

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 221 of 2013

Arising Out of PS. Case No.-27 Year-2007 Thana- Dehri Town District- Rohtas

Munni Yadav Son of Ram Bali Singh Resident of Village- Budhawal, P.S.-
Karakat (Gorari), District- Rohtas

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Vikram Deo Singh, Advocate
		Mr. Surendra Prasad Singh, Advocate
For the Respondent/s	:	Mr. Ajay Mishra (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 01-05-2018

The sole appellant has approached this Court by filing the present appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'). The appellant by judgment dated 28-02-2013 was convicted for commission of offence under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and Section 3(i) (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'SC/ST Act'). By order dated 04-03-2013, under Section 376 of the I.P.C., the appellant has been directed to undergo rigorous



imprisonment for life and to pay a fine of Rs. 30,000/- (thirty thousand). In default of payment of fine, he has been directed to further undergo imprisonment for two years. For offence under Section 3(i)(xi) of the SC/ST Act, he has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- (one thousand) and in default, he was directed to further undergo imprisonment for six months. All the sentences were directed to run concurrently. The judgment of conviction and sentence has been passed by Sri Sajal Mandilwar, learned Additional Sessions Judge Ist, Rohtas at Sasaram (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 404 of 2007 (arising out of SC/ST Dehri P.S. Case No. 27 of 2007).

2. Short fact of the case is that on 28-04-2007, a written report addressed to officer incharge, SC/ST Police Station – Rohtas, Dehri was filed bearing R.T.I. (Right Thumb Impression) of alleged victim namely Guriya Kumari (P.W.4). In the written report, it was alleged that the victim, aged about 15 years, daughter of Ganesh Ram (P.W.3), resident of village – Budhawal, P.S. Karakat (Gorari), District – Rohtas, a member of Scheduled Caste, on 26-04-2007 after the storm at about 7:00 in the evening, she had gone in the mango orchard of one Ramta Singh S/o Suraj Singh of village Budhawal, to collect mangoes.



She disclosed that she was keeping vigilance of the said orchard. While she was collecting mangoes, the appellant, aged about 21 years of her own mohalla, from backside caught her and carried her in a पलानी (open hut) and thereafter, forcibly committed rape with her. It was further mentioned in the written report that while accused was catching her from backside, her younger brother namely Nanhe Ram was also there and after seeing that he returned back to his house and informed her mother and भाभी (wife of her elder brother) and both of them arrived runningly. At that very time, the appellant was preparing to commit rape twice, however; after noticing those witnesses, he fled away. It was further indicated in the written report that regarding said occurrence, an information was given to Karakat (Gorari) police station, whereafter, the accused was apprehended by the police and subsequently, he was left out and it was also alleged that her case was never instituted there and this was the explanation regarding delay in filing written complaint in the police station. On the said hand written report in the second page, R.T.I. (Right Thumb Impression) of the victim (P.W.4) was obtained and on the said page, Left Thumb Impression of Ganesh Ram (P.W.3) father of the victim, R.T.I. of Sugana Devi (P.W.1) mother of the



victim and R.T.I. of one Usha Devi (not examined) were also obtained.

3. On the basis of said written report, on the same date i.e. on 28-04-2007 at 9:00 AM, a formal F.I.R., vide SC/ST Rohtas Dehri P.S. Case No. 27 of 2007, was registered for offence under Sections 341, 376 of the I.P.C. and Section 3(i)(x)(xi) of the SC/ST Act against sole appellant. Thereafter, the victim was got examined by a medical officer i.e. P.W.5 Dr. Jayshree Chandra and for ascertaining her age, the victim was examined by a Medical Board. During investigation, the investigating officer found the case true and thereafter, on 30-06-2007, chargesheet was submitted against the sole appellant and on 09-07-2007, learned Chief Judicial Magistrate, Rohtas at Sasaram took cognizance of the offence. On 10-08-2007, the case was committed to the court of sessions and thereafter, it was numbered as Sessions Trial No. 404 of 2007. On 30-06-2008, charge under Section 376 of the I.P.C. and Section 3(i)(x)(xi) of SC/ST Act was framed against the appellant.

