

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.285 of 2015**

Arising Out of PS.Case No. -5 Year- 2009 Thana -HAYAGHAT District- DARBHANGA

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Satyendra Singh, S/o - Heera Prasad Singh, R/o Village - Ghosrama, P.S. - Hayaghat, District - Darbhanga.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Jagannath 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: 09-01-2018

Appellant Satyendra Singh has been found guilty for an offence punishable under Section 354 of the I.P.C. and sentenced to undergo R.I. for two years vide judgment of conviction and order of sentence dated 17.04.2015 passed by the 1st Additional Sessions Judge, Darbhanga in Sessions Trial No.237 of 2009.

2. PW-3, the alleged victim (name withheld), filed written report on 30.01.2009 for an occurrence dated 25.01.2009 alleging inter alia that on 25.01.2009 at about 1.00 p.m. while she alone was picking firewood at a Mango Orchard belonging to Ganesh Singh and Raju Singh, at that very time, Satyendra Singh, son of Heera Prasad Singh of village-Ghosrama came from behind, caught hold her, lifted her after gagging her mouth from her wrapper and then, took her to mustard field of Sunil Singh and committed rape



after threatening of dire consequence. He escaped thereafter. She lifted the slipper (Chappal) of aforesaid Satyendra Singh, which he left during course of fleeing, came to her house and narrated the event to her husband as well as mother-in-law. Then her husband had gone to the place of Sarpanch, who had instructed not to file a case as the matter will be sorted out at his level, but as he failed and during midst thereof, her husband had assaulted Satyendra Singh for which, the Sarpanch took adverse, did not opt to proceed furthermore, whereupon the matter has been reported.

3. After registration of Hayaghat P.S. Case No.05 of 2009, investigation commenced and concluded by way of submission of chargesheet followed with the trial which ultimately 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. However, neither ocular nor documentary evidence has been adduced at the end of the defence.

5. In order to substantiate its case, prosecution had examined altogether four PWs and those are, PW-1 Dr. P. K. Das, PW-2 Tulshi Sadai, PW-3 victim and PW-4 Rohit Sadai. Side by side, had also exhibited viz. Exhibit-1 medical report, Exhibit-2 signature of PW-2 over the written report, Exhibit-2/1 signature of PW-4 over the written report, Exhibit-3 written report and Exhibit-4 formal F.I.R.



As stated above, defence has not examined oral or documentary evidence.

6. While criticizing the finding recorded by the learned lower Court, it has been submitted on behalf of learned counsel for the appellant that status of witnesses have been properly acknowledged by the learned lower Court, but the principles so decided in the relevant paragraph so cited by the learned lower Court has been misinterpreted as in the facts and circumstances of the case, none of the principle is applicable. That being so, the judgment of conviction and sentence recorded by the learned lower Court is fit to be annulled.

7. On the other hand, learned Additional Public Prosecutor supported the finding recorded by the learned lower Court and submitted that the learned lower Court has appreciated the evidence in its right perspective taking into account the relevant principles decided by this Court as well as the Hon'ble Apex Court at an earlier occasion and which are found duly applicable in the facts and circumstances of the case.

8. Now, coming to status of the witnesses, it is evident that the trend, which was at an initial stage during course of examination of PW-2 gone steriled and that happens to be reason behind that the witnesses melted down one by one hushing the prosecution case. PW-2, though during course of examination-in-chief, had deposed on merit and on the first day of cross-examination



stood firm, but after having his cross-examination adjourned to the subsequent date, mutilated the allegation. Though, admittedly, he was not at all an eye witness as per prosecution version itself. PW-3 is the victim, who had supported the case of the prosecution to the extent of naming Satyendra Singh to be her rapist and further, running away from the place of occurrence leaving a pair of slipper at the spot, which was taken by the victim to her house, was produced before the police official and for that, production-cum-seizure list was prepared. However, she declined to identify the accused in dock and on that very score, she was declared hostile. During course of cross-examination by the learned Additional Public Prosecutor, she had stated that name of father of Satyendra Singh happens to be Heera Singh. Apart from the fact that during cross-examination, she had categorically stated that the accused, who is in dock had not committed rape with her. PW-4 is the Bhainsur of victim (PW-3), who had scribed the written report as well as stood as one of the witness over the production-cum-seizure list. He also failed to identify the accused in dock, whereupon was declared hostile. Admittedly, this witness also not an eye witness to occurrence as per prosecution version.

9. From the evidence available on the record, more particularly PW-3, it is evident that during course of her examination-in-chief, she had not identified culprit Satyendra Singh to be her



rapist. It is needless to say that the evidence having before the Court happens to be substantial evidence over which the finding of the Court is to be based. Furthermore, it is evident that I.O. has not been examined nor there happens to be any kind of material to suggest that during course of investigation, the I.O. had tried to connect the slipper with the appellant, who was under custody nor the same had been produced before the Court during trial. Furthermore, on account non-examination of I.O., the supportive objective finding relating to the P.O., which happens to be mustard field of Sunil Singh has not been properly surfaced.

