

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.426 of 2013

Against the judgment and order of conviction and sentence dated 12.03.2013 / 15.03.2013 passed by Sri Jitendra Nath Singh, learned ad hoc Additional Sessions Judge IV, Araria in Sessions Trial No. 234 of 2010 / 14 of 2010 / 754 of 2012.

Arising out of P.S. Case No. 242 Year 2009, Thana – FORBESGANJ, District-ARRARIA

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Bhupendra Kumar Mehta, S/O Parmeshwari Mehta, R/o At and P.O.- Farbisganj,
Police Station - Farbisganj, District - Araria

.... Appellant

Versus

The State of Bihar

.... Respondents

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Appearance:

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate,
Mr. Alok Kumar, Mr. Birendra Kr.Singh &
Mr. Pratik Mishra, Advocates.

For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 06-03-2018

This Criminal Appeal has been preferred by the sole accused Bhupendra Kumar Mehta, who has been convicted by learned Ad hoc Sessions Judge IV, Araria (hereinafter referred to as ‘the trial court’) vide judgment dated 12.03.2013 passed in Sessions Trial No. 234 of 2010 / Trial No. 14 of 2010 / 754 of 2012 by which the learned trial court has been pleased to hold and declare that the prosecution has been able to prove the guilt of the accused in the alleged occurrence for the offences U/S 452, 376/511 and 302 of the Indian



Penal Code and thereupon convicted and sentenced him to undergo rigorous imprisonment of five years and Rs. 5,000/- as fine and, in default of fine, he has to further undergo simple imprisonment of three months for the offence punishable U/S 451 IPC, rigorous imprisonment for 10 years and Rs.10,000/- fine and, in default of fine, he has been awarded to undergo simple imprisonment of six months for the offence punishable U/S 376/511 of the I.P.C. and imprisonment for life and Rs. 20,000/- fine and in default of fine to undergo one year for the offence punishable U/S 302 of the I.P.C. and all the sentences have been ordered to run concurrently.

2. On perusal of the records received from the learned trial court it appears that the prosecution case is based on the Fardbeyan of Soni Kumari, wife of Sudhir Pandit, resident of Village Jagdish Mill, Ward No. 8, Forbisganj, P.S. Forbisganj, District Araraia. Fardbeyan of Soni Kumari (since deceased) was recorded by Sub Inspector of Police Kapildeo Prasad Singh (PW9) who has proved the Fardbeyan (Ext.6). In her Fardbeyan, Soni Kumari (since deceased) made her statement in the Referral Hospital, Forbisganj Ward on 05.08.2009, at about 1:00 P.M., that she was married five years back and from the said marriage she has got a girl child, aged about three years. It is further stated that she was a teacher in Bal Shramik Vidyalaya, F.C.I. Chawk, on 05.08.2009 she went to her school and came back to her



house at 10:30 A.M. Her husband had gone to work in Soni Studio at Bus Stand and in her house there was none else than she and her daughter. According to her Fardbeyan, she started cooking in her house, in the meantime the accused Bhupendra Kumar Mehta, who was also a teacher and resident of the same locality, entered in her house and asked her to marry him. On this, she stated that how can she marry him as she was already married, the accused Bhupendra Kumar Mehta started to forcibly catch hold of her and wanted to rape her which she protested. At this stage, the accused brought Kerosene oil which was kept in a 5-litre gallon in the kitchen and poured Kerosene oil on her body and thereafter he burnt a paper from the stove and threw that on her body. She got burn injuries on her neck and cheeks; on raising HULLA one student came who placed blanket on her body in an attempt to put off the fire. On information, her husband came and with the help of the persons in the society she was brought to Referral Hospital on a rickshaw from where she was referred to Purnea Referral Hospital for better treatment. She has alleged that the accused Bhupendra Kumar Mehta was pressurizing her to enter into illicit relationship and to marry him which she was not agreeable to and she protested and because of that the accused had committed this act.

