

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.907 of 2013

Arising Out of PS. Case No.-78 Year-2007 Thana- HARNAUT District- Nalanda

Sanjay Yadav, Son Of Late Aklu Yadav, Resident Of Village - Nimkal , P.S. -
Vena, District - Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 554 of 2013

Arising Out of PS. Case No.-78 Year-2007 Thana- HARNAUT District- Nalanda

Sunil Beldar @ Jhoparia @ Jhopari Beldar, son of Kameshwar Beldar,
Resident of village Daili Maheshpur PS. Harnaut, Distt. Nalanda

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 907 of 2013)

For the Appellant/s : Smt. Nilima Sinha, Advocate
Ms. Divya Verma (Amicus Curiae)
Ms. Meenu Kumari, Advocate
Sri Rajeev Ranjan, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 554 of 2013)

For the Appellant/s : Mr. Md. Salahuddin Khan, Advocate
Sri Saurabh Kumar, Advocate
Sri Surendra Sao, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA

JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 11-04-2019

1. Two appellants in the aforesaid two appeals were
tried together and by common judgment they have been convicted



and sentenced and as such both the appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

2. The aforesaid appeals were firstly taken up for hearing on 09.04.2019, however on the said day there was none appearance of counsel for either of the appellants. On the next day i.e. on 10.04.2019 Mr. Salahuddin Khan, learned counsel for the appellant in Cr. Appeal (D.B.) No. 554 of 2013 was present, however in Cr. Appeal (D.B.) No. 907 of 2013 there was again none appearance. Since repeatedly on two dates there was non appearance on behalf of the appellant in Cr. Appeal (D.B.) No. 907 of 2013 and the case was of the year 2013 the court requested Ms. Divya Verma, learned counsel, who was present in court to assist the court as Amicus Curiae to which she agreed upon and thereafter hearing commenced. However, in the midst of hearing Smt. Nilima Sinha, learned counsel with Ms. Neetu Kumari, learned counsel for the appellant in Cr. Appeal (D.B.) No. 907 of 2013 arrived and as such on behalf of the appellant- Sanjay Yadav we heard both Smt. Nilima Sinha, learned counsel for the appellant as well as Ms. Divya Verma, learned counsel, as Amicus Curiae.

3. Appellants in both the appeals by judgment dated 09.05.2013 were convicted for commission of offence under



Section 376(G) of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”] and Sections 3(i)(x) and 3 (ii)(v) of the Schedule Castes And Schedule Tribes (Prevention of Atrocities) Act, 1989 [hereinafter referred to as the “S.C. S.T. Act”]. By order dated 16.05.2013 appellants in both the appeals under Section 376(G) of the I.P.C. were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/- each. Under Section 3(i)(x) of the S.C. S.T. Act both were sentenced to undergo rigorous imprisonment for two years. Under Section 3(ii)(v) of the S.C. S.T. Act both were sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 2000/- each. In default of payment of fine both were directed to further undergo rigorous imprisonment for three months. All the sentences were directed to run concurrently.

4. Short fact of the case is that a written report was submitted to the Superintendent of Police, Nalanda (Biharsharif) under the signature of victim (P.W. 6). In the written report it was disclosed that the victim was minor and Schedule Caste i.e. belonging to “ चमार ” community. On 01.03.2007 after closure of Missionary School, Harnaut, on the eve of Holi the victim with her father and younger brother after purchasing clothes and other articles for the Holi occasion in the evening was returning back to



