

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No. 663 of 2013**

Arising Out of PS. Case No.-1 Year-2012 Thana- Kinjar District- Jehanabad

Sanoj Kumar @ Sanoj Bind, Son of- Kameshwar Bind, Resident of Village-
Mishra Bigha, P.S.- Kinjar, District- Jehanabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 747 of 2013

Arising Out of PS. Case No.-1 Year-2012 Thana- Kinjar District- Jehanabad

Sahendra Yadav @ Sahendra @ Neta @ Nata, son of Mahesh Yadav, resident
of Village - Mishrabigha, P.S. Kinjar, District Arwal.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 663 of 2013)

For the Appellant/s : Mr. Animesh Kr. Mishra (Adv), *Amicus Curiae*

For the Respondent/s : Mr. Shivesh Chandra Mishra (A.P.P.)

(In CRIMINAL APPEAL (DB) No. 747 of 2013)

For the Appellant/s : Mr. Nitya Nand Neeraj (Adv.)

For the Respondent/s : Mr. 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 : 15-04-2019

Sri Nitya Nand Neeraj, learned counsel has appeared on
behalf of appellant Sahendra Yadav @ Sahendra @ Neta @ Nata
{in Cr.Appead (DB) No. 747 of 2013}, however; since none had



appeared on behalf of appellant Sanoj Kumar @ Sanoj Bind {in Cr.Appeal (DB) No. 663 of 2013}, Sri Animesh Kumar Mishra, learned counsel, who was present in Court, was requested to assist the Court as *Amicus Curiae* and he agreed for the same.

2. The appellants, in aforesaid two appeals, were tried together, convicted and sentenced by a common judgment passed in Sessions Trial No. 461 of 2012 and as such, both the appeals were taken up together under the heading “For Hearing” and are being disposed of by this common judgment.

3. Both the appellants by judgment dated 23-05-2013 were convicted for commission of offence under Section 376(2)(g) of the Indian Penal Code, 1860 (hereinafter referred to as ‘I.P.C.’) and by order dated 30-05-2013, both the appellants were sentenced to undergo imprisonment for life and to pay a fine of Rs. 5,000/- (five thousand) each. The fine amount was directed to be paid to the prosecutrix (victim). The appellants were convicted and sentenced in Sessions Trial No. 461 of 2012 (arising out of Kinjer P.S. Case No. 01 of 2012) by Sri Ajay Kumar Srivastava, learned District & Sessions Judge, Jehanabad (hereinafter referred to as the ‘Trial Judge’).

4. Short fact of the case is that on 07-01-2012 at 8:30 A.M., Assistant Sub-Inspector of Police Nandeshwar Thakur (not



examined) of Kinjer Police Station recorded *fardbeyan* of victim (P.W.1), who was married lady aged about 22 years. The *fardbeyan* was recorded at Bed No. 1 in Sadar Hospital, Jehanabad. In the *fardbeyan*, the victim disclosed that in the preceding evening i.e. on 06-01-2012 at 5:00 PM, she had gone out of her house for attending natural call to the eastern side of the village. After defecating, while she was returning and reached at the orchard of Devi Asthan near paddy *khalihan*, suddenly her co-villager Sahendra @ Neta {appellant in Cr.Appeal (DB) No. 747 of 2013} started assaulting her and she started raising alarm. Subsequently, Sanoj Kumar {appellant in Cr.Appeal (DB) No. 663 of 2013}, Ranjit Kumar, Bucha Kumar (all resident of same village i.e. village Mishrabigha) and 3-4 unknown persons, all resident of same village and police station i.e. P.S. Kinjer, District - Arwal forcibly wrapped her mouth with the help of one muffler. Her hands and legs were also tied and by way of lifting, they carried her to some distance. All the accused persons one-by-one thereafter committed rape with her. She could identify four accused persons with their name. She further stated that all the accused persons, after committing rape, threatened that if she raises alarm she would be killed. She further stated that one of the villager, who was coming to attend call of nature, after seeing the



occurrence raised alarm and thereafter, all the accused persons fled away towards eastern side of the village. Subsequently, her mummy (mother-in-law) and co-villagers with one Jitendra Kumar lifting her brought to her house. Her uncle and other associates with the help of villagers carried her to Jehanabad Hospital, where she was under-treatment. The said *fardbeyan* was read over to her and after finding it correct, she put her signature in presence of her neighbour Jitendra Kumar. Jitendra Kumar also put his signature on the *fardbeyan*, however; he has not been examined as prosecution witness during trial.