3. The victim Soni Kumari was treated in Referral



Hospital, Forbisganj, Araria on 05.08.2009 by Dr. Jai Narain Prasad (PW10), who has proved the injuries found on her body. The injury report has been marked as Ext.5. One of the injuries noted by him is 'burn on both hands'. The victim was thereafter treated at Forbisganj and from there she was referred to Apollo Burn Hospital where she finally succumbed to her injuries and died on 15.08.2009. The case was initially registered U/S 452/354/326/307 IPC, however, after the Fardbeyan of the victim Soni Kumari was recorded and when she died Section 302 IPC was also added vide order dated 20.08.2009.

4. After investigation, police submitted a charge sheet against the accused (appellant) U/S 452, 302, 376/511 IPC and the learned Chief Judicial Magistrate, Araria, after taking cognizance of the offences, committed the case to the court of sessions. Charges U/S 452, 302, 376, 511 IPC were framed against the accused and was explained to him which he denied and pleaded not guilty. The defence version is total denial of the allegations levelled against the accused and in his statement U/S 313 Cr.P.C. the accused has pleaded innocence.

5. In course of evidence, altogether 14 witnesses were examined on behalf of the prosecution. PW1 Raman Kumar Singh is an independent witness, who happened to be a tenant in the house of the deceased. He had rushed to save the victim after hearing HULLA,



he had called another tenant Ramesh Kumar Karpat (PW3) and then he had gone to call Sudhir (husband of the victim) from the Bus Stand Studio. He has stated in his examination-in-chief that many women from the neighboring places had assembled and Ramesh had gone to bring a rickshaw and they had gone to the Referral Hospital, Forbisganj. This witness had also gone to the hospital where police reached in his presence and, according to this witness, police recorded the statements of Soni Kumari in his presence and in presence of other persons. This witness has further stated that Soni had informed police about the occurrence that had taken place and in which Bhupendra Kumar Mehta (appellant) had admitted to rape her and on protest he poured Kerosene oil on the body of Soni and burnt her. In his cross-examination by defence, this witness once again stated that the Investigating Officer recorded his statement on the same day of occurrence at about 2:30 P.M. The defence has not suggested this witness that he was not present when the I.O. recorded the statement of the victim Soni Kumari.

6. PW2 is Sanjay Kumar, who is said to be a social worker. He has also supported the prosecution case. He is a hearsay witness. PW3 is Ramesh Kumar Karpat, who is a tenant in the house of the victim. He rushed to the house of the victim on 'HULLA' even as when he was called by Raman (PW1). He has stated in his cross-



examination that Soni was lying in unconscious condition in between the Dining Hall and the Passage. This witness had brought a rickshaw and has stated that Raman (PW1) had gone to call the husband of the victim. PW4 is Sudhesh Kumar, who is a Clerk in the School where the deceased was a teacher.

7. PW5 is Suryanand Pandit, who is the father of the deceased Soni Kumar. In his examination-in-chief he has stated that the Investigating Officer had recorded the statements of Soni Kumari in his presence. He rushed to the hospital on getting the information from his son-in-law and on reaching the hospital he was told by Soni Kumari about the alleged act committed by the accused Bhupendra Kumar Mehta. In his cross-examination this witness has rejected the suggestion of the defence that he had not stated before police that Soni Kumari had told him that Bhupendra Kumar Mehta had entered in her house, attempted to rape her and, on protest, he had poured Kerosene oil and put her on fire. He has reiterated in his cross-examination that her daughter had told him about the occurrence. PW6 is Raj Kishore Pandit, who is the cousin brother of the husband of the deceased. In Para 7 of his cross-examination, he has stated that police had already taken statements of Soni Kumari when he reached Referral Hospital, Forbisganj with his family. He has denied the suggestion that he had not stated before the I.O. that Soni had told him



about Bhupendra Kumar Mehta entering in her house and attempting to rape her and then pouring Kerosene oil.

8. PW7 is Sanjay Kumar Mahto, who is a neighbour of the victim Soni Kumari. He has stated that when he reached the house of Soni on HULLA he found that Soni was in a burnt-condition and was in trauma. He has stated that police had gone to the hospital but by that time he had already returned. This witness has stated further that Soni was talking to somebody on mobile and was very much excited. In cross-examination this witness has stated in Para 5 that Soni was talking to her husband in a hot temperament.