her house. On way she noticed that four unknown accused persons were following. As she reached near *Dailli More* at about 7.00 P.M. the accused who were following from behind moved ahead and from front side they blocked the way. Two accused persons put pistol on temporal region of the victim as well as on her father and enquired their name whereupon her father described his name. The accused after noticing the fact that victim belongs to “ चमार ” community using abusive language said that they were “ चमरा ” and work is done. One of the accused person snatched ओढ़नी (Dupatta) of the victim and carrying her father by the side and tied her father with *Mahua* tree. Another accused person caught hold of her younger brother. She further disclosed that the accused who was near her father had forcibly taken “*Kanchan* watch” amounting to Rs. 1400/- and took out Rs. 600/- from upper pocket of her father. Two accused persons forcibly dragged her near the side of the tree in the *Masoor* beans field and one of the accused after thrashing her pushing her mouth committed rape. Second accused person also committed rape. Then the earlier two accused, who had already committed rape left the place and again third and fourth accused one by one committed rape with her. All four accused persons after committing rape fled away towards Eastern side. The victim cryingly reached near her father who was



tied in the tree and she untied him. Thereafter, frightingly she along with her father and younger brother came to her house. She further stated that her father gave information regarding the occurrence to nearby people and with villagers they again went to the place of occurrence, however none could be noticed. On the next day on 02.03.2007 in the morning at 6.00 A.M. her father went to attend call of nature to the place of occurrence and there he saw that two persons were searching something near the place of occurrence. After noticing them, alarm was raised and thereafter number of persons came runningly and apprehended one of the accused person who was brought to the village. This information was immediately sent to the Harnaut Police Station by her father who gave information regarding the occurrence as well as regarding apprehension of one of the accused person. The Officer-in-charge along with Police force came to the village and carried the person who was apprehended to Police Station. It has further been stated in the written report that on being asked by the Officer-in-charge, the apprehended accused person disclosed his name as Sanjay Yadav of village – Nimkal, P.S. -Harnaut and he disclosed his father's name as Aklu Yadav. The Officer in charge of the Police station told her father and mother to return back as case will be lodged and accused will be sent to jail. This fact was



disclosed by her father when her father returned back to home. It was also indicated that while her father enquired about the case then it was noticed that in Police Station no case was lodged and Sanjay Yadav, who was apprehended, was also freed. It was claimed by the informant that she can identify accused persons after seeing them. The informant further claimed that accused persons knowing the fact that the informant was of schedule caste, they had committed the crime and Officer in charge had not lodged the case and freed the apprehended accused person. The written report was signed by the informant on the bottom. In the written report on the left hand side there is one endorsement marked to O/C for registering case and it is dated 03.04.2007 however this endorsement has not been got exhibited. On the basis of the said written report a formal F.I.R vide Harnaut P.S. Case No. 78 of 2007 was registered on 06.04.2007 at 14.30 Hours (2.30 P.M.) under Section 379/376(G)/34 of the I.P.C. and Section 3 (i)(x)(xi) (xii) & 3 (ii)(v) of the S.C. S.T. Act against Sanjay Yadav[sole appellant in Cr. Appeal (D.B.) No. 907 of 2013] and 3 unknown accused persons. After investigation on 31.01.2008 charge sheet was submitted against Brijnandan Yadav (not named in F.I.R.) showing Sanjay Yadav [appellant in Cr. Appeal (DB) No. 907 of 2013] and Sunil Beldar @ Jhoparia @ Jhopari Beldar [appellant in



Cr. Appeal (DB) No. 554 of 2013] as absconder. Thereafter, on 20.05.2008 learned Chief Judicial Magistrate, Nalanda took cognizance of the offence. Subsequently, two appellants who were shown absconder were remanded in the case. In the meanwhile, one of the accused namely- Brijnandan Yadav who was earlier charge- sheeted, absconded and as such, by order dated: 09.09.2011 while separating the case of Brijnandan Yadav case of two appellants was committed to the court of Sessions and it was numbered as Sessions Trial No. 236 of 2013. On 15.05.2012 charge was jointly framed against both the appellants under Section 376(G), 379/34 of the I.P.C. and Section 3(i)(x) & 3(ii)(v) of the S.C. S.T. Act.

