

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.440 of 2014

Arising Out of PS. Case No.-1 Year-2013 Thana- BHOJPUR GRP CASE District- Bhojpur

Ramesh Kumar, Son of Sri Sant Ram, R/o Village-Chhoyal, P.S.-Bhuntar,
Distt.-Kullu, Himachal Pradesh, at present Unit no.20, J and K Rifle, Posted
at Riyong Arunachal Pradesh.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 487 of 2014

Arising Out of PS. Case No.-1 Year-2013 Thana- BHOJPUR GRP CASE District- Bhojpur

Dinesh Kumar @ Dinesh Singh, Son of Dayal Singh, Resident of Godauri,
P.S.- Bhuntar, District- Kullu (Himachal Pradesh), Presently residing at
D.A.V. School, Board Colony, Patna, P.S.- Shastri Nagar, District- Patna.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 440 of 2014)

For the Appellant/s : Mr. Ravindra Kumar, Advocate

For the Respondent/s : Ms. Vineeta Kumari, APP

(In CRIMINAL APPEAL (SJ) No. 487 of 2014)

For the Appellant/s : Mr. Prakash Kumar, Advocate

Mr. Binod Kumar Singh, Advocate

Mr. Manoranjan Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-01-2024

1. The present appeals preferred by



appellants/convicts Ramesh Kumar and Dinesh Kumar @ Dinesh Singh against judgment of conviction and order of sentence dated 24.07.2014 rendered by 8th Adhoc Additional District and Sessions Judge, Bhojpur at Ara, in Sessions Trial No. 13 of 2013, whereby and whereunder appellants/convicts Ramesh Kumar and Dinesh Kumar @ Dinesh Singh have been convicted for the offence punishable under Section 354/341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 02 (two) years for the offence under Section 354 of the Indian Penal Code and were ordered to undergo one month rigorous imprisonment for the offence under Section 341 of the Indian Penal Code.

2. The crux of prosecution case as springs through fardbeyan of informant namely, Rekha Dorji (PW-5) that on 03.01.2013 at 11.15 PM, while she was going to Delhi by Brahmaputra mail and when the train proceeded from Ara railway station, a man sitting in the A.C. compartment forced her to sit on his berth, one another person was also along with him, whose intention was not appearing good, then she fled away towards the gate and tried to jump, but one another person standing at the door stopped her, thereafter, she went ahead and jumped from the door of another coach, due to which, she



received injuries. Thereafter, she was taken to hospital by the police for better treatment.

3. On the basis of aforesaid First Information Report, Ara GRPS Case No. 01 of 2013 dated 04.01.2013 was lodged against appellants/convicts. After completing investigation, the Investigating Officer submitted charge-sheet bearing no. 02/13 dated 12.01.2013 against appellants/convicts under Sections 376 (g) and 506 of the Indian Penal Code and also under Sections 341, 323, 354, 376, 511 and 34 of the Indian Penal Code.

4. Learned Chief Judicial Magistrate took cognizance of aforesaid case on the basis of materials available on records collected during investigation against both appellants/convicts under Sections 341, 323, 354, 376, 511 and 34 of the Indian Penal Code and committed the case before the learned Sessions Judge for trial under Section 209 of the Code of Criminal Procedure (in short 'Cr.P.C.'). Before learned trial court, charges were explained to appellants/convicts, which they pleaded "not guilty" and claimed trial.

5. To establish its case before the learned trial court, the prosecution altogether examined total of twelve witnesses, namely, PW-1 Ajit Kumar, PW-2 Rakesh Kumar,



PW-3 Sandesh Kumar, PW-4 Gaurav, PW-5 Rekha Dorji, who is informant/victim of this case, PW-6 Kanhiya Lal Singh, PW-7 Ajay Prakash, PW-8 Harendra Singh, PW-9 Amar Deo Upadhyar, PW-10 Dr. Ashok Kumar Pandey, PW-11 Rajan Prasad, who is investigating officer and PW-12 Dr. Madhubala Singh, who examined the injured.

6. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit 1 – Signature on fardbeyan of informant Rekha Dorji (PW-5).

