

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.468 of 2003

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

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Laxami Thakur @ Laxman Thakur, son of Sri Bichho Thakur, resident of village
Gaura (Manjhi Dih), P.S. Chandan (Anandpur), District Banka

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Subhash Kumar Jha, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 15-03-2018

Sole appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for eight years vide judgment and order dated 23.8.2003 passed by Sri Bijoy Prasad Poddar, the then IInd. Additional Sessions Judge, Banka in Sessions Case No. 555 of 2001. However, other accused Bichho Thakur has been acquitted from the charge levelled against him under Section 120B IPC.

2. Prosecution case which has been initiated on the basis of fardbeyan of informant Lalita Kumari (PW 2), in short, is that she had gone to her field situated in Hariyasi Bahiyar for making passage to bring water into the field and at that time accused Laxmi Thakur came there and enquired from her as to whether she was bringing water into her field and thereafter accused Laxmi Thakur lifted her into his lap



forcibly and brought her into the Rahar field of Shado Mahton, where she was subjected to rape by the appellant by pushing napkin in her mouth. It is also the prosecution case that when mother of informant began to take her to Anandpur O.P., accused Bichho Thakur threatened her with dire consequences and stopped her from going to Anandpur O.P.

3. On the basis of aforesaid fardbeyan, Chandan P.S. Case No. 49 of 2000 was registered. Police after investigation submitted charge sheet and cognizance for the offence has been taken and after commitment the case traveled to the file of the learned trial judge for trial and disposal.

4. During trial appellant was charged under Section 376 IPC and another accused Bichho Thakur was charged under Section 120B IPC.

5. In order to substantiate its case the prosecution has examined altogether six witnesses, they are PW 1 Shakuni Devi, who is mother of victim girl, PW 2 Lalita Devi, who is victim and informant in this case, PW 3 Mahesh Yadav, who is a hearsay witness, PW 4 Ramdeo Thakur and PW 5 Bonga Thakur @ Sahdeo Thakur, who have been declared hostile by the prosecution, PW 6 Deo Kishore Prasad is I.O of this case.

6. On behalf of defence also three witnesses have been



examined, they are DW 1 Kartik Yadav, DW 2 Shankar Das and DW 3 Jitendra Mandal and the evidence of DWs 1 and 2 shows that they were present at the place of occurrence and no such occurrence had taken place and they had not seen victim Lalita Kumari and accused appellant Laxmi Thakur at the time and place of occurrence and DW 3 is Pleader's clerk, who has proved the medical report of Lalita Kumari which has been marked as Ext.A. Defence of the accused person is of innocence and of false implication.

7. Learned trial court after conclusion of trial has convicted the appellant under Section 376 IPC and sentenced him as stated above and acquitted the other accused Bichho Thakur.

8. Contention of learned counsel for the appellant is that evidence of PW 2, the victim girl, is unbelievable and suffers from infirmities and there is no eye-witness to the occurrence, except PW 2 and Doctor has not been examined in this case to support the prosecution case. It has also been submitted that father of victim has not been examined in this case and that also creates doubt about the prosecution case. PW 1 is mother of victim girl and PW 2 is hearsay witness and other witnesses have been declared hostile and even the I.O. also appears to be an interested witness as he could not say as to whose information he has come in village to record the fardbeyan though he has found foot prints at the place of occurrence and he has



admitted that clothes of the victim have not been seized nor it was sent for chemical examination, as such, prosecution case suffers from infirmities but the learned trial court has not considered the aforesaid infirmities and convicted the appellant under Section 376 IPC, which is not sustainable in the eye of law.

9. On the other hand, learned counsel for the State has defended the judgment on the ground that there are sufficient evidence available on record to show that it is the appellant who has committed rape upon the victim girl and, as such, the conviction of the appellant is just and proper and does not require any interference by this Court.

10. On considering the evidence available on record in the background of submission of both sides it appears that PW 2 is the informant in this case and her evidence discloses that about two years prior at about 9 A.M. she had gone to Hariyasi Bahiyar to make passage for water to her field and in the meantime accused appellant Laxmi Thakur came there and asked what she was doing and her evidence further discloses that she was lifted and thrashed in the Rahar field of Bhado Mahton forcibly and after pressing napkin in her mouth he committed rape upon her. Her evidence in paragraph-3 shows that she narrated as to how she was raped by the appellant in details, though in the FIR no such details have been mentioned. Her evidence also discloses that when she and her mother was going to



Anandpur Out Post to lodge fardbeyan, accused Bichho Thakur, father of appellant Laxmi Thakur stopped them from going to Anandpur Out Post and threatened them for dire consequences. In her cross examination she has admitted that Laxmi Thakur and Bichho Thakur were son and father. Her evidence further discloses that she was going to report about the occurrence to Bichho Thakur but he has denied that he has no relationship with Laxmi Thakur. She has also admitted that her father was alive.