5. During the trial to establish its case on behalf of the prosecution altogether eleven witnesses were examined. Out of eleven witnesses, P.W. 1 -Deepak Kumar (brother of the victim), P.W. 2 - Rambrich Das @ Rajesh Kumar Das (father of the victim) and victim (P.W. 6) were examined as eye witnesses to the occurrence, whereas, P.W. 3 -Dharamshila Devi (mother of the victim) and P.W. 5 - Nand Kishore Mochhi (uncle of the victim) are hearsay witnesses. Besides this, P.W. 5 is the witness in respect of seizure list and in his presence appellant Sanjay Yadav was apprehended. P.W. 4 (Bipin Kumar) is witness to the seizure



list, P.W. 7 - Shivjanam Ram is the 1st Investigating Officer, P.W. 8 - Anjani Kumar Verma is the 2nd Investigating Officer who had only submitted charge sheet and P.W. 9 - Dr. Noor Fatima had examined the victim on the point of her injury as well as she was member of the medical board constituted for ascertaining the age of the victim. P.W. 10 (Shyam Ravidas) and P.W. 11 (Mukesh Yadav) since did not support the prosecution case were declared hostile. After conclusion of the prosecution evidence on 03.04.2013 the appellants were questioned on incriminating circumstances and evidences which were brought on record against them and their statement under Section 313 of the Code Of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.") was recorded. Since subsequent to their examination under Section 313 of the Cr.P.C. one document i.e. F.S.L. report was brought on record, they were again examined under Section 313 of the Cr.P.C. on 06.05.2013. In their statement recorded under Section 313 of the Cr.P.C. the appellants claimed to be innocent however from the defence side neither oral nor documentary evidence has been brought on record.

6. Mr. Md. Salahuddin Khan, learned counsel appearing in Cr. Appeal (DB) No. 554 of 2013 on behalf of the appellant -Sunil Beldar @ Jhoparia @ Jhopari Beldar after placing entire



evidence has argued that prosecution has completely failed to establish its case against the appellant -Sunil Beldar @ Jhoparia @ Jhopari Beldar. It has been argued that name of appellant has neither appeared in the F.I.R. nor any of the witnesses during evidence have disclosed name of the appellant, however his name has come during investigation after examination of two witnesses under Section 161 of Cr.P.C., who have been examined as P.W. 10 - Shyam Ravidas and P.W. 11 - Mukesh Yadav, however, those witnesses were declared hostile during the trial. It has been emphatically argued by way of referring to the evidence of Investigating Officer (P.W. 8), in paragraph no. 9 of his cross examination in which the Investigating Officer has stated that the name of the appellant has come in the case after 10 P.M. on 11.05.2007. He tried to persuade the court to examine the case diary only to ascertain the fact that two witnesses i.e. Shyam Ravidas (P.W. 10) and P.W. 11 - Mukesh Yadav had disclosed about the name of the appellant in their statement recorded under Section 161 of the Cr.P.C. which was recorded on 11.05.2007. It has further been argued that the possibility of involvement of the appellant is ruled out on mere examination of evidence in paragraph 3 of cross examination of P.W. 6 (victim) in which she categorically stated that she was knowing the appellant since prior



to the occurrence. It has been argued that had the appellant been involved in the case, right from the very beginning the victim would have repeatedly named the appellant but she has never whispered disclosing name of the appellant as one of the rapists in the present case. It has also been argued that prosecution has miserably failed to bring on record any plausible reason for delay in lodging F.I.R. By way of referring to the evidence of P.W. 6 (victim) it has been argued that victim has stated that only 3-4 days after the occurrence his father had noticed Sanjay Yadav while he was roaming in the market and thereafter it was enquired as to whether F.I.R. was lodged and then it could be ascertained that no F.I.R. was lodged. In such situation in normal course after noticing the fact regarding non lodging of the F.I.R. which was required to be lodged as per the prosecution case on 2nd March 2007 when one of the accused i.e. Sanjay Yadav was apprehended and handed over to Police, however even after noticing Sanjay Yadav moving in market after 3-4 days of the occurrence no step was taken for immediately informing either the Superintendent Of Police or filing any complaint petition in the court regarding non lodging of the case. Even thereafter one month time was consumed in filing written petition before the Superintendent of Police. As per Mr. Salahuddin Khan, learned counsel for the appellant such delay in



