

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.665 of 2016

Arising Out of PS. Case No.-257 Year-1998 Thana- SAKRA District- Muzaffarpur

Md. Akhtar son of Md. Muslim, R/O Village-Mahant Maniyari, PS-Maniyari,
Distt-Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 715 of 2016

Arising Out of PS. Case No.-257 Year-1998 Thana- SAKRA District- Muzaffarpur

Devanand Paswan S/o- Late Shiv Bachan paswan Resident of village-Sain
Belsar, P.S.-Belsar, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 665 of 2016)

For the Appellant/s : Mr.Neeraj Kumar Alias Sanidh, Adv.

For the Respondent/s : Mrs. Abha Singh, APP

(In CRIMINAL APPEAL (SJ) No. 715 of 2016)

For the Appellant/s : Mr.Shashi Bhushan Singh,
Mr. Pankaj Kumar Singh, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

18-10-2019

Cr. Appeal (SJ) No. 665/2016 wherein Md. Akhtar is
the appellant and Cr. Appeal (SJ) No. 715/2016 wherein
Devanand Paswan is the appellant conjointly arise out from a
common judgment of conviction dated 01.08.2016 and order of
sentence dated 03.08.2016 passed by 8th Additional Sessions
Judge, Muzaffarpur in Sessions Trial No. 75/2000 arising out of



Sakra PS Case No. 257/1998 whereby and whereunder each one has been sentenced to undergo RI for seven years as well as to pay fine of Rs. 10,000/- in default thereof, to undergo SI for three months, additionally while no separate sentence has been passed under Section 363/109 IPC, whereupon, have been heard together and are being decided by a common judgment.

2. Victim (name withheld) not examined, on account of her death as is evident from the evidence of her father, PW-1, Parmeshwar Thakur, gave First Information Report on 09.12.1998 before Sakra Police Station on account of having been produced by Maniyari Police after having recovered from the Sasural of Ram Dayal lying at village, Sakri Sarai, alleging *inter alia* that she had fallen in love with her co-villager, Umesh Paswan, son of late Jugeshwar Paswan, and on account thereof, they developed physical intimacy and for that, they had chosen the house of late Yogendra Bhagat. The wife of late Yogendra Bhagat whom she called *Paanwali*, instructed her on 07.12.1998 that “*now you people leave for Durgapur*” whereupon, she accompanied Umesh Paswan and stayed in the night at Dardha Chaur and on the following day, came to Muzaffarpur. Thereafter, Umesh Paswan disclosed that he will follow her, got her over a rickshaw and instructed her to go to Prabhat Cinema



where two persons were waiting for her. After her arrival, they inquired from her whether she has been sent by Umesh and, having been affirmative at her end, they accompanied, visited the other cinema hall and then thereafter, one of them who disclosed his identity as Ram Dayal Paswan, took her to his Sasural lying at village, Sakri-saraiya. After taking meal, while she was recessing in a room, Ram Dayal came and committed rape. One more person was there whose name was Devanand Paswan who also committed rape upon her. Thereafter, they made programme to visit Bhagalpur and as, there was shortage of money, so they instructed another person, namely, Md. Akhtar who was in their company since before, to bring money from his house and while he was at his house, Maniyari police apprehended him with regard to kidnapping of a girl and during course thereof, on his pointing out, the police also conducted raid at the Sasural of Ram Dayal from where, she has been rescued and then brought to Sakra Police Station.

3. After having registration of Sakra PS Case No. 257/1998, investigation commenced and after concluding the same, these two appellants along with Ram Dayal whose trial has been separated before the learned lower court itself, were charge-sheet, on account of being under-custody without having



any reference with regard to *Paanwali* as well as Umesh Paswan, the trial sailed, ultimately, meeting with the result, subject matter of these two appeals.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the CrPC is that of complete denial. However, nothing has been adduced in defence.

5. Altogether five PWs have been examined on behalf of prosecution in order to substantiate its case who are PW-1, Parmeshwar Thakur, PW-2, Sushila Devi, PW-3, Janak Bhagat, PW-4, Vijay Kumar Choudhary, PW-5, Arup Kumar Srivastava. Side by side, has also exhibited Ext-1, Report of Medical Board, Ext-2, Statement under Section 164 CrPC. As stated above, nothing has been adduced in defence.

6. Gone through the record. From perusal of the record, it is evident that it happens to be a case of no evidence. Because of the fact that slip of victim along with Umesh Paswan consensual one was neither known nor seen by anybody. It is the initial version of the prosecution that Md. Akhtar and Ram Dayal were found at Prabhat Cinema wherefrom, they took the victim to the Cinema Hall where they screened cinema and then came to Bhagwanpur Bus Stand and then to Sakrari Saraiya



under consent of the victim, where presence of Devanand is found and, that is the place wherefrom the victim was rescued and Devanand and Ram Dayal were apprehended while Md. Akhtar was apprehended at Maniyari much before that. Therefore, PWs-1, 2 and 3 were incompetent on that very score. PW-4 is the Magistrate who had recorded the statement of victim under Section 164 CrPC. When the victim has not been examined, then in that circumstance, the aforesaid statement loses its sanctity. Moreover, statement under Section 164 CrPC is not a substantive piece of evidence and so, no reliance could be place over it.

7. PW-5 is one of the doctors of the Medical Board which was constituted for examination of the victim, and his evidence is found only with regard to ascertainment of the age of the victim. As from the evidence of the victim, PW-1, it is evident that victim had already died. That being so, her evidence could not be recorded.

8. Giving anxious consideration to the facts and circumstances of the case, it is found and held that the finding so recorded by the learned lower court, happens to be inappropriate one. Consequent thereupon, the same is set aside. Both the appeals are allowed.



9. Since appellant, Devanand Paswan (Cr. Appeal (SJ) No. 715/2016) is on bail, he is discharged from the liability of bail bond while Md. Akhtar (Cr. Appeal (SJ) No. 665/2016) is under custody, he is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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