

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.444 of 2015

Arising Out of PS.Case No. -274 Year- 2009 Thana -RUNISAIDPUR District- SITAMARHI

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1. Ram Sakal Sah @ Chunnu son of Rajdeo Sah, resident of village Olipur Sarachiya, P.S. Runni Saidpur, Dist- Sitamarhi.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Tuntun Kumar, Adv.

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-03-2018

Appellant, Ram Sakal Sah @ Chunnu has been found guilty for an offence punishable under Section 323 IPC and instead of being inflicted with the substantial sentence, has been directed to pay fine of Rs. 1000/-, 376/511 IPC and sentenced to undergo RI for 4 years as well as to pay fine of Rs. 5,000/-, under Section 3(i)(x) of the SC/ST (POA) Act and sentenced to undergo RI for 3 years with a further direction that in default of payment of fine, to undergo SI for one month additionally with a further direction to run the sentences concurrently vide judgment of conviction dated 11.06.2015 and order of sentence dated 16.06.2015 passed by 1st Additional Sessions Judge-cum-Special Judge, SC/ST, Sitamarhi in Sessions Trial No. 548/2009/51/2009.

2. Name withheld (PW-7) filed a written report on 31.08.2009 divulging the fact that at about 9.00 PM on 28.08.2009,



she along with her younger Gotni (name withheld, PW-6), wife of Chandan Ram had gone over Tahirpur culvert to ease themselves. When they reached near culvert, where bamboo cluster happens to be, all of a sudden, Ajay Sah, with Ram Sakal Sah (appellant) appeared out of whom, Ajay caught hold of her and further, instructed her to indulge in copulation whereupon she protested. He tried to allure her under different modes and then tore her blouse by using force, made her to lie and attempted to commit rape. During midst thereof, her Gotni came in rescue who was caught hold of by Ram Sakal Sah who disclosed that now she is his prey and he also began to indulge in an activity in order to outrage her. Anyhow, both of them raised alarm whereupon villagers, their husbands rushed seeing whom, both of them began to flee therefrom. Out of whom, Ajay Sah was apprehended by them. After arrival of the villagers, husband, Ajay Sah was caught hold. Then thereafter, they both disclosed the misdeeds having at the end of accused persons. Villagers have said that Ajay should be released at the present moment and they will decide the matter in Panchayati but, as Panchayati did not occur, so a written report has been filed with a request that Ajay should be punished.

3. After registration of Runnisaidpur PS Case No. 274/2009, investigation followed and after concluding the same,



charge-sheet was submitted, facilitating the trial, meeting with ultimate result subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has also been suggested that husband of prosecutrix as well as PW-6 are under employment of Rambabu Sah, co-villager with whom the father of the appellant happens to be on litigating terms and at his instance got this case filed. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 8 PWs out of whom PW-1, Rajendra Paswan, PW-2, Kodai Paswan, PW-3, Shivchandra Ram, husband of informant, PW-4, Chandran Ram, husband of PW-6, PW-5, Gona Paswan, PW-6, one of the victims, PW-7, informant and PW-8, Investigating Officer. Side by side had also exhibited Ext-1, forwarding report, Ext-1/1, endorsement over written report, Ext-2, formal FIR. As stated above, nothing has been adduced in defence.

6. Before proceeding towards argument having been made on behalf of respective parties, from the lower court, it appears that this happens to be a separate trial as, investigation against the accused Ajay Sah remained pending while charge-sheet was filed on 17.12.2009 against the appellant, and even in the aforesaid



background, the format of the charge shows name of Ajay Sah. Whatsoever incorporated therein as is evident from the evidences of the respective PWs, majority of the same happens to be relating to the aforesaid Ajay Sah. It is also evident from the lower court record that appellant tried tooth and nail to frustrate the trial by keeping his absence resulting cancellation of bail bond at so many occasions, learned counsel representing him did not turn up to cross-examine the PW-7, informant on subsequent date, Investigating Officer, PW-8 whereupon, he was discharged, even during course of argument counsel did not turn up and so vide order dated 13.03.2015, the trial was fixed for judgment. During course thereof, when the record was duly appraised, the aforesaid defect was traced out and then thereafter, by the aforesaid order dated 13.03.2015, the format was amended deleting the name of Ajay Sah and substituting the same by the appellant but, the other defects remained. However, in terms of Section 221 of the CrPC coupled with Section 464 CrPC even to some extent attracting the privilege so allowed under Section 465 CrPC, the aforesaid omission, for the present, is duly ignored till the final adjudication as there happens to be some sort of discrepancy with regard to the appellant.

