

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.557 of 2013

Arising Out of PS. Case No.-224 Year-2006 Thana- SIMRI BAKHTIYARPUR District-
Saharsa

=====

Satya Narain Yadav S/O Sunder Prasad Yadav Resident Of Village- Gopalpur,
P.S- Bakhtiyarpur, District- Saharsa.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Sippy Sinha, Amicu-Curiae
For the Respondent/s : Mr. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 26-11-2024

Heard Ms. Sippy Sinha, *Amicus Curiae* for the
appellant, and Ms. Anita Kumari Singh, learned APP for the
State.

2. The present appeal has been filed under
Section 374(2) of the Code of Criminal Procedure, 1973
(hereinafter referred to as 'Cr.P.C.') challenging the judgment of
conviction and order of sentence dated 19.07.2013 in Sessions
Trial No. 10 of 2009, arising out of Bakhtiarpur P.S. Case No.
224/06 (G.R. No. 1760/06) passed by learned Sessions Judge,
Saharsa (hereinafter referred to as 'trial court') by which the
appellant/convict has been convicted for the offence punishable
under Section 376 of the Indian Penal Code and sentenced



rigorous imprisonment for ten years and 25,000/- fine and in default of payment of fine, further rigorous imprisonment for two months.

3. The brief facts leading to the filing of the present appeal are that informant Rekha Devi has given written information to the Superintendent of Police, Saharsa on 19.5.2006 by mentioning therein that on 17.05.2006 in the night at 1'O clock, she was sleeping in her room which was constructed of *fush* and her mother-in-law was sleeping in the court yard nearby and in the night one of her villager namely Satya Narain Yadav entered into the house then he tried to commit rape forcefully and when she denied and tried to run away out of house, Satya Narain Yadav has over powered her and thrown her on the ground and wrapped '*Tolia*' on her mouth and tried to outrage her modesty and by force started committing rape on her and continued till half an hour and thereafter, Satya Narain Yadav started to run towards eastern side then the informant's mother-in-law Bindeshwsari Devi came there and alarm has been made on which neighbour Umesh Yadav and Amar Yadav awoke up and they have seen Satya Narain Yadav going towards eastern side. and victim (PW-1) further stated that she has identified him in the light of



lamp (*Dibiya*) and it is also mentioned in the letter of informant which has been given to Superintendent of Police, Saharsa that Satya Narain Yadav has threatened her that he will kill her if she tell anyone about the occurrence and on that day her husband was not at the house. The letter which has been filed by the informant-Rekha Devi to the Superintendent of Police, Saharsa has been sent to the Officer-in-charge Simri Bakhtiarpur P.S. for institution and investigation, on which Bakhtiarpur P.S. Case 224/06 dated 10.12.2006 has been registered against accused Satya Narain Yadav for the offence u/s 376 of the I.P.C.

4. On the basis of the aforesaid written information of the informant, the Investigating Officer has investigated and submitted charge-sheet no. 151/07 dated 31.07.2007 against accused Satya Narain Yadav for the offence punishable u/s 376 of the I.P.C and cognizance has been taken under Section 376 of the I.P.C vide order dated 13.9.2007 and in the further proceeding of the case, accused Satya Narain Yadav appeared before the trial court and the case has been committed to the court of Sessions by the court of Learned Judicial Magistrate, 1st Class, Saharsa vide order dated 16.01.2009.

5. The learned counsel for the appellant has confined her arguments in challenging the sentence imposed by



the trial court in its judgment dated 19.07.2013. She submitted that no independent witnesses has supported the occurrence. She further submitted that there was land dispute between the appellant and the informant and for this reason, the informant has falsely implicated the appellant in order to harm his reputation.

6. Before the trial court, prosecution has examined 5 witnesses namely, PW-1 Rekha Devi, PW-2 Umesh Yadav, PW-3 Bindeshwari Devi, PW-4 Shivendra Kumar Verma, and PW-5 Birendra Yadav.

