

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.190 of 2009

Sanjay Tiwary, Son of Dharamnath Tiwary, resident of village-Ashok Pakari,
Tiwary Tola, Police Station-Pipra, District-East Champaran at Motihari.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Dr.Amrendra Kumar, Adv. Mr. Manish Rai Sharma, Adv. Mr. Setu Pratik, Adv.
For the Respondent/s	:	Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 19-12-2018

1. Appellant, Sanjay Tiwary has been found guilty for an offence punishable under Section 366 of the IPC and sentenced to undergo R.I. for seven years, under Section 376 of the IPC and sentenced to undergo R.I. for seven years, with a further direction to run the sentences concurrently vide judgment of conviction dated 21.01.2009 order of sentence dated 23.01.2009 passed by Additional Sessions Judge, FTC-I, East Champaran at Motihari in connection with Sessions Trial no.757 of 2007/43 of 2007.

2. PW.3, Subhash Tiwary filed written report on 25.04.2007 disclosing therein that his neighbour Sanjay Tiwary son of Dharamanth Tiwary happens to be on visiting term. It has further been disclosed that in the evening of 22.04.2007 he has come to his place. Since midnight of 22.04.2007 his wife (name withheld) is missing. He made hectic search but, could not locate. He has gone to the place of Sanjay Tiwary to inquire whereupon, he abused and further, declined to



say anything. He has further stated that he has got two daughters aged about two years as well as three years. So, he apprehended complicity of his neighbour Sanjay Tiwary who, with the help of his two younger brothers namely Satendra Tiwary and Ranjan Tiwary along with his Bhabhi, wife of Ramakant Tiwary enticed her away with an ulterior motive.

3. After registration of Pipra P.S. Case No.56/2007, investigation commenced and during course thereof, victim was recovered. Her statement under Section 164 Cr.P.C was recorded. She was medically examined and then thereafter, after completing investigation submitted charge sheet, facilitating the trial meeting with an ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that on account of land dispute, appellant/accused has been falsely implicated. However, nothing has been adduced in defence.

5. It has been submitted on behalf of learned counsel for the appellant that it happens to be a case of no evidence in spite of that, the learned lower court has recorded finding of guilt whereupon, inflicted inappropriate sentence against the appellant. In order to substantiate the same, it has been submitted that PW.1 and PW.2 have not supported the case of the prosecution. PW.3 is the informant who had not spoken anything against the appellant much less, with regard to



recovery of the victim, his wife during course of investigation as well as castigating him for kidnapping as well as commission of rape upon the appellant. So far PW.4, victim is concerned, though, during course of her examination-in-chief she has alleged against the appellant but, during course of cross-examination, apostatized.

6. Apart from this, it has also been submitted that neither other independent witnesses including the doctor, I.O. has been examined nor, there happens to be an explanation at the end of the prosecution on that very score. In the aforesaid facts and circumstances of the case, it could not be said that prosecution has succeeded in substantiating its case.

7. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that from the evidence of the PW.3 it is manifest that he had succeeded in proving its case over kidnapping as the same has not been deceived/controverted while from the evidence of PW.4, it is found duly substantiated and further, while being captive she was raped at the end of the appellant. That being so, judgment of conviction and sentence is fit to be confirmed.

8. In order to substantiate its case, prosecution has examined altogether four PWs who are PW.1-Kamal Sah, PW.2-Sajjan Tiwary, PW.3-Subhash Tiwary and PW.4-victim, the victim. Side by side also exhibited Ext.1-written report. Nothing has been adduced at the end of the defence.



9. Coming to the evidences having been adduced on behalf of prosecution, it is evident that PW.1 and PW.2 have not supported the case of the prosecution whereupon, they both have been declared hostile. PW.3, informant has stated that his wife became missing since the night of 22.04.2007. During course of search, his Bhabhi had disclosed that in his absence Sanjay Tiwary used to visit his place and indulged in joking with her. They have gone to the place of Sanjay Tiwary but, did not find. He met with his parents, brother of Sanjay Tiwary who disclosed that Sanjay Tiwary is not available. They also abused him. Even on hectic search, he could not locate his wife whereupon, putting suspicion against Sanjay Tiwary to have enticed her away he filed written report on 25.04.2007. Identified the accused. During cross-examination he has stated that he had not seen Sanjay Tiwary gossiping with his wife since before. Sanjay Tiwary happens to be his brother. In para-6, he has stated that he had gone to the place of Sanjay Tiwary in the evening of 23.04.2007 along with villagers. At that very time, Sanjay Tiwary was not present. On the same day after 5-6 hours he met with Sanjay Tiwary but, had not inquired anything from him. In para-8 he has stated that he has got land dispute with the Sanjay Tiwary.

10. PW.4 the alleged victim who during examination-in-chief has stated that on the fateful night while she had gone to meet nature's call, on the pretext of knife three persons kidnapped her, took her to an orchard where one-by-one they committed rape. Two persons



whom she identified as Satyendra Tiwary and Ranjan Tiwary returned back while third one, Sanjay Tiwary (appellant) took her to Dumra and from Dumra to Siwan where he procured her LTI on two papers. While he was sleeping she escaped therefrom and returned back to her house. Her statement was recorded under Section 164 Cr.P.C. at the behest of the police. Identified the accused. During cross-examination she has stated that accused Sanjay Tiwary happens to be her pattidar. In para-4 she has stated that both have got land dispute. In para-5 she has stated that her husband has two brothers. Both are separate but are residing in the same house. On the fateful day, she quarreled with her Dayadin and then she left the place to go to her Maika in an anguish. As, her husband, Bhaisur were not knowing whereupon, this case has been instituted. After 2-3 days, she returned back from her Maika. She had made statement before the Magistrate as per wish, tutored by her husband. Police had also threatened that in case, she is not going to depose as per their wish, then in that circumstance, they will draw case agiasnt her. She had further stated that she had not seen Dumra nor Siwan.

11. Evidence denotes examination-in-chief, cross-examination and re-examination, if any as defined under Section 138 of the Evidence Act. That means to say, whenever evidence is to be considered, it cannot be segregated independently rather, have a conjoint reading over which, one has to infer whether prosecution has succeeded its case or not. From the judgment impugned, it is apparent



that learned lower court had not cared to see the cross-examination that means to say evidence in its totality has not been considered. It is not the principle of appreciation of evidence. Law does not permit appreciation of evidence in piecemeal manner. So, while recoding the finding, the lower court deflected itself from the settle principle of law. Be that as it may, from the evidence of all the PWs, it is evident that certainly it happens to be deficient one whereupon, the judgment of conviction and sentence recorded by the learned lower court could not find favour. Accordingly, is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Prakash Narayan

AFR/NAFR	AFR
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