

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1766 of 2018

Arising Out of PS. Case No.-2940 Year-2010 Thana- KATIHAR COMPLAINT CASE
District- Katihar

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1. Ashok Roy son of Anil @ Sunil Roy
 2. Mantu Roy son of Late Tingan Roy
 3. Kant Lal Roy son of Late Gheru Roy, All resident of Village- Garhbaghua (Siktia), Police Station- Azamnagar, District- Katihar.

... .. Appellant/s

Versus

1. The State of Bihar .
2. Pramila Devi @ Kachri, wife of Nand Lal Roy, R/o village-Gorbhaghua (Siktia), P.S.-Azamnagar, District-Katihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Md. Rahmatullah
For the Respondent/s : Mr.Sri Abhay Kumar

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 07-01-2019

1. Appellants, Ashok Roy, Mantu Roy, Kant Lal Roy having been found guilty for an offence punishable under Section 376/511 of the IPC whereupon each one has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.4000/- in default thereof to undergo S.I. for six months, additionally, by the Additional Sessions Judge, FTC-II, Katihar vide judgment of conviction dated 17.04.2018 and order of sentence dated 18.04.2018 relating to Sessions Trial No.444/2011.

2. Name withheld (PW.4) filed complaint petition on 07.10.2010 showing the date of occurrence as 22.09.2010 at



about 08:00 PM against the accused persons (appellants) with an allegation that they both were resident of same village and were known to each other. Her husband Nandlal Rai had gone to the place of his cousin brother (Fhuphera Bhai) leaving behind the complainant as well as minor children. In the aforesaid background, the accused persons came at her Darwaja and called her husband whereupon, she came out. As soon as she came out accused, Kant Lal gagged her mouth and then Ashok Roy, Mantu Roy lifted her inside a room where they committed rape one by one. After commission of rape, the accused persons came outside and during course thereof, she had apprehended Kant Lal who, after giving a jerk managed to escape. They also indulged in pushing and pulling. On the next day her husband came whom she disclosed the incident. Then thereafter, while they were going to police station, the relative and the well wishers of the accused intervened whereupon *panchayati* was convened and in the panchyati on 25.09.2010 accused persons confessed their guilt, asked for pardon. Finally, the *Panches* inflicted rupees one thousand fine against the accused persons which they failed to deposit in spite of having granted a week time. Then thereafter, had gone to police station where, the police did not recorded her fardbeyan and accordingly, complaint petition has been filed.



3. After holding an inquiry under Section 202 Cr.P.C. by the learned Magistrate whom the case was transferred under Section 192(2) of the Cr.P.C., accused were summoned whereupon they appeared and then thereafter, being the offence triable by the court of sessions facilitated commitment whereupon, trial commenced and concluded in a manner, subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that this case has purposely been filed at the behest of the complainant as, her Samdhi who happens to be the Chowkidar of the locality namely Sogen Rai has been proceeded at the end of appellant Ashok in a murder case, and in likewise manner, the wife of appellant Kant Lal Roy, namely, Puchiya had instituted a case against the husband, Samdhi and the witness. Furthermore, the order sheet as well as format of charge have been made an exhibit.

5. In order to substantiate its case, prosecution has examined altogether four PWs who are PW.1-Podina Rai, PW.2-Rajan Rai, PW.3-Nand Lal Rai, PW.4-Pramila Devi. No documentary evidence has been exhibited at the end of the



prosecution. Though, no oral evidence has been adduced at the end of the defence, Ext.A order sheet dated 06.09.2017, relating to complaint case no.2818/2010 as well as Ext.B-the format of charge relating thereto, have been made an exhibit.

6. After going through the evidence of the respective witnesses, it is evident that PW.1 and PW.2 are co-villager while PW.3 is the husband of the complainant and PW.4 is complainant herself. It is further evident that neither PW.1 nor PW.2 have claimed to be an eye witness to occurrence and admittedly, PW.3 the husband, was not at all present at his house on the alleged fateful day. In the aforesaid background first of all let the evidence of PW.4 the so alleged victim be considered.

7. PW.4 during her examination-in-chief has stated that on the alleged date and time of occurrence Kant Lal came to her house and called her husband whereupon she opened the door. No sooner than, he pressed her mouth. Mantu and Ashok who were along with him threw her on the ground and then, one by one committed rape. At that very time, none was present in her house. She had caught hold Kant Lal but, he managed to escape she had gone to the police station along with her husband. The police instructed her to file a case before the court. Accordingly, complaint case was filed. Identified the accused. During cross-



examination at para-3 she had admitted that the marriage of her daughter has been solemnized in the village itself. Sogan Rai is her father-in-law. She had further admitted that PW.2 Rajen Rai is the brother of Sogen Rai. She had further stated that Ashok and Mantu are uncle of Kant Lal. At para-4 she had shown ignorance with regard to institution of complaint case no.2818/2010 by Puchiya wife of Kant Lal Roy. Then had disclosed boundary of her house North-Gurudeo Rai, South-Kalu Rai, East-Shivnath Rai, West-Ashok Rai and Gojan Rai. House of Kant Lal lies after houses of 4-5 persons. House of Baijnath, Dashrath and others fell in between who also happen to be witness of this case. At para-4 she had stated that at the time of opening of door, she thought that her husband was there. She had further stated that none of the children was present there. In para-5 firstly she declined to accept Raina Devi (complaint named witness but given up) to be her Dayadin but, subsequently, accepted that she happens to be wife of her Bhaisur Anant. Then had also admitted institution of murder case against her Samdhi, Soren Rai by the Ashok Rai, accused. In para-6, she had stated that her neighbour Rajan Rai is witness of this case. She had further stated that Podina Rai, Rajan Rai arrived at the spot ten minutes after departure of the accused. She had further stated that she was medically examined. Again



controverted that she was not at all medically examined. She had further admitted that accused persons are an elderly person. She had further said that she had disclosed her husband regarding the occurrence but, her husband had not talked with anybody in the village. Then had denied the suggestion that in the background of cases having been instituted against her husband as well as Samdhi, they planned, conspired and got this false case filed.

