

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.99 of 2013

Arising Out of PS. Case No.-74 Year-2005 Thana- Triveniganj District- Supaul

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1. Neti Yadav S/o Jhamo Lal Yadav Resident of Village- Bhairiopatti, P.S.- Triveniganj, Dist.- Supaul
 2. Anil Yadav S/o Thakur Prasad Yadav Resident of Village- Bhairiopatti, P.S.- Triveniganj, Dist.- Supaul

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 116 of 2013

Arising Out of PS. Case No.-74 Year-2005 Thana- Triveniganj District- Supaul

Mahendra Yadav S/o Bindeshwari Yadav R/o Village - Bhairiopatti, P.S. Triveniganj, District - Supaul

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 99 of 2013)

For the Appellant/s : Miss Monika, Advocate.

For the Respondent/s : Mr. Sujeet Kr. Singh, APP.

(In Criminal Appeal (SJ) No. 116 of 2013)

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae.

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

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date : 03-10-2018

Heard learned counsel for the appellants Miss
Monica in Cr. Appeal No. 99 of 2013 and learned Amicus



Curiae Mr. Ranbir Singh in Cr. Appeal No. 116 of 2013 as well as learned APP for the State on these criminal appeals.

2. As both the criminal appeals have cropped up from the same judgment, hence aforesaid two appeals are being heard together and disposed of by this common judgment.

3. Aforesaid two criminal appeals have been preferred against the Judgment and Order of conviction and sentence dated 18.01.2013 passed by *Ad hoc* Additional Sessions Judge Ist, Supaul in Sessions Trial No. 315 of 2006 arising out of Triveniganj P.S. Case No. 74 of 2005, whereby the learned trial court convicted the accused Anil Yadav, Neti Yadav and Mahendra Yadav for the offence punishable under Section 201 of the Indian Penal Code and sentenced them to undergo R.I. for three years each and also slapped them with a fine of Rs.1000/- each and in case of default of payment of fine to further undergo S.I. for three months each under Section 201 of the Indian Penal Code.

4. Factual matrix of the case is that Triveniganj P.S. Case No. 74 of 2005 was instituted under Sections 376/201/34 of the Indian Penal Code against the accused persons, namely, Arun Kumar Yadav, Neti Yadav, Anil Yadav, Mahendra Yadav and Vidyanand Yadav on the basis of the *fardbeyan* of Nirmal



Kumari, daughter of Basudeo Sah recorded by S.I. B. K. Gupta O/c P.S. Triveniganj on 27.06.2005 at 4 PM at P.S. Triveniganj with the allegation in succinct that on 19.06.2005 at around 09:30 AM, while she was regressing to her house from Shiv Temple after offering worship and arrived near the field of Vidyanand Yadav, Arun Kumar Yadav who was hidden in the field emerged there from the said field and catching her hold asked her to lift the bundle of grass. On her refusal to oblige him, he dragged her inside the field and assaulted her and tied her hand by means of patua and pressed her neck. Thereafter he committed rape against her stripping her off. She fell senseless. When she regained sense after two hours she found herself in her house. Her father divulged that she was lying unconscious in the field of Mahadev Yadav and on making hulla, Surya Narayan Sah and Sushil Kumar lifted her to the house. Then she divulged the occurrence to her family members and her father divulged the occurrence to the villagers in turn. Accused Arun Kumar Yadav was brought at the door of Ram Lochan Sah and he confessed his guilt in the occurrence. Further allegation is that when her father was rushing her to the P.S. on the bullock cart, Neti Yadav and Anil Yadav forcibly made them return and took her to the clinic of Dr. Poddar where she underwent



treatment. Then she was taken to her house by her father at 09:30 PM. A panchayati was organized on the following morning. Neti Yadav, Anil Yadav, Mahendra Yadav and Vidyanand Yadav asked her father not to lodge the case else they will be ousted from the village and promised him to give 10 kattha land and money for the treatment and maintenance of the informant. They forcibly took her father to registry office on 21.06.2005 and executed 10 kattha of land in favour of her father and forcibly took Rs.11000/- from her father for executing the said land but the accused persons did not return registry receipt to him. The accused persons did not allow her and her father to rush to the P.S. and laid siege of the house but anyhow she arrived at the P.S. along with her father and uncle and gave her statement.

5. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet under Sections 376 and 201/34 of the Indian Penal Code against the accused Arun Kumar Yadav and Vidyanand Yadav which was committed to the court of sessions. Later on police submitted supplementary chargesheet against the accused Mahendra Yadav, Neti Yadav and Anil Yadav under Sections 376 and 201/34 of the Indian Penal Code.



6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and after commitment and on transfer finally the case came in the *seisin* of *Ad hoc* Additional Sessions Judge Ist, Supaul for trial.

7. Charge against the accused persons namely Anil Kumar Yadav, Neti Yadav and Mahendra Yadav was framed under Section 201 of the Indian Penal Code. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case in ocular evidence, the prosecution has examined altogether seven witnesses namely, Surya Narayan Sah as PW-1, Sushil Kumar as PW-2, Buchni Devi as PW-3, Mahadev Sah as PW-4, Basudeo Sah as PW-5, informant Nirmal Kumari as PW-6 and Dr. Nutan Verma who had examined the victim as PW-7. Prosecution has also filed and proved several documents by way of documentary evidence in the case.

9. Statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. The defence



has neither adduced any ocular nor documentary evidence in buttress of its case.

10. After hearing the parties and perusing the record, the learned trial court passed the aforesaid Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts Neti Yadav and Anil Yadav have preferred Criminal Appeal (SJ) No. 99 of 2013 and convict Mahendra Yadav has preferred Criminal Appeal (SJ) No. 116 of 2013.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned counsel for the appellants and learned *Amicus Curiae* that the occurrence is of 19.06.2005 at 09:30 AM, but F.I.R. was lodged on 27.06.2005 i.e. after abnormal delay of eight days and no plausible and convincing reason has been assigned by the prosecution to explain the aforesaid abnormal and inordinate delay in lodging the F.I.R. which creates serious doubt about the prosecution



case. It is further submitted that out of six material witnesses examined by the prosecution, PW-1 has not supported the occurrence of Section 201 I.P.C. as levelled against the appellants. PW-2 happens to be brother of the informant, PW-3 her mother, PW-4 her uncle, PW-5 her father and PW-6 informant herself. Aforesaid witnesses happen to be highly interested witnesses of the case. As per the prosecution case, a panchayati was organized by the accused persons, but no punch has been examined by the prosecution. Thus the testimony of the highly interested witnesses does not stand corroborated by any independent witness of the occurrence. It is further submitted that there is vital contradiction between the testimonies of the witnesses regarding the occurrence of Section 201 IPC as alleged against the appellants and the aforesaid inconsistent ocular evidence of the prosecution does not stand corroborated by any independent witness of the occurrence. It is also submitted that the father of the informant namely Basudeo Sah had got the sale executed by Vidyanand Yadav on assurance of the payment of sale consideration but as he did not give sale consideration to him, chirkut of the aforesaid sale deed has not been accorded by Vidyanand Yadav and in order to obtain aforesaid sale deed from Vidyanand Yadav and grab his



aforesaid property without making payment of sale consideration, father of the informant has got this false and frivolous case filed against the appellants. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy and reliable evidence. Hence the aforesaid judgment and order of conviction and sentence passed by the learned Trial Court against the appellants is liable to be set aside and the appellants are entitled to be acquitted.

14. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence has submitted that the informant has supported the prosecution case *in toto*. Other witnesses have also corroborated the aforesaid prosecution case and learned trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

15. From perusal of the record, it appears that there are two parts of the occurrence. In first part, accused Arun Kumar Yadav is said to have committed rape against the



informant by dragging her in the patua field and assaulting her while in the second part of the occurrence, the appellants are said to have forcibly prevented the father of the informant and the informant from rushing to the P.S. for lodging the case and after getting the informant treated in the clinic of Dr. Poddar, made them return to the house and detained them in the house for eight days and also extended threatening of ousting from the village in case of lodging the F.I.R. and father of the accused Arun Kumar Yadav namely Vidyanand Yadav executed sale deed of 10 kattha of land in favour of the father of the informant taking Rs.11,000/- from him to keep mum but did not provide him the registry receipt. To substantiate the second part of the occurrence which is levelled against the appellants, prosecution has examined six material witnesses of the case. Out of them, PW-1 Surya Narayan Sah does not appear to have supported the aforesaid occurrence rather only occurrence of taking the victim from the place of occurrence to her house and divulgence of the occurrence of rape against her by the accused Arun Kumar Yadav by her to her family members and thereafter rushing the informant to the P.S. for lodging the case. He has even whispered nothing against the appellants.

16. So far as execution of 10 kattha of land in



favour of the father of the informant taking Rs. 11,000/- from him and not providing registry receipt of the same to keep him mum is concerned, aforesaid allegation is not levelled against the appellants rather father of the accused Arun Kumar Yaav, namely Vidyanand Yadav and the said accused is not facing the case under hand. As per the prosecution case as mentioned in the fardbeyan, only accused Neti Yadav and Anil Yadav made the informant and her father return on the way to Dr. Poddar and did not allow them to go to the P.S., but in quite contradiction to the aforesaid prosecution case, informant (PW-6) has stated in para-1 of her examination-in-chief that all the four accused persons namely Neti Yadav, Anil Yadav, Vidyanand Yadav and Mahendra Yadav did not allow them to approach P.S. rather made them return on the way and in quite contradiction to the aforesaid prosecution case and the statement of the informant, Sushil Kumar (PW-2) has stated in Para-1 of his examination-in-chief that Neti Yadav, Mahendra Yadav and Vidyanand Yadav made them return forcibly on the way while Buchni Devi (PW-3) has stated in Para-1 of her examination-in-chief that Neti Yadav and Vidyanand Yadav made them return from the way.