Exhibit 2 – Statement of Amardeo Upadhyay.

Exhibit 2/1 Further statement of Amardeo Upadhyay.

Exhibit 3- Statement of Ajit Singh

Exhibit 4 - Statement of Rakesh Kumar

Exhibit 5 – Statement of Sandesh Kumar

Exhibit 6 - Statement of Gaurav

Exhibit 7- Statement of Amardeo Upadhyay under Section 164 of the Code of Criminal Procedure

Exhibit 8 -Injury report of injured Rekha Dorji (informant)

Exhibit 9- Fardbeyan of Rekha Dorji (informant)



Exhibit 10, 11 & 12 -Seizure Lists

Exhibit 13- Charge-sheet

Exhibit 14 -Injury Report of Rekha Dorji.

7. No witness was examined in defence during trial as well as no document was exhibited in defence. Statement of convicts/appellants were recorded under Section 313 of the Criminal Procedure Code (Cr.P.C.), where they shows their complete innocence by denying the incriminating evidence appears against them during the trial.

8. Learned Trial Court, after completion of trial, convicted both appellants/accused under Section 354/341 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for 02 (two) years for the offence under Section 354 of the Indian Penal Code and were ordered to undergo one month rigorous imprisonment for the offence under Section 341 of the Indian Penal Code. Aggrieved thereof present appeals preferred by appellants/accused under Section 374(2) of Cr.P.C.

9. Hence, the present appeals;

ARGUMENT ON BEHALF OF THE LEARNED COUNSEL
APPEARING FOR THE APPELLANTS/ACCUSED

10. It is submitted by learned counsel that the nature of evidence as surfaced during the trial is not inspired



such confidence on the basis of which conviction can be recorded as same appears full of material contradictions and also improved over earlier statement. It is submitted that PWs. -1, 2, 3 and 4 who were working with the appellants in the same army unit and travelling in same B1 coach of Brahmaputra mail, had no knowledge of any such occurrence. It is submitted that present case instituted on the basis of statement of PW-9, namely, Amardeo Upadhyay and, therefore, the subsequent statement of victim/PW-5 is hit by provision of Section 162 of Code of Criminal Procedure (in short 'Cr.P.C.'). It is also submitted that the version narrated regarding occurrence by victim/PW-5 before the police is different that what she deposed during the trial. It is submitted that only eye-witness in this case is PW-9, who himself appears to be involved in present case. It is submitted that in a train, there is no separate provision for ladies toilet and, as such, it cannot be said that appellant knowing the fact that toilet is specifically for ladies entered into it. It is also submitted that nothing surfaced during trial which may suggest that appellant was aware about the presence of victim inside the toilet. It is pure accidental and merely on this ground as the appellant entered into the toilet which was already occupied by victim/PW-5, it cannot be said that he was under



intention to outrage the modesty of the victim. It is also pointed out that several important witnesses as TTE/coach attendant were not examined during the trial. Learned counsel also submitted that it is admitted position that victim/PW-5 was in train without ticket and was changing compartment frequently to save her from the catch of TT/coach attendant and also from police. While concluding the argument, it was submitted that matter has been compromised between the parties and as same was lodged under confusion but the said compromise was not accepted by the court being offence compoundable.

ARGUMENT ON BEHALF OF THE LEARNED APP
APPEARING FOR THE STATE

11. The learned APP while opposing the submission as advanced by learned counsel appearing on behalf of the appellants that victim/PW-5 categorically stated that the intention of appellants were not appearing good. It is also stated that victim received serious injuries due to jumping from the running train as to save her from the clutches of appellants where she received injuries. It is pointed out that her statement was recorded in hospital where she was not in fit condition, which is apparent from her deposition itself and in such condition minor contradictions are bound to surface and mere



on that score only it cannot be said that prosecution did not established its case beyond reasonable doubt. It is also submitted that the occurrence is also supported by eye-witness PW-9, namely Amardeo Upadhyay, who tried his best to save the victim but failed.

12. In view of above, learned APP submitted that recording of conviction under Sections 354 and 341 of the Indian Penal Code by learned trial court is correct in eyes of law and same is not required to be interfered under present appeal, which is otherwise liable to be dismissed.

