

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.28 of 2009**

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

\*\*\*

[Against judgment of conviction and order of sentence dated 22.12.2008 passed by the Additional Sessions Judge, FTC III, Supaul, in Sessions Trial No.96 of 2006 arising out of Triveniganj P.S. Case No.74 of 2005]

\*\*\*

- =====
1. Arun Kumar Yadav, son of Bidyanand Yadav,
  2. Vidyanand Yadav, son of Bindeshwar Yadav, both resident of village-Vairo Patti, P.S.-Triveniganj, District-Supaul.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

=====

**Appearance :**

For the Appellant/s : Mr. Maya Shankar Mishra, Advocate  
Mr. Nagendra Upadhyay, Advocate

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

=====

**CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA**

**CAV JUDGMENT**

**Date: 30-04-2018**

By judgment of conviction and order of sentence dated 22.12.2008 passed by the Additional Sessions Judge, FTC III, Supaul, in Sessions Trial No.96 of 2006 arising out of Triveniganj P.S. Case No.74 of 2005, Appellant No.1, Arun Kumar Yadav, has been convicted for the offence under Section(s) 376 Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and Appellant No.2, Vidyanand Yadav, has been convicted



for the offence under Section(s) 201 Indian Penal Code and sentenced to undergo rigorous imprisonment for one year.

2. Prosecution case, as per First Information Report, is that on 19.06.2005 at about 8.30 AM, the informant had gone to Temple for Puja. She was returning home and reached near the field. Both the appellants were hiding in the field. It is alleged that appellant, Arun Kumar Yadav, caught the hand of the victim and told her to pick up the grass. The informant denied and attempted to run away. Then, Appellant, Arun Kumar Yadav, took her inside the field and started assaulting her. Thereafter, he tied both the hands of the victim with *Patuaa* and started pressing her neck. The informant became afraid. He removed her clothes and committed rape with her and she became unconscious. She recovered sense after 1-2 hours and found herself in the house. Father told her that some boy had seen her lying in *Patuaa* field of Mahadeo Rai at 10.15 AM and they raised *halla*. Thereafter, her brother, Sushil Kumar along with villager, Surya Narayan Sah, had brought her and gave information about the occurrence. Father of the informant told the occurrence to the villagers. The villagers caught the boy. Thereafter, boy was brought to the door of Ram Lochan Sah. He admitted his guilt before the villagers. Thereafter, father of victim was bringing the victim to the Police Station for lodging the case, then Neto Yadav,



and Anil Yadav persuaded the informant to return back and brought her to Dr. Poddar, where she got treatment. Thereafter, the informant was brought to the house by her father. *Panchayati* sat on 20.06.2005 in which Neto Yadav, Anil Yadav, Mahendra Yadav, and Vidyanand Yadav asked the father of the informant not to lodge the case and threatened him that they will be ousted from the village, if case is lodged. He will be given 10 Kathas of land for treatment and maintenance. They told that registry of 10 Kathas of land has been done on 21.06.2005. *Panches* had taken rupees eleven thousand as cost for registration, but they have not handed over the document. The accused persons confined the father of the informant and did not allow him to go to Police Station. Thereafter, the informant came to the Police Station stealthily on 27.06.2005 to lodge the case.

3. Charge has been framed against the accused Appellant Ao.1, Arun Kumar Yadav for the offence under Section(s) 376 Indian Penal Code and against Appellant No.2, Vidyanand Yadav, for the offence under Section(s) 201 Indian Penal Code. They faced trial and have been convicted and sentenced as mentioned above.

4. The defence has not examined any witness.

5. Defence case is that father of the victim girl has



obtained sale deed executed by accused Vidyanand Yadav for 10 Kathas of land, but consideration amount was not paid within the due time by the father of the victim. Being aggrieved, appellant, Vidyanand Yadav, did not return the *Chirkut* of the sale deed to the father of the informant. This caused the father of the victim irritated and he instituted this false case making false allegation.