7. PW-1 Rekha Devi is the informant and victim of the case. She has stated in her examination-in-chief on 09.01.2013 that occurrence took place six years ago in the night at about 1'0 clock and at that time she was sleeping at '*Darwaja*' of her house and her mother in law was sleeping in the court yard. She further stated that her villager namely Satya Narain Yadav came close to her and she has identified him in the light of '*Dibiya*' and then he wrapped '*Gamchha*' on her mouth and made teeth bite on her cheek and came over her body and committed rape on her for half an hour and in course of that Satya Narain Yadav torn her blouse and petticoat and in the meantime her mother-in-law came there, then Satya Narain



Yadav ran away. She further stated that Umesh Yadav and Amar Yadav came there and identified Satya Narain Yadav who was running away from the place of occurrence. Satya Narain Yadav has also threatened her that he will kill her if she will file any case. She further stated that any how she has kept herself hidden and came before the Superintendent of Police, Seharsa where she has given written information which was written by some other person, as she has given instruction for writing the complaint. She further stated that police officer has also investigated the place of occurrence and she has also given statement before the Police Officer.

8. PW-1 Rekha Devi in her cross-examination stated that the occurrence took place in the year 2006 in the month of May and her mother-in-law was sleeping at a distance of 10 'lugga' and she was sleeping alone. She further stated that medical examination was not done and she has not given her clothes to the Police Officer and she has also not taken any medical treatment of injury caused by teeth bite.

9. PW-2 Umesh Yadav in his examination-in-chief has stated before the trial court on 09.01.2013 that the occurrence took place six years ago in the night at 1'0 clock and at that time he was at house when he heard 'hulla' which was



coming from the house of Yogendra Yadav and then he went there and he saw that Satya Narain Yadav was running away from the place of occurrence. He further stated that Rekha Devi (informant) told him that accused Satya Narain Yadav has committed rape on her. PW-2 Umesh Yadav in his cross-examination stated that he has not seen the occurrence from his own eyes and the house of Yogendra Yadav is situated at a distance of 2 *lugga* from his house.

10. PW-3 Bindeshwari Devi W/O late Basudeo Yadav in her examination-in-chief before the trial court on 10.01.2013 stated that she has difficulty in hearing. She further stated that she was in the court yard and alarm was made by her daughter-in-law thereafter she went to the door of house and she saw Satya Narain Yadav who was running away. PW-3 Bindeshwari Devi in her cross-examination stated that she has not seen the occurrence from her own eyes.

11. PW-4 Shivendra Kumar Verma in his examination-in-chief stated that he is home guard and he identified the signature of Sub Inspector of Police-Narendra Kumar Singh on the formal F.I.R of Bakhtiarpur P.S. Case no. 224/06.

12. PW-5 Birendra Yadav in his examination-in-



chief has stated that he knows the occurrence and the occurrence took place in the year 2006 and there was land dispute going on between the parties. He further stated that he has not given statement before the police officer. He has been declared hostile and the prosecution has drawn attention of this witness towards his statement recorded by the Investigating Officer, in course of investigation.

13. Before the trial court, the defence has examined altogether 5 witnesses namely, DW-1 Baijnath Yadav, DW-2 Jagdish Yadav, DW-3 Ram Bharosh Yadav, DW-4 Yogi Paswan, and DW-5 Yogendra Yadav who is the husband of Rekha Devi (informant).

14. DW-1 Baijnath Yadav in his examination-in-chief on 24.05.2013 stated that the occurrence is of the May 2006 and land dispute was going on between the appellant and the informant's family due to which hot discussions occurred between the parties, where he has intervened and pacified both the parties but Rekha Devi has filed this case. He further stated that Rekha Devi relates to DW-1 as '*Bhabho*' and good relation has been prevailed between both the parties and compromise petition has also been filed. Baijnath Yadav in his cross-examination stated that at the time of occurrence, house of



Rekha Devi was of *Tat-fush*. He further stated that he does not remember the day and date of occurrence.