4. In the case, to establish its case on behalf of the prosecution, altogether six witnesses were examined. Out of six witnesses:



“P.W.1 Sugana Devi, mother of the victim, P.W.2 Nanhe Ram, brother of the victim and P.W.3 Ganesh Ram, father of the victim were examined as witnesses to support the prosecution case, whereas, victim was examined as P.W.4. In the case, none of the independent witness was examined, whereas, doctor, who medically examined the victim i.e. Dr. Jayshree Chandra, was examined as P.W.5 and investigating officer Rama Kant Ram was examined as P.W.6.”

5. After examination of the prosecution witnesses, on 29-07-2010, statement of appellant under Section 313 of the Cr.P.C. was recorded, in which, he denied the charges. Ofcourse, on behalf of the defence, no witness was examined, but a defence was taken right from the very beginning that it was a case of false implication. The reason was assigned that earlier the father of the victim was authorized by Ramta Singh, owner of the said mango orchard, to watch the orchard. Earlier, an F.I.R. for offence under Section 365 of the I.P.C. was instituted against Ramta Singh and another and in that connection, it was suggested, as if, the present case was got instituted, as per instance of Ramta Singh. It was also pleaded that the present



case was instituted falsely and falsity of the present case was evident from the fact that in relation to the same occurrence, prior to lodging the present case, the victim herself had filed a written complaint in Karakat (Gorari) police station, in which, she had not at all alleged as to whether she was raped or not, but in the said written report, it was alleged that this appellant, at the time while the victim (P.W.4) was collecting mango after the storm in the same orchard on 26.04.2007, had caught her hand and tried to outrage her modesty and in the meanwhile, people arrived and after noticing the people, he (appellant) leaving the hand of the victim had fled away. From the defence side, certified copy of F.I.R., vide Karakat P.S. Case No. 31 of 2007, registered for offence under Sections 341 and 354 of the I.P.C. was got exhibited, which was marked as Ext. A. In the said case, during investigation, accusation was not found true and as such, a final report was submitted and certified copy of final report was got exhibited, which was marked as Ext. B. From the defence side, one another document i.e. certified copy of F.I.R. of Karakat P.S. Case No. 110 of 2001, registered for offence under Sections 365, 120(B) of the I.P.C., against Ramta Singh (owner of the orchard in question) and others was filed and the same was marked as Ext. A/1.



6. Sri Vikram Deo Singh, learned counsel assisted by Sri Surendra Prasad Singh, learned counsel for the appellant has argued that it was a case of completely false implication. It has been argued that falsity of the present case is evident from the fact that in relation to so called occurrence, which had occurred on 26-04-2007, the informant of the present case, who is victim (P.W.4), had filed a written report, having her L.T.I., on the basis of which, an F.I.R., vide Karakat P.S. Case No. 31 of 2007, was registered for offence under Sections 341 and 354 of the I.P.C., in which, during investigation accusation was not found true and final report was submitted. Even after lodging of the earlier case, a new story was developed and a written report bearing R.T.I. of said victim was introduced in the present case and on the basis of said report, the present F.I.R., vide Rohtas Dehri (SC/ST Act) P.S. Case No. 27 of 2007, was registered for offence under Sections 341, 376 of the I.P.C. and Section 3(i)(x) (xi) of the SC/ST Act against the sole appellant. It has been highlighted that only within one day, the informant of the present case had developed a case of outraging modesty to the case of committing rape. Sri Vikram Deo Singh, learned counsel for the appellant has also placed reliance on Ext.1 i.e. Medical Examination Report, which was proved by P.W.5 Dr. Jayshree



Chandra, to show that medical report itself is sufficient to draw an inference that it was completely a false case. He submits that even victim in her evidence had said that in the occurrence, she had received injury on her private part as well as other parts of the body and blood had started oozing out, but in the medical examination, the doctor, who examined her, had noticed no injury either internal or external on the body of the victim (P.W.4). Learned counsel for the appellant highlights that even during medical examination, the hymen of the victim was found intact. According to learned counsel for the appellant, if it was case of the prosecution that victim was once raped and immediately second attempt was being made, there was no reason to notice the hymen intact. He highlights that doctor, who examined the victim, had stated that even tip of little finger was not accepted by the private part of the victim. The victim was also examined by the medical board to examine her age and in such examination, the age of the victim was noticed in between 17 and 18 years. Besides this, it has been argued that in the first case, which was initiated on the basis of a written report of the victim i.e. Karakat P.S. Case No. 31 of 2007, it was indicated that after noticing mother of the victim and other villagers, the appellant had fled away, whereas, during entire trial from the



prosecution side, none of the independent witness was examined. In this case, there are four witnesses. Out of four witness, P.W.4 was victim herself, P.W.1 is the mother of the victim, P.W.2 is brother of the victim and P.W.3 is the father of the victim. In sum and substance, it was argued that it was completely a false case and the learned Trial Judge, without appreciating all those facts, has passed the judgment of conviction and sentence, which requires interference.