9. PW8 is Manju Devi, who is sister of PW12 (husband of the deceased), has stated that on the said date she had gone to tie Rakhi to his brother but when she reached there she found that her brother was not there and the house was in a ransacked condition. When she called her brother on mobile then she was informed about his presence in Referral Hospital, Forbisganj where she went and talked to her Bhabhi (the deceased). This witness has also stated that her Bhabhi told her that Bhupendra Mehta had come and attempted to rape her but, on protest, he poured Kerosene oil on her body and put her on fire.

10. PW9 is Kapildeo Prasad Singh, who is the Investigating Officer of this case. He has proved the Fardbeyan and



the endorsement made by Sri S.K. Yadav, the then Officer-in-charge of Forbisganj Police Station, on 05.08.2009. He has explained the place of occurrence and has also proved the statements recorded in the case diary in this regard. PW10 is Dr. Jai Narayan Prasad, who was posted as In-charge Referral Hospital, Forbisganj and has proved his Injury Report (Ext.5). In his cross-examination, the defence did not ask him about the mental condition of the victim or the possibility of her making a statement before a police officer in that mental condition when she reached Referral Hospital, Forbisganj. This witness has not been given any suggestion that the victim Soni Kumari, when reached Referral Hospital, Forbisganj, was not in a position to make any statement.

11. PW11 is one Narayani Saha, who has been declared hostile as she denied her statements made before the police in course of investigation. PW12 is Sudhir Kumar Pandit, who is husband of the deceased. He has narrated the prosecution story as per the Fardbeyan of Soni Kumari. He has proved his signature on the Fardbeyan of Soni Kumari as Ext.6. He has stated that police had taken the statement of the victim Soni Kumari in his presence. In course of his cross-examination this witness has denied the suggestion that he was doubting on the chastity of his wife and had scolded her because of which she became angry and in fit of anger she had poured Kerosene



oil on her body and in collusion with police he concocted a case against the accused. PW13 is Bittu Kumar Pandit, who is the nephew of Sudhir Kumar Pandit and has supported the prosecution story. PW14 is Dr. Ashok Kumar Yadav, who had conducted post-mortem at NMCH, Patna on 15.08.2009 on the dead body of the deceased Soni Kumari. He has proved the post mortem report as Ext.7.

12. On behalf of defence, one Deodatta Yadav has deposed that on 05.08.2009, at about 10:30 A.M., he had seen the accused at the Bus Stand. This witness has stated that the accused was staying at the Bus Stand and had gone to Birpur on the Raksha Bandhan. In his cross-examination, he has stated that he was brought by defence to give evidence as no notice in this connection was received from the court.

13. In view of the evidences and the materials available on the record, the trial court convicted the accused holding that the prosecution witnesses have supported and corroborated the prosecution case as stated in the Fardbeyan of the deceased victim, informant and all the witnesses. The trial court was of the view that all witnesses are not eye witnesses of the occurrence but they have heard the occurrence from the mouth of the deceased in burnt condition at the time of giving her Fardbeyan before the I.O. regarding occurrence and all of them have fully corroborated and proved the dying



declaration of the deceased's Fardbeyan. The trial court did not find any material contradiction taken by the defence from the evidence given by these witnesses.

14. Arguing on behalf of the appellant, Sri Kanhaiya Prasad Singh, learned Senior Counsel, submits that the Fardbeyan (Ext.3), which has been treated as the dying declaration contains a highly suspicious story and that being the only evidence on the basis of which the trial court has convicted the accused, the judgment of the trial court stands vitiated on account of non-consideration of the contradictions in the statements of the prosecution witnesses. Learned senior counsel has referred the statements made by the prosecution witness no. 3 to show that according to this witness, the victim was lying in an unconscious condition in between the Passage and the Dining Hall and, therefore, according to the learned senior counsel, when the victim Soni Kumari was taken to the Referral Hospital at Forbisganj, she was not in a position to get recorded her Fardbeyan. Expanding the argument, learned senior counsel has further relied upon the examination-in-chief of Dr. Jai Narayan Prasad (PW10), who has proved the Injury Report (Ext.5) showing that the victim had got burn injuries on both hands. It is his argument on the basis of the Injury Report showing that there were burn injuries on both hands that the LTI of the victim on her Fardbeyan becomes highly suspicious