13. This Court perused the entire records and considered the arguments as canvassed by learned counsel appearing on behalf of the parties.

14. **PW-1** is Ajit Kumar, who was travelling in the same train in B1 coach/compartment of Brahmaputra mail. He was on berth no. 31, whereas accused/appellant Ramesh was on berth no. 39. It was stated that accused/appellant worked in his unit and designated as "*Lans Nayak*" and was going to his home during vacation. It is stated that another accused/appellant, namely, Dinesh boarded train at Patna. Both accused/appellants, namely, Ramesh and Dinesh took their meal together on berth no. 23 and, thereafter, they proceeded towards the gate. He slept



thereafter, and came to know at Allahabad railway station only that accused/appellant Ramesh was arrested by police as he outraged the modesty of a girl. From his deposition, it is apparent that he is not the *eye-witness* of the occurrence and the relevant fact what can be gathered from his statement that both accused/appellants were present in coach no. B1 and they proceeded towards the gate of the compartment after taking their meal.

15. **PW-2** is Rakesh Kumar, who was also travelling in the Brahmputra mail on 3rd January, 2013 and was the occupant of berth no. 23 of B1 coach/compartment. He also stated that accused/appellant Ramesh was also travelling in said train. It was also deposed by him that friend of accused/appellant Ramesh, namely Dinesh boarded to compartment at Patna. They took their meal together and thereafter, proceeded towards gate. He also stated to be slept after taking his meal. He came to know at Buxar railway station that Ramesh (accused/appellant) was arrested by police, where luggage of Ramesh was unloaded from train by RPF at Mughalsarai railway station.

15.1 On cross-examination, it appears that he recorded the statement at Allahabad railway station and stated



that he has no any personal knowledge of this occurrence. From his deposition, the fact which can be gathered that both accused/appellants were available in B1 compartment and after taking their meal they proceeded towards gate.

16. **PW-3** is Sandesh Kumar, who was also a co-traveller of B1 compartment of Brahmputra mail. He also supported that Dinesh boarded train at Patna and thereafter, both of them took their meal together. It was stated that after taking meal, both of them proceeded towards outside. At Buxar he came to know from Rakesh that Ramesh was arrested by police.

16.1 On Cross-examination, he stated that as per his knowledge, nothing happened between Patna and Buxar. It was also stated that he gave his statement on instance of police. It was also stated by him that as per his knowledge no public alarm was raised.

17. **PW-4** is Gaurav, who is also a co-traveller of Brahmputra mail and was occupant of berth no. 45 of B1 coach/compartment. It was stated by him that Ramesh and his friend occupied berth no. 23 and he failed to depose about the place of boarding of his friend. He also stated that he did not saw Ramesh and his friend taking their meal together. He came to know at Mughalsarai from Rakesh that police arrested



Ramesh and his friend who was sitting on berth no. 23.

17.1 On cross-examination, it was stated by him that police detained him at Allahabad station. It was stated that he has no personal knowledge regarding any occurrence in coach/compartment in which he was travelling. It was also stated by him that he deposed on instance of police. He was also threatened to sent jail by police. It was stated that almost all people of his coach was occupant of reserved berth. He stated that he has no knowledge regarding occurrence.

18. **PW-5** is Rekha Dorji, who is the victim of this case, she stated that occurrence is of 3rd of January, 2013 when she was going to Delhi through Brahmaputra mail as she was without ticket, she was changing compartment frequently and so when she entered into one AC coach, two boys started to talk her in divergent language and they also tried to hold her, resultantly she went to toilet but one of them forcibly entered. It is stated that very quickly she came out from the toilet where another boy was found standing outside and made an attempt to caught her, where to save herself from their clutches she jumped from the train and received injuries. It was stated that she received injuries on her back, forehead etc. She stated specifically that she narrated same thing before the police. It



was stated that the statement recorded by police was not read over to her and she was also not in position to read. She identified her signature over written information, which was exhibited as Exhibit No. 1. She also identified appellant/accused Ramesh Kumar who entered into toilet forcibly and by pointing another appellant/accused Dinesh she said that he was the person who was standing outside the toilet.

