of victim along with her. Then thereafter, he slipped after breaking the window. She had seen the misdeeds having committed by Md. Sajid and then escaping therefrom. In para-3, she had stated that



victim happens to be her Nanad (sister-in-law). The house of victim is her house. Another house is situated in the village intervened by ten houses. In para-5, she had stated that she resides at the house situated in mohalla-Tokariya Tola. In para-6, she had stated that she heard alarm raised by the victim while she was at the place of Nimi whose house lies two houses away when she reached there she had seen so many persons. When she reached she saw Md. Sajid inside the room. About 10-20 persons have gone there and have seen and during course thereof, victim had disclosed the incident. Furthermore, victim had disclosed that Md. Sajid after breaking ventilator managed to escape. She had also admitted under para-7 of her cross-examination that there was talk of marriage negotiation.

16. PW.7 is the victim. She deposed that on the alleged date and time of occurrence, she was in her court yard. Md. Sajid came in the courtyard, caught hold her right hand and said either to accompany him or he will commit sin with her. He had also said that think over it. Then thereafter, he dragged her inside a room and then forced her to lie over bed, torned her cloth, broken string of Salwar, he also got undressed and then, committed rape against her will. She raised hue and cry after the occurrence whereupon villagers assembled. Seeing whom, Sajid after breaking ventilator slipped. People opened the door after breaking latch and then came inside. She was in perplexed condition. After regaining sense, she disclosed



the event and then thereafter, she was taken to P.S. along with them where written report was filed. Then thereafter, she was taken to hospital. Her statement before Magistrate was also recorded. Then had identified the Chhapal belonging to Sajid which was produced by her before the Investigating Officer left by Md. Sajid during course of escape.

17. During cross-examination, she at para-15 stated that Md. Sajid caught hold her by one hand and shut her mouth through another and then, pulled. She tried to release herself but in vein. Then had stated that whole event was disclosed before the police. She had further disclosed that she tried to release herself through left hand. She had further stated that her mouth was pressed whereupon she was unable even to make grooming sound. She had also said that there was dragging mark over the floor which was shown to the police. While she was being carried inside the room, she had caught hold the door as a result of which there was scratch mark. In para-16, she had stated that after dragging inside the room, first of all, she was thrown upon bed. Even at that very time her mouth was pressed and then, by another hand cloth was torned, string of Salwar was broken and then raped. At para-18 she had further stated that she was lifted by both hands even then, she had not raised alarm. In para-19, she had stated that at the time of occurrence neither her sister nor her brother-in-law was present as they had gone to field. In para-20, she had stated that



accused had slipped away through ventilator after climbing. In para-22, she had stated that during course of removing brick from the ventilator by the accused, the same fallen over her as a result of which she sustained injury which was shown to the police. She shown ignorance with regard to any kind of talk over marriage.

18. PW.9 is the Investigating Officer, who had deposed that after receiving the written report from town P.S., case was registered, she took up investigation. She recorded further statement of the informant, statement of Tawarej. Produced the victim for medical examination. She visited the place of occurrence and detailed the same. During course of which, she had shown presence of ventilator in the room. Got the statement of other witnesses, produced the victim before the Magistrate for her statement under Section 164 Cr.P.C. Victim produced one pair Chhapal belonging to Md. Sajid. After surrender of the accused, she had taken effort for DNA test. Victim had also produced Salwar. Exhibited. Awaiting reports from FSL submitted charge sheet. During cross-examination at para-25 she had stated that she had not seen any brick fallen from ventilator. In para-26, she had further stated that she had not found latch of the door broken. In para-27, she had further stated that she had not seen whether ventilator was broken or not.

19. PW.1 is the doctor had completely negatived incidence of rape on the basis of clinical examination of the victim,



during course of which she had not found any injury externally or internally. Some sort of deficiency is there however, neither prosecution nor accused had drawn attention over the same.

20. So far rape case is concerned, the evidence of victim has got primacy. It has been settled at rest that in case there happens to be consistency, reliability and truthfulness in the evidence of the victim then no corroboration is required and conviction could be recorded on the sole testimony of the victim. Certainly, a female (unmarried or married) considering the Indian social atmosphere would not dare to institute a case as, chastity happens to be everything for her and in likewise manner the stigma which she will follow till her death, making her life a hell. So, unless and until, the victim is subject to rape, ordinarily prosecution for such offence is not at all perceived as a tool to satisfy the personal vendetta as well as grudge but exceptions are there and that happens to be reason behind that the Apex Court has also settled that in case there happens to be some sort of doubt over the authenticity of the version of the victim then, in that circumstance, the court should see, corroboration. It is evident from the evidence of PW.7, victim that appellant had come inside her house, caught hold her hand, directed her to accompany him and in an alternative he also threatened that she will be victimized and so, giving a pause appellant had directed to think over the same. She had not disclosed her response though subsequent



activity is found duly narrated. In the aforesaid background when the other evidence have been considered, it is evident that some sort of negotiation for marriage took initiative at an earliest which did not materialize. Furthermore, when evidence of all the witnesses are independently considered none of them have shown presence of other at the house and in likewise manner, one had excluded the other while approaching to the victim allegedly inside the room. It is also surprising that once the Salwar was produced then why not a jumper which, according to victim, was also torn. On the other hand, if the evidence of all the witnesses are taken together in its entirety, each have consistently narrated that when they reached inside the room of the victim having seen her in perplexed condition but, for that PW.2 had stated that she got the room opened while PW.5, the brother had said that door was broken. It is also surprising that in presence of so many persons accused managed to escape without any sincere effort at their end to apprehend. The objective finding of the I.O. is found another circumstance. When the evidence of all the witnesses is taken together in its entirety along with the medical evidence, it looks unsafe to identify the appellant to be responsible for admitting rape upon the victim and that being so, the finding recorded by the learned lower court to the extent of Section 376 of the IPC extinguishes. But considering the evidence of victim, it is found that an attempt was there, and so appellant is found and held guilty for an offence



punishable under Section 376/511 of the IPC and in the aforesaid background is sentenced to R.I. for five years maintaining the fine amount as well as the default clause concerning thereto as well as conviction and sentence relating to Section 341 of the IPC with a further direction to run the sentences concurrently. Accordingly, Appeal is partly allowed in terms thereof. Appellant is under custody which he will remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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

