

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.451 of 2003

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

Dayanand Yadav, son of Late Shadho Yadav, resident of village Belauri, P.O.
Belauri, P.S. Lakhisarai, District Lakhisarai

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Mr. Arun Kumar Arun with
Mr. Atul Anand, Advocates

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

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-03-2018

Sole appellant Dayanand Yadav has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for five years and he has further been convicted under Section 3(xii) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and sentenced to undergo rigorous imprisonment for two years vide judgment and order dated 1.8.2003 and 2.8.2003 respectively passed by Sri Abdul Nasir Khan, the then 1st Additional Sessions Judge-cum-Special Judge, Munger, in Sessions Trial No. 399 of 2001.

2. Prosecution case as appears from the fardbeyan of



Suma Devi (PW 9), who is said to be grandmother of the victim Rita Devi, in short, is that on 25.2.2001 when she reached at her house in village Balouri at 7 A.M. to see her Mousi (aunt) Rupa Devi, who died on 24.2.2001, there where she was informed by one Gita Devi (PW 2) that her granddaughter Rita Kumari, aged about eight years, was raped by villager Dayanand Yadav (appellant), upon which she enquired about the matter in her house and lady members of the house narrated that on 24.2.2001 at 7.30 P.M. accused Dayanand Yadav came at the darwaja of informant, called upon the informant but as there was no male member in her house, her granddaughter Rita Kumari having heard the call came out of the house, upon which appellant Dayanand yadav gagged her mouth, took her away in his lap at a distance of half kilometer from the village near Pipal tree and committed rape and brought her to Khalihan situated in western side of the village and threatened her to kill if she would narrate the matter to anyone. Further prosecution case is that at 9 P.M. the victim Rita Kumari came to the house in



weeping condition and narrated the said fact. Further prosecution case is that victim Rita Kumari sustained swelling injury in her private part.

3. On the basis of aforesaid fardbeyan Lakhisarai P.S.Case No. 59 of 2001 was registered and after cognizance and commitment the case traveled to the file of the learned Trial Judge for trial and disposal.

4. During trial charges were framed against the appellant under Section 376 IPC and also under Section 3(xii) of SC/ST Act.

5. During trial altogether 12 witnesses have been examined on behalf of prosecution, they are PW 1 Ramautar Das, who is husband of informant and has proved Ext.1, PW 2 Gita Devi, who is mother of victim and has been declared hostile, PW 3 Anchi Devi declared hostile, PW 4 Dipnarain Bind, who is hearsay witness, PW 5 Mukesh Das, who is maternal uncle of the victim and hearsay witness, PW 6 Ramdular Das declared hostile, PW 7 Raj Kumar Yadav declared hostile, PW 8 Lalpari Devi declared hostile, PW 9



Suma Devi, who is nani (maternal grandmother) of the victim declared hostile, PW 10 Shukri Devi declared hostile, PW 11 Sabita Kumari declared hostile and PW 12 Rita Kumari, who is victim girl.

6. Apart from that, the prosecution has brought on record the following documents as exhibits, they are Ext.1-signature of Ramautar Das on the fardbeyan and Ext.1/1-signature of informant Suma Devi on fardbeyan.

7. Defence of the accused appellant is total denial of the occurrence and of innocence.

8. On perusal of entire evidence, it appears that all the witnesses except PWs 1, 4, 5 and 6 have been declared hostile, including the informant of the case, who claims to be maternal grandmother of the victim girl and mother of the victim girl Gita Devi (PW 2) and the victim herself and their evidence does not disclose anything relevant to support the prosecution case at all, whereas PWs 1, 4, 5 and 6 are hearsay witnesses and PW 1 (husband of informant) is said to have heard the prosecution story from Gita Devi, mother of



the victim girl but Gita Devi has been declared hostile and her evidence does not show that she has disclosed about the prosecution case to PW 1. Similarly from the evidence of Dipnarain Bind (PW 4) it appears that he is not an eye-witness to the occurrence and claimed to have heard the prosecution story from informant Suma Devi (PW 9), who, too has also been declared hostile and there is nothing in his evidence that the prosecution story has been narrated by the informant to him. PWs 5 and 6 are also hearsay witnesses and they have claimed to have heard the prosecution story from the informant (PW 9). As I have stated above, the informant has been declared hostile and her evidence does not show that she disclosed the fact to the witnesses. However, learned trial court, as discussed above, has convicted the appellant under Section 376 IPC and also under Section 3(xii) of SC/ST Act and sentenced him as stated above.

9. Learned counsel for the appellant has assailed the judgment on the ground that there is absolutely nothing



against the appellant as almost all the witnesses, including mother of the victim girl (PW 2) and victim girl have been declared hostile and at best the victim could be an eye-witness to the commission of rape but she has been declared hostile and her mother and grandmother (informant) have also been declared hostile and, as such there is nothing in this case to convict the appellant under Section 376 IPC and 3(xii) of SC/ST Act but in spite of having no legal evidence available on record learned trial court has convicted the appellant, as such, the conviction of the appellant is perverse and bad in law.

10. On the other hand, learned counsel for the State has submitted that the statement under Section 164 Cr.P.C. of the victim girl shows that such occurrence took place, however she has been declared hostile but the evidence of other witnesses, who are hearsay witnesses, shows that they have supported the prosecution case about commission of rape to PW 12 Rita Kumari.

11. On perusal of the judgment it appears that learned



trial court has convicted the appellant in spite of having no legal evidence on record and all the witnesses have been declared hostile except PWs. 1, 4, 5 and 6, who are hearsay witnesses and their evidence cannot be held to be admissible but learned trial court has convicted the appellant on the ground that victim was minor girl and her statement made under Section 164 Cr.P.C is against the accused appellant about commission of rape by him upon her and further there is no evidence available on record to show previous enmity between the parties and so there is nothing on record to disbelieve the evidence of PW 1, who is maternal grandfather of the victim and PW 5, who is maternal uncle of the victim. However, learned trial court failed to consider that PWs 1, 4, 5 and 6 were hearsay witnesses and in absence of any corroboration of their evidence by evidence of other witnesses the same has no value in the eye of law.

12. Considering the discussions made above, the impugned judgment of conviction and order of sentence do not appear to be sustainable in the eye of law. 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 liability of his bail bond.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
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