18.1 On cross-examination, it was stated by her that she boarded in train on previous day of the occurrence and since then she was frequently changing the compartments at the time of checking. It is stated by her that the boys were present near to same door from where she jumped. It was also stated by her before the police that when she was in toilet, one boy entered forcibly and when she came out quickly from toilet another boy found standing outside and, therefore, she jumped from the train and she came to know latter that said place was “Ara”. It was stated that she was going to Delhi to work in a farm house. It was also stated by her that she was not nervous being without ticket. She failed to disclose the address of farm house. She denied the suggestion that as she was without ticket and having no money, therefore, out of anxiety to be caught by police personnel, jumped from the train and received injuries.



While being crossed on behalf of appellant/accused Dinesh, she stated before the court that her first husband left her and, thereafter, she solemnized second marriage, two childrens out of said wedlock. She denied to talk with anyone in train.

19. **PW-6** is Kanhaiya Lal Singh, who deposed in his examination-in-chief that on 03.01.2013 he was posted at Buxar when one person from Brahmputra express came to him in very disturbed condition and said that one girl jumped from train at Ara station as two persons outraged her. It was also stated by him that said two persons are still present in train. The name of person who came to him was Amardeo Upadhyay (PW-9). It was deposed that at that point of time, Ajay Kumar, police inspector, constable B.K. Tiwary and constable S.K. Rai were present with him. On identification of said Amardeo Upadhyay (PW-9) they went to the gate of train and arrested a person who was standing over there. He disclosed his name as Ramesh and also disclosed his name of friend as Dinesh. He deposed that Ramesh was asked to call Dinesh and thereafter, Dinesh was arrested from platform no. 1. It was deposed that statement of Amardeo Upadhyay was recorded by Ajay Prakash, R.P.F Inspector and thereafter, brought both apprehended accused/appellants to GRP and handed over to them.



19.1 On cross-examination on behalf of accused/appellant Ramesh, it was stated by him that Amardeo Upadhyay is not known to him prior to this occurrence. It was stated that statement of Amardeo (PW-9) was recorded by his in-charge. He could re-collect the name of Amardeo Upadhyay (PW-9) as he gave information regarding special occurrence. He also stated that he has no personal knowledge, whether FIR was lodged against Amardeo Upadhyay or not, whereas on cross-examination on behalf of accused/appellant Dinesh, it was stated by him that he was present when Amardeo Upadhyay (PW-9) was talking with in-charge Ajay Prakash. He started to give his statement at about 3.00 PM which last for about 1-2 minutes. He failed to disclose the number of coach/compartment in which occurrence took place. It was stated by him that he has no personal knowledge about the occurrence and what he stated is based upon the information received from Amardeo (PW-9).

20. **PW-7** is Ajay Prakash, who stated to be posted at Buxar with RPF on date of occurrence i.e. 03.01.2013. On said date at about 2.55 PM, 14055 up Brahmaputra express arrived at Buxar railway station at platform no. 4. He was in his office and by that time one person, namely Amardeo Upadhyay (PW-5) came to his office and stated that one military person



outraged the modesty of a lady passenger in toilet and also committed wrong act upon her. It was stated that after coming out from toilet, said lady passenger tried to jump from B1 coach but he stopped her. It was stated that lady passenger further moved towards the gate of A-1 compartment/coach and jumped from train near western railway over bridge of Ara railway station. It was stated that said Amardeo Upadhyay (PW-9) stated that he knows said military passenger who outraged lady. On his identification appellant/accused Ramesh Kumar was arrested firstly and thereafter, information was given to RPF Inspector as to recover the lady passenger, who jumped from the train. Accused/appellant Ramesh disclosed name of his friend as Dinesh Gawan, who is also accused/appellant and said Dinesh Gawan was also arrested with the aid of GRP from platform no. 1 of Buxar railway station. He detained accused/appellant Ramesh for about one hour and thereafter, handed over him to SHO G.R.P., Buxar. By that time no case was lodged at Buxar railway station. It was stated that case was registered on the statement of Rekha Dorji by SHO, Ara GRP. The custody of Ramesh was given to Ara GRP by Buxar GRP. It was stated by him that he made his statement before the court out of information as he received from the conversation with Amardeo