10. As per Evidence Act, for proving facts in issue, it be by means of direct evidence or by indirect evidence/ circumstantial evidence and so far, circumstantial evidence is concerned, it should be in channelized way in such manner that no other hypothesis than identity of the accused to be author of the crime could be inferred. However, certain exceptions are there in order to additionally support the circumstances of circumstantial evidence and that happens to be reason behind that the Hon'ble Apex Court while dealing with ***Visveswaran-appellant vs. State represented by S.D.M.-respondent reported in A.I.R. 2003 SC 2471***, has held:-

“12. Before we notice the circumstances proving the case against the appellant and establishing his identity beyond reasonable doubt, it has to be borne in mind that approach



required to be adopted by Courts in such cases has to be different. The cases are required to be dealt with utmost sensitivity, Courts have to show greater responsibility when trying an accused on charge of rape. In such cases, the broader probabilities are required to be examined and the Courts are not to get swayed by minor contradictions or insignificant discrepancies which are not of substantial character. The evidence is required to be appreciated having regard to the background of the entire case and not in isolation. The ground realities are to be kept in view. It is also required to be kept in view that every defective investigation need not necessarily result in the acquittal. In defective investigation, the only requirement is of extra caution by Courts while evaluating evidence. It would not be just to acquit the accused solely as a result of defective investigation. Any deficiency or irregularity in investigation need not necessarily lead to rejection of the case of prosecution when it is otherwise proved.”

Before proper appreciation of the principle laid down under Para-12 (supra), a short glimpse over facts of the case is to be taken, appellant a police constable lifted the victim and her husband from a Bus Stand and on one pretext or the other, suggesting that they are to be taken to police station and during midst of way, husband of victim was forced to get down from the taxi as on query made by the victim, appellant had disclosed that there was some sort of complain



at the end of her parents and so, she was to be inquired into, however, was taken her to a hotel where she was raped. On the following morning, the taxi driver came, whom the appellant had said that they are coming ready and for that, gone inside washroom. Getting an opportunity, the victim bolted the door of washroom and rushed to down stair, then to Bus stand, narrated the event to her husband and then, to police station. F.I.R. was registered, hotel was raided, wherefrom appellant was apprehended. He was examined by a doctor, who found dried semen around his private part and in the aforesaid background, though during course of trial though witnesses turned hostile, but the documentary evidence disclosing booking of the hotel room by the appellant, payment at his end in advance, supported by the Manager of the Hotel, the appellant having been failed at his score to disclose his whereabouts during the intervening period during course of which, offence was committed, changed his physical feature during course of evidence by having long moustache as well as beard evidence of doctor persuaded the Apex Court to draw an adverse inference while in the present case, no such conditions are visualizing. Admittedly, PW-2 and PW-4 were not an eye witness to occurrence rather whatever they deposed happens to be based upon the statement of PW-3, the victim and even for the argument sake, admitting that happens to be admissible in terms of Section 6 of the Evidence Act, the same has not been reiterated during course of trial and that being



so, the same could not be taken into consideration legally. The learned lower Court simply referred the judgment without peeping into whether same is applicable in the facts and circumstances of the present case.

11. The learned lower Court had also relied upon *State vs. Ram Deo Prasad reported in 2010 (1) BLJR 214* corresponding to *2010 (1) BLJ 39* wherein also the Court taken into consideration the relevant provision of law in the background of the evidence having adduced on behalf of prosecution whereunder witnesses have stated that appellant was found carrying a girl in dead of night and further, while they were in search of the aforesaid girl child, when they proceeded in a direction having disclosed by Suman Kumar Sah, they heard stumping sound and when they proceeded in that direction, they have seen the appellant, who escaped after throwing the victim, who later on succumbed. PW-2, though had supported that he had seen a man carrying a minor girl in his lap resiled subsequently so far identification of appellant was concerned, however other witnesses stood firm and in the aforesaid background, it has been held under:-

“23. Section 6 of the Evidence Act relates to relevancy of facts forming part of same transaction.

It reads as under:

“6. Relevancy of facts forming part of same transaction.- Facts which, though not in issue, are so connected with a fact in issue as to form part of



the same transaction, are relevant, whether they occurred at the same time and place or at different times and places.”

Illustration (a) is material to the present context and that reads as follows:

“(a) A is accused of the murder of B by beating him. Whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.”

