

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.778 of 2006**

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1. Laxhmi Yadav Son of Late Dasrath Yadav
 2. Bidhyanand Yadav Son of Late Andu Yadav
 3. Binod Yadav son of Laxhmi Yadav
 4. Ashok Yadav son of Laxhmi Yadav
 5. Umesh yadav Son of Bidhyanand Yadav

All are resident of Village- Hatha Bhakhri, P.S. Kursakanta, District-
Araria

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, Amicus Curiae
For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT**

Date : 19-06-2024

Heard Mr. Vipul Sinha, learned *Amicus curiae*

on behalf of the appellants and Mr. A.M.P. Mehta,

learned APP appearing for the State.

2. This appeal has been preferred by the appellants being aggrieved and dissatisfied with the judgment of conviction dated 24.8.2006 and order of sentence dated 25.8.2006 passed by the learned 1st Additional Sessions Judge, Araria, in Sessions Trial No. 643/2001 & 92/2001, whereby and whereunder the appellants/ convicts were convicted under Sections 376/511 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for ten



years for the offences punishable under Sections 376/511 of the Indian Penal Code.

3. The prosecution case, in brief, is that on 15.9.2000 at about 6:00 a.m while the complainant was cleaning utensils at 'Chapanal' in front of her house, the appellants Laxmi Yadav and Bidhyanand Yadav rushed there and caught her from behind. They told her to proceed towards *bari* upon which the complainant opposed, thereafter, both accused persons pushed her towards *bari* and torn her sari & blouse and tried to commit rape. When the complainant protested and raised alarm, the appellant Laxmi Yadav called his other associates who are appellant Nos. 3, 4 & 5. After that, all the accused persons tried to commit rape with the complainant after abusing and they also assaulted her. On *hulla*, the witnesses namely Shail Kumar Yadav, Udyachand Yuadav and Rajendra Yadav rushed to the place of occurrence and saved the complainant.

4. On the basis of a complaint, Complaint Case



No. 1866C of 2000 was registered against the appellants for the offences punishable under sections 376, 511, 504, 323 of the Indian Penal Code. Thereafter, cognizance was taken and the case was committed to the court of Sessions for trial.

5. In order to bring home the guilt to the accused, altogether five witnesses had been examined on behalf of the prosecution. The defence had also examined one witness on his behalf.

6. P.W.1, Udyachand Yadav in his examination-in-chief has deposed that at the time of occurrence, he was at his door which is in front of the tube-well (place of occurrence) where the complainant (P.W.-4) was cleaning her utensils. He further deposed that he saw that the appellants Laxmi Yadav and Bidyanand Yadav came there from behind and caught the complainant started dragging her towards *kelabari*. The accused persons torn her clothes and tried to commit rape. On raising alarm, this witness and other



witnesses namely Shail Kumar Yadav and Rajendra Yadav rushed at the place of occurrence and saved the complainant. This witness has also deposed that appellant Binod Yadav assaulted the complainant when the accused persons failed to commit rape upon the complainant.

7. P.W.2, Shail Kumar Yadav has deposed in his examination-in-chief that at the time of occurrence, he was going to attend the nature's call. He saw that appellant Laxmi Yadav caught hold of the complainant and dragging her towards '*bari*' whereafter, appellants Bidyanand and Laxmi Yadav torn her clothes due to which she became totally naked. He further deposed that on *halla*, he, Rajendra and others proceeded there and saved the victim from the clutches of the accused appellants.

8. P.W.3, Rajendra Yadav in his examination-in-chief has deposed that he had gone to see his field at about 6:00 a.m on the date of



occurrence, when he saw appellants Bidyanand Yadav and Laxmi Yadav were catching hold of the complainant and dragging her towards *bari* where they torn her *sari* and *blouse*. He further deposed that he did not see the accused trying to rape the complainant but the complainant herself had said so.

9. P.W. 4 Dewaki Devi is the complainant herself, who in her examination-in-chief has deposed that on the alleged date of occurrence, at about 6:00 a.m, when she was cleaning utensils at '*chapana*' then the appellants Laxmi Yadav and Bidhyanand Yadav came there and caught hold of her from behind. She further deposed that they started carrying her towards '*bari*' and torn her sari & blouse. Thereafter, in order to commit rape, appellant Laxmi Yadav pushed her down. When the complainant objected, appellant Laxmi Yadav called his other associates. On *hulla*, witnesses Udaychand, Shail Kumar and Rajendra reached there and saved her from being raped.



10. P.W.-5, Deonandan Diwakar is a formal witness who has proved the complaint petition as Exhibit-1.

11. The defence has also examined one Md. Sufi as D.W. 1 who has deposed in his examination-in-chief that he is the Mukhiya of the Panchayat and there was a dispute between the appellants and the husband of the complainant as he was part of the panchayati. He further deposed that a proceeding under Section 107 and 144 Cr.P.C was also initiated against them from before.