7. Sri Ajay Mishra, learned Addl. Public Prosecutor, though has opposed the appeal, was not in a position to properly defend the prosecution case, particularly; in view of the specific evidence of P.W.5 Dr. Jayshree Chandra as well as Medical Examination Report i.e. Ext.1.

8. Besides hearing learned counsel for the parties, we have minutely examined entire evidences i.e. oral and documentary evidence. Before proceeding, it would be necessary to indicate what victim had stated in her evidence.

9. The victim P.W.4 in her evidence has stated that on the date and time of the occurrence, she had gone to collect mangoes from the orchard. At that very time, from backside, the appellant caught her and carried her to a पलानी (open hut) and forcibly raped her. Her brother went to the house and gave



information to the mother and thereafter, her mother (P.W.1) and *Bhabhi* Usha Devi (not examined) arrived there. After noticing them, the accused person fled away from the place of occurrence. In paragraph – 5, she stated that thereafter she with her mother and *Bhabhi* went to Karakat (Gorari) police station, where Daroga Ji did not lodge case. The police apprehended accused in the evening and early in the morning on the next date, he (appellant) was left by the police. Thereafter, she went to the *Harijan* Police Station and lodged the case. She claimed that the written report, which was filed before the police on 28-04-2007, bears her L.T.I. In the case, since the scribe of the written report was neither examined nor properly the written report was introduced, the said written report was marked for identification as Ext. “x”. She further deposed that thereafter she was medically examined in Sadar Hospital, Sasaram. Surprisingly, in her examination-in-chief in paragraph 5, this witness deposed that while after the occurrence, she went to the Karakat Police Station, the police did not register the case, but in cross-examination in paragraph 19, she accepts that she had filed a case, which was numbered as Karakat P.S. Case No. 31 of 2007, which was registered on 27-04-2007. In paragraph - 21 of her cross-examination, she further states that prior to the



present case, own brother of the appellant namely Nanhe Yadav was kidnapped and he did not return thereafter. In paragraph – 22, she states that father of Nanhe (also father of the appellant) had lodged a case against Ramta Singh regarding kidnapping. It may be clarified that Ramta Singh is known as owner of the orchard, which was being watched by the informant side. This witness in the same paragraph i.e. paragraph - 22 of her cross-examination had stated that mango orchard, which is the place of occurrence, was of Ramta Singh. In paragraph 23, she had denied the suggestion that the present case was got instituted, as per instance of Ramta Singh. In paragraph 25, she further accepts that in Karakat police station, she had not filed written report regarding rape.

10. P.W.1 Sugana Devi is the mother of the victim. In her evidence, she stated that on the date and time of occurrence, the appellant had caught her daughter from backside and Nanhe Ram was also slapped by the appellant and thereafter, he (Nanhe) reached to the house and disclosed the fact that one accused was committing rape. Thereafter, this witness alongwith other went to the place of occurrence and after seeing her and others, the appellant fled away. In cross-examination,



she stated that on the same date i.e. 11:00 in the night, she went to Karakat police station, but police did not register case.

11. P.W.2 Nanhe Ram, brother of the victim, had deposed that on the date and time of occurrence, his sister was caught from the backside by the appellant and carried her to मरई (open hut), where she was raped. When he went there, he was ousted by the appellant. Thereafter, he went to the house and informed his mother. Subsequently, his mother with him came to the place of occurrence, however; the appellant after noticing his mother fled away. This witness too had denied the suggestion that he deposed as per instance of Ramta Singh.

12. P.W.3 Ganesh Ram, father of the victim, at the time of occurrence was not present. One day thereafter, he had arrived and he deposed that he was informed by the victim and his wife regarding the occurrence.