6. Prosecution has examined altogether eight witnesses to prove the case.

7. Nirmal Kumari, PW 5, is the informant and the victim of the case. She has stated in her examination-in-chief that she was returning on the date of occurrence after performing Puja. She saw Arun Yadav, sitting in *Patuaa* field. He told her to pick up grass, which she denied. Thereafter, he caught hold her hand and brought her in *Patuaa* field. He tied her both hands and legs with *Patuaa* and committed rape with her by shutting her mouth. Accused caused injury to her private part with his hand. She became unconscious. She was in her house when she got consciousness. She saw her father and mother in the house. She told her mother and father that Arun Yadav has forcibly committed rape with her. She was brought to the police by her father and mother and case was lodged in Triveniganj P.S. Other witnesses also gave their thumb impression on the *fard-e-beyan*. Thereafter, she was sent to hospital



where she got treatment. Doctor gave stitches on her private part and also gave some medicines to eat. Thereafter, police arrived in the village in evening. They were taking her to lodge the case then Mahendra Yadav, Vidyanand Yadav and Neti Yadav persuaded her to return and said that they will not allow them to live in the village if she will file the case. They brought her to Dr. Poddar. The Doctor showed his inability to treat her. Thereafter, she came to her house. *Panchayati* was held on the next day. Vidyanand Yadav forcibly took the father of the informant to *Panchayati*. She after 7-8 days stealthily came to Triveniganj for lodging the case.

In para 8 of her cross-examination, she has stated that when Arun Yadav was committing rape with her, she became unconscious. He had put his *Lungi* in her mouth.

8. Dr. Nutan Verma has been examined as PW 1. She had examined the victim on 28.06.2005. She has stated in her evidence that vagina was torn. Stitches were given by her in Operation Theater. No blood was oozing as dressing was done earlier. In vagina, white curdy discharge was present. The doctor had found abrasion 5" x 4.5" over both side of back and both scapular region and epidermal abrasion over sacroiliac region over right back of pelvis 1" x ½". Victim had painful movement and she was limping. Her age was about 10 years. The victim was mentally



shocked and afraid while she was being examined. She was scared but co-operative and mentally normal. Vaginal swab was taken and sent for radiological examination at Sadar Hospital, Saharsa. The Doctor has said that from all aspects of above examination, it is a case of rape. She has proved the Medical Report, which has been marked as Ext.1.

In cross-examination, it has been stated that abrasion found by her on the person of the victim was of within 24 hours. She has not mentioned age of the injuries found on the person of the victim. In para 13 of his cross-examination, this witness has stated that she has mentioned age of the victim as a guess work, but she cannot be aged 14 years as she had not developed secondary sexual character. In cross-examination, this witness has stated that she found white curdy discharge in vagina. White curdy discharge in vagina can remain in vagina up to 72 hours.

9. Buchani Devi, PW 2, is mother of the victim girl. She has stated that her daughter was raped by Arun Yadav in *Patuaa* field while she was returning after Puja. Age of her daughter was 10-11 years. She was raising *halla* in *Patuaa* field. Sushil Kumar and Surya Narayan Sah brought her after hearing the sound of cry. She was slightly unconscious. She sprinkled water on her



face and gave her milk to drink then she regained consciousness. She told her after regaining consciousness that Arun Yadav has committed rape with her in *Patuaa* field. Private part of the victim was injured.

In para 11 of her cross-examination, she has stated that she has not seen the occurrence with her own eyes. Her son, Sushil Kumar brought her to the house. She was unconscious at that time. In examination-in-chief, this witness has stated that she along with her husband and victim were going to Police Station to lodge the case, but near *Pool*, Neti Yadav, Vidyanand Yadav and Mahendra Yadav forcibly got them returned to the house and told them not to file the case. *Panchayati* was called on the next day at the initiative of Vidyanand Yadav, Neti Yadav and Mahendra Yadav. Vidyanand Yadav told that he will give 10 Kathas of land, but her husband refused to take the land. Vidyanand Yadav, Neti Yadav and Mahendra Yadav took her husband on a cycle to Triveniganj and executed sale deed, but did not handover the document to him. Her daughter remained in the house for 3-4 days. She used to cry on account of pain. Triveniganj Police sent her daughter for medical examination.