From the composite reading of the main draft of the provision and the above noted illustration (a), what appears is that anything said or any act done either by the accused or by the deceased or by the by-standers at the time of the occurrence or so shortly before or after it so as to forming part of the same transaction was a relevant fact. What appears from the above provision and the illustration is that if some one states something which he could be picking up on account of hearing the word or seeing the act, as the case may be, he must divulge the same to others just after he had heard or seen the act. What is connoted by the provision is that there should be a close proximity between hearing the words or seeing the act and relating the same to others so that any chances of aberration, improvement or embellishment is completely ruled



out. The reason for putting the restriction of proximity in the provision by putting illustration(a) has a pristine purpose. The evidence of hearsay is inadmissible and irrelevant. It is made admissible as per the provision of Section 60 of the Evidence Act or under certain other provisions which are exceptions to the general rule of inadmissibility of the evidence of hearsay. Section 6 of the Evidence Act is one such exceptions. As such, the restriction appears put that the person who relates to others a word heard by him or an act seen by him must do it without any longer loss of time. P.W.2 has stated in paragraphs 1 and 2 of his evidence that he had seen a man going towards the field of Ram Bachan Mishra with a child just 10-20 minutes ago. Thereafter the informant and other persons were seen by him passing through the road in front of his house and he went near them and stated that he had seen a man carrying a child towards east. The time appears very short and he admits relating the above fact of seeing a man going with the child to the informant and other witnesses who were villagers or his family members. P.W. 2 Suman Sah does not deny it that he had narrated the fact to the informant and other witnesses who were villagers or the family members of the informant. So the narration about seeing the act of taking away of the



child appears admissible to me under Section 6 of the Evidence Act as res gestae as also under Section 60 of the Evidence Act.”

12. In ***Premiya alias Prem Prakash vs. State of Rajasthan reported in A.I.R. 2009 SC 351***, which the learned lower Court had also relied upon to infer against the appellant a case having duly proved for an offence punishable under Section 354 of the I.P.C., it has been observed:-

“12. In order to constitute the offence under [Section 354](#) IPC mere knowledge that the modesty of a woman is likely to be outraged is sufficient without any deliberate intention of having such outrage alone for its object. There is no abstract conception of modesty that can apply to all cases. ([See State of Punjab v. Major Singh](#) (AIR 1967 SC 63). A careful approach has to be adopted by the court while dealing with a case alleging outrage of modesty. The essential ingredients of the offence under [Section 354](#) IPC are as under:

(i) that the person assaulted must be a woman;

(ii) that the accused must have used criminal force on her; and

(iii) that the criminal force must have been used on the woman intending thereby to outrage her



modesty.

13. Intention is not the sole criterion of the offence punishable under [Section 354](#) IPC, and it can be committed by a person assaulting or using criminal force to any woman, if he knows that by such act the modesty of the woman is likely to be affected. Knowledge and intention are essentially things of the mind and cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances in which and upon whom the alleged offence is alleged to have been committed. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight. In the instant case after careful consideration of the evidence, the trial court and the High Court have found the accused guilty. But the offence is [Section 354](#) IPC.”

13. So far facts of the present case is concerned, even considering the evidence of the victim (PW-3), it is evident that she had categorically stated that she was ravished and that being so, there was no scope left to calm down to the extent of outraging modesty. That being so, there was/ is no material available on the record to justify the finding.

14. PW-1 is the doctor, who had examined the victim



on 31.01.2009 and had found the following:-

“She was average built, Her height was 4’1”, Weight was 40 kg. Teeth-14+/ 14+, Hairs axillary grown and black, pubic well down blacka and bushy. Breasts pendulous with darkened areola and prominent nipples secreting milk, Menarche-3 years back, LMP 20 days back as stated by her. He did not find any suspicious stains or foreign hairs on the body or clothes worn by her at the time of examination and he did not find any external injury on any part of her body. On Genital examination he found labia majora were separated apart exposing the pink labia menorah. Hymen was represented by tags of issues carunculae myfitifores. Vaginal canal admitted two fingers. He took aspirations and swabs from the vaginal canal and were subjected under the microscope immediately after collection of the samplesand he did not find spermatozoa live or dead, intact or broken. He advised for X’ray examination. He received X’ray plate No.9778 from the department of Radiology Darbhanga Medical College Hospital Laheriasarai duly signed by the Radiologist which showed components of the elbow joints and found fused. Ossification centres of iliac crests and ischial tuberosities have appeared but not fused. Triradiate cartilage on the ace-tabular cavity was found fused. Head greater trochanter and lesser trocahnter of the femur were found fused. Lower ends of radius and ulna showed recent fusion.



Head of metacarpals were found fused. He opined that age of victim lady was between 18 and 19 years and there is no positive evidence to suggest commission of recent forceful sexual intercourse with her with emission. He proved Exhibit-1 medico-legal report.”

Certainly on account of delay, the medical report could not be expected to corroborate the factum of rape, more particularly the victim, happens to be married one. So far delay in institution of the case is concerned, the same would not be a matter of concerned whenever it relates with an offence of rape. There happens to be consistent view even recently been decided in *State of Himachal Pradesh vs. Sanjay Kumar reported in 2017 CRI.L.J. 1442* that delay in institution of the case so far rape is concerned, has got no significance.

15. Giving anxious thought to the facts and circumstances of the case in consonance with the finding recorded by the learned lower Court, it is apparent that same is not at all substantiated and that being so, is set aside. Appeal is allowed. Appellant is on bail, hence is directed to be discharged from its liabilities.

(Aditya Kumar Trivedi, J)

Vikash/-

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