Upadhyay (PW-9). He met Rekha Dorji/victim at Sadar Hospital, Ara. He also stated to record statement of Amardeo Upadhyay (PW-9). He identified his hand writing and signature over the statement which on his identification exhibited as Exhibit no. 2. It is also stated that statement of Amardeo Upadhyay (PW-9) was recorded by SHO, GRP Harendra Singh before him. He also identified the signature and writing of said Harendra Singh, which on his identification, exhibited as Exhibit no. 1/A.

20.1 On cross-examination by accused appellant Ramesh, it was stated by him that when he arrested accused/appellant Ramesh on information of Amardeo Upadhyay (PW-9) by that time no case was registered. It was stated that fact narrated by Ramesh was not reduced by him in writing. His statement was also obtained by Harendra Pd., SHO but he did not put his signature.

20.2 On cross-examination on behalf of accused/appellant Dinesh, it was stated by him that he could not state that who were arrested beside Upadhyay (PW-9). It was stated by him that accused/appellant Dinesh was arrested from platform no. 1 on identification of accused/appellant Ramesh.

21. **PW-8** is Harendra Singh, who was posted on



03.01. 2013 as Officer-in-charge of Bhaigan police station. He recorded statement of Amardeo Upadhyay (PW-9). He identified his hand writing and signature alongwith signature of Amardeo Upadhyay (PW-9), which on his identification exhibited as Exhibit no. 2/2. He stated to arrest accused/appellant Ramesh on identification of Amardeo Upadhyay (PW-9) and also arrested accused/appellant Dinesh on identification of Ramesh. He also recorded the statement of co-passengers of said coach/compartment. He recorded statement of Ankit singh, Rakesh Kumar, Sandesh Kumar and Gaurav, where he identified his signature and hand writing, which on identification exhibited as Exhibit nos. 3, 4, 5 and 6.

21.1 On cross-examination, it was stated by him that he was not known to Amardeo Upadhyay (PW-9) prior to this occurrence. He started investigation as offence was cognizable and it was his preliminary action. He recorded the statement of four persons on instance of Amardeo Upadhyay (PW-9). He was not cross-examined on behalf of accused/appellant Dinesh.

22. The only eye-witness of this occurrence is **PW-9** i.e. Amardeo Upadhyay who was also travelling in the said train in AC III tier compartment of Brahmputra mail. On



03.01.2013 in afternoon at about 2.45 PM train reached at Ara railway station and on so he started to arrange his luggage near to gate as he has to leave the train at Buxar. When he was in process to collect the luggage from his berth to gate, he saw that one girl entered into toilet where out of two boys, one entered into toilet whereas another was standing outside. It was stated that girl/victim came running near to gate and he pushed her inside. It was stated that she was crying. It was stated by him that again said girl moved towards AC II coach from where she jumped, latter on he came to know that said girl was travelling in B2 coach. He claimed to identify both persons, one who entered into toilet as appellant/accused Ramesh and another who was standing outside toilet was appellant/accused Dinesh. He identified his signature on his statement recorded under Section 164 of the Code of Criminal Procedure which on his identification exhibited as **Exhibit No. 7.**

22.1 On cross-examination on behalf of appellant/accused Dinesh. He stated that accused/appellant was not known to him prior to this occurrence. He denied that police arrested him at Buxar. He stated in para-5 that he is not aware that what happened to victim girl. He denied to depose falsely on instance of police. On further examination on behalf of



appellant/accused Ramesh, it was stated by him that he never saw victim prior to occurrence, as train started by that time. It was stated by him that he did not saw any person to behave indecently with said lady after exit from toilet and before jumping her from train.

23. **PW-10** Dr. Ashok Kumar Pandey, who was posted as Medical Officer on 03.01.2013 in Sadar Hospital, Ara and examined the injured Rekha about 4.45 PM and found following injuries on her person:-

- (I) scratch left foot dorsally 1/2" x 1/4"
- (ii) scratch on left hand 1/4" x 1/2 C.M.
- (iii) Lacerated wound 1/5 C.M., x 1/2 C.M.
- (iv) Lacerated wound 1/2" 1/4" on vertex of head.
- (v) Tenderness chest.
- (vi) Multiple scratch on back in region.
- (vii) Lacerated wound 1.5 C.M. x 2.1 C.M. on right ankle.