5. On the basis of *fardbeyan*, on the same date i.e. 07-01-2012, a formal F.I.R., vide Kinjer P.S. Case No. 01 of 2012, was drawn at 10:00 A.M. for offence under Section 376(H)/34 of the I.P.C. against (1) Sahendra @ Neta (app. in Cr.App.DB No. 747/13), (2) Sanoj Kumar (app. in Cr.App.DB No. 663/13), (3) Ranjit Kumar, (4) Bucha Kumar and other 3-4 unknown persons. After registering the F.I.R., the case was thoroughly investigated by P.W.6 Md. Aslam Ali and thereafter, on 09-02-2012, chargesheet was submitted against all the four F.I.R. named accused persons, who were already in custody, under Section 376(2)(g)/34 of the I.P.C., whereupon on 25-02-2012, the learned Chief Judicial Magistrate, Jehanabad took cognizance of the



offence. Before commitment, two of the chargesheeted accused persons claimed juvenility and as such, their case was separated. The case of aforesaid two appellants was committed to the court of sessions on 31-07-2012 and it was numbered as Sessions Trial No. 461 of 2012. On 13-09-2012, charge under Section 376 (g)/34 of the I.P.C. was framed, which was denied by the appellants and they claimed to be tried.

6. During the trial, to establish its case on behalf of the prosecution, altogether six witnesses were examined. Out of six witnesses, P.W.1 is the victim, who was a married lady aged about 22 years. She was married in the village Mishrabigha, P.S. Kinjer, District – Arwal. P.W.2 Chintu Ram is the younger brother of the husband of the victim and P.W.3 Chandradeo Ram is the grand father-in-law of the victim, whereas; P.W.4 Prakash Kumar is *pattidar* and elder brother of the husband of the victim. P.W.5 Dr. Renu Singh is the Medical Officer, who had examined the injuries of the victim and P.W.6 Md. Aslam Ali is the investigating officer of the case.

7. After conclusion of the prosecution evidences, on 23-04-2013, the appellants were questioned with incriminating circumstances and evidences, which were brought against them. Their statement under Section 313 of the Code of Criminal



Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') was recorded. In their statement recorded under Section 313 of the Cr.P.C., appellant Sahendra Yadav @ Neta (in Cr.App.DB No. 747/13) had claimed that due to old animosity, he was falsely implicated, whereas, appellant Sanoj Kumar @ Sanoj Bind (in Cr.App.DB No. 663/13) had claimed, as if, he was falsely implicated and he also stated that he was having two children. After examining the entire evidence, the learned Trial Judge by the judgment impugned has held them guilty and passed the judgment of conviction and sentence, which has been assailed before this Court by filing aforesaid two appeals under Section 374(2) of the Cr.P.C.

8. Sri Nitya Nand Neeraj, learned counsel for the appellant/Sahendra Yadav {in Cr.Appeal (DB) No. 747 of 2013}, after placing entire evidence, has argued that the appellant was falsely implicated, since there was dispute in between the appellant and husband of the victim relating to money transaction and just prior to the occurrence, dispute arose and on the next date, the present false case was instituted. He submits that this is the reason that while cross-examining the witnesses, suggestion was given regarding false implication due to dispute, which occurred just one day prior to the occurrence. Besides this, it has been argued that number of witnesses without any plausible explanation were not



examined by the prosecution and as such, he submits that the prosecution has not been able to establish its case beyond all reasonable doubt, even then, the learned Trial Judge has passed the judgment of conviction and sentence.