because the victim was not in a position to put her thumb impression in that condition. It is his further argument that the LTI of the victim Soni Kumari has not been witnessed by any doctor or nursing staff of the Referral Hospital, Forbisganj and, therefore, the Fardbeyan whereunder such a detail description of the entire occurrence has been provided cannot be said to be an inspiring piece of evidence to convict the accused.

15. Learned senior counsel has also referred to paragraph 3 of the deposition of PW14, who had conducted the post-mortem. From Paragraph 3, learned senior counsel has shown that the burn injuries were found from the lower part of face, neck and upto upper part of both thighs and part of upper extremities, therefore, it suggests that her hands were also burnt and she could not have put her thumb impression.

16. The next argument of the learned senior counsel is that PW7, who is even though a prosecution witness, has deposed in his examination-in-chief that the victim Soni Kumari was talking on her mobile and she was in a very excited condition. In his cross-examination, this witness has stated that Soni Kumari was talking to her husband in a hot temperament and, later on, he came to know that due to quarrel with her husband she had put herself on fire. It is thus submitted by learned senior counsel that in this case there is no eye



witness of the occurrence and the conviction of the accused on the basis of the Fardbeyan (Ext.3) of the victim is not safe to rely.

17. On the other hand, learned A.P.P. representing the State opposed the submissions of the learned senior counsel for the appellant. It is submitted that the Fardbeyan (Ext.3) has been rightly treated as a dying declaration. The LTI of the victim has been duly identified by her husband on the Fardbeyan and the prosecution witnesses, such as, PW1, PW5, PW8 and PW12 have categorically stated that when they met the victim Soni Kumari in the hospital where she had narrated the entire story to them and had stated that accused Bhupendra Kumar Mehta had entered in her house and attempted to rape her and, on protest, he poured Kerosene oil and put her on fire. As regards submission of learned senior counsel that there were burn injuries on the hands, learned A.P.P. submits that the Injury Report (Ext.5) nowhere shows that her fingers including thumbs were burnt and the injuries suffered on both hands do not mean that the victim was not in a position to put her L.T.I. It is pointed out that the defence has not even suggested anything in this regard to the doctor (PW10) who had proved the Injury Report. If the defence wanted to create a doubt about LTI of the victim, they could have suggested at least that the victim was not in a position to put her LTI but this was not done by defence. Learned counsel further submits that so far as



the statement of PW3 is concerned, his statement that the victim was lying in an unconscious condition is not fully corroborated by other independent witnesses.

18. Reference in this regard has been made to the statement of PW1 Raman Kumar Singh, who was the first person to reach inside the house of the victim and it is he who had called PW3. PW1 has not stated that the victim was in an unconscious condition. He has supported the prosecution case and has stated that the victim had told him about the manner of occurrence. As regards the statement of PW7, the learned A.P.P. has further stated that PW7 initially in his examination-in-chief has stated that the victim was in a burnt condition and was in trauma (घबराई हुई). He has also stated the fact that the police had gone to the hospital but by that time he had already returned. The statement of this witness that Soni was talking on phone prior to the occurrence has not been proved by any material particulars. This witness is said to be a neighbour and the accused is also a neighbour residing in the same Mohalla but when he was called upon to identify the accused he could not say that against whom the case was lodged. Learned A.P.P. further submits that in his cross-examination he has stated that Soni was talking to her husband in a hot temperament but no evidence has been brought on record in any form or by way of electronic evidence to show that she was talking to



her husband prior to the occurrence. Learned A.P.P. has further argued that the suggestion given to PW12 that he was doubting the chastity of his wife was only a bald suggestion at a belated stage because the defence did not suggest this defence to PW5 (father of the victim), PW8 (sister-in-law of the victim) or PW1 when they were in dock and therefore it was an attempt of the defence at a belated stage to create some kind of doubt on the prosecution story.

