

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.869 of 2015

Arising Out of PS. Case No.-108 Year-2011 Thana- BAHADURGANJ District- Kishanganj

Fule Rehaman, S/o Late Ataur Rahman, resident of village - Mohamad Nagar,
P.S. Bahadurganj, District - Kishanganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pankaj Kumar Singh, Advocate
Mr. Raunak Kumar Singh, Advocate
Mr. Diwakar Sinha, Advocate
For the State : Mr. Abhimanyu Sharma, APP
For the Informant : Mr. Binay Krishna, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 26-04-2023

By the impugned judgment and order dated
20.11.2013/ 22.11.2023 passed by the learned 1st Additional
District & Sessions Judge, Purnia in Sessions Trial No. 1328 of
2011, the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
376 of the IPC	RI for Life	10,000/-	SI for six months
323 of the IPC	RI for six months	--	--
341 of the IPC	--	500/-	SI for six months
3(1)(iii) of the SC/ST Act	RI for three years	--	--



3(1)(xi) of the SC/ST Act	RI for three years	--	--
3(1)(xii) of the SC/ST Act	RI for three years	--	--

2. The name of the victim (the informant, PW-5), who is the informant (PW-5) of Bahadurganj P.S. Case No. 108 of 2011, is not being disclosed in the present judgment so as to conceal her identity in the best interest of her prestige and dignity.

3. The *fardbeyan* of PW-5 (a member of Scheduled Tribe), recorded by the Sub-Inspector of Police, Bahadurganj Police Station on 05.09.2011 at 17:00 P.M. at Nariyal Bari, Aadiwasi Tola at the door of the informant's house, is the basis for registration of the FIR. According to her *fardbeyan*, on the date of occurrence i.e. 05.09.2011 at 11:30 A.M. she had taken her cattle (cow) for grazing near Kankai river in the banana orchard of one Dinesh. When she was fetching her cow banana leaves, she saw a person working in a nearby turmeric field, who approached her and enquired about her name and address. She disclosed to him her name and address. Thereafter he went back to keep the bundle of grass of which he had cut at a distant place and returned to the informant. He thereafter dragged her into the banana orchard and when she started shouting for help, he pressed her neck and shoved dry leaves of banana plants into



her mouth, rendering her helpless. Thereafter, he committed rape upon her. After having committed rape, when that person (the appellant) started fleeing away, the informant raised a loud outcry whereafter other persons working in the nearby field rushed and apprehended him (the appellant). He was assaulted by the villagers because of which he sustained injuries. He disclosed his name and accordingly the FIR came to be registered against the appellant for commission of the offences punishable under Sections 341, 323, 307 and 376 of the Indian Penal Code.

4. The informant was examined by the doctor (PW-9). She was also examined by a Medical Board for the determination of her age. The Medical Board found her age to be between 17 to 19 years. From the evidence of PW-9 it appears that following injuries were found on her :-

- "i. Defused swelling over forehead including upper eye.*
- ii. Clear redness of both eyes.*
- iii. Painful opening of mouth due to pain in teeth.*
- iv. Abrasion on the right side of tongue.*
- v. Multiple abrasion on the front of neck.*
- vi. Another abrasion on the back of the neck 3 inch x ¼ inch x the skin thickness.*
- vii. An abrasion on the left shoulder ¼ inch x ¼ inch x skin thickness."*

5. Though the doctor did not find any internal injury, in the medical report, he opined that possibility of rape could



not be ruled out.

6. The police, upon completion of investigation, submitted charge-sheet on 11.09.2011 for the offences punishable under Sections 341, 323, 307 and 376 of the IPC and Section 3(1)(iii), 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act ('SC/ST Act' in short). Cognizance was subsequently taken by the learned Chief Judicial Magistrate and the case was committed to the Court of Sessions. Later, the charges came to be framed against the appellant for commission of the offences punishable under Sections 323, 341, 307, 376 of the IPC and Section 3(1)(iii), 3(1)(xi) and 3(1)(xii) of the SC/ST Act. The appellant denied the charges, pleading not guilty and claimed to be tried.

7. It was the defence set up on behalf of the appellant at the trial that the appellant's she-goat had grazed the informant's crops for which the informant and her husband had brutally assaulted the appellant. Regarding the said occurrence the wife of the appellant had filed a complaint case before the Chief Judicial Magistrate, Kishanganj. The present criminal case came to be instituted to preempt the appellant taking legal action against the informant's husband and the informant herself.

8. The prosecution examined 14 witnesses at the trial



including the doctors (PWs-9 to 12), and the Investigating Officer (PW-14). PWs-2, 6 and 13 for the first time deposed at the trial, as is evident from their depositions read with the deposition of the IO. Their statements were not recorded by the police during the course of investigation. Be it noted that the informant and the appellant are co-villagers, which is evident from the FIR itself.