lodging of case appears to be fatal for the prosecution case. It has also been argued that in the evidence of P.W. 6 (victim) she has stated that after the occurrence she was treated in Puja Clinic in the village but no report has been brought on record regarding her first examination by medical expert nor the doctor who firstly examined her has come forward to support the prosecution case. He further submits that as per the F.I.R. it was a case only against Sanjay Yadav and three unknown accused and though the appellant was subsequently made accused no test identification parade was held and in absence of any test identification parade or even his identification by the victim in the dock there was no reason to pass judgment of conviction and sentence in respect of appellant- Sunil Beldar @ Jhoparia @ Jhopari Beldar and as such it has been argued that the judgment of conviction and sentence is not sustainable in the eye of law.

7. Smt. Nilima Sinha, learning counsel appearing on behalf of the appellant -Sanjay Yadav in Cr. Appeal (DB) No. 907 of 2013 has argued that there was every possibility of false implication of the appellant since the appellant was a tempo driver. It has also been argued that prosecution case appears to be not believable due to the reason that it was the case of the prosecution that victim was raped by four unknown accused persons and even



thereafter one of the persons who has been arrayed as accused in the present case namely: Sanjay Yadav was shown to be apprehended in the next morning from the same place of occurrence on the plea as if Sanjay Yadav along with one another accused person was searching something at the place of occurrence. It has been argued that it is completely improbable that after commission of such type of crime the accused would again visit the place of occurrence for being identified. It has also been emphasized that victim was a student in Loyola School i.e. Missionary School and as such she was well aware about the rights and having knowledge for taking immediate action in such situation, however the victim had supposedly filed a written report after more than one month from the date of occurrence. She further submits that victim in her evidence has stated that when after committing rape all the four accused persons fled away she herself untied the hands of her father. According to learned counsel for the appellant if it was a case of gang rape on a minor girl and while committing rape she was also brutally assaulted in such situation it was not possible for her to come forward for untieing the hands of her father whereas along with the victim her brother who was not even tied was present. Smt. Nilima Sinha, learned counsel for the appellant has also reiterated the submission which was advanced



by Mr. Md. Salahuddin Khan that the victim though was shown to be examined in Puja Clinic no medical report has been brought on record. She further submits that in the case prosecution has not been able to establish the place of occurrence. According to Smt. Sinha though the Investigating Officer after recording F.I.R. had visited the place of occurrence he had not noticed any unnatural thing whereas it was the case of prosecution that victim was dragged in the Moong beans field and she was thrashed in the field and raped by four accused persons. In such situation there was every possibility to notice trampling of the *Moong* field however no such fact has been noticed by the Investigating Officer. She has also disputed regarding identification of the appellant. Of- course in the present case since Smt. Nilima Sinha, learned counsel, has already appeared on behalf of the appellant /Sanjay Yadav, at the time when appeal was taken up she was not present and in her absence Ms. Divya Verma, learned counsel, had appeared as Amicus Curiae.

8. In furtherance of the submission advanced by Smt. Nilima Sinha, learned counsel for the appellant, Ms. Divya Verma, learned Amicus Curiae has argued that the act of father of the victim in the facts and circumstance of the present case appears to be unnatural. She submits that in the evidence it has come that



since the victim was raped by four accused persons she became unconscious. She was brutally assaulted also and she was carried by her father and brother to her house, even then, for the whole night father of the victim had not taken any step for getting the victim examined by medical officer/expert nor any medical assistance was taken. She has further pointed out that prosecution case appears to be doubtful due to the reason that P.W. 5 (uncle of the victim) in his evidence in paragraph 1 has deposed that after the occurrence when his brother (father of the victim & P.W. 2) returned back in the same night at 8-9 P.M. he disclosed that her daughter was raped by Sanjay Yadav. Ms. Verma, learned Amicus Curiae has argued that once at the time of occurrence itself the appellant was identified with his name, there was no reason for the prosecution to introduce a case that in the next morning while father of the victim went for attending natural call and he visited the place of occurrence he noticed two unknown persons and then he identified as if those two persons were the culprits who had committed rape in the preceding night. In the written report itself it has been stated that on chase out of two accused persons one was apprehended and he was handed over to Police. The Officer- in-charge of the Police Station was informed by the apprehended person regarding his name as Sanjay Yadav with his full address as