19. We have heard learned senior counsel for the appellant and learned A.P.P. for the State and perused the entire records. We have discussed the evidences which have been brought on the record on behalf of the prosecution and the defence.

CONSIDERATION

20. The submission of the learned senior counsel that the Fardbeyan (Ext.3) is highly suspicious and, therefore, it should have been rejected by the learned trial court would not appeal us. We are of the considered opinion that there is no reason to bring any reasonable doubt in our mind as to the correctness and genuinity of the Fardbeyan (Ext.3) of the victim girl. The Injury Report (Ext.5) only talks of burn injuries of both hands. This cannot be taken as a clinching material to show that the victim was not in a position to put her LTI on the Fardbeyan or that she was unable to make a statement when the I.O. reached the Referral Hospital, Forbisganj. The doctor



(PW9), who proved the Injury Report, was not suggested by defence that when he saw the victim she was in an unconscious condition or that the victim while being admitted in the hospital or before being referred to the Referral Hospital, Purnea was not in a position to talk or make statement in terms of her Fardbeyan. Since the defence remained silent on this issue in course of cross-examination of PW9, we are unable to take a view that the victim was not in a position to make statement or she was not in a position to put her LTI. We also find from Ext.3 that on her Fardbeyan, her husband (PW12) has stood as a witness and his signature has also been proved as Ext.6 in course of trial without any objection.

21. The submission of learned senior counsel for the appellant that according to PW3, the victim was lying in an unconscious condition in between the Passage and the Dining Hall cannot be accepted because there are independent witnesses, such as, PW1 and PW7, who have not stated that the victim was lying in an unconscious condition. PW7 has stated that she was in trauma (घबराई हुई) and PW1 has stated that the victim had told him the entire manner of occurrence and had taken the name of Bhupendra Kumar Mehta (the appellant). The manner of occurrence, as alleged in the Fardbeyan (Ext.3), has not only been supported by PW5 and PW8 but have also been supported by PW1. When PW5 (father of the victim) and PW8



(sister-in-law of the victim) were cross-examined, the defence did not ask them any question or put them any suggestion about the relationship between the husband (PW12) and the victim lady. Only at a belated stage, when Pw12 came to be cross-examined, a suggestion was given to him that he was doubting the chastity of his wife which led to the present occurrence. PW12 denied this suggestion. The defence never asked or suggested this issue of chastity to the persons who were living in the same house as tenants, particularly PW1 and PW3, who came to depose and the defence had opportunity to cross-examine them and take their view on the point of defence that PW12 was doubting the chastity of the victim lady. Thus, according to us, the defence story, as suggested to PW12, was only an afterthought at a belated stage and the same could not be proved by any independent evidence so as to create a reasonable doubt on prosecution case. The statement made by PW7 in his cross-examination that the victim was talking to her husband in a hot temperament seems to be an afterthought only and even though the prosecution has not declared him hostile, we are unable to believe his statement in the cross-examination because in his examination-in-chief he never said that the victim was talking to her husband in a hot temperament and how could he come to know this while being cross-examined, apart from this there is no other material to corroborate his statements to this



effect.

22. We also find that the I.O. (PW9) has also stood cross-examined without any contradiction in his statement. He has categorically proved that he had visited Forbisganj Referral Hospital where he had recorded the Fardbeyan of the victim. The victim had survived for about 11 days from the date of occurrence, no medical evidence has come on record to show that she was lying in unconscious condition on 05.08.2009 when his Fardbeyan was recorded by PW9.

23. In the totality of the materials which are available on the record, we do not find any material contradiction in the prosecution evidence so as to have any reasonable doubt in our mind regarding the correctness of the finding recorded by the learned trial court. We are, therefore, not interfering with the judgment under appeal. The appeal is accordingly dismissed.

24. We are told that the appellant is in custody, therefore, he will continue to serve the remaining sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Dilip, AR

AFR/NAFR	NAFR
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Date	
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