

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1539 of 2017

Arising Out of PS.Case No. -605 Year- 2012 Thana -AHIAPUR District-
MUZAFFARPUR

=====

Anand Ram @ Phula Ram @ Anant Ram, Son of Mahendra Ram,
resident of Village-Neliri, P.S.-Ahiyapur, District-Muzaffarpur.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent

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Appearance :

For the Appellant/s : Ms. Soni Shrivastava, Adv.

For the State : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 23-07-2018

The appellant/Anand Ram @ Phula Ram @
Anant Ram has been convicted under Section 376 of the
Indian Penal Code (*in short the **I.P.C.***) by judgment dated
18th April, 2017, passed by the learned 13th Addl. District &
Sessions Judge, Muzaffarpur in Sessions Trial No. 157 of
2013, arising out of Ahiyapur P.S. Case No. 605 of 2012,
and by order dated 19th April, 2017, he has been sentenced
to undergo rigorous imprisonment for seven years, to pay a



fine of Rs. 3,000/- and in default of payment of fine, to further suffer simple imprisonment for one month.

2. The appellant is said to have committed rape upon the victim/P.W. 6.

3. The prosecution case is based upon the *fardbeyan* of P.W. 6, who has alleged that on 04.11.2012 at about 9 O'Clock in the night, when she had come out of her house to attend the call of nature, she was caught by the appellant, who forcibly took her to the half constructed house of one Hanif Mian of the village. At that place, it has been alleged by the prosecutrix (P.W. 6) that she was subjected to rape. When she protested, the appellant left her and started running away. In the meantime, persons of the neighbourhood caught the appellant and assaulted him. In the same breath, the prosecutrix has also stated that when she raised protest against the act of the appellant, she was pushed down on the ground, leading to injuries to her. She was taken to hospital by her husband and villagers where she was treated for sometime. The victim/P.W. 6 has also alleged that while fleeing-away, the appellant took her A.T.M. card, on which, the Pin number was also written.

4. On the basis of the aforesaid *fardbeyan* statement of the victim/P.W. 6 on 07.11.2012 with respect



to the occurrence dated 04.11.2012, a case *vide* Ahiyapur P.S. Case No. 605 of 2012, dated 07.11.2012, was instituted for investigation for the offences under Sections 376, 379 and 323 of the I.P.C.

5. The police, after investigation of the case, submitted charge-sheet, whereupon, cognizance was taken and the case was committed to the Court of *Sessions* for trial.

6. The Trial Court, after examining thirteen witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellant as aforesaid. However, the appellant has been acquitted of the charge under Sections 379 and 323 of the I.P.C.

7. P.Ws. 7, 8, 9 and 13 are the villagers, who have expressed their complete ignorance about the occurrence and, hence, they have been declared hostile.

8. P.Ws. 1, 2 and 3 are the Doctors, who have examined the appellant as well as the victim/P.W. 6.

9. Dr. Bipin Kumar (P.W. 1) has deposed before the Trial Court that on 10.11.2012, he was posted in S.K.M.C.H., Muzaffarpur and on the same day, he examined the victim/P.W. 6. The victim had refused for her internal examination. Her *X-ray* was done and was put to ossification test. On external examination, it was found that



the victim was aged about 22 to 23 years. From the evidence of P.W. 1, it appears that the victim had not received any injury on her person on the day of the occurrence or else, the report of P.W. 1 would have contained reference of such injury.

10. Dr. S.B. Jha (P.W. 2) has examined the appellant and found four injuries on his person. The appellant had complained of chest pain in the upper part and pain in his shoulders as well. There was an abrasion on the scalp over right side. The cause of injuries is reported to have been caused by hard and blunt substance.

11. Dr. Prity (P.W. 3) has examined the victim in the first instance. The injury report prepared by her has been marked as Ext.-3 and 3/1. She has deposed before the Trial Court that the victim was brought to the hospital by her husband/P.W. 5. She had examined the victim on 09.11.2012 and did not find any injury on her external portion of the body. On internal examination, the victim's hymen was found to be ruptured, but there was no sign of any injury. The vaginal swab and smear which were taken did not report positive for any spermatozoa.

12. What becomes evident from the deposition of the aforesaid three Doctors/witnesses is that the victim did not suffer any injury and that she was married. Thus,



the evidence of P.W. 3 or P.W. 1 is of no avail, so far as the charge against the appellant is concerned. What is relevant is that in the occurrence, the appellant was caught and assaulted by the villagers, for which, a case was lodged by the appellant *vide* Ahiyapur P.S. Case No. 606 of 2012.

13. The brother-in-law of the victim, *viz.* Md. Saleem has been examined as P.W. 4. He has supported the prosecution version in as much as he has stated that on 04.11.2012, he heard some sound coming from the side of Hanif's under constructed house. When he went there, he found the appellant and the prosecutrix. The appellant was seen running away, but was caught by the villagers. The victim, on being asked, told that the appellant had tied her mouth with a piece of cloth and had subjected her to rape. He has further deposed that the information was provided to the police and, thereafter, the police took the victim as well as the appellant to S.K.M.C.H., Muzaffarpur for treatment. The suggestion given to him that the appellant had lent Rs. 1,00,000/- to one Md. Aslam, who is related to the husband of the victim, which had not been returned and on demand of the same, a false case has been instituted.