well as his father's name. According to learned Amicus Curiae this introduction of appellant in the morning as well as his name disclosed from the mouth of P.W. 5 in the night itself creates serious doubt regarding involvement of the appellant. On aforesaid grounds it has been argued that the judgment of conviction and sentence is required to be interfered with and the appellant may be extended benefit of doubt.

9. Sri Ajay Mishra, learned Additional Public Prosecutor submits that it is a case of gang rape that too with a minor girl and as such on the basis of evidence of P.W. 6 itself the judgment of conviction and sentence is required to be approved. He further submits that P.W. 1 – Deepak Kumar (brother of the victim), P.W. 2 – Rambrich Das @ Rajesh Kumar Das (father of the victim) and victim herself (P.W. 6) are consistent on the point as to how four unknown accused persons had followed them and thereafter at 7.00 P.M. they apprehended the victim and her father and brother and dragging the victim all the four accused persons had committed rape one by one on the victim. He further submits that on the person of the victim even after one month the doctor who examined her i.e. P.W. 9 (Dr. Noor Fatima) had noticed some injuries and hymen was found ruptured. According to Sri Mishra, learned Additional Public Prosecutor, in such cases this court may



not take lenient view and judgment of conviction is required to be approved.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. So far appellant – Sunil Beldar @ Jhoparia @ Jhopari Beldar in Cr. Appeal (DB) No. 554 of 2013 is concerned, on going through the entire evidence it is difficult to come to conclusion regarding his involvement. The reason for disbelieving the prosecution case regarding involvement of Sunil Beldar is that the informant – victim (P.W. 6) in her evidence has categorically stated that this appellant was known to her since prior to the occurrence. In such situation there was no reason for not naming him in the written report which was presented before the Superintendent Of Police much after one month from the date of occurrence. Moreover, this appellant was not present in the dock on the date of evidence of P.W. 6 since he had appeared on representation and as such it was not a case that victim had identified him in dock. This fact has also been corroborated in the evidence of 1st Investigating Officer i.e. P.W. 7 (Shivjanam Ram), who in paragraph – 17 of his cross examination has made categorical statement that neither in the written report nor in the statement recorded under Section 161 of the Cr.P.C. either of the aforesaid witnesses or the informant had



named this appellant as one of the culprits. If this appellant was known to the prosecution side there was every possibility that after the occurrence in the same night his name would have surfaced whereas P.W. 5 (uncle of victim) in his evidence has stated that in the same night at 8 - 9 P.M. father of the victim -P.W. 2 (Rambrich Das @ Rajesh Kumar Das) had disclosed that her daughter was raped by Sanjay Yadav.

11. So far case of Sanjay Yadav [appellant in Cr. Appeal (DB) No. 907 of 2013] is concerned, it is true that immediately on the next day of the occurrence his name had surfaced since he was apprehended from the place of occurrence itself, but on examination of entire evidence we are of opinion that prosecution has not been able to establish its case beyond all reasonable doubts. The prosecution case so far appellant/ Sanjay Yadav is concerned also comes into cloud of doubt. It is not in dispute that victim was studying in a missionary school as has been deposed by the victim herself. It is the case of prosecution that victim along with her father and brother was intercepted by four unknown accused persons. In the *Moong* beans field she was raped one by one by almost four accused persons. Her age during medical examination was assessed between 15-16 years. In the evidence it has come that her clothes i.e. Salwar and Samij were seized by