17. As per the prosecution case and the account of



the informant (PW-6), father of the informant Basudeo Sah (PW-5) only rushed the informant to the P.S. on bullock cart. But in quite contradiction to the aforesaid statement of the informant, PW-2 Sushil Kumar in Para-1 of his examination-in-chief has stated that he rushed the informant to the P.S. while PW-3 Buchni Devi in Para-1 of her examination-in-chief has stated that they were rushing the victim to P.S. Triveniganj on bullock cart for lodging the case and PW-4 Mahadev Sah in para-1 of his examination-in-chief has stated that they were rushing the victim to the P.S. for lodging the case and PW-5 Basudeo Sah in para-1 of his examination-in-chief has stated that he, his wife and son were taking the informant to the P.S. for lodging the case.

18. As per the prosecution case, accused took them to Dr. Poddar where she was treated and then her father took the informant to her house at 09:30 PM. But in quite contradiction to the prosecution case, informant (PW-6) in para-1 of her examination-in-chief has stated that she was taken to the doctor of Kumiyaahi who refused to treat her and accorded her some medicine only. Then her father took her to the house. While PW-2 Sushil Kumar has not stated about taking the informant to the doctor rather has stated that the



accused persons made him and the informant return to the house forcibly then they regressed to the house at 08:30 PM and PW-3 Buchni Devi in Para-1 of her examination-in-chief has stated that she took the victim to compounder at Kumiyaahi who accorded her some medicine. Thereafter they regressed to the house and PW-4 Mahadev Sah in Para-1 of his examination-in-chief has stated that the accused persons took the victim forcibly to the hospital of Kumiyaahi and made the girl send to the house after getting her treated while PW-5 Basudeo Sah in Para-1 of his examination-in-chief has stated that on interruption of the accused persons, he rushed the victim to Dr. Poddar of Kumiyaahi who administered 2-4 injections to the victim and vented his inability to handle the case. Then he took her to the house at 08:30 PM.

19. As per the account of PW-6 and PW-2 given in Para-1 of their respective examination-in-chief accused had detained them in the house and laid siege of the house for eight days and did not allow them to lodge the case. Anyhow getting opportunity after eight days, they rushed to the P.S. But PW-3 and PW-4 have not supported the aforesaid statement of PW-6 and PW-2. Moreover, PW-2 who happens to be brother of the informant has stated in Para-2 of his cross-examination that



during the aforesaid period of eight days, they used to pay visit to their co-villagers and for defecation in the open and also used to meet and interact with the villagers, so million dollar question arises as once the PW-2 had opportunity to go outside of the house from the alleged clutches of the accused persons and meet and interact with the villagers why he did not rush to the P.S. to inform the matter to the police earlier or at least send any of the villagers to the P.S. to inform the occurrence though he had sufficient opportunity for that which remained unanswered. Moreover, as per the account of PW-3 and PW-5 given by them in their respective examination-in-chief, they took the victim to the doctor/compounder themselves and from there to their house which means that the accused persons were not with them during the aforesaid period and they had ample opportunity to rush to the P.S. and inform the occurrence to the police on that very day but they did not do so. Aforesaid aspect of the case creates serious doubt about the prosecution case and prosecution has failed to assign any convincing and plausible reason to explain the inordinate and abnormal delay of eight days in lodging the F.I.R. which also creates serious doubt about the sanctity of the aforesaid F.I.R. and the prosecution case.



20. As per the witnesses' account, accused persons had organised the panchayati in the village regarding the occurrence on following day of the occurrence, but no punch has been examined by the prosecution in substantiation of the aforesaid prosecution case. As per the prosecution case, on 21.06.2005, execution of 10 kattha of land forcibly in favour of the father of the informant was made and punches realized the expense of the aforesaid execution worth Rs. 11,000/- from the informant, but registry receipt of the aforesaid sale deed was not handed over to him. On perusal of the testimony of the witnesses, it appears that none of the witnesses barring the informant (PW-6) has stated as to who took the father of the informant from his house for execution of the document forcibly. PW-2 in Para-2 of his cross-examination has stated that his father was taken to registry office on the Hero Honda motorcycle forcibly but he did not disclose the name of the person taking him on the aforesaid motorcycle. Though PW-6 has stated in her examination-in-chief that Vidyanand Yadav had forcibly taken her father to the panchayati and from there to Triveniganj for registration of the document and PW-3 has stated in Para-1 of her examination-in-chief that Vidyanand forcibly executed 10 kattha of land to her husband on



21.06.2005 to hush up the matter but the said Vidyanand Yadav is not the appellant of the case under hand. Moreover, PW-6 in para-2 of her cross-examination has stated that she had lodged the case at the P.S. as told to her by her parents which also goes to create serious doubt about the sanctity of the F.I.R. and the prosecution case. Thus from perusal of the prosecution case and the aforesaid testimony of the witnesses, it appears that there is vital contradiction between the prosecution case and the testimony of the informant and the testimony of the witnesses *inter se* regarding the complicity of the appellants in the alleged occurrence.

21. In the facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court against the appellants is set aside and the appellants are acquitted from the charge levelled against them. As the appellants are on bail, they are discharged from the liability of their bail bonds. Accordingly, aforesaid two criminal appeals are allowed.



22. Let a copy of the first and last page of this judgment be handed over to the learned Amicus Curiae, Mr. Ranbir Singh and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J)

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AFR/NAFR	A.F.R.
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