12. Mr. Vipul Sinha, learned *Amicus Curiae*, appearing on behalf of the appellants has submitted that admittedly, all the material P.W.s are closely related to the informant and are highly interested. During the course of investigation, not a single independent witness has come forward to claim himself/herself to be the eye witness to the occurrence. It is the case of the prosecution that the occurrence took place on



15.09.2000 at 6:00 a.m in the morning but instead of registering an F.I.R, a complaint was filed in the next day on 16.09.2000 which itself creates doubt over the authenticity of the prosecution version. The parties were on litigating terms from before as the proceedings under Sections 107 and 144 Cr.P.C were also initiated against them from before. Hence, to settle the personal vendetta with the accused appellants, this false case has been registered against them. Moreover, the recovered clothes were not sent for any chemical examination neither from bare perusal of the records, it appears that the victim/complainant was medically examined.

13. *In contra*, learned A.P.P appearing on behalf of the State has stated that the appellants made an attempt to ravish the complainant and the witnesses have also supported the case of the prosecution.

14. From perusal of the records and on going through the evidences, this Court finds that all the prosecution witnesses are highly interested witnesses.



The offence relates to attempt of rape which comes within the purview of cognizable offence and for the cognizable offence, it is prerequisites that F.I.R should be registered. But in the instant case, instead of registering an F.I.R, a complaint was filed by taking a plea that Officer-in-charge had not the registered the F.I.R. Section 154(3) of the Cr.P.C facilitates that any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information under cognizable offence, he/she may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence. Hence, this Court finds lacuna for not



lodging the F.I.R in this case.

15. From perusal of the evidence of the victim (P.W. 4), it appears that she had only deposed about the complicity of two accused persons namely Laxmi Yadav and Bidhyanand Yadav but in the complaint petition, she had named all the five accused persons who are appellants before this Court and alleged that they have committed the alleged offence. She did not whisper in her deposition in the trial court about rest three convicts/appellants. According to her evidence in examination-in-chief, she had specifically alleged that Laxmi Yadav and Bidhyanand Yadav came, caught hold her from behind and dragged her towards *bari*, thereafter appellant Laxmi Yadav opened her sari and appellant Bidhyanand Yadav torn her blouse and attempted to ravish her but just thereafter, all the prosecution witnesses (P.W.s 1, 2, 3) came there and saved her from the clutches of the accused appellants. In her cross-examination also, the victim (P.W. 4) did



not whisper about the other appellants except appellants Laxmi Yadav and Bidhyanand Yadav. But, in her cross-examination, she had deposed that Laxmi Yadav and Bidhyanand Yadav misbehaved with her and after one hour of misbehaving by both the appellants, the prosecution witnesses (P.W.s 1, 2 and 3) came at the place of occurrence and saved her which contradicts her own evidence in examination-in-chief.

16. From scrutinizing the victim's (P.W. 4) above noted deposition, it is apparent that P.W.s 1, 2, and 3 had not seen the occurrence and they were not present at the time of committing the offence. It is a general rule that conviction can be awarded on the basis of interested witnesses but evidence of witnesses P.W.s 1, 2, 3 are not be able to believe because they deposed contradictory evidence which is not credible and trustworthy. According to the evidence of the victim (P.W. 4), the appellants Laxmi Yadav and Bidhyanand Yadav caught hold her and torn her blouse but the said



blouse has not been exhibited as material exhibit. From perusal of the prosecution evidence, it is also apparent that the victim sustained injuries on her person at the time of occurrence but there is no medical evidence on record to support and corroborate the prosecution case in respect of the fact that the victim (P.W.) 4 has sustained injuries on her person. Moreover, both the parties were on litigating terms from before. There is an inordinate delay of one day in registering a case without explaining the delay. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the manner and motive of the occurrence. Moreover, there is contradiction in the evidences of the prosecution witnesses and most of the witnesses are highly interested witnesses. Hence, the appellants are entitled to get the benefits of doubt.

17. In that view of the matter, the judgment of conviction dated 24.8.2006 and order of sentence dated 25.8.2006 passed by the learned 1st Additional



Sessions Judge, Araria, in Sessions Trial No. 643/2001 & 92/2001, is set aside and the appeal is allowed.

18. The appellants are acquitted of all the charges after getting the benefits of doubt.

19. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

20. Accordingly, the appeals stand allowed.

21. This Court expresses the appreciation for the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 7000/-(Seven Thousands) towards his professional fee for extending valuable assistance to this Court in deciding this appeal.

(Sunil Kumar Panwar, J)

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