preparing seizure list, which was marked as Ext. 2. In the evidence it has come that both clothes were having some white mark which was established as semen during forensic test as per Ext. 6. In a case of rape by four accused persons on a minor girl there was every possibility of profuse bleeding. Had it been so there would have been mark of blood on the clothes also however no such mark was noticed on the clothes nor while being examined by P.W. 9 (Dr. Noor Fatima) any vital injury was noticed on the private parts of the victim. The doctor on the contrary has said that private part was accepting only one finger. At the time of argument it was highlighted by Mr. Md. Salahuddin Khan, learned counsel for the appellant that after commission of rape by four accused persons there was no reason to notice such finding by the medical expert. He has also argued that on the person of the victim no other external injury was noticed whereas it was case of prosecution that victim was forcibly dragged by accused persons to the field which was not normal surface. Had it been a case of rape by four accused persons dragging to the field the victim would have suffered at least some abrasion and scratch injury on her back besides injury on private parts, however no such injury has been noticed by the doctor. At this juncture it would be necessary to deal with the evidence of P.W. 9 (Dr. Noor Fatima) who had examined the



victim and who was also one of the members of the medical board. She has proved injury report, marked as Ext. 5 and also report of medical board, marked as Ext. 4. Dr. Noor Fatima on 7th April 2007 was posted as Medical Officer at Sadar Hospital, Biharsharif and she had examined the victim both on the point of her injuries as well as being member of the medical board she had examined the age of the victim. In her evidence it has come that on physical, dental and radiological examination victim's age was assessed in between 15-16 years. The said report was marked as Ext. 4. On the same day at 4.30 P.M. she examined the victim and noticed the following facts:-

“(1) right sided bell peresis (facial peritus) found pale
(2) secondary sex character- axillary hair present. Public hair partially present. Breasts – Partially developed.
(3) Dental finding – 14 teeth in upper jaw. 14 teeth in lower jaw.
Pelvic examination:- Hymen ruptured introitum admits 1 finger size. Vaginal swab examination: spermatozoa not found.
R.B.C. plenty in all fields
W.B.C. 3-4 in all fields.
Opinion: Hymen is ruptured so possibility of rape cannot be ruled out.”

The injury report was proved by her which was marked as Ext. 5. On examination of her evidence it appears that in opinion she stated that possibility of rape cannot be ruled out. In the same report she has also noticed the fact regarding admission of only one finger. Of-course the doctor had given opinion



regarding not ruling out the possibility of rape but on examination of her evidence as well as injury report (Ext. 5) one thing is clear that no any vital injury was noticed on the person of the victim whereas she was minor on the date of alleged commission of rape by four accused persons in a field having rough surface.

12. P.W. 1 – Deepak Kumar (brother of the victim) in his evidence has stated many facts which he had not stated during investigation in his statement recorded under Section 161 of the Cr.P.C. and as such the evidence of P.W. 1 lacks credibility.

13. P.W. 2 – Rambrich Das @ Rajesh Kumar Das has reiterated the fact which has been stated in the written report. This witness besides reiterating the facts disclosed in the written report has further reiterated that four unknown accused persons had committed the crime whereas on examination of evidence of brother of this witness, namely: Nand Kishore Mochhi (uncle of the victim) it is evident that in the same night this witness had disclosed regarding involvement of the appellant- Sanjay Yadav. The involvement of the appellant -Sanjay Yadav appears to be doubtful due to the reason that once this appellant was known to P.W. 2, there was no reason to come out with a case as if on the next day in the morning two unknown persons were seen at the place of occurrence and among them one was apprehended who