9. Sri Animesh Kumar Mishra, learned *Amicus Curiae* appearing on behalf of appellant Sanoj Kumar @ Sanoj Bind {in Cr.Appeal (DB) No. 663 of 2013} submits that the name of one Jitendra Kumar was referred by the victim herself that it was Jitendra, who with the help of villagers and other family members, had lifted the victim and brought her to her house from the place of occurrence, however; the said Jitendra Kumar was not examined as prosecution witness. He submits that Jitendra Kumar is also one of the signatory on the *fardbeyan* as witness to the *fardbeyan*. It has also been argued that it is improbable that on the one hand, prosecution has come out with a case that after committing rape and noticing that one of the villager was coming, all the accused persons fled away, however; on the other hand, the prosecution has come out with a case that while the relative of the informant hired a tempo for carrying the victim to the hospital, the appellants had threatened the tempo driver to leave the place of occurrence. Sri Mishra submits that such situation creates serious doubt regarding the credibility of the prosecution case. He has also



reiterated that in the evidence of investigating officer, the fact has come that statement of number of witnesses was recorded, but during trial, only relatives of the victim had come forward to depose as prosecution witness. He further submits that the appellant Sahendra Yadav (in Cr.App.DB No. 747/13) was also known as Jitendra Yadav, but the victim in her evidence has stated that brother of Sahendra namely Jitendra had also arrived at the place of occurrence while accused persons had already fled away. This, according to Sri Mishra, learned *Amicus Curiae*, creates serious doubt on the prosecution case. Accordingly, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubt.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor {in Cr. Appeal (DB) No. 747 of 2013} submits that it was case of barbaric gang rape, which has been established by all the corners of the evidences. He submits that in such brutal case, it appears that the learned Trial Judge has taken lenient view, otherwise in such cases, sentence for life imprisonment was required to be imposed till last breath of the appellants, however; instead of imposing such sentence, the learned Trial Judge has only imposed sentence to life imprisonment. Sri Mishra, learned A.P.P. submits that the entire evidence of prosecutrix is itself sufficient as to how



the prosecution case is truthful. Besides the evidence of prosecutrix, it has also been established by medical evidence and during investigation, the investigating officer has also noticed the place of occurrence, that was the field, which was trampled. At the place of occurrence, the investigating officer has also noticed broken pieces of bangles and one pair of slipper of one of the appellants. He submits that the learned Trial Judge, on the basis of evidence on record, has rightly passed the judgment of conviction and sentence.

11. Sri Shivesh Chandra Mishra, learned Addl. Public Prosecutor {in Cr.Appeal (DB) No. 663 of 2013} adopting the submission of Sri Ajay Mishra, learned A.P.P. has further argued that the entire prosecution case has been established by the evidence of the victim supported by the medical evidence as well as other corroborative evidence. He further submits that injury report itself reflects as to how in wild manner, the appellant alongwith others had committed rape with a married lady aged about 22 years. He submits that the rape was so brutal that after the occurrence, the victim had lost her conscious and in unconscious state, she was lifted by villagers and relatives and brought to the house. He further submits that it was not end of the matter. When family members tried to carry the victim to hospital through a



hired tempo, the tempo driver was threatened by the appellants and this was the reason that tempo driver left the place and victim was carried to hospital only in a jeep, which was brought by the family members from another village.

12. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same, *prima facie*, we must express that it was a shocking case of barbaric and wild rape committed on a married lady, who was aged about 22 years. However, before proceeding, it is necessary to discuss the evidence, which has been brought on record.