**10.** Sushil Kumar, PW 3, is the brother of the victim girl. He has stated that he along with Surya Narayan Sah, was



taking rest in orchard. He heard sound of crying of Nirmal Kumari (victim). He along with Surya Narayan Sah went in the field and found Nirmal Kumari lying unconscious in *Patuaa* field of Mahadev Yadav. He also found blood stain in her *Pant*. He and Surya Narayan Sah brought Nirmal Kumari to the house in unconscious state. He found that Nirmal Kumari was raped. His mother sprinkled water on her face and also gave milk to drink. Then she regained consciousness. She after regaining consciousness told to the mother that Arun Yadav has committed rape with her while returning from Puja. His father, mother and victim, Nirmal Kumari, were going to Police Station to lodge the case. The accused persons got them returned and gave threat that they will not allow them to live in village if they will file the case. The accused persons called *Panchayati*. In *Panchayati*, they told that they will give 10 Kathas of land to his father. They took the father of the informant on a motorcycle to Triveniganj and executed a sale deed, but did not handover the document. Case was registered on the basis of the statement of victim, Nirmal Kumari, in Triveniganj Police Station. Police also took statement of his father, mother etc. and sent Nirmal Kumari for medical examination to Supaul where she was medically examined by Dr. Nutan Verma.

In para 15 of his cross-examination, he has stated



that he has not seen the occurrence from his own eyes.

**11.** Surya Narain Sah, PW 6, has stated in his evidence that on the date of occurrence between 9-9.30 AM, he along with Sushil Kumar was in the *Chaur*. He heard sound of crying and went to *Patuaa* field and saw Nirmal Kumari crying. She was unconscious. He brought her to her house. Thereafter, he went to his land. Thereafter, he again came to the house of Nirmal Kumari and saw that victim girl after regaining consciousness was speaking to her mother that Arun Yadav has committed rape with her. Mother of the girl told about the occurrence to her husband. Basudeo and Sukhdeo brought Arun Yadav. Arun Yadav was sent to the Police Station. Nirmal Kumari was taken to Triveniganj by her parents. Thereafter, this witness came to his house. Police came after eight days of occurrence and recorded his statement.

In cross-examination, he has stated that he has not seen occurrence with his own eyes.

**12.** Mahadeo Sah, PW 7, has stated in his evidence that his niece, Nirmal Kumari, who is daughter of Basudeo Sah, was returning her house after Puja. When she reached near *Nahar*, then Arun Yadav, who was hiding himself in *Patuaa* field, told her to pickup the grass. When she refused then he brought her in *Patuaa* field and after tying her hands assaulted her and committed rape



with her after removing her *Pant*. The girl became unconscious. Sushil Kumar heard cry of the girl and came running to the place of occurrence along with Surya Narayan Sah. They took the victim girl to the house where several persons assembled. Arun Yadav did not listen to *Panchayati*. The girl after regaining consciousness told about the occurrence to him. The girl got treatment in the hospital. Condition of the victim became serious after retuning to the house. Police of Triveniganj sent the victim girl to Supaul Hospital for better treatment where she got treatment by Dr. Nutan Verma.

He stated in his cross-examination that he gave statement after 8-10 days of the occurrence. He had told the police that Sushil Kumar heard cry of the girl and he along with Surya Narayan Sah reached the place of occurrence. He was not present in the village on the date of occurrence. He had gone to earn livelihood. He returned to the village at about 2-2.30 PM and then he learnt about the occurrence from his family members. The niece, Nirmal, also told him about the occurrence. She also told that Sushil and Surya Narayan Sah had gone to the place of occurrence. His niece was fully unconscious. She regained consciousness after about half an hour. He found scratch on both sides of her back. The girl had told that accused Arun Yadav has also assaulted her and tied her mouth. Thereafter, he committed rape with her on account of



which she became unconscious.

**13.** Basudev Sah, PW 4, is the father of the victim. He has stated that his daughter, Nirmal Kumari, had gone for Puja at 8.30 AM. She was returning to her house after Puja at 9.30 AM. Arun Yadav, who was hiding in *Patuaa* field, told his daughter to pickup the grass. She denied on the pretext that she is hungry then Arun Yadav forcibly dragged her to *Patuaa* field and tied both her hands by *Patuaa* and assaulted her. He also committed rape with her after shutting her mouth with *Lungi*. She became unconscious. Accused left Nirmal Kumari in *Patuaa* field of Mahadeo Yadav. She was crying in *Patuaa* field. His son, Sushil, and villager, Surya Naryan Sah, went on hearing cry of his daughter and found Nirmal Kumari was crying. They brought her to the house. Several villagers arrived in the house. His wife was also present in the house. Water was sprinkled on the face and thereafter she regained consciousness. She told about the occurrence to her mother and other family members present in the house. The female members saw *Pant* of the victim was wet with blood. Wife of this witness and other female members found injury on private part of Nirmal Kumari. He wanted to lodge the case, but villagers told that they will bring the boy. They brought the boy Arun Yadav, who admitted his guilt. He along with his wife and victim was going to Police Station for lodging the