7. Learned counsel for the appellant has begun his submission that instant appeal should not be heard instead thereof, he



be allowed an adjournment to take recourse under Section 391 of the CrPC to file certified copy of the judgment relating to trial of Ajay Sah wherein these witnesses were also examined which ended in acquittal of Ajay Sah. When the learned counsel for the appellant has been requested that the aforesaid judgment will serve no purpose in the background of the fact that (a) witnesses while being examined, in the present case, were not confronted with their evidences whatsoever deposited by them in the aforesaid trial, (b) the aforesaid evidence was not recorded in presence of appellant, Ram Sakal Sah @ Chunnu (c) in terms of Section 273 of the CrPC, the evidences are to be recorded in presence of accused only which was not at all found relating to appellant, Ram Sakal Sah with the trial of Ajay Sah. That being so, prayer under Section 391 CrPC could not be legally entertainable. Even in one trial, the witnesses had got an option and that happens to be reason behind that the principle of '*falsus in uno falsus in omnibus*' is not at all applicable in Indian legal context.

8. Then thereafter, proceeding ahead the learned counsel for the appellant submitted that no offence whatsoever alleged against the appellant is made out because of the fact that charge has been levelled against him to have assaulted PW-7, but, PW-7 had not alleged against him and that being so, the charge under Section 323 IPC is found not at all attracted. In likewise manner, It has also been



submitted that no offence punishable under Section 3(i)(x) of the SC/ST (POA) Act is made out as it was dead of night, none other was present and further, nothing was uttered at the end of the appellant. When attention of the learned counsel has been drawn up that conviction is under Section 3(i)(xi) of the SC/ST (POA) Act, then the learned counsel for the appellant has submitted that in the background of charge being suffered with vagueness, it has got no relevance at all. Then it has been submitted that so far charge under Section 376/511 IPC is concerned, that is also not applicable because of the fact that PW-7, informant had not alleged against the appellant to have acted in any manner adverse to her interest during course of so alleged occurrence and in likewise manner, PW-6 had also deposed. The other witnesses admittedly, are not eyewitnesses to the occurrence and so, their evidences will not serve any purpose, consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

9. On the other hand, learned APP while supporting the findings rendered by the learned lower court, has submitted that PWs-6 and 7 conjointly have gone to the alleged place of occurrence to ease themselves and during course thereof, appellant along with Ajay Sah appeared and they pounced upon each of them. As per allegation, Ajay Sah had tackled PW-7 while appellant had tackled



PW-6 and the activity having been at their end is found duly exposed which the learned lower court had minutely observed. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be confirmed.

10. From the evidence available on the record, it is evident that it happens to be of two kinds. The first one happens to be of PWs-6, 7 respective victims and the remaining PWs-1, 2, 3, 4, 5, being corroborative in the nature. Investigating Officer is PW-8 who has not been cross-examined at the end of the appellant.

11. Be that as it may, on account of non cross-examination of PW-8, Investigating Officer, though from perusal of the evidence of the respective witnesses, it is evident that some sort of material development has been found over which, their attention has been drawn up, such as PW-3 (para-11), PW-4 (para-6), PW-5 (para-9), PW-6 (para-7) and that PW-7, was also not cross-examined on subsequent date and as such, nothing is found relating to her testimony on that very score, remained unaffected. In the aforesaid background, now evidences of the witnesses are to be seen whether they justify the finding having been recorded by the learned lower court.

12. PW-1 had stated that on the alleged date and time of occurrence, he was sleeping over roof of Kanya Vidyalaya along



with so many persons including PW-2 and PW-5. After hearing hulla, they rushed to the place where they found Ram Sakal Sah and Ajay Sah being caught hold of by wife of Shivchandra Ram and Chandan Ram respectively. Scuffle was going on. He had seen blouse of wife of Shivchandra Ram torn. Ajay Sah escaped therefrom while Ram Sakal did not succeed. He had further stated that wife of Shivchandra Ram had disclosed that for the purpose of committing sin with them, they came at that very place. Then had stated that Shivchandra Ram and Chandan Ram came and then all of them took Ajay Sah to the village for getting grievances redressed at village level but as they failed, filed this case. He claimed identification of accused as Ajay and then corrected as Ram Sakal Sah by way of stating that his eyesight has become weak.

13. During cross-examination at para-3, he had stated that when he reached at the place of occurrence, he had seen scuffle near Ikri. At that very time, he had seen blouse of PW-7 torn. There was water in the ditch up to chest and the Marpeet was going on in the aforesaid ditch. He had seen torn blouse in same sequence. He had also gone upto knee deep water where they had apprehended Ajay Sah.