13. The victim, who was examined as P.W.1, in her evidence has stated that occurrence had taken place in the evening at 5:00 PM on 6th January, 2012. She at that very time after defecating was returning back to her house and while returning on way she reached in an orchard of Devi Asthan near a paddy *khalihan*, appellant Sahendra (in Cr.App.DB No. 747/13) came out from behind *khalihan* and started assaulting her. She raised alarm. In the meanwhile, appellant Sanoj Bind (in Cr.App.DB No. 663/13) also came out from the back side of paddy *khalihan* and with the help of his muffler, he tied her mouth. Subsequently, Sahendra Yadav (app. in Cr.App.DB No. 747/13), Sanoj Yadav



(app. in Cr.App.DB No. 663/13), Ranjit Yadav and Bucha Yadav tied her hands and legs and from orchard of Devi Asthan, they lifted her about 100 yards away. At that very time while she was trying to get relief, she was continuously threatened for her death. The accused persons thrashed her in the *Arhar* field and torn her cloths and all the four accused persons one-by-one forcibly committed rape. She further stated that since she was in her in-laws' village, she was not aware about the name of owner of the *Arhar* field. While she was being raped, one villager namely Birendra Yadav was passing through, who was going to attend natural call and after hearing the sound, all the four accused persons leaving her fled away towards eastern side. On the alarm raised by Birendra Yadav, villagers and her mother-in-law Chinta Devi arrived at the place of occurrence. She clarified that her husband and father-in-law were doing private job in Ajmer (Rajasthan) and on the date of occurrence, they were in Ajmer. The victim was lifted by villagers and brought to her in-laws house. Subsequently, for providing medical aid, her *pattidar* brought an auto-rickshaw near her door. The driver of the said auto rickshaw was threatened by accused persons and thereafter, the driver fled away. After getting information of the occurrence, her uncle Shambhu Ram and brother Satish Kumar with about 50 villagers



from her native village Kauri brought one commander jeep to her in-laws house. She further stated that within 10 minutes after getting information, police also arrived at her in-laws house. Since her condition was precarious, the police firstly brought her to Sadar Hospital, Jehanabad, where she was treated and she remained in hospital for about 8 days. She further clarified that she gave her *fardbeyan* to the police in Sadar Hospital. She identified the *fardbeyan* marked as Ext.1. She also identified both appellants, who were present in dock. This witness was cross-examined at length, however; nothing could be extracted to create any doubt. On court question, she replied that after the occurrence, her face had swollen and virtually due to swelling, her face had changed. Her both hands were also swollen. She stated that she was having injury on her breast. She had also received injury inside her mouth and this was the reason that her mouth was bleeding. This witness was given suggestion that one day prior to the occurrence, in between her husband and accused persons, there was some dispute in relation to some monetary transaction and in retaliation, the present false case of rape was instituted, however; this suggestion was denied. It is also evident that in cross-examination she has reiterated that her husband and father-in-law were residing in Ajmer, Rajasthan.



14. Similarly, P.W.2 Chintu Ram, who is younger brother of husband of the victim i.e. her *Dewar*, has stated that he was informed about the occurrence by the victim. He too identified both the appellants in dock. In cross-examination, he stated that he had seen teeth bite sign on both breast of her *Bhabhi* (victim) and her both lips were swollen. This witness too was given suggestion regarding false implication. On examination of his evidence, particularly; cross-examination, it appears that he has reiterated the version of the victim regarding injury caused on her person by the accused persons.

15. P.W.3 Chandradeo Ram is the grand father-in-law of the victim. Ofcourse, at the time of occurrence, he was not present at the place of occurrence, but in his evidence, he has stated that after hearing *hulla*, he went to the victim's house and saw her grand daughter-in-law lying almost in dead condition. He further stated that the relatives from Kauri village had brought jeep, on which, victim was carried to hospital. He has also supported the prosecution version that while tempo was brought for carrying the victim to hospital, the tempo driver was threatened by appellant Sanoj Bind (in Cr.App.DB No. 663/13) and Bucha Yadav, whose case was separated since he had claimed juvenility. He further stated that when he saw the victim, he had also seen injury on her



private part, teeth bite on hand, mouth and also breast. He identified both the appellants in dock. In cross-examination also, he reiterated that private part, mouth, nose, breast and hands of the victim were bleeding. He too was suggested regarding false implication, which was denied by him.

16. P.W.4 Prakash Kumar, who was in relation *pattidar* and *Bhaisur* (elder brother of the husband) of the victim, in his evidence, too has stated that while he went to the victim's house, he saw the victim in unconscious position and he had seen injuries on her face.