13. P.W.5 Dr. Jayshree Chandra on 28-04-2007 was posted as lady medical officer in Sadar Hospital, Sasaram and on the same date at 11:30 AM, she examined the victim and noticed following facts:-

“**MI** – 1. cut mark on right index finger.

2. cut mark on side of left eye.

Auxilliary hair shaved. Pubic hair present, black,
Breast developed.



Date of last menstrual period – approx. 25 days back.

On examination - No external injury, abnormal strain or foreign particle seen on any part of her body including her private part. Hymen intact. It was difficult to introduce tip of little finger in vagina. Vaginal swab taken and sent to microscopical exam. to Pathologist S.H. Sasaram.

C.S. Rohtas was requested to do needful for the age determination.

Her vaginal swab for exam. was done by Dr. V.K.Singh Pathologist S.H. Sasaram. Report attached.

Her age determination was done by a medical board under the Chairmanship of D.S. Sadar Hospital Sasaram. Report attached.

According to opinion of medical board, she is between 17 - 18 yrs. (seventeen to eighteen) of age.

Opinion :- On basis of clinical exam. And report of vaginal swab exam., it is very difficult to say whether she is raped or not.”

The doctor proved the Medical Examination Report, which was marked as Ext.1. She also proved the report of the Medical Board, which was marked as Ext. 1/1. As per report of the Medical Board, the age of the victim was assessed in between 17 and 18 years. In paragraph – 11 of her cross-examination, she clarified that no injury in any part of body of victim was seen. The evidence of P.W.5 completely rules out the prosecution case regarding rape.



14. P.W.6 Rama Kant Ram is the investigating officer. He has stated that on 28-04-2007, he was posted in SC/ST Police Station, Rohtas as officer incharge and he had drawn the formal F.I.R., vide SC/ST Rohtas Dehri P.S. Case No. 27 of 2007 on 28-04-2007 and he had also investigated the case, recorded statement of witnesses and got the victim examined by the Medical Board. In paragraph - 10 of his cross-examination, he deposed that the victim had informed him that she had lodged a case, vide Karakat P.S. Case No. 31 of 2007, on 27-04-2007 under Sections 341 and 324 (corrected Section 354) of the I.P.C., in which, the accused (appellant) was arrested. However, subsequently he was left out. In paragraph - 15 of his cross-examination, he has stated that in the case diary, he has not at all mentioned that he noticed any injury on the body of the victim and in paragraph – 16, he states that he did not seize any cloth of the victim. He also did not notice any mark in the मरई (open hut), where alleged occurrence had taken place.

15. On examination of entire evidence, particularly; the exhibits produced on behalf of the defence, there is no reason to approve the judgment of conviction and sentence. Moreover, on examination of the statement of the appellant recorded under Section 313 of the Cr.P.C., it appears that only



formality was completed, otherwise in particular, neither any evidence nor any specific circumstance was explained to him. The appellant in his statement recorded under Section 313 of the Cr.P.C. had denied the allegation and claimed to be innocent.

16. On going through the medical evidence also, it is difficult to draw an inference as to whether the victim was raped. Merely on the ground that during trial, only oral evidence was brought on record regarding commission of rape, unless such accusation is corroborated by other evidence, certainly on such oral evidence only, conviction may not be approved. In the present case, it has come that the victim in relation to so called occurrence had given first version before the police through written report, which was registered as Karakat P.S. Case No. 31 of 2007, in which, only accusation was made that the appellant tried to outrage modesty of the victim, whereas, during investigation, the said case was not found true and this was the reason that final report was submitted, which has been brought on record as Ext. B. However, the suggestion of false implication, which has been given from the defence side that case was got instituted as per instance of one of the accused



Ramta Singh, who was owner of the orchard in question, may also not be ruled out.

17. In view of facts & circumstances and entire evidence, we are of the considered opinion that judgment of conviction and sentence of the appellant is not sustainable in the eye of law and as such, the judgment of conviction dated 28-02-2013 and order of sentence dated 04-03-2013 passed by Sri Sajal Mandilwar, learned Additional Sessions Judge 1st, Rohtas at Sasaram in Sessions Trial No. 404 of 2007 (arising out of SC/ST Dehri P.S. Case No. 27 of 2007) is, hereby, set aside and the appellant, who is in custody, is directed to be released forthwith, if not required in any other case.

18. The appeal is allowed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

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