8. PW.3 is the husband, who had stated that on the alleged date and time of occurrence, he had gone to Bengal to the place of his cousin brother. He returned back after two days whereupon, his wife disclosed that during the intervening period Ashok, Mantu and Kant Lal called him and when she opened the door, Kant Lal, gagged her mouth, forced her to lay down and then Kant Lal, Ashok and Mantu one by one committed rape. Then had stated that panchayati was convened but, accused persons have not participated in the panchayati whereupon, case has been filed before court. During cross-examination he had stated that he had not seen the occurrence. He had further stated that whatever been stated by his wife he had narrated. He had admitted the case having been instituted by Puniya Devi before institution of this case. He denied the suggestion that out of enmity, this case has been instituted.



9. PW.2 had stated that on the alleged date and time, heard uproar coming from the house of the victim, whereupon he rushed. When he reached at the house of the victim, he had seen Kant Lal, Ashok and Mantu running therefrom. On query, victim had disclosed that after thrusting cloth inside her mouth one by one they outraged her modesty. During cross-examination he had admitted the inter-se relationship with the complainant. Also admitted that son of Soren Rai, his brother has been married with the daughter of the victim. He had also admitted presence of case having been instituted at the end of wife of Kant Lal. He had further stated that he had not seen the occurrence.

10. PW.1 had stated that on the alleged date and time of occurrence he had gone to the place of Robin to demand the due wages. After hearing alarm coming out from the house of the victim, he rushed and had seen Kant Lal, Ashok and Mantu. Victim was weeping. On query she disclosed that although three accused called her husband whereupon, she had disclosed that her husband was not present. Then, the accused pressed her mouth and began to grapple her. She had also disclosed that they have outraged her modesty identified the accused. During cross-examination, he had stated that his house as well as house of the



victim is intervened by the house of Kant Lal and Dakwa. Then the boundary of the P.O. as North-ditch (dobha), South-Pond of school, East-Road, West-Pond. He had further stated that first of all he arrived at the place of occurrence. Then thereafter, others came. He had further stated that he came to know about the occurrence from the victim.

11. From the evidence of PW.4, victim as discussed herein above, it is apparent that she has got three sons and a daughter. From the complaint petition there happens to be divulgence with regard to presence of all the children which, at the time of evidence has completely been washed away. Even during her examination-in-chief, she had stated that she was alone on that very score, she was duly cross-examined. Furthermore, it is also evident that one of the witness of the complaint Raina Devi who happens to be her *Gotani*, at first instance was disowned by her had not produced. It is also evident that none of the person having their presence in boundary has come forward to depose. Furthermore, there happens to be material contradiction in the evidence of PW.1 and PW.2, whereupon their presence at the P.O., became doubtful, keeping the children away, is a circumstance which has to be taken into consideration, as they were not a kid.



12. The second instance is, there happens to be long delay in filing the complaint petition and for that, an explanation was offered in the complaint petition that on the following day after arrival of her husband whom she disclosed were going to police station, the well-wishers of accused intervened whereupon *panchayati* was convened on 25th, wherein the accused persons confessed their guilt, asking for pardon and lastly *panchayat* inflicted fine of rupees one thousand each which they were to pay but, as they failed, gone to police station and then, as instructed by the police filed complaint petition before the court. During examination PW.4, victim completely given a go-bye to the aforesaid story. There happens to be no explanation at the end of the complainant/victim regarding the delay. Furthermore, though PW.3 in casual manner disclosed regarding event of *panchayati* but not in a manner as explained under the complaint petition which, PW.1 and PW.2 have not supported.

13. Third circumstance is to be seen, admittedly the wife of Kant Lal had filed a case prior to institution of this case. Ashok had instituted a murder case against Samdhi of complainant/victim since before. That means to say, they were hostile since before even having presence of strain relationship. There happens to be no indication in the evidence or in the



complaint petition that accused persons were on visiting terms since before. Then in that circumstance, was really it possible for the accused to come at the Darwaja of the victim and asked for her husband and in likewise manner, opening of door by the complainant/victim.

14. Apart from this, it happens to be a gang rape. Having been raped by the three persons would not have allowed the victim to be in normal condition. Neither she herself nor any of the witness deposed on that very score. Further she had not spoken that she was overpowered on the point of weapon, or keeping under fear of death. She also failed to say whether an effort was taken at her end to raise alarm, nor to escape herself.

15. It is not the within the legal wisdom to discredit the version of a victim of a rape on the point of delay nor to disbelieve on flimsy ground but, when there happens to be strain relationship since before, having not on visiting term and their arrival by chance that too in absence of husband whereupon, the victim came outside and fallen prey at the hands was really possible that too, without any protest having presence of the witnesses hostile to appellants since before that too, made their presence inconsistent as, PW.1 had stated that when he reached at the place of occurrence, all the three accused persons were present



there while victim was weeping. He had reached at the P.O. first of all while PW.2 had stated that when he reached at the place of occurrence, he had seen there three accused persons coming out from the house of the victim.

16. After having proper consideration of the evidence as discussed herein above, the finding recorded by the learned lower court did not find favour. Consequent thereupon, same is set aside. Appeal is allowed. Appellants are under custody, hence are directed to be released forthwith, if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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