before the Police had disclosed his name as Sanjay Yadav. This creates serious doubt in the mind of the court. Similarly, mother of the victim i.e. P.W. 3 – Dharamshila Devi though has stated that she was narrated the story by the victim (P.W. 6), P.W. 2 and P.W. 1, but on examination of her evidence it is clear that she too had not taken any step to get her daughter examined by any medical officer or provide proper medical aid. In the entire evidence it has come that for the whole night after the occurrence the victim remained in her house. In paragraph 6 of cross examination of P.W. 2 - Rambrich Das @ Rajesh Kumar Das (father of the victim) it has come that the victim was not provided any medical aid for the whole night nor he asked anyone to bring any medicine. It was stated that doctor was about 1 K.M. away from his village. The victim – P.W. 6 in her evidence has stated that at the time of committing rape she was assaulted by the accused persons and anyhow after the accused persons fled away she could come near her father who was tied in *Mahua* tree and she untied the same and subsequently she became unconscious and in such state/condition she was brought to her residence. Had it been a case of such injury which led to unconsciousness of the victim there was every possibility that the father (P.W. 2) would had taken every step to



provide medical aid to his daughter, however for the whole night the victim remained in her house.

14. P.W. 4 (Bipin Kumar) though has identified his signature on the seizure list relating to seizure of clothes of the victim and his signature was marked as Ext. 1, but in his evidence he has stated that nothing was seized in his presence, however, P.W. 5 – Nand Kishore Mochhi (uncle of the victim) and victim herself are also witnesses to the seizure list relating to clothes and their signature have been marked as Ext. 1/1 and 1/2 respectively. It is also difficult to believe that once it is case of prosecution that the victim was raped by four accused persons and she was minor why on her wearing there was no blood mark. In such situation there was every possibility of noticing some blood mark on the clothes even after one month. However after one month while it was produced it was shown as if clothes were having some white mark and that has been corroborated in the chemical examination as semen of human being. It is also difficult to believe that once such serious offence was committed on the victim what was the reason for filing written report after more than one month from the alleged date of occurrence. It is the case of prosecution that occurrence had taken place on 1st March 2007 but written report was addressed to the Superintendent of Police having endorsement



of 03.04.2007 for lodging F.I.R. and investigating the case. Though in the written report prosecution has tried to give reason for filing of delayed report and a plea has been taken that local Police even after apprehending one of the main accused had not lodged the case, but this also appears to be not believable. The victim (P.W. 6) in her evidence has stated that 3-4 days after the occurrence her father had seen Sanjay Yadav in the market and thereafter her father enquired as to whether F.I.R. was lodged or not. Once it was noticed immediately after 3-4 days of the occurrence that no F.I.R. was lodged, again there is no plausible reason for lodging present case after one month. Actually there is no explanation for such delay in filing written report. The written report contains an endorsement dated 03.04.2007 however F.I.R. was shown to be drawn on 06.04.2007. It is not the end of the matter. On examination of the record it is further evident that F.I.R. was received in the court of Chief Judicial Magistrate, Nalanda on 09.04.2007 whereas, F.I.R. was lodged on 06.04.2007. There is no explanation on this very point.

15. On examination of entire evidence the Court is of opinion that prosecution has not been able to establish its case beyond all reasonable doubts and as such by way of extending benefit of doubt both appeals are allowed. The judgment of



conviction dated 9th May, 2013 and sentence dated 16.05.2013 passed by Sri Ajit Kumar Sinha, learned 1st Addl. Sessions Judge – cum- Spl. Judge, Nalanda at Biharsharif in Sessions Trial No. 236 of 2013 [arising out of Harnaut P.S. Case No. 78 of 2007, G.R. No. 646 of 2007] is hereby set aside and both the appellants are acquitted from all the charges. Since appellant -Sanjay Yadav is in custody and his appeal has been allowed, it is hereby directed to release him forthwith if not wanted in any other case. So far appellant – Sunil Beldar @ Jhoparia @ Jhopari Beldar in Cr. Appeal (DB) No. 554 of 2013 is concerned, he is on bail. Accordingly, he is discharged from liability of his bail bond.

16. Let a copy of the first and last page of this judgment be handed over to learned Amicus Curiae, Ms. Divya Verma and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J)

(Prakash Chandra Jaiswal, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	18- 04-2019
Transmission Date	18-04-2019