Doctor reserved the opinion of x-ray and he said weapon as hard and blunt. He said in para no. 6 that these injuries may be caused by falling from running train. In cross examination he said in paras 9 and 10 that without X-ray report he can not say, regarding the grievousness and nature of injury and x-ray is not present before him. The injury report is marked as Ext-A.

24. **PW-11** is Rajendra Pd., who received statement of Rekha Dorji/victim on 04.01.2013 at about 10.15 AM, which



was recorded by S.I. M. Ahmad at P.M.C.H. emergency ward, Patna, which was exhibited during trial as Exhibit no. 9. After registering the case, he himself took investigation. It was stated by him that after receiving information, Ajay Kumar, in-charge RPF regarding occurrence, registered a Sanha and proceeded to verify the same and on so as he reached near western outer signal between railway pole no. 594/29 and 594/26 he found that one lady in injured condition was coming. He provided train trolley to her and brought her to Sadar Hospital, Ara and admitted there. She was badly injured. From Sadar Hospital, Ara at about 6.30 PM on 03.01.2013 she was sent to PMCH, Patna. The Medical Officer seized jacket and brassier of victim and sent for FSL examination. He also seized undergarments and black pant of accused/appellant Ramesh on 05.01.2013. This seizure was made at Ara railway station. He secured to record statement of Amardeo Upadhyay (PW-9), Ajit Kumar, Rakesh Kumar and Gaurav Kumar under Section 164 of Code of Criminal Procedure (in short 'Cr.P.C.'). He found blood stained at railways tracks which was seized by him and sent for FSL examination. It was stated that on following the guidelines as received by senior officer during the course of investigation, he submitted charge sheet under Sections 341, 323, 354/34 of the



Indian Penal Code against accused/appellants Ramesh Kumar and Dinesh Kumar vide charge sheet no. 2/30 on 12.01.2013. He identified both accused/appellants during the trial.

24.1 On cross-examination on behalf of accused/appellant Ramesh Kumar, he stated that he received information regarding occurrence at about 3.15 PM on 03.01.2013 which was mentioned in his station diary. It was stated that he did not record statement of Rekha Dorji/victim at Ara as she was not in condition to give her statement but though he made an attempt to record her statement but she was unconscious. He also asked from doctor, whether she can give her statement where it was said that she is not in position to give her statement. He also stated that informant did not disclose that on which station, she boarded in train, rather she only stated that she was going to Delhi. It was also stated by him that he did not investigate on this point whether Rekha Dorji/victim was passenger of AC compartment or not. He did not collect any documentary evidence which may suggest that informant was travelling in AC compartment. It was stated that the charge sheet was submitted under Section 376/511 of the Indian Penal Code under direction of senior police officer. It was stated by him that he did not made any attempt to secure statement of victim under



Section 164 of Cr.P.C. He also stated to record statement of coach attendant and TTE but same was not recorded under Section 164 of Cr.P.C.

25. **PW-12** Dr. Madhu Bala Singh also examined Rekha Dorgi, injured on-3.1.2013 at 5.00 P.M. at Sadar hospital Ara and he said in Para 2 that on examination of internal parts no injury present. In para 3 she said that hymen found old ruptured. In para No-4 Visera swab taken, sent to Pathological examination. According to the report no spermatozoa either alive or dead found. In para No-6 she said that opinion regarding rape is not clear, where rape is done or not.

25.1 In cross examination she said in Para 8 that she did not find positive sign of rape and she said in para No-8 that she did not find any injury. The Examination report of Doctor is marked as **Exhibit-14**.

CONCLUSION

26. For the sake of convenience or for the better understanding of the fact, it is apposite to reproduce the provision of Sections 341 and 354 of the Indian Penal Code, which is as under:-

341. Punishment for wrongful restraint.- *Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one*



month, or with fine which may extend to five hundred rupees, or with both.”

