

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.236 of 2004

1. Pramod Yadav son of Kishori Yadav
2. Kishori Yadav son of Late Chaipshu Yadav, both are resident of Village-Doriyare, P.S.- Bousi, District- Araria.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ramesh Kumar Singh, Adv.

For the Respondent/s : Ms. Anita Kumari Singh, APP.

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 12-01-2023

The instant appeal has been filed against the judgment of conviction and order of sentence dated 25.02.2004 passed by the Additional District & Sessions Judge (Fast Track Court No.- I), Araria in Sessions Trial No. 747/2003(Tr. 31/2003) whereby and whereunder the learned trial court convicted the appellants for the offence punishable under Section 323 of the Indian Penal Code (in short I.P.C.), and sentenced them to pay fine of rupees one thousand each and in default of payment of fine they have been directed to undergo rigorous imprisonment for one year from which being aggrieved the appellants have preferred this appeal.

2. The substance of the prosecution story appearing from the FIR is as follows :-

On 12.06.2002 at about 11:00 A.M, allegedly, the informant went to a brick kiln to collect her weekly wages and when she reached to southern corner of brick kiln then the accused Pramod Yadav forcefully caught her from behind and took her inside the brick kiln and under threat committed rape by stuffing a towel in her mouth and during that occurrence one namely Md. Mojahid rushed to the spot on seeing the occurrence and caught hold the accused Pradeep yadav but he was assaulted by the said accused and then informant cried and on hearing her cry several persons gathered there and then the other accused Kishori Yadav who happens to be father of the accused Pradeep Yadav came with some unknown persons and got the accused Pradeep Yadav freed and on resistance made by the prosecution party the accused persons assaulted Md. Mojahid and others.

3. On the basis of written application Raniganj P.S. Case No. 104/2002 was registered under Sections 376, 341, 323 and 379 of I.P.C. which set the criminal law in motion and after completion of investigation the police submitted charge-sheet against both the appellants and after taking cognizance of the alleged offences the learned Magistrate committed the case to

the court of Sessions on 20.09.2003 and on 17.12.2003 both the accused were charged with the offences punishable under Sections 376, 323 and 325 of I.P.C. to which the accused pleaded not guilty and claimed to be tried.

The prosecution examined five witnesses along with the victim/informant in oral evidence who are as follows : -

1. P.W. 1 Md. Manjoor Alam (expunged)
2. P.W. 2 Md. Mojahid
3. P.W. 3 Md. Manjoor Alam
4. P.W. 4 Md. Mansoor Alam
5. P.W. 5 Md. Zaheer (Father of the victim)
6. P.W. 6 XXXX (the informant/victim)

4. The prosecution did not give any documentary evidence and after the completion of prosecution evidence the statements of the accused persons were recorded in which they denied all the circumstances appearing against them from the prosecution evidences and in defence the accused persons did not give any evidence.

5. Learned counsel for the appellants submits that all the prosecution witnesses examined during the trial were declared hostile and they did not support the prosecution's case in any manner and on the basis of evidence given by all these

witnesses the trial court convicted the appellants for the offence punishable under Section 323 of I.P.C. awarding fine of Rs. 1000/- (Rupees One Thousand) upon them while the material witnesses including the informant did not reveal the specific names of the appellants being involved in committing the alleged *Mar-Pit* with her and other person namely Md. Mojahid.

6. I have heard both the sides and perused the judgment impugned as well as the evidences available on record.

7. Now, I have to see whether the evidences adduced by the prosecution are sufficient to justify the conclusion of the Trial Court with regard to the conviction of the appellants for the offence punishable under Section 323 of I.P.C.

8. In this matter the learned Trial Court acquitted the accused/appellant namely Pramod Yadav of the offence punishable under Section 376 of I.P.C. for which he was charged and convicted both the appellants for the offence punishable under Section 323 of the I.P.C. The informant revealed the name of the appellant No. 1 as Pradeep Yadav in the FIR in place of his actual name Pramod Yadav and made against him the specific allegation that he forcefully sexually assaulted her after opening her clothes and stuffing the towel in her mouth. The informant was examined as P.W. 6 before the Trial Court but she flatly

denied the said allegation of rape in her examination-in-chief and she simply stated that on account of a dispute of payment of wages, an incident of quarrel and *Mar-Pit* took place. But the witness did not reveal the names of the specific persons who committed the said *Mar-Pit* and she was declared hostile. It is important to mention that in the cross-examination made by the prosecution, the witness stated that she was not able to identify the accused persons who were present at that time in the Court room and further deposed that she knew one of the accused namely Kishori Yadav. From this statement one thing is quite clear that the appellant No. 1 was not known to the so-called victim, despite of this fact in the FIR the victim revealed the specific name of the said appellant as being the main accused who allegedly committed rape on her and the said contradiction casts a serious doubt in the prosecution's story. Though the appellant No. 1 has been acquitted of the offence of rape but he and appellant No. 2 were convicted and punished for the offence punishable under Section 323 of I.P.C. and in this regard the evidence of the informant is very important. In the examination-in-chief, the said witness did not reveal the names of the specific persons who allegedly committed *Mar-Pit* and also did not reveal the names of the appellants as being involved in the

alleged incident of *Mar-Pit* and in the cross-examination she deposed that 100-150 persons worked at the brick kiln and she could not identify the persons who committed *Mar-Pit* among the said employed persons. She further deposed in the cross-examination that Tractor of appellant No. 2 namely Kishori Yadav was used at the Brick Kiln to carry and transport bricks and she worked on that Tractor as a labourer and she demanded her labour wages, owing to which the incident of quarrel took place and except the said incident no other occurrence took place. From the evidence of this witness it is quite clear that the informant who is stated to be the victim of the alleged incident of *Mar-Pit* did not reveal the names of the appellants as being involved in committing the alleged *Mar-Pit* and also did not reveal their any specific role in the said occurrence and simply alleged that on the date and time of the alleged occurrence a simple incident of quarrel took place in between her and the appellant No. 2 with regard to the payment of labour wages. Accordingly, I find the evidence of this witness completely not favourable to the prosecution in proving the offence of Section 323 of I.P.C.

9. Other prosecution witness P.W. 3 is a formal witness of seizure of cloth of the so-called victim and he proved

the seizure-list concerned to the seizure of the cloth of the victim which was marked as Exhibit-1 but he deposed in the cross-examination that the investigating officer did not say anything to him about the occurrence and the said cloth was already kept in the Police Station.

10. P.Ws. 2, 3, 4 and 5 went hostile and these witnesses did not support the allegation of the prosecution in respect of the offence of Section 323 of I.P.C. for which both the appellants were charged and these witnesses revealed almost similar facts in their cross-examination about the informant and their evidence is also not sufficient to prove the alleged offence of simple hurt punishable under Section 323 of I.P.C. against the appellants.

11. In the light of above-discussed evidences available on case record, I am of the considered view that learned Trial Court erred in convicting both the appellants for the offence punishable under Section 323 of I.P.C. as the evidences adduced by the prosecution discussed above are not sufficient to attract the main ingredients of the said offence. Accordingly, the conclusion made by the learned Trial Court in respect of the said offence is not sustainable in the eye of law hence, the judgment impugned convicting both the appellants for the said offence and

order impugned sentencing the appellants for the said offence are
hereby set aside and the instant appeal stands allowed.

(Shailendra Singh, J.)

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