

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.75 of 2009

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

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Mehtar Sah, son of late Anki Sah, resident of village Belahi, P.S. Jogani (Bathnaha,
Distt. Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.
Mr. Mukesh Kumar Rana, Advocate.
For the State : Dr. Rabindra Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 07-09-2018

1. This Criminal Appeal has been filed against the Judgment of conviction and order of sentence dated 22/24.01.2009 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Araria, in Sessions Trial No. 374 of 2002/Trial No. 240 of 2006 arising out of Complaint Case No. 1040 of 2001 by which the appellant has been convicted under Section 376 read with 511 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years under Sections 376 read with 511 of the Indian Penal Code and fine of Rs.3,000/-, in default of payment of fine, to undergo simple imprisonment for one month.

2. Heard learned counsel for the Appellant and learned Additional Public Prosecutor.

3. Counsel for the Appellant has submitted that there



is land dispute between the parties. The Complainant-informant (PW-7) is only the eye witness. She has stated that occurrence has taken place at Hand Pump situated near her *Darwaza* where Satsang was going on in which several persons were present, but there is no any independent witness. The victim has only supported the allegation as an eye witness. Counsel for the Appellant has further submitted that there is previous land dispute between the parties. This Criminal Case has been filed by the informant on account of such land dispute.

4. Counsel for the State has submitted that there is no illegality in the impugned Judgment of conviction and order of sentence passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Araria.

5. The prosecution case in brief is that on 21.6.2001 at about 8.00 p.m. Thakani Devi (informant) went to take water from the hand pump for preparing dinner. It is further alleged that when she was taking out water from the hand pump, the Appellant came from behind and caught hold her breast from back side. In the meantime, one unknown person also came who gagged her mouth. They took her towards eastern side near Mango orchard with intention to commit rape on her. The Appellant also took out golden chain worth Rs.5,000/-. It is further alleged that the accused after raising *saree* of the complainant attempted to commit rape with her. The complainant



raised hulla, then, father-in-law and *Dewar* of the complainant along with some people came to the place of occurrence and caught hold the Appellant. The unknown person who was involved in the occurrence fled away. The villagers assembled there. Thereafter, the Appellant succeeded to run away.

6. Prosecution has examined eight witnesses in this Case. The informant Thakni Devi is PW-7. She has stated in her evidence that at about 8.00 p.m. *Satsang* was going on at her door. She went to take water from hand pump situated at the door of courtyard and when she pressed the handle of hand pump for taking water, the Appellant caught her breast from back side and took her near Mango tree along with one unknown person. She has also stated that Appellant pushed her on the ground and raised her *saree*. He also torn her blouse and attempted to commit rape with her. The accused persons along with the Appellant also caused five injuries on her mouth and cheek and another unknown person took away golden chain from her neck. She raised *hulla* then parents-in-law, *Dewar* and other villagers came there. The father-in-law and *Dewar* caught hold the Appellant, but he fled away from their clutches. The complainant had sustained injury in her mouth and face during course of occurrence.

7. The informant (PW-7) was cross-examined during



her evidence. Paragraphs 22 to 27 of cross-examination are very relevant. She has stated in her cross-examination in paragraphs-23 and 24 that *Chapa Kal* is at the distance of 10 hands from the place where *Satsang* was going on. There were 15-20 persons present. The Appellant caught her from back and attempted to take her away but she did not raise *hulla*. She has stated that her mouth was not tied up with *Gamchha*. She has stated in paragraphs-25 and 26 of her cross examination that Appellant took her away on his shoulder from the *Chapa Kal*, but she did not raise *hulla*. The Appellant pushed her down on the ground. She sustained injury on her back. The Appellant caught her from Chapa Kal and took her away to the Mango orchard and pushed her down on the ground but she did not raise *hulla*. She raised *hulla* after removing cloth from her mouth. On *hulla*, other persons arrived there. At first her father-in-law arrived. She was in the Mango orchard at that time. Thereafter, mother-in-law along with her *Dewar* and other villagers arrived.

8. From evidence of informant (PW-7) it appears that other witnesses have come after raising *hulla* by her. The other witnesses have been examined as PWs-1, 3, 4, 5, 6 and 8. All of them have stated that they reached the place of occurrence after hearing *hulla*.

9. The defence has examined two witnesses as DW-1



and DW-2. Both have stated that there was previous land dispute between the parties.

10. DW-1 has stated that on 20/21.6.2001 Appellant was not present in the village. He had gone to his sister's house and in his absence, father of the victim had cut soil of the land, for which, *Panchayati* was held on 26.06.2001. In the *Panchayati* it was decided that father of the victim had committed wrong and *Panchnama* was prepared. DW-1 and DW-2 along with others have put their signature on *Panchnama*, but father of the informant has not put his signature on *Punchnama*.

11. As such, from the evidence of informant (PW-7) this Court finds that she did not raise *hulla* at the hand pump when the Appellant is said to have pressed her breast from back side and also during the period she was carried out from *Chapa Kal* to Mango orchard. It also appears from the entire evidence of the informant that place of occurrence was just at a distance of 10 hands from the place of *Satsang* where 15-20 persons were present, but no any independent witness has seen the occurrence as an eye witness. The witnesses who have appeared on behalf of prosecution are all family members of the informant. They have been examined as hear-say witnesses. All these witnesses have stated that they arrived at the place of occurrence on hearing *hulla* of the victim (informant).



12. Therefore, this Court does not find any reliable and cogent evidence on behalf of the prosecution to substantiate the charge against the Appellant beyond all reasonable doubt.

13. As such, the impugned judgment of conviction and order of sentence dated 22/24.01.2009 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1, Araria, in Sessions Trial No. 374 of 2002/Trial No. 240 of 2006 arising out of Complaint Case No. 1040 of 2001 is not in accordance with law and the same is hereby set aside. The Appellant is acquitted of the charges levelled against him. He is discharged from the liabilities of bail bonds.

15. This Criminal Appeal is accordingly allowed.

(Sanjay Priya, J)

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AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	19/09/2018
Transmission Date	19/09/2018