354. Assault or criminal force to woman with intent to outrage her modesty.- *Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will there by outrage her modesty, ¹ [shall be punished with imprisonment of either description for a term which shall not be less than one year but which may extend to five years, and shall also be liable to fine].”*

27. From the depositions of aforesaid prosecution witnesses, it appears that PW-1, PW-2, PW-3 and PW-4 were also travelling in same coach and train alongwith accused/appellants. From their depositions, it appears that both accused/appellants were known to each other and they took meal together on berth no. 23 of B1 coach of Brahmaputra mail. The said berth was allotted in favour of PW-2, namely, Rakesh Kumar, it appears from their deposition that after taking meal, both of accused/appellants were went towards outside i.e. gate, therefore, presence of both accused/appellants near to the gate of train is not disputed, whereas, none of these witnesses noticed the presence of informant/injured/victim in compartment.

28. The only *eye-witness* of the occurrence is PW-9, who is the Amardeo Upadhyay. He is appearing important witness next to victim in the sense that he reported the occurrence to RPF/GRPF personnels even before lodging the FIR. He was in process to leave the train at Buxar station and in



that process he was keeping his luggage near to gate, where he noticed that victim entered into the toilet. It was stated by him that out of two boys, one boy entered into the toilet and other was standing outside. He also noticed that victim woman came out from toilet and rushed towards the gate, where he pushed her inside and prevented her to jump from the train compartment, thereafter, the said victim runs towards AC-II from where she jumped. He identified both accused/appellants, where he identified accused/appellant Ramesh as a person who entered into the toilet and accused/appellant Dinesh who was standing outside the toilet. He stated categorically in his cross-examination that he is not aware that what happened with victim woman. It was also stated by him that after taking exit from the toilet and before jumping, no person did indecent behaviour with victim woman. From his deposition, it is not appearing that the entry of accused/appellant Ramesh into toilet was forcible or with knowledge that victim woman was present inside. It is also not appearing that said toilet was dedicated to ladies only, with such evidence, the culpable mental state as to outrage the modesty of the victim woman by accused/appellants cannot be gathered.

29. Now the most important witness of the



occurrence is victim herself, who examined during the trial as PW-5, who admitted in her examination-in-chief that she was travelling without ticket and for that she was changing frequently her compartment and so when he entered into the AC-II coach, two persons started to talk differently. With this statement intention to outrage cannot be gathered. She further stated that both accused/appellants tried to hold her and therefore, she entered into the toilet, where one boy entered forcibly. She came out in hurry, where the second person was standing outside also made an attempt to hold her and as to save her, she jumped from the train where she received injuries. If the depositions of victim be read in light of deposition of another *eye-witness* of the occurrence PW-9 several contradictions appears regarding occurrence. Firstly, victim stated in her deposition that the another boy was standing outside the toilet also made an attempt to hold her but the same was negated by PW-9. Secondly, victim woman stated that she jumped immediately from the same compartment but as per PW-9 she rushed towards AC-II, from where she jumped. She was not chased by any of the accused/appellants upto AC-II gate.

30. If the version of victim be taken into consideration, it appears that occurrence took place in a broad



day time. The only *eye-witnesses* of the occurrence did not depose in the manner it was stated by victim woman. From the perusal of records, it also appears that the first incriminating circumstances was stated to accused/appellants to caught hold the hand of informant/victim and to ask her to sit on berth whereas this fact nowhere appears to be surfaced from the deposition of victim woman/PW-5. It also appears that the second incriminating circumstances which was explained regarding indecent behaviour but no incriminating circumstances was placed before the accused regarding occurrence what stated to be happened inside the toilet or outside the toilet, while recording their statement under Section 313 of Cr.P.C.