15. DW-2 Jagdish Yadav in his examination-in-chief has stated that he knows both the parties and informant Rekha Devi is aunt of Satya Narain Yadav. He further stated that his house is situated just adjacent to the house of Rekha Devi from eastern southern portion. He further stated that on 17.05.2006, scuffling took place between both the parties due to land dispute and Rekha Devi has filed the rape case but no such occurrence took place. In paragraph-4 of his deposition, he stated that the husband of Rekha Devi resides outside the village. This witness has also said under paragraph 5 of his deposition that on 17.5.2006 in the night no occurrence took place. Jagdish Yadav in his cross-examination has stated that it is not within his knowledge that Informant Rekha Devi has filed rape case against accused Satya Narain Yadav, and thereafter, Satya Narain Yadav has also filed case against husband of Rekha Devi in which the wife of Satya Narain Yadav is the victim. He further stated that it is not within his knowledge that rape case which has been filed against husband of Rekha Devi was found false.

16. DW-3 Ram Bharosh Yadav in his



examination-in-chief has stated that he knows both the parties and Rekha Devi is his aunt and accused Satya Narain is his brother. He further stated that on 17.05.2006, in the night scuffling took place between Satya Narain Yadav and Rekha Devi due to land dispute and at that time he went there along with other witness and he has intervened and pacified the matter between the parties. Ram Bharosh Yadav in his cross-examination has stated that the name of father-in-law of Rekha Devi is Basudeo Yadav and Basudeo Yadav has died. He further stated that Basudeo Yadav has one son named Yogendra Yadav who is aged about 45 years and the age of Rekha Devi is 2 years less than the age of Yogendra Yadav.

17. DW-4 Yogi Paswan in his examination-in-chief has stated that he knows both the parties Rekha Devi and Satya Narain Yadav and Rekha Devi is the aunt of Satya Narain Yadav and there was land dispute between Rekha Devi and Satya Narain Yadav and a quarrel took place on 17.05.2006 in the morning. He further stated that his house is situated towards south of the house of Rekha Devi. DW-4 Yogi Paswan in his cross-examination has stated that at the time of occurrence, Dafadar Mahendra Yadav was also there and he denied the prosecutions claim that at that time Dafadar was Masudan



Paswan. He further stated that he has not given statement before the police officer.

18. DW-5 Yogendra Yadav who is the son of late Basudeo Yadav and husband of the informant namely Rekha Devi in his examination-in-chief has stated that informant Rekha Devi is his wife and on 17.05.2006 he was outside the house and when he came to his house after 6 days, his wife told him that scuffling took place with Satya Narain Yadav relating to the land dispute and no other occurrence took place and some persons instigated her then she filed a complaint before the Superintendent of Police, Saharsa. He further stated that his wife has also came to the court on 10.06.2013 and now there is no dispute.

19. DW-5 Yogendra Yadav in his cross-examination stated that wife of Satya Narain Yadav also filed rape case against him (DW-5). He further stated that he has not given any complaint to the police officer as he was outside the village at the time of occurrence.

20. The learned *amicus curiae* argued that no independent witnesses supported the prosecution's version of events, thereby undermining the credibility of the case. She further submitted that there were no eyewitnesses to the alleged



incident apart from the informant herself, whose testimony stands uncorroborated by any other evidence or testimony. She further submitted that the grounds for delay in lodging the FIR has not been explained as the occurrence happened on 17.05.2006 and FIR lodged on 10.12.2006. She further argued that the husband of the informant testified as a defence witness and asserted that no act of rape was committed against his wife by the appellant. She further submitted that property dispute was going between the appellant family and the family of the informant. She further mentioned that the testimony of PW-3, Bindeshwari Devi, cannot be relied upon as she is not able to see and hear properly. It has been contended that on these basis the case has not been established beyond all reasonable doubt.

21. She further submitted that there are vital contradictions in manner of occurrence and genesis of the case has not been proved by the informant as PW-2 and PW-3 has not seen the alleged occurrence. Moreover, PW-4 is a formal witness which does not proves the prosecution case. Further, PW-5 is a hostile witness as he has no knowledge about the occurrence. Investigating Officer also has not been examined in this case by the prosecution which implies that prosecution has failed to prove its case beyond all reasonable doubt against the



appellant, and therefore, the conviction of the appellant is bad and not sustainable in the eyes of law. Therefore, prayed to set aside the conviction and sentence of the trial Court and to acquit the accused extending benefit of doubt.

