

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.376 of 2013

Arising Out of PS. Case No.-54 Year-2010 Thana- PANDAU District- Madhubani

1. Nand Lal Chaudhary and Ors. S/O Phulchand Kamat Resident Of Village- Nabtol, Police Station- Pandaul, District- Madhubani
2. Sagun Lal Chaudhary S/O Late Phulchandra Chaudhary Resident Of Village- Nabtol, Police Station- Pandaul, District- Madhubani
3. Rup Lal Chaudhary S/O Late Phulchandra Chaudhary Resident Of Village- Nabtol, Police Station- Pandaul, District- Madhubani
4. Ranjan Chaudhary S/O Nand Lal Chaudhary Resident Of Village- Nabtol, Police Station- Pandaul, District- Madhubani

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Baidya Nath Thakur, Advocate Mr. Shankar Kumar Thakur, Advocate Mr. Prabhakar Thakuar, Advocate
For the State	:	Mr. Amit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

Date : 18-11-2024

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 dated 20.03.2013 and order of sentence dated 20.03.2013 passed in Sessions Trial No. 390 of 2010, arising out of Pandaul P.S. Case No. 54 of 2010 (G.R. No. 1023 of 2010), by learned Adhoc Additional Sessions Judge III, Madhubani by which the



charges against the appellant has been framed 448, 341, 323, and 504 of I.P.C. whereas, the accused namely, Nandlal Chaudhary has also been charged under Section 376 and 511 of the I.P.C. All the convicts are hereby sentenced to undergo Rigorous Imprisonment for one year for committing an offence punishable under Section 323 of the I.P.C and further they are sentenced to undergo Rigorous Imprisonment for one year for committing offence punishable under Section 448 of the I.P.C with a direction that both the sentences shall run concurrently.

2. Heard Mr. Baidya Nath Thakur, learned counsel for the appellant, and Mr. Amit Kumar Singh, learned APP for the respondent-State.

3. The brief facts of the case are that while she had slept and at about 11 P.M., she woke up and saw that someone was on her body and wanted to open her cloth and in the light of torch and saw that the person is Nand Lal Chaudhary who is a co-villager. Thereafter she protested. Thereafter Nand Lal Chaudhary tried to flee away and she cried thereafter. Many people of her village came there and assaulted the culprit with fists and slaps.



In morning, the villagers wanted to organise panchayