

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.310 of 2015**

Arising Out of PS.Case No. -141 Year- 2011 Thana -MAJORGANJ District- SITAMARHI

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Jagarnath Mahto, son of Gonaur Mahto, resident of Village - Gadhula Bishampur,
P.S. - Majorganj, District - Sitamarhi.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Hans Lal Kumar-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT**Date: 19-06-2018**

Seen the report submitted by the D.G.P, Bihar, Patna in pursuance of order dated 19.03.2018. From perusal of the report, it is evident that the erring officials have properly been identified and are being departmentally proceeded. The aforesaid report, as is evident, will serve no purpose, even if allowed to be taken by way of additional evidence as provided under Section 391 of the Cr.P.C. as whatever deformity on account of lapses of the concerned police officials have incurred those would not be found rectified. Thus this appeal has to be decided on its own merit. On previous occasion, i.e. on 19.03.2018 basically, the half part of the judgment was already dictated. During course of appreciation of the evidence, some sort of



lapses, dereliction of duties, negligence, intentional activities, adverse to prosecution were perceived and in the aforesaid background, Paras- 7, 8 dealt with the aforesaid eventualities and further under Para-8, D.G.P., Bihar, Patna was directed to place his report after proper enquiry on that very score.

2. Appellant Jagarnath Mahto has been convicted for an offence punishable under Section 354 of the I.P.C and sentenced to undergo R.I for two years as well as to pay fine appertaining to Rs. 5,000/- and in default thereof, to undergo R.I for two months, additionally, under Section 3(i)(xi) of the S.C/S.T (Prevention of Atrocities) Act and sentenced to undergo R.I for two years as well as to pay fine appertaining to Rs. 2,000/- and in default thereof, to undergo two months, additionally, under Section 448 of the I.P.C. and sentenced to undergo R.I. for three months with a further direction to run the sentences concurrently vide judgment of conviction dated 14.05.2015 and order of sentence dated 16.05.2015 passed by the 1st Additional Sessions Judge-cum-Special Judge, Sitamarhi in Sessions Trial No.240 of 2012/ 28 of 2012.

3. P.W-4 filed written report on 18.09.2011 disclosing therein that in the preceding night (17.09.2011) at about 11.30 p.m. while she was sleeping, appellant Jagarnath Mahto made house trespass after opening the bamboo gate and began to tease her with an



intention to commit rape. She protested and during course thereof, she caught hold collar of Jagarnath Mahto, raised alarm attracting the villagers, who came and began to assault. Ram Surat Ram, Chulhai Ram, Rudal Mahto also arrived, who intervened into the matter.

4. After registration of Majerganj P.S. Case No.141 of 2011, investigation commenced and after concluding the same, charge-sheet was submitted facilitating the trial meeting with the ultimate result, subject matter of instant appeal.

5. 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 of the occurrence. It has also been pleaded that on account of dues persisting since before, when demand was made by the accused/appellant, he was caught hold of and brutally assaulted for that, on the fard-bayan of the appellant, Majerganj P.S. Case No.142 of 2011 has been registered. Furthermore, oral as well as documentary evidence has been adduced in order to substantiate the same.

6. Altogether five witnesses have been examined on behalf of prosecution, PW-1 Rakesh Ram, PW-2 Manoj Ram, PW-3 Kaushalya Devi, PW-4 Prabhavati Devi, victim and PW-5 Jaldhar Paswan, I.O. Prosecution had also exhibited as Exhibit-I, formal F.I.R., Exhibit-2, endorsement over written report. In likewise



manner, one DW Punyadeo Mishra, formal in nature, has been examined while Exhibit-A, certified copy of order dated 03.11.2007, Exhibit-A/1, C.C. of order dated 19.09.2011 to 26.08.2013, Exhibit-B, certified copy of Majorganj P.S. Case No.142 of 2011, Exhibit-C, chargesheet of Majorganj P.S. Case No.142 of 2011 has been made on behalf of defence.

7. PW-1, is the son of the victim, who had stated that on the alleged date and time of occurrence, he had gone to see the dance having been organized in his village. On hue and cry, he came at his house where had seen the villagers engaged in assaulting Jagarnath Mahto. He came across the fact that the aforesaid Jagarnath Mahto had tried to ravish his mother. Police station was informed whereupon, police came and took away Jagarnath, identified the accused. During cross-examination, the accused has tried to bring on record the activities of female members of his family wherein he had shown ignorance that his aunt Rajkumari Devi had instituted a rape case against the Gajadhar Mahto (brother of Jagarnath) and others, and after receiving substantial amount, got the case compromised. In likewise manner, he had shown ignorance with regard to institution of a rape case by his mother against his co-villager Ramji Thakur and then, compromised the case after extorting huge amount. In Para-4, he had stated that he had not seen the occurrence. He had deposed on the



basis of hearsay evidence. Then had denied the suggestion that his family was borrowing the money from the accused, which had repeatedly been demanded as a result of which, this case has been filed in order to digest the same.

8. PW-2 had stated that on the alleged date and time of occurrence while he was at his house, rushed towards the house of Prabhavati Devi where he had seen the villagers having apprehended Jagarnath Mahto, police was informed. Son of Prabhavati Devi had disclosed that accused was trying to outrage modesty of his mother, identified the accused. In cross-examination at Para 3, he had stated that Prabhavati Devi happens to be his aunt. Again, he was confronted with the cases having lodged by Raj Kumari Devi as well as Prabhavati Devi and, getting compromised after squeezing the same from the respective accused. At Para 4, he had shown house of the accused at Western-Southern corner from the house of the Prabhavati Devi intervened by a land belonging to Ramji. In Para 5, he had stated that son of Prabhavati Devi had disclosed regarding the occurrence. At Para 6, he had admitted that his statement was not recorded by the police. Then had denied the suggestion.