case, but, Vidyanand Yadav, Mahendra Yadav etc. persuaded him and forced him to return. Vidyanand Yadav told him to not lodge case. He will give him land. Vidyanand Yadav threatened this witness that he will be ousted from the village, if he will lodge the case. The girl was first taken to Dr. Poddar, who did not give treatment as condition of Nirmal Kumari was serious. Vidyanand Yadav called *Panchayati* on the next day and admitted guilt of his son and told the informant to not lodge the case. He offered to give 10 Kathas of land to Nirmal Kumari for maintenance to which this witness did not agree. Thereafter, Neti Yadav, Vidyanand Yadav forcibly took him to Triveniganj Registry Office and took rupees eleven thousand from his as registration cost. Vidyanand Yadav and Mahendra Yadav were not allowing this witness to take his daughter for medical treatment. He along with his wife and victim, Nirmal Kumari, stealthily went to the Police Station after 5-6 days of the occurrence. Other family members of this witness also accompanied. Police recorded *fard-e-beyan* of Nirmal Kumari on which Nirmal Kumari gave her thumb impression. This witness has also put his signature on the *fard-e-beyan*. His brother, Mahadeo Sah, also put his thumb impression on the *fard-e-beyan*. Victim was sent to Supaul Hospital from Triveniganj. Dr. Nutan Verma, Medical Officer examined her. She again returned to Police Station



from Supaul Hospital. Thereafter, she went to her house. Accused persons did not give him *Chirkut* of execution of land. This witness does not know even which land was given to him. In para 8, he has stated that Neti Yadav has got his signature on two blank papers by force.

In cross-examination, he has stated that his daughter had gone for Puja alone. In para 16 of his cross-examination, he has stated that he has not seen the occurrence from his own eyes. He learnt about the occurrence firstly from his younger son, Om Prakash, who informed him to return home immediately as Nirmal Kumari is not well. He returned to house and his wife told him about the occurrence. His daughter, Nirmal Kumari, also told him about the occurrence later on. He informed Neti Yadav and Mahendra Yadav about the occurrence. He along with his wife and Nirmal Kumari proceeded for filing the case via soling road, but he could not reach Police Station. In para 26 of his cross-examination, he has stated that he had not called any *Panchayati*. He was taken in *Panchayati* by Vidyanand Yadav.

**14.** Vijay Kumar Gupta, PW 8, is the Investigating Officer of the case. He has stated that he recorded *fard-e-beyan* of victim, Nirmal Kumari, aged about 11 years. He took up the investigation of the case. He recorded statement of victim and other



witnesses. He sent the victim girl for medical treatment to Supaul Sub-Divisional Hospital. He also recorded statement of victim, wherein, she has fully supported the case. He also recorded statement of Basudeo Sah, Buchni Devi, Surya Narayan Sah, Sushil Kumari, Mahadeo Sah etc., who all have supported the occurrence as mentioned earlier. He procured the Medical Report of the victim from Dr. Nutan Verma. He submitted charge-sheet against both the appellants.

He has stated in his cross-examination that the date of occurrence is 19.06.2005. *fard-e-beyan* was recorded on 27.06.2005. He has investigated about the delay in lodging the *fard-e-beyan* and come to the conclusion that the villagers were forcing the victim and her parents to not lodge the case on account of *Panchayati*. During cross-examination, attention of this witness was drawn by the defence with regard to contradictions in respect of earlier statements given by the witnesses before the police and their evidences in the Court.