9. PW-1 declined to support the prosecution's case and accordingly he has been declared hostile. Other than those who deposed for the first time at the trial, the witnesses who supported the prosecution's case at the trial are Josef Basaki (PW-3, the brother-in-law of the informant), Jaikas Baski (PW-4, the husband of the informant), the informant herself (PW-5) and one Chameli Hembram (PW-7).

10. It appears from the evidence on record that the informant was first examined by a doctor on 05.09.2011 at 7:50 pm at the Primary Health Centre, Bahadurganj (Exhibit-5) and subsequently by a Medical Board on 06.09.2011. In such view of the matter, we have considered it proper to consider the evidence of PW-3, PW-4, PW-5, PW-7, PW-8 read with the evidence of the IO, since in our considered opinion the evidence of other prosecution's witnesses who deposed for the first time



at the trial need to be considered with more circumspection and caution.

11. PW-3, the brother-in-law of the informant, deposed at the trial that while sitting on the brink of the dam he had seen some persons rushing towards the banana orchard whereupon he had also followed them and noticed the appellant fleeing away from the place of occurrence. The informant is said to have disclosed to PW-3 that the appellant had come to the informant enquiring about her name and address when she was resting near the banana orchard. From the deposition of PW-3, it transpires that recording of evidence was adjourned because he was not giving straight answers and was found stating irrelevant facts for a long time. She (PW-5) is said to have disclosed to PW-3 the manner in which the occurrence had taken place. In his cross-examination he deposed that he had seen 25-30 persons running towards the banana orchard. According to him, he had reached the place of occurrence first, whereafter 25-30 persons had reached there. According to him, when he reached the place of occurrence the informant was found lying on the ground. She had told PW-3 that this appellant had committed rape on her.

12. PW-4, the husband of the informant, in his



evidence deposed that at 4:00 pm on 05.09.2011, he was returning from his school and had noticed some persons gathered near his house. On enquiry he was told that the appellant had committed rape on his wife. Thereafter he went into the courtyard of his house and found that the appellant and his wife were sitting there. They were brought to his house by the villagers. Thereafter she (PW-5) disclosed to her husband (PW-4) that the appellant had committed rape upon her. Apparently thus, he (PW-4) is a witness to the presence of the informant and the appellant in the courtyard of the house of PW-4 and the informant.

13. PW-5, while supporting the prosecution's case as was disclosed by her in the First Information Report, further disclosed that the appellant, while committing rape, had bitten her tongue. In her cross-examination, she denied that the appellant and the informant were residents of the same village. She also deposed that she was menstruating when the occurrence had taken place and her pants were blood stained. She denied the suggestion that a false case of rape was lodged because of some dispute arising out of the appellant and his wife allowing their she-goat graze in the field of the informant whereafter the appellant was assaulted by the inhabitants of



Aadiwasi Tola. Before a criminal case could be registered against the informant and others, the present false case was registered.

14. PW-7, in her evidence, deposed that at the time of occurrence she was working in a field adjacent to the place of occurrence when she heard a noise from the banana orchard. She ran towards the place of occurrence and found the informant lying naked on the ground and the appellant running away from there. He (the appellant) was, however, apprehended. The informant (PW-5) had told them that the appellant had ravished her. Her clothes were lying beside her. She was made to wear her clothes. Thereafter the informant and the appellant were brought to the house of the informant.

15. PW-8, Lagan Marandi, also claimed that he was working near the banana orchard and upon hearing the noise he had rushed to the place of occurrence. It is noted that PW-8 was not cross-examined in the absence of any representation on behalf of the defence.

16. PW-9, the doctor who was part of the Medical Board, which had examined the informant, while proving the report of the Medical Board, had deposed that she had not found any external injury on the vagina of the informant. All the



injuries found on the body of the informant were on the upper part of the body, namely, neck caused by hard and blunt substance.

17. PW-13, who deposed for the first time at the trial, claimed that upon the outcry made by the informant he was the first person to reach the place of occurrence whereafter others had assembled. According to her, the appellant was resident of village Mohammad Nagar. Contrary to the evidence of PW-3 (Josef Basaki), PW-13 deposed that no family member of the informant had reached the place of occurrence and only villagers had taken the informant to her house.

18. PW-14 is the Investigating Officer of the case. He deposed that from the place of occurrence broken pieces of bangles were recovered. According to him, medical examination of the informant was also conducted. After the medical examination he had seized the clothes of the informant on 08.09.2011 which were given by the doctor of the Sadar Hospital which were kept in *Malkhana* of the police station. The seized clothes were, however, not sent for forensic examination to the Forensic Science Laboratory.