14. PW-2, who was sleeping with PW-1 over roof of Kanya Vidyalaya, deposed that after hearing hue and cry, they rushed.



After arrival at the place of occurrence, they saw Ajay Sah having grabbed by a woman who was wife of Shivchandra Ram. He had attempted to tease her. He caught hold Ajay and then entrusted Ajay to Shivchandar. Then thereafter, he returned back to school to sleep.

15. PW-3 is the husband of informant, PW-7. He had stated that he happens to be '*Chamar*' by caste, a member of scheduled caste and accused persons are '*Teli*', backward. On the alleged date and time of occurrence, he was at his house, his wife and Bhabho, (wife of younger brother) had gone to ease themselves towards culvert. After some time, they heard sound '*Pakro-Pakro*' whereupon he along with his younger brother, Chandan Ram rushed. When they reached at the place of occurrence, they saw Ajay Sah having been caught hold of by his wife as well as his Bhabho, who were raising alarm. Then thereafter, he also apprehended Ajay. His wife had disclosed that as soon as she was about to sit to ease, Ajay caught hold of her and after abusing, threatened that he will commit rape and then, threw her on the ground, torn her blouse, attempted to commit rape. At that very time, his Bhabho came who began to raise alarm. Till then they also arrived. Then had stated that Ram Sakal Sah had also attempted upon his Bhabho but, hearing alarm, he escaped. Then thereafter, they took Ajay to their house. Till then, his master, Jainarain came who, on the pretext of Panchayati, got him released.



Then thereafter, as no Panchayati was convened, a written report has been filed. Identified the accused. During cross-examination at para-4, he had stated that at the place of occurrence, there was trampling mark. There was mark which could have exposed the scuffle. In para-6, he had stated that when he reached at the place of occurrence, he had seen blouse of his wife as well as that of his Bhabho torn. There was soil over their face. Hair was open. Sari was in disordered way. He had further said that blouse and Sari were shown to the police but police had not seized the same. At para-7, he had stated that he had not seen scratch mark over body of his wife. Then had denied the suggestion that at the instance of Rambabu, his employer, got this case filed.

16. PW-4 is the husband of PW-6. He during his examination-in-chief had stated that his Bhabhi and his wife both had gone to culvert to meet the nature's call. After hearing alarm, he along with his brother, Shivchandra Ram rushed towards place of occurrence where they saw Ajay Sah having been caught hold of by his wife as well as by his Bhabhi and scuffle was going on. Then thereafter, they caught hold of Ajay Sah. On query, his Bhabhi had disclosed that Ajay was saying to them that she will be raped. Blouse of Bhabhi was torn. His wife had disclosed that seeing the persons coming, Ram Sakal managed to succeed after pushing her. Then



thereafter, they brought Ajay to their house where Jainarain Sah came and on the pretext of Panchayati, took away Ajay. Then thereafter, as no Panchayati was convened, hence case has been instituted.

17. During cross-examination at para-7, he had stated that he had not found mark of violence over the body of his wife as well as Bhabhi. Only blouse of his Bhabhi was torn. Then had denied the suggestion that at the instance of Rambabu, who happens to be on strained relationship with the family of appellant, got this case filed.

18. PW-5 is the person who was sleeping with PWs-1 and 2 over the roof of Kanya Vidyalaya who deposed that after hearing the sound of alarm, they rushed. After arrival at the place of occurrence, they had seen the wife of Shivchandra had caught hold of Ajay. He had further stated that in torch light, he had seen Sakal Ram fleeing therefrom. He further stated that there was scuffle between Ajay and Shivchandra Ram. Then thereafter, Ajay was taken to village where Jainarayan Sah on the pretext of Panchayti, got him released. As no Panchayati was convened, this case has been instituted. During course of cross-examination at para-5, he had stated that he along with Kodai Paswan and Rajendra Paswan gone to place of occurrence. He had further stated that it was rainy season and on account thereof, there was availability of water at different places



also.

19. PW-6 is one of the victims who had deposed that on the alleged date and time of occurrence, she along with PW-7 (gotini) had gone to culvert to meet nature's call where her co-villagers, Ram Sakal Sah and Ajay Sah came. They intended to commit rape over PW-7 and during said course tore her blouse. There was push and pull and during course thereof, Ram Sakal fled away. Ajay was apprehended by both of them and then they raised alarm attracting so many persons including their respective husbands who came and caught hold of Ajay, took him to their house where Jainarayan Sah and others came and disclosed that the matter will be decided at village level and for that Panchayati will be convened. As Ajay happened to be driver of Jainarayan Sah. However, Panchayati did not materialize whereupon, lastly, the case has been instituted. Identified the accused.