31. In this context, it would be apposite to reproduce the legal reports of ***Raghubir Pandey Vs State of Bihar and Tuna Pandey Vs. State of Bihar*** reported in ***Cr. Appeal (DB) No. 339 of 1990 with Cr. Appeal (DB) No. 395 of 1990***, where it was observed in paragraph nos. 16 and 17 as under:-

“16. It has been considered by a number of times and by several authoritative pronouncements it has been decided that circumstances not explained to the accused cannot be considered for the purpose of fastening the guilt. In a case reported in (2006) 12 SCC 306: Vikramjit Singh @ Vicky vs. The State of Bihar the accused



was acquitted because the circumstances leading to prove guilt against the accused was not explained to him under Section 313 Cr.P.C. Similarly, in (1984) 4 SCC 116: Sharad Birdhichand Sarda vs. State of Maharashtra it was held that all the circumstances which link the offence with the offender has to be explained and if that was not done then that could not be considered for proving the charge and it cannot be said that the evidence was substantially complied. Hon'ble Apex Court in the case of Sajjan Sharma vs. The State of Bihar reported in (2011) 2 SCC 206 has deprecated erratic and evasive compliance of Section 313 Cr.P.C.

17. In the present case, if the circumstances which link the appellants with the offence were not explained to them and without considering this vital aspect order of conviction was passed that was a grave error and violation of the provision of Section 313 Cr.P.C. Not only that other circumstances which has gone to the root of the matter i.e. immediate cause of occurrence has not been brought on the record."

32. It appears that the deposition of PW-5 i.e. victim/informant improved over her FIR. It further appears from the perusal of record that matter was compromised between the parties and for that purpose, a compromise petition dated 30.01.2014 was also filed before the learned trial court stating thereof that victim/informant jumped from the compartment out of her nervousness as she was travelling without ticket and no indecent behaviour was made by accused/appellants or neither she was outraged by them but the said compromise petition was not taken into consideration by the learned trial court as offence under Section 354 of the Indian penal Code is compoundable.



By that time, the court was in business of this case and was not *functus officio* as the judgment of conviction was recorded on 24.07.2014.

33. Hon'ble Supreme Court in the matter of ***P. Ramaswamy Vs. State (Union Territory) of Andaman and Nicobar Islands*** reported in (2013) 14 SCC 577, where it was observed in para 12 as under:-

“12 In the circumstances, without going into the question whether the High Court was right in refusing to take compromise on file and compound the offence, we deem it appropriate to grant permission to compound the offence. Hence, we permit the appellant, complainant and the victim to compound the offence under Section 354 of the IPC. The said offence shall stand compounded. As per Section 320(8) of the Criminal Procedure Code the composition of this offence shall have the effect of acquittal of the offence under Section 354 of the IPC. Hence, the appellant is acquitted of the charge under Section 354 of the IPC. In view of this the impugned orders dated 13/7/2012 and 10/12/2012 passed by the Calcutta High Court are set aside. If the appellant is in jail, he is directed to be released forthwith unless otherwise required in any other case.”

34. From the perusal of records, it also appears that FIR which was exhibited by learned trial court as Exhibit-9 of informant/victim woman, nowhere stating that anything happened inside the toilet by accused/appellant. It simply state that one person hold her and asked to sit on berth, where she felt that the intention of said person was bad and thereafter, she



rushed towards the gate as to jump from there but was prevented by a person standing near to gate and thereafter, she rushed to another compartment from where she jumped. If the version of this exhibit be taken into consideration then certainly, the accused/appellants who were on berth no. 23 asked victim/informant to be seated on said berth but the said fact was not supported during the trial, neither it was supported by any of the prosecution witnesses as discussed above rather a new story regarding entering into the toilet by one accused/appellant and also made an attempt to hold by another accused/appellant who was standing outside the gate were developed during the trial.

35. In view of aforesaid facts, prosecution failed to establish its case beyond reasonable doubt, accordingly, appeal stands allowed.

36. The impugned judgment of conviction and order of sentence dated 24.07.2014 rendered by 8th Adhoc Additional District and Sessions Judge, Bhojpur at Ara, in Sessions Trial No. 13 of 2013 is hereby quashed and set aside. The accused/appellants are acquitted of the charges levelled against them. Appellants are on bail as submitted, On acquittal, their bailors and sureties stand discharged from their respective liabilities.



37. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be refunded to them immediately.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	
CAV DATE	NA
Uploading Date	
Transmission Date	