22. Further, the absence of any medical examination of the informant raises significant questions regarding the credibility of the allegations. This omission creates a reasonable doubt as to whether the offense of rape was actually committed or not? Without the corroborative evidence that a medical examination could have provided, the case lacks a critical element to substantiate the claims, leaving room for ambiguity and uncertainty about the incident. This oversight highlights a potential gap in the investigation that could impact the overall strength of the prosecution's case.

23. Learned *amicus-curiae* has relied upon the judgment of the Hon'ble Apex Court in the case of ***Munna Lal Vs. State of Uttar Pradesh***, reported in ***2023 SCC OnLine SC 80*** has held that:

*“Non-examination of
investigating officer creates a
material lacuna in the effort of
the prosecution to nail the*



appellants, thereby creating reasonable doubt in the prosecution case.”

24. She further relied on one more judgment passed by Hon’ble Supreme Court in ***Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475*** which states that:

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction



merely based on the testimony of the police jamadar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.” Police Jamadar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

25. On the other hand, learned Additional Public Prosecutor has vehemently opposed these appeals and submits that there is direct allegation against the present appellant, for committing rape on Rekha Devi (informant). She further



submitted that in view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeals should not be entertained.

26. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court.

27. On deeply studied and scrutinized all the facts and materials available on record, it is evident to note that the informant Rekha Devi (PW-1), in her initial deposition in re-cross-examination dated 09.01.2012, she alleged that the appellant had committed rape on her. However, in her subsequent deposition dated 23.05.2013, she stated that meaning of rape is beyond her comprehension and she considers the act of grasping her hand and covering her mouth as rape. She further stated that the appellant has done nothing to her and she filed this complaint at the influence of others. Furthermore, she stated that the appellant is her nephew and he had land dispute with her and further she stated that she do not voluntarily pursued this case. She further stated that she previously made statement at the request of others. This assertion does not meet the essential elements of the offence under Section 376 of the Indian Penal Code.



28. Further, in the deposition of the informant's mother-in-law (PW-3), she stated that she did not witness the incident firsthand. Furthermore, PW-2, PW-4 and PW-5 has also stated in their deposition that they have not seen the occurrence and the informant told them about the incident thereby they are considered as hearsay witnesses, and thus, their deposition cannot be relied upon in order to prove the case beyond all reasonable doubt. Additionally, both the informant (PW-1) and her husband (DW-5) stated that there was an ongoing land dispute between the family of the appellant and the family of the informant. It has been further noted that a quarrel had occurred on the same day over this issue which is supported by all the defence witnesses including the husband of the informant, which led the informant to file the case based on the influence of others. As it is evident that there is insufficient corroborating evidence, whether oral or documentary, to justify the conviction of the appellant. These inconsistency raises significant doubts about the prosecution case. Thus, prosecution has failed to substantiate the charge under Section 376 of the IPC as on



the year. Consequently, the trial court's conviction cannot be upheld and must be overturned. Furthermore, the prosecution has failed to establish the guilt of the accused/appellant for the charges levelled against them.

29. Hence, the impugned judgment of conviction and order of sentence dated 19.07.2013 passed in Sessions Trial No. 10 of 2009, arising out of Bakhtiarpur P.S. Case No. 224/06 (G.R. No. 1760/06), by learned Sessions Judge, Saharsa against the appellant is set aside and the appellant is acquitted from the charges levelled against him. As the appellant is on bail, he is discharged from his liability of bail bonds.

30. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 10,000/-(ten thousand) to the learned Amicus-Curiae Ms. Sippy Sinha towards honorarium for assisting this Court in the present appeal.

31. Let a copy of first and last page of this judgment be handed over to the advocate Ms. Sippy Sinha, learned Amicus-Curiae and Office is directed to proceed further in granting honorarium to her which is to be paid by



Patna High Court Legal Services Committee.

32. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.11.2024
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