14. The husband of the prosecutrix (P.W. 6), *viz.* Md. Lukman has been examined as P.W. 5. He has narrated what the victim had told him. He has also stated



before the Trial Court that he reached the place of occurrence and found that his wife/prosecutrix was crying. He saw the appellant also near the house of Hanif, a co-villager. He has admitted in his cross-examination that Md. Aslam is his brother, but denied the fact that his brother had taken Rs. 1,00,000/- from the appellant for the marriage of his daughter and that any *Panchayati* was held for re-payment of the said amount. When aforesaid P.W. 5 was further confronted with the fact that the appellant was assaulted and a case was lodged by him *vide* Ahiyapur P.S. Case No. 606 of 2012, he expressed his complete ignorance about the same.

15. Now the only witness whose evidence would be important for consideration in the present case is the evidence of the victim herself, who has been examined as P.W. 6. She has reiterated the same story which she had narrated in her First Information Report. At about 9 O'Clock, when she had come out of her house to attend to the call of nature, she was caught and raped by the appellant. After the appellant had ravished her, he wanted to run away, but was apprehended and assaulted by the local people. The victim, in her cross-examination, has stated that she has four children. She has further stated that after the act of sexual assault, she became unconscious



and was brought to her house first where she regained her consciousness. She has also denied that she had any knowledge about Md. Aslam having taken Rs. 1,00,000/- from the appellant.

16. Ms. Soni Shrivastava, learned Advocate appearing for the appellant has submitted that the statement of the victim/P.W. 6 that she was injured in the occurrence because she was pushed down on the ground on protest is absolutely wrong. She was examined by P.W. 3 on 09.11.2012, but no external injury was found on her person. The other grounds which have been urged for assailing the judgment and order of conviction is that the occurrence took place on 04.11.2012, whereas, the F.I.R. was lodged on 07.11.2012 and no explanation has been offered for such delayed reporting of the matter. The explanation, viz. that she was undergoing treatment in a hospital cannot be accepted to be true, in view of the deposition of P.W. 3 as also P.W. 1, who did not find any injury on the person of the victim/P.W. 6.

17. It has also been argued that the fact that the appellant also was assaulted and had to undergo medical treatment reflects that perhaps, he was caught in the company of the victim and since the victim was a married lady, hailing from a different community, the people



of the locality assaulted him.

18. The act of rape could not be established for the simple reason that no injury was found and the major part of the version of the prosecutrix does not appear to be correct or trustworthy. The delay in lodging the F.I.R.; absence of any injury on the person of the prosecutrix thereby, making major part of her version before Trial Court to be incorrect and no evidence of rape or any internal injury, completely rubbishes the prosecution version.

19. The Investigating Officer of this case has not been examined and definite prejudice has been caused to the appellant as the attention of the witnesses to their earlier statement though were drawn, but could not be confirmed by putting such questions to the Investigating Officer of this case.

20. From the overall circumstances, P.Ws. 4 and 5, who claimed to have seen the appellant running away, do not appear to be trustworthy and reliable. No doubt, the medical examination of the victim, after some days of the occurrence, may not provide the investigating agencies or the Court with any clue regarding the correctness of the version, but from the overall surrounding circumstances and deposition of the witnesses, the allegation against the appellant appears to be false. The



charge of rape has not been established beyond all reasonable doubts.

21. The falsity of the prosecution case further appears from the fact that the victim is stated to have been robbed of her A.T.M. card. Ms. Soni Shrivastava, learned Advocate has submitted that it does not appear to be probable that a person would come out in the night to attend the call of nature with his/her A.T.M. card. In this connection, the suggestion given to the witnesses that there was a dispute with respect to re-payment of Rs. 1,00,000/- to the appellant, which was taken by the brother of the victim, assumes some significance. The aforesaid ground in favour of the appellant could not be established because of the non-examination of the Investigating Officer.

22. In any view of the matter, since the evidence is absolutely deficient against the appellant, benefit of doubt would be required to given to him.

23. For the aforesaid reasons, the judgment of conviction dated 18th April, 2017 and order of sentence dated 19th April, 2017, passed by learned 13th Addl. District & Sessions Judge, Muzaffarpur in Sessions Trial No. 157 of 2013, arising out of Ahiyapur P.S. Case No. 605 of 2012, cannot be sustained in the eyes of law and the same is, hereby, set aside.



24. The appeal is, accordingly, allowed.

25. The appellant/Anand Ram @ Phula Ram @ Anant Ram is in custody. He is directed to be released forthwith from jail, if not required in any other case.

26. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25.07.2018
Transmission Date	25.07.2018

