

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.84 of 2004

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1. Satrugan Singh Son of Sheo Pujan Singh
2. Ram Dhyan Singh, Son of Kishun Singh
3. Shyam Pati Devi, Wife of Sheo Pujan Singh
4. Madhuri Devi, Daughter of Sheo Pujan Singh
All residents of Village – Masarhi, P.S. – Gaurichak, Dist – Patna.
.... Appellant/s

Versus

State of Bihar
.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Arun Kumar Tripathi, *Amicus Curiae*.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-03-2018

Nobody has appeared on behalf of the appellant in spite of repeated calls and it appears that the case is of the year 2004, as such, I deem it appropriate to appoint Mr. Arun Kumar Tripathi, learned counsel as *Amicus Curiae* to assist the court.

2. This appeal is against the judgment of conviction and order of sentence dated 17.01.2004, passed by Sri. N.C. Lala, the then Adhoc Sessions Judge, Additional Court No. 2, Patna in Sessions Trial No. 415 of 1992, by which the appellant Shatrughan Singh was convicted under Section 323 of the Indian Penal Code and was sentenced to undergo R.I. for six months and other appellants were also convicted under Section 323 of the IPC but they were released on probation under Section 4 of the probation of Offenders Act.



3. It appears that other appellants, namely, Ram Dhyani Singh, Shyam Pati Devi and Madhuri Devi have already furnished the probation bond of Rs. 2,000/- and period of six months have also expired as such, this appeal with regard to these three appellants stand abated.

4. Prosecution case as per the fardbeyan of Geeta Devi (informant and P.W. 3) recorded by the officer in charge Gaurichak police station, in short is that, on 06.09.1998 at 05 A.M., mother of appellant Shtraughan Singh and one Sunita Devi daughter of Bhola Sonar had gone to ease out themselves in dilapidated portion of house of the informant and when informant protested and abused, they left the place. It is further alleged that at about 5.30 A.M. appellant Shatrughan Singh came to her and asked her as to why she had abused his mother. On this, she replied that why she daily come to ease out in her house. Thereafter, the appellant Shtrughan Singh dashed her on a cot and started attempting to commit rape on her but as she had delivered a baby 15 to 20 days ago, she could not resist. In the meantime, wife of one Yogendra Singh came and appellant Shatrughan Singh left her and started fleeing away from her house and on query made by the wife of said Yogendra Singh, informant disclosed that the appellant committed rape on her. On hearing this, the accused returned and assaulted the informant by means of fists and slaps. In the meantime, her husband, who had gone to ease out



himself, returned and informant narrated the occurrence to him, thereafter other accused- appellants reached there and assaulted the informant and his husband with fists and slaps, causing injury to her and her husband.

5. On the basis of the said fardbeyan of informant, Gaurichak P.S. Case No. 392/88 was registered against the appellants. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri. N.C. Lala, the then Adhoc Sessions Judge, Additional Court No. 2, Patna in Sessions Trial No. 415 of 1992, for trial and disposal.

6. Charge was framed against the appellant Shtraughan Singh under Section 323, 448, and 376 of the IPC and charge was framed against other accused – appellant under Section 323 and 448 of the IPC.

7. In order to substantiate the charges, prosecution has examined altogether seven witnesses, they are; P.W. 1 – Mritunjay Singh (son of informant), P.W. 2 – Kritya Nand Singh (husband of the informant), P.W. 3 – Geeta Devi (informant), P.W. 4 – Binda Singh, P.W. 5 – Rajeshwar Singh, P.W. 6 – Dr. S. Bhatia, who had examined the informant and P.W. 7 – Dudheshwar Singh (Investigating Officer), who treated and examined the injured and P.W. 8 – Amar Nath Jha (Investigating Officer.)



8. The defense of the appellant is of false implication and denial of any such occurrence.

9. Post trial, learned Trial Court though not found the case true against the appellant under Section 376 and 448 of the IPC, however, he convicted the appellant under Section 323 of the IPC and sentenced him in the manner as stated above.

10. Being aggrieved, the appellants preferred the present appeal.

11. Contention of learned *Amicus Curiae* is that when the allegation of commission of rape and unauthorized trespass has not been proved, therefore, the allegation of assault and that too by fists and slaps also appears to be suspicious and does not inspire confidence. Appellants had falsely been implicated in this case due to land dispute, which will appear from the fact that P.W.1, who is own son of the informant has not supported the prosecution case. Similarly P.W. 4 and 5 have also not supported the case of prosecution and further it is alleged that appellant Shatrughan Singh and other appellant assaulted the informant and his husband also but no injury report has been brought on record with regard to P.W. 2, husband of the informant and the trial court without considering all these facts has convicted the appellants under Section 323 of the IPC, which is not sustainable in the eye of law.

12. On the other hand, learned counsel for the respondent - State has supported the finding of guilt recorded by learned Trial Court and



have submitted that there is consistent evidence to show that the appellants had assaulted the informant and her husband and as such, there is no infirmity in the impugned judgment of Trial Court and conviction and sentence of appellant under 323 is just and proper.

13. Considered the rival submission of the parties. From perusal of evidence of P.W. 3, who is the informant in this case, it appears that she has stated that appellant Shatrughan Singh trespassed her house and committed rape on her and also assaulter her and her husband. Evidence of P.W. 2 also corroborates the evidence of P.W. 3. However, it appears that the trial court has disbelieved the story of commission of rape as well as unauthorized trespass by the appellant in the house of informant. So far prosecution story with regard to assault on her by the appellant is concerned, the evidence of P.W. 1, who is the own son of informant, falsifies the aforesaid prosecution story as he has stated in his evidence in para – 1 that Shatrughan Singh was over the body of his mother and on hearing the sound of cry of his mother, he woke up and assaulted the appellant Shatrughan Singh by brick and, thereafter, the appellant Shatrughan Singh fled away and his father was not there at that time. If the evidence of this witness is believed to be true, the whole prosecution story with regard to assault to informant and her husband is demolished. This witness has not been declared hostile. No doubt, none of the witness has stated about the presence of this witness in the house at the time of



occurrence and in F.I.R also, there is no such statement that he assaulted the appellant Shatrughan Singh has been mentioned but he is a prosecution witness and has not been declared hostile and there is no occasion for this court to discredit the evidence of this witness. Further, it appears that P.W. 4 and P.W. 5 has also not supported the case of prosecution as P.W. 4 has stated in his evidence that he has not seen any occurrence and P.W. 5 has stated that there was previous dispute between the husband of the informant and the appellant Shatrughan Singh.

14. Considering the entire discussions made above, it appears that the prosecution has failed to establish its case of assault by the appellants to informant and his husband. Accordingly, this appeal is allowed. Judgment of conviction dated and order of sentence dated 17.01.2004, passed by Sri. N.C. Lala, the then Adhoc Sessions Judge, Additional Court No. 2, Patna in Sessions Trial No. 415 of 1992, is set aside.

15. As the appellant is on bail, he is discharged from liabilities of bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.03.2018
Transmission Date	22.03.2018