9. PW-3 had deposed that on the alleged date and time of occurrence, Jagarnath Mahto made house trespass in the house of Prabhavati Devi whereupon, there was uproar she had gone there



whereupon, seen the villagers engaged in assaulting Jagarnath Mahto and then thereafter, tied him. Then had stated that she heard that Jagarnath wanted to rape Prabhavati Devi. During cross-examination at Para-3, she had shown presence of accused at the southern boundary of the house of the Prabhavati while the remaining boundaries are as East-Sheela Mahto, West-Hanuman Chowk as well as house of Lakhinder Mahto, North-road. She had further disclosed that she had seen Jagarnath inside the house where people were assaulting him. In Para-4, she had admitted to be *Gotni* of Prabhavati. She had further stated that police had taken away Jagarnath Mahto. Then had shown ignorance with regard to institution of a rape case by her *Gotni* under Paras-5 and 6. Then had denied the suggestion.

10. PW-4 is the victim herself, she had stated that on the alleged date and time of occurrence while she was sleeping, accused Jagarnath Mahto intruded inside her house after opening the gate made of bamboo and caught hold her. He had come to rape her. She had caught hold his collar and raised alarm. Her husband, who happens to be handicapped, was sleeping in Baithka, came followed by Manoj, who began to raise alarm whereupon others including brother of Jagarnath, wife of Jagarnath came. Then thereafter, villagers assaulted Jagarnath. He was tied in the room itself wherefrom, taken away by the police on being informed. She had



furnished one application in the pen of Ram Surat Ram, identified the accused. During cross-examination, at Para-4, she had admitted that her Gotni Raj Kumari Devi had instituted the rape case against Gajadhar Mahto and Shivraj Ram. In Para-5, she had also admitted that she had instituted case against her co-villagers Ramji Thakur and Janak Mandal relating to an attempt of rape. She had further stated at Para-6 that her daughter-in-law (Putohu) also resides in the same house. To support the fact of her husband being handicapped, she will file necessary certificate. In Para-8, she had shown boundary of her house as North-road, South- Madan Mohan Jha, East-house of Gajendra Ram, West- field of Ramji Thakur. Then had stated that the house of Jagarnath Mahto lies one bigha south to her house. At Para-9, she had stated that as soon as her gate was opened, she raised question, who happens to be. At that very time, she was alone. Then at Para-10, there happens to be contradiction. In Para-11, she denied the suggestion that on account of consistent demand of money which they had borrowed at the end of the accused, he was brutally assaulted and then, after getting institution of the case at his end, filed this case in order to counter-meet the same.

11. PW-5 is the I.O. After exhibiting the relevant document, stated that after registration of the case he was entrusted with the investigation. He reached at the place of occurrence which



happens to be the house of the informant and detailed the same. He had recorded further statement of the informant, also recorded statement of co-villagers, received supervision note and then thereafter, submitted charge-sheet. During cross-examination, at Para-10, he had stated that he had not arrested the accused, he had not found gate of a room damaged or removed rather it was properly fixed. In Para-11, he had stated that witness Manoj Ram (PW-2), Rakesh Ram (PW-1), Dudhani Devi (not examined), Kaushalya Devi (PW-3) have claimed to have seen the occurrence. In Para-13, he had further stated that he had not investigated over the fact that prosecution party was habitual in filing such kind of cases and then compromise the same after squeezing money.

12. Defence had exhibited the fard-beyan of Jagarnath Mahto, on the basis of which Majorganj P.S Case No. 142/2011 was registered. After analyzing the evidence available on the record, it is evident that prosecution party was carrying some sort of grievances and that happens to be reason behind that at one occasion PW-3, Gotni of informant (PW-4) had shown presence of accused at the Southern boundary of the house of the informant, which has been controverted by the informant. In likewise manner, there happens to be an admission at the end of the informant (PW-4) that at an earlier occasion Ramdulari (her another Gotni) as well as she herself had



instituted case of attempt to rape against co-villagers, which was later on, compromised. In the aforesaid background, when the present eventualities have been critically analyzed, it is evident that although there happens to be consistency at the end of the prosecution witnesses that police was informed, police had come, took away Jagarnath but PW-5, I.O had not corroborated the same. Furthermore, it is also evident that appellant Jagarnath Mahto could not be arrested in the background of the fact that in the night, no written report was filed at the end of the informant (PW-4). From the record, it is evident that she had filed written report on 18.09.2011 at about 9.45 A.M. Before that, fard-beyan of appellant/ accused was already recorded by the police official while he was admitted at Primary Health Centre, Majorganj but no case was recorded till recording of instant case. And the reason for non-institution of case at an earlier occasion has not been explained. Moreover save and except PW-4 none claimed to be an eye-witness. Furthermore, neither daughter-in-law nor husband of informant has come forward to support.

13. After proper evaluation of the evidences, circumstances visualizing from the record, it is evident that prosecution has not been able to substantiate its case beyond reasonable doubt. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is hereby set-aside.



Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Ranjit/Amjad

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	23.06.2018
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