19. It has been argued on behalf of the appellant that a false case came to be instituted by the informant (PW-5)



because of certain dispute which had arisen between the informant and the appellant, on the charge that the appellant and wife had strayed their goat to graze the field of the informant, the appellant was assaulted and before the appellant could lodge a case against the persons who had assaulted him, the present false case came to be instituted. It is his further submission that the occurrence is said to have taken place in the broad day light at 11:30 am in a banana orchard. It has also come in the evidence that other witnesses were near the place where the informant was found lying naked. It is highly improbable that such offence, as alleged against the appellant, would have been committed by him in the banana orchard when other persons were working in the nearby fields. It has also been argued that the failure on the part of the prosecution to send the clothes of the informant for forensic science test and get examined the informant as per the requirement of Section 53A of the CrPC, is fatal to the prosecution's case. It has also been argued that the informant, in the present facts and circumstances of the case, cannot be said to be a truthful witness of sterling character on whose oral evidence only the conviction of the appellant can be sustained, the case of the prosecution appearing improbable in the background of the nature of evidence which emerged during



the course of the trial.

20. Learned Additional Public Prosecutor has, on the other hand, submitted that the prosecutrix has fully supported the case of the prosecution of commission of rape by the appellant on her. Other witnesses have supported the prosecution's case that the informant was found lying on the ground without any clothes on her person. The appellant was seen fleeing away from the place of occurrence who was apprehended by the villagers. In such view of the matter, finding of conviction does not need interference on the ground of absence of forensic examination of the clothes of the victim and any other medical evidence to prove commission of rape.

21. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration of the rival submissions advanced on behalf of the parties.

22. It is evident from the evidence of the witnesses that on a cry raised by the informant the villagers, who were present nearby had rushed to the place of occurrence. The occurrence is said to have taken place at 11:30 A.M. Near the banana orchard where the occurrence is said to have taken place, there were persons working/ present in the fields nearby the



banana orchard. In such circumstance, the prosecution's case, as disclosed in the First Information Report that the appellant would come to the informant, enquire about her name and address and then would forcibly take her into the banana orchard to commit rape upon her in the manner described therein appears to be suspicious though it cannot be said to be an impossible circumstance. The appellant was apprehended by the villagers. The clothes, which the victim was wearing when the occurrence had taken place, were seized by the police. The clothes were, however, not sent for forensic science test. The clothes were not produced as the material exhibits before the trial court. The witnesses are inconsistent on the point as to who had reached the place of occurrence first. PW-13, whose statement was not taken during the course of investigation, claimed in his deposition that he had reached the place of occurrence first, whereas PW-3 claimed that he had reached the place of occurrence within two minutes. PW-3 had reached the place of occurrence upon seeing various persons rushing towards the place of occurrence. He had seen the villagers rushing towards the place of occurrence from a distance of nearly 150 yards but he had reached the place of occurrence first because of the circuitous route which the others were required to



take to reach there. Others reached there ninety minutes after his reaching the place of occurrence. There is no medical evidence to suggest commission of rape, inasmuch as, no injury was found on the private parts of the informant. The medical evidence did not suggest even the recent sexual intercourse.

23. It is true that the oral evidence of the victim of rape alone can be the basis for recording the finding of conviction, if such evidence is found to be creditworthy and unblemished. In the peculiar facts and circumstances of the present case, emerging from the evidence of the prosecution's witnesses, we find it difficult to conclude that the prosecution was able to establish its case beyond all reasonable doubts. According to the informant, the appellant had bitten the informant's tongue while committing rape upon her. In our opinion, as the appellant was apprehended by the villagers and handed over to the police on the same day, the failure on the part of the prosecution in not conducting medical examination of the informant in accordance with the requirement under Section 53A of the CrPC, in the present facts and circumstances of the case, renders the prosecution's case weak.

24. In our opinion, based on the evidence adduced at the trial as noted above, it cannot be said that the prosecution



was able to establish the charges against the appellant beyond all reasonable doubts.

25. The finding of conviction recorded in the judgment and order dated 20.11.2013 passed by the learned 1st Additional District & Sessions Judge, Purnia in Sessions Trial No. 1328 of 2011, arising out of Bahadurganj P.S. Case No. 108 of 2011 is accordingly set aside as unsustainable. The appellant accordingly stands acquitted of the charge of commission of offences punishable under Sections Sections 323, 341, 307, 376 of the IPC and Section 3(1)(iii), 3(1)(xi) and 3(1)(xii) of the SC/ST Act by giving him benefit of doubt.

26. The appellant is in jail. Let him be released forthwith, if he is not required in any other case.

27. This appeal is accordingly allowed.

(Chakradhari Sharan Singh, J)

I agree.
Rajesh Kumar Verma, J

(Rajesh Kumar Verma, J)

Rajesh/-

AFR/NAFR	NAFR
CAV DATE	18.01.2023
Uploading Date	29.05.2023
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