20. During cross-examination at para-4, she had stated that she including villages used to go that side for meeting nature's call. As soon as they reached there, Ram Sakal and Ajay Sah caught hold of both of them. Because of the fact that it was night, she is unable to say from which side they came. Then had disclosed that for about five minutes, they indulged in grappling with Ajay and Sakal. Ajay threw PW-7 over ground while Ram Sakal after giving a



slap to her, escaped. They both caught hold Ajay. Then had disclosed boundary of her house. Then had disclosed at para-6 that Ram Sakal happens to be from her Tola. Then had denied the suggestion that this case has been instituted at the instance of Bhola Paswan and others who happened to be inimical to the father of the Sakal Ram Sah.

21. PW-7 is the informant who had deposed that on the alleged date and time of occurrence, she along with her Gotni, PW-6 had gone to Tahirpur culvert to meet nature's call. As soon as they were to ease, Ajay caught hold of her while PW-6 was caught hold of by Ram Sakal from behind. Her blouse was torn by Ajay. Then had indulged in push and pull with an intention of committing rape. Ram Sakal escaped therefrom while Ajay was apprehended by her as well as by her Gotni and also raised alarm attracting so many persons including their husbands who came and caught hold of Ajay and took him to their Darwaza where villagers came and directed to release as the matter is to be sorted out by way of Panchayati. As the Panchayati was not convened therefore, the case has been instituted.

22. During cross-examination at para-5, she had deposed that Ram Sakal Sah had not tried to rape. Then at para-6 had stated that the place where they indulged in push and pull happens to be at the distance of 10 Laggi north from her house. They were caught hold of two Laggi prior to the culvert where both of them caught hold



of Ajay and from there he was taken to their Darwaza, subsequently thereof, she was deferred and on the next date, as none turned up to cross-examine her, accordingly, she was discharged.

23. PW-8 is the Investigating Officer who had stated that after having been entrusted with the investigation, he proceeded therewith, recorded further statement of the informant, another victim, witnesses and then inspected the place of occurrence which happens to be near culvert lying over Tahirpur road having a boundary, North-pitch road, South-pitch road, East-bamboo cluster of Mithila Bihari Sharan, West- field of Mithila Bihari Sharan. Accused was apprehended. Received supervision note and then, after completing investigation, submitted charge-sheet. This witness was also discharged without cross-examination on account of non presence of learned counsel for the appellant.

24. From the evidence available on the record, it is evident that PW-5 had stated that in torch light he had seen the appellant, Ram Sakal fleeing therefrom which, PWs-1 and 2 who accompanied PW-5, have not disclosed. When the evidence of PW-1 is gone through, it is evident that from the examination-in-chief when they reached, they found Ram Sakal and Ajay Sah indulged in grappling with the wife of Shivchandra Ram as well as Chandan Ram and further, the place of occurrence happens to be a ditch having



water up-to chest. He had further claimed that he also got down in the ditch up to the knee deep water and then had seen the occurrence which none of the PWs including both the victims have substantiated.

25. PW-2 did not suggest presence of appellant at the spot rather he had stated that when he reached at the place of occurrence along with PWs- Ajay was indulged in scuffle with wife of Shivchandra Ram and who was apprehended by him, PW-5 had explained in different way that while he along with PWs-1 and 2 were going towards place of occurrence had seen Ram Sakal Sah fleeing in torch light. PWs-3 and 4 are the respective husband of PW-6 and 7 and they have not disclosed anything against appellants save and except whatever been disclosed by the PWs-6 and 7. So far PW-6 is concerned, during her examination-in-chief, she had stated that appellant along with Ajay indulged with PW-7 as they attempted to commit rape upon her, tore her blouse, indulged in push and pull and during course thereof, Ram Sakal Sah fled away while Ajay Sah was apprehended by them which, during course of cross-examination at para-4 been twisted in a manner that there was push and pull in between her as well as her Gotni with Ajay Sah and Ram Sakal Sah for about five minutes and then thereafter, Ajay threw her Gotni the ground while Ram Sakal gave a slap to her and fled away. Ajay was apprehended by both of them.



26. PW-7 had stated that she was caught hold of by Ajay Sah while PW-6 by Ram Sakal Sah from behind with an intention to commit rape and during course thereof, there was push and pull and during midst thereof, Ram Sakal Sah fled away. During cross-examination, she had stated that Ram Sakal Sah had not attempted to ravish upon her. So, with regard to activity of Ram Sakal Sah as well as part allegedly, played at his end, during course of alleged occurrence, is found conflicting one and whereupon the ultimate beneficiary would be the accused. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside.

27. Appeal is allowed. Since appellant is on bail he is discharged from the liability of the bail bond.

(Aditya Kumar Trivedi, J)

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