17. P.W.5 Dr. Renu Singh on 07-01-2012 was posted as Medical Officer, Sadar Hospital, Jehanabad and at 12:22 PM, she had examined the victim and noticed following facts:-

“i -Height 5 ft 2”, Weight 49 Kg. and Teeth-28

ii -External injuries -

Swelling of upper lip, small cut on upper lip, multiple small cut on face, breast well developed, bruise on left breast, auxiliary hairs present.

iii – Internal Examination :-

Pubic hair present, hymen not found, bleeding from vagina present, vagina admits two fingers, vaginal swab taken for pathological examination.

iv – The pathological report has been given by Dr. Ashok Kumar, according to which -

Sperm - not found,

W.B.C. none,

Epithelial cell a few,

R.B.C. none.

Opinion - From above physical and pathological findings, it may be concluded that possibility of rape cannot be ruled out.”



18. P.W.5 further stated that the medical report was in her pen and signature, which was marked as Ext.2. Ofcourse, in its report, P.W.5 had recorded opinion that possibility of rape cannot be ruled out, but in cross-examination, she has categorically stated that the findings recorded by her were pointing to commission of rape. She further clarified that although, in report, possibility of rape was guessed, but the findings definitely indicating towards commission of rape. Thus, the oral evidence is substantially corroborated by the medical evidence.

19. The investigating officer i.e. Md. Aslam Ali, who was examined as P.W.6, has also supported the prosecution case. On 07-01-2012, Md. Aslam Ali (P.W.6) was posted as officer incharge of Kinjer Police Station. In his evidence, he proved the formal F.I.R. marked as Ext.3 and he described in detail as to what he noticed at the place of occurrence. In his evidence, he is categorical on the point that at the place of occurrence, grass and bushes were trampled and at the place of occurrence, he had also noticed part of broken bangles and one pair of slipper. After investigating the place of occurrence, he examined the witnesses, particularly Chandradeo Ram (P.W.3), Prakash Kumar (P.W.4), Chintu Ram (P.W.2). Subsequently, on 10-01-2012 Sahendra Yadav (appellant in Cr.Appeal DB No. 747 of 2013) was arrested,



whereas, he got an information that on 13-01-2012, appellant Sanoj Bind (in Cr.Appeal DB No. 663 of 2013) and Bucha Yadav (whose case was separated) had surrendered in the court. He clarified that he had got the signature of one Jitendra Kumar, as witness to the *fardbeyan*, but he had not examined him. He further in cross-examination clarified that the slipper, which was found at the place of occurrence, was of Jitendra Yadav, who was having alias name of Sahendra Yadav and alias name of Neta (appellant in Cr.Appeal DB No. 747 of 2013). On examination of the evidence of P.W.6/investigating officer, it is evident that at the place of occurrence, trampling was noticed and broken pieces of bangles were also found.

20. On going through the entire evidence, there is no reason to raise any doubt on the prosecution case. After examination of the entire evidence, the appellants were questioned with the incriminating circumstances and evidences, ofcourse they denied and claimed false implication, but in defence, no plausible material has been brought on record to place reliance on such defence. On the contrary, the evidence categorically speaks regarding culpability of the appellants in the present brutal and heinous crime, for which, they have been convicted. Accordingly,



we do not find any error in the judgment of conviction and sentence.

21. Accordingly, the judgment of conviction and sentence dated 23-05-2013 and 30-05-2013 respectively passed in Sessions Trial No. 461 of 2012 (arising out of Kinjer P.S. Case No. 01 of 2012) by Sri Ajay Kumar Srivastava, learned District & Sessions Judge, Jehanabad is, hereby, approved and both the aforesaid appeals stand dismissed.

22. Let a copy of the first and last page of this judgment be handed over to the learned *Amicus Curiae* Sri Animesh Kumar Mishra and the learned *Amicus Curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J.)

(Prakash Chandra Jaiswal, J.)

Anay

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