

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.259 of 2003

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Dharemdra Rai, Son of Rajendra Rai, Resident of Village – Dhum
Rai Ke Pura, P.S. – Buxar Industrial, Buxar.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ahileshwar Pd. Singh, Sr. Adv.
Mr. Rajendra Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-02-2018

Challenge in this appeal is of judgment of conviction and order of sentence dated 09.05.2003, passed by Shri R.P. Rai, the then Presiding Officer, Fast Track Court No. -1, Buxar, in Sessions Trial No. 74/96, by which the sole appellant - Dharmendra Rai, stood convicted under Sections 354 of the Indian Penal Code (hereinafter referred to as the "IPC") and was sentenced to undergo R.I. for six months.

2. Prosecution case as per the fardbeyan of Sunita Devi, in short is that on 17.11.94 at about 8. A.M., she was going along with her mother to take bath in the Ganges river and when they reached near the *bandh*, her mother sat down to ease out herself and she proceeded ahead, in the meantime, accused – Dharmendra Rai on the point of pistol tried to drag her and asked her to come along with him, on



which she protested and raised *hulla* and on hearing the sound of *hulla*, her mother came and accused person fled away.

3. On the basis of the fardbeyan of the informant, Buxar (Muffasil) P.S. Case No. 143/94 was instituted against the appellant under Section 376/511 of the IPC and under Section 27 of the Arms Act.

4. Post investigation, charge sheet was submitted. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of R.P. Rai, the then Presiding Officer, Fast Track Court No. -1, Buxar for trial and disposal

5. In order to prove its case, prosecution has examined altogether 06 witnesses, out of which P.W. 4 – Harendra Prasad and P.W. 5 –Vakil Sah have been declared hostile by the prosecution, P.W. 6 is the formal witness, who proved Ext. 1 – Fardbeyan, Ext. 2 – Formal F.I.R. and Ext. 3 – case diary, P.W.1 – Rajnarayan Sah (father of informant), P.W. 2 – Santosh Kumar Sah, (brother of informant) and P.W. 3 –Lachiya Devi, mother of informant and eye witness of the alleged occurrence. It appears from the evidence of P.W. 3 that the informant died during the pendency of the case and as such, she could not be examined in this case. Further it also appears that in this case I.O. has not been



examined.

6. Neither oral nor documentary evidence has been brought on record by the defence and from statement under Section 313 Cr.P.C as well as from the trend of cross-examination, it appears that the defence of the accused person is of false implication and of innocence.

7. Learned Trial Court after considering the evidence available on record, though not found the case true under Section 376/511 of the IPC as well as 27 of the Arms act, however, he convicted the appellant under Section 354 of the IPC and sentenced him in the manner as stated above.

8. Contention of learned Senior counsel for the appellant is that in this case, neither I.O. nor the informant herself has been examined to prove the genuineness of prosecution case and non – examination of informant and I.O. has certainly caused a serious prejudice to the defence and though it is alleged that P.W. 3, mother of the informant, is an eye- witness of the case, however, there are certain contradictions between her statement made before the police and in her evidence in chief and since the I.O. has not been examined, he could not be confronted with the aforesaid contradiction. Further submission is that no independent witness has been examined and P.W. 1 and P.W. 2 appears to be a hearsay witness and the case is



based only on the sole testimony of P.W. 3., whose evidence has not been corroborated by the evidence of any independent witness. It has also been submitted that the appellant at the time of alleged occurrence was a juvenile and the judgment of trial court itself shows that the trial court has considered this aspect but has not remanded the case to Juvenile Justice Board, for better appreciation of facts, as provided in Juvenile Justice Act, 1986 and has convicted the appellant only on the basis of sole testimony of P.W. 2, which is out and out perverse and not sustainable in the eye of law.

9. On the other hand, learned counsel for the respondent - State supported the finding of guilt recorded by learned Trial Court and submitted that as the informant died during pendency of the case, which is evidence from evidence of P.W. -3, she could not be examined and P.W. 3, who is the mother of informant, was accompanying the victim on the alleged date of occurrence, is an eye witness of the occurrence and has fully supported the case of prosecution and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellant under Section 354 of the IPC is just and proper.

10. Heard the rival contentions of the parties.

11. On evaluation of evidence of witnesses, as discussed



above P.W. 4 and P.W. 5 have been declared hostile and P.W. 6 is the formal witness in this case and there is nothing relevant in their evidence. So far P.W. 1 and P.W. 2 are concerned, they are father and brother of the victim, respectively and P.W. 1 has disclosed in his evidence that she came to know about the occurrence from his wife (P.W. 3), whereas P.W. 2 has stated in his evidence that he came to know about the occurrence from the victim. P.W. 3 is mother of the victim and her evidence discloses that on the alleged date of occurrence, she was accompanying the victim to take bath in the river Ganges and when they reached near the *bandh*, she sat down to ease out herself and her daughter (victim) proceeded further, thereafter, she heard a sound of scream of her daughter and rushed towards her daughter and found appellant – Dharmendra Sah, catching hold of the victim and was having a pistol in his hand and the accused on seeing her, fled away from the place of occurrence. This witness, in her cross-examination has disclosed that at the time of alleged occurrence the victim girl was aged about 18 to 19. Her evidence in cross-examination also disclosed that informant/victim had died after her marriage.

12. No doubt, I.O. and informant has not been examined in this case but it has come in the evidence of P.W. 3 that



the informant had died after her marriage and as such, she could not be examined and so far non – examination of I.O. is concerned, it is well settled principle of law that only because of non – examination of I.O., the entire prosecution case cannot be brushed aside and in this case, in spite of cross- examination, apart from minor contradiction/omission from earlier statement before police, there is no other discrepancy in the evidence of P.W. 3, and that supports the earlier version of the case. P.W. 1 and P.W. 2, though, are not the eye witness of the occurrence but their evidence shows that just after occurrence, P.W. 3 and victim disclosed about the occurrence to them. Hence evidence of witnesses is unimpeachable and that shows appellant forcibly tried to infringe the modesty of informant.

13. A submission has been advanced by Learned Senior Counsel for the appellant that at the time of alleged occurrence, appellant was minor and as provided in Juvenile Justice Act , 1986, the Trial Court should have referred the matter to Juvenile Justice Board. I find force in the said submission of learned Senior Counsel for the appellant, However, the occurrence is of the year 1994 and appellant was sentenced to undergo R.I. for six months and it appears that the appellant has also remained in custody for 14 days and there is nothing on record to show that he has



previously convicted in connection with any other case or has ever misused the privilege of bail and no fruitful purpose will be served to remand the matter to Juvenile Justice Board for consideration afresh or to sent the appellant behind the bars to serve the remaining sentence.

14. Accordingly, while upholding the conviction of appellant under Section 354 of the IPC, his sentence to undergo R.I. for 06 months is reduced to a period already undergone by him in judicial custody.

15. With the above modification in sentence, this appeal is disposed of.

16. As the appellant is on bail, he is discharged from liability of bail bond.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
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