

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.85 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUNGER

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Shambhu Yadav @ Shambhu Prasad Yadav, s/o Anup Lal Yadav, r/v-Matadih
Nayatola, P.S.-Dharhara, District-Munger.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamal Kumar Sinha

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 11-09-2018

By judgment dated 18.12.2008 passed by learned 1st

Additional Sessions Judge, Munger in S. Tr. No. 844/2005, arising out
of Dharhara P.S. Case No. 18/2004, the appellant, namely, Shambhu
Yadav @ Shambhu Prasad Yadav has been convicted under Section
376 of the Indian Penal Code and by order dated 05.01.2009, he has
been sentenced to undergo R.I. for ten years with fine of Rs. 10,000/-.
In default of payment of fine, to further undergo R.I. for one year.

2. Heard the learned counsel for the appellant as well as
the State.

3. Learned counsel for appellant has submitted that
besides victim girl, there is no any eye-witness of the occurrence. She
was not medically examined. She has stated in her evidence that there
is no injury on her body. It is further submitted that the victim was



working at the Crusher of Manoj Yadav and at his instance, she has falsely implicated the appellant in this case because appellant had enmity with aforesaid Manoj Yadav.

4. As per prosecution case, on the date of occurrence, the informant had gone to work as labourer along with other ladies at the Crusher of Manoj Yadav. She was working with other labourer on aforesaid Crusher since long time. It is alleged that on the date of occurrence, the informant arrived at the Crusher of Manoj Yadav at about 8 A.M. and after one hour, she went to attend call of nature in the eastern side of Crusher and when she was returning after attending call of nature towards Crusher, in the way accused Sambhu Yadav arrived and caught hold her neck and committed rape after putting her down.

5. Defence of the appellant is complete denial of occurrence and false implication in this case at the instance of owner of Crusher, namely, Manoj Yadav.

6. During trial, altogether five witnesses have been examined on behalf of prosecution.

7. The informant has been examined as P.W. 2. She has stated in her evidence that when she was returning after attending call of nature, accused Shambhu Yadav committed rape with her. After coming on Crusher, she told about the occurrence to other



person. In her cross-examination in para 5, she has stated that nobody had seen the occurrence. The occurrence of rape continued for half an hour but nobody came to the place of occurrence during that period. In para 6 and 7 of her cross-examination, she has stated that her *Saree* and Blouse were not torned. The occurrence has taken place beneath the bridge. She has stated in her evidence that she has not sustained any injury but some swelling has taken place on her neck due to pressing by accused Shambhu Yadav.

8. The other prosecution witnesses, namely, Bataswa Devi (P.W.3), Gautam Kumar (P.W. 4), Rajesh Kumar Kisku (P.W. 5) are hearsay witnesses. They all have stated in their cross-examination that they have not seen the occurrence.

9. Dinesh Jha (P.W. 1) is a formal witness. He has proved the formal F.I.R. as well as the Fardbeyan.

10. Some documents have been filed on behalf of defence, which has been marked as Ext. A without objection, which is injury report of the victim Ratni Devi. In the injury report, doctor has found no mark of injury on private part of victim. There is no presence of spermatozoa. Further, the doctor has also not found any external injury on the body of victim. The doctor has opined that there is possibility of rape.

11. In this manner, from the evidence of witnesses



available on record, it appears that besides the victim, there is no any other eye-witness to corroborate the occurrence. The prosecution has not produced any medical evidence with regard to victim girl. The victim has also nowhere stated in her evidence that she was medically examined. She has specifically stated in her cross-examination in para 6 and 7 that her *Saree* and Blause were not torned. She has not suffered any injury. She has only sustained swelling over the neck due to press by appellant.

12. The defence has filed injury report of the victim as Ext. A, which was admitted without objection by the prosecution. The doctor has found no any external injury on any part of body of victim. The doctor has also found no injury on the private part of victim.

13. In such circumstances, this Court finds that prosecution has not been able to prove the charge levelled against the appellant for offence under Section 376 of the Indian Penal Code beyond reasonable doubt by cogent and reliable evidence.

14. The appellant is accordingly acquitted from the charge levelled against him.

15. The impugned judgment of conviction dated 18.12.2008 and order of sentence dated 05.01.2009 is hereby set aside.

16. This Criminal Appeal is allowed.



17. The appellant is on bail. He is discharged from liability of his bail bond.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
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