**15.** In this manner, from the evidence of the witnesses, as discussed above, it appears that the victim girl, Nirmal Kumari, PW 5, has fully supported her case in her evidence levelling specific allegation against the appellant, Arun Yadav, of committing rape with her after taking her into *Patuaa* field. She was



cross-examined at length by the defence. She has fully corroborated the time of occurrence, place of occurrence and manner of occurrence in her cross-examination in para 5, 6, 7 and 8. She has categorically stated about committing of rape by the accused. She sustained bleeding injury in her private part. She has given vivid picture of occurrence and how she was raped by the accused person in her cross-examination in para 8 and 9. She has stated in para 12 of her cross-examination that after the occurrence there was blood stain on her clothes, but she does not know whether those clothes were seized by the police or not.

**16.** Dr. Nutan Verma, PW 1, Medical Officer, Sub Division Hospital, Supaul, who examined the victim, Nirmal Kumari, submitted Medical Report, which has been marked as Ext.1. As stated in her evidence, she found vagina was torn and stitches were given in vagina in operation theater. She has further stated in her evidence that from all aspect of above examination, it is a case of rape. In para 15 of cross-examination, this witness has stated that she found white curdy discharge in the vagina. She has assessed her age to be 10-14 years. PW 3 and 6 have stated that they have brought the victim girl to her house from *Patuaa* field on hearing her cry in unconscious state. She told them about the occurrence levelling specific allegation of rape against Arun Yadav



after regaining consciousness in the house. Similarly, father of the victim (PW 4) and mother of the victim (PW 2) and the independent witness, Mahadeo Sah, (PW 7), have all supported the case and have stated in the evidence that they reached the house of the informant. Victim girl told them that appellant, Arun Yadav, has committed rape with her. The Investigating Officer, PW 8, has found the case true after investigation. Defence has not adduced any evidence to contradict the allegation made against the accused and to prove the defence that instant case has been filed by the informant falsely to get the sale deed executed with respect to 10 Kathas of land from Vidyanand Yadav, Appellant No.2.

**17.** This Court from the evidence of the victim girl, who is aged about 10-14 years, as mentioned by the Doctor and also the Medical Report of the Dr. Nutan Verma and the evidence of other witnesses, namely, PW 2, 3, 4, 6 and 7 and also the evidence of the Investigating Officer (PW 8), comes to the opinion that judgment of conviction and sentence passed by the Court below against the Appellant No.1, Arun Yadav, is after proper appreciation of evidence of the witnesses. The defence has not been able to discredit the evidence of the victim (PW 5) and other witnesses.

**18.** This Court does not find any motive of the victim



girl, PW 5, aged about 10-14 years, to give false evidence. The Doctor has also no motive to give false report supporting the evidence of the victim. There is no evidence, at all, brought by the defence to show false implication of the accused persons by the prosecution party. It further appears that the Trial Court after considering all aspects of the case has sentenced Appellant No.1, Arun Kumar Yadav, to undergo rigorous imprisonment for seven years under Section 376 Indian Penal Code.

**19.** Therefore, conviction and sentence passed against the Appellant No.1, Arun Kumar Yadav, is hereby confirmed.

**20.** So far evidence with regard to Appellant No.2, Vidyanand Yadav, is concerned, there is no evidence, at all, to brought charge against him for the offence under Section(s) 201 Indian Penal Code.

**21.** Therefore, impugned judgment of conviction and sentence passed against Appellant No.2, Vidyanand Yadav, is hereby set aside. He is acquitted of the charge under Section(s) 201 Indian Penal Code.

**22.** Bail bond of Appellant No.1, Arun Kumar Yadav, is hereby cancelled. He is directed to surrender in the Court below immediately for undergoing the sentence as ordered by the Trial Court by the impugned judgment.



**23.** In the event, Appellant No.1, Arun Yadav, does not surrender in the Court below, the Court below will take appropriate steps in accordance with law for arrest of Appellant No.1, Arun Yadav, to undergo the sentence as awarded to him.

**24.** This appeal is, accordingly, **allowed in part.**

**(Sanjay Priya, J)**

*J.Alam/-*

|                   |                   |
|-------------------|-------------------|
| AFR/NAFR          | <b>AFR</b>        |
| CAV DATE          | <b>23-03-2018</b> |
| Uploading Date    | <b>03-05-2018</b> |
| Transmission Date | <b>03-05-2018</b> |