11. PW 1 is mother of victim girl and in her evidence she has stated that her daughter had gone to the field for making passage for bringing water in Hariyasi Bahiyar and she came back and told her that accused Laxmi Thakur had committed rape upon her. She tried to come to Anandpur O.P. to lodge case against accused Laxmi Thakur then accused Bichho Thakur threatened her with dire consequence if case is lodged against his son Laxmi Thakur and on the next day Bara Babu came and recorded the fardbeyan. Her evidence in cross examination also discloses that her daughter told about the occurrence in her house and she disclosed about the same to 2-4 persons after arrival of the darogaji. Her evidence also shows that first her statement was recorded and thereafter the statement of victim girl was recorded, whereas fardbeyan shows that victim Lalita Kumari has made her first statement.



12. PW 3 is Mahesh Das and hearsay witness and he has stated in his evidence that he saw Lalita Kumari and her mother crying and Lalita Kumari told him that she was raped by Laxmi Thakur. However, there is nothing like that in the evidence of PW 2, who is the victim girl that she disclosed the same to PW 3. As such, evidence of this witness does not appear to be believable.

13. PWs 4 and 5 have been declared hostile and there is nothing relevant in their evidence for just decision of the case.

14. PW 6 is the I.O. and in his evidence he has stated that he came to know about the occurrence and recorded the statement of victim girl at village. He has found foot prints at the place of occurrence but he has not mentioned about the same in the diary. His evidence also shows that he has not seized sari of the victim.

15. Prosecution has not examined the Doctor who is said to have examined the victim girl for the reasons best known to the prosecution and no such explanation has been given for that but defence has brought on record the injury report as Ext. A, which has been proved by a formal witness. The defence witnesses have been examined to show that no such occurrence has taken place and at the time of occurrence DWs. 1 and 2 were present and they had not seen Lalita Kumari and Laxmi Thakur at the place of occurrence.

16. On perusal of entire evidence it appears that except PW 2



there is no eye-witness to the occurrence and even Doctor, who has treated the victim girl, has not been examined and medical report has not legally been brought on record to show that she was suffering from any injury and in such a situation the finding of the learned trial court creates doubt about the prosecution case. It further appears that in this case fardbeyan was recorded by PW 6 and in his evidence he has not mentioned as to whose information he reached to the village to record the fardbeyan and for such act of I.O. It further appears that PW 6 is the investigating officer in this case and he has taken over the investigation also. Hon'ble Supreme Court has deprecated such practice as being informant of this case, he would try to justify his action in the court. It further appears that in spite of occurrence took place on 30.8.2000 nobody was informed about the same. It further appears that though prosecution evidence shows that victim girl was lifted by appellant Laxmi Thakur, thrashed her on the ground and committed rape upon her and details of commission of rape has been given by PW2 but no question has been asked from the appellant to the evidence available against the appellant on which learned trial has tried to rely upon, rather a general question has been asked to the accused that on 30.8.2000 in village Goura Hariyali Bahiyar he has forcibly committed rape upon Lalita Kumari which does not appear to be proper compliance of Section 313 Cr.P.C. Hon'ble Apex Court in



the case of **Sukhjit Singh v. State of Punjab : (2014) 10 SCC 270** after relying upon earlier judgments of the Hon'ble Supreme Court, including **Ajay Singh vs. State of Maharashtra : (2007) 12 SCC 341** has laid down the principle in paragraph-14 of the judgment for recording statement of the accused under Section 313 Cr.P.C., which is as follows :

“14. The word “generally” in Sub-section (1)(b) does not limit the nature of the questioning to one or more questions of a general nature relating to the case, but it means that the question should relate to the whole case generally and should also be limited to any particular part or parts of it. The question must be framed in such a way as to enable the accused to know what he is to explain, what are the circumstances which are against him and for which an explanation is needed. The whole object of the section is to afford the accused a fair and proper opportunity of explaining circumstances which appear against him and that the questions must be fair and must be couched in a form which an ignorant or illiterate person will be able to appreciate and understand. A conviction based on the accused's failure to explain what he was never asked to explain is bad in law. The whole object of enacting Section 313 of the Code was that the attention of the accused should be drawn to the specific points in the charge and in the evidence on which the prosecution claims that the case is made out against the accused so that he may be able to give such explanation as he desires to give.”

Considering the aforesaid settled principle of law laid down in the case of Sukhjit Singh (supra), it appears that in present case also the requisites questions are not put to the accused and that will



amount to non compliance of the statutory requirement of Section 313 Cr.P.C., as such, prejudice is deemed to have been caused to the accused and this vitiates the entire trial and a conviction based on such a vitiated trial is unsustainable. Learned trial court has not considered this aspect of the matter and convicted the appellant under Section 376 IPC.

17. Considering the above infirmities and inconsistencies discussed above, the conviction of the appellant does not appear to be sustainable.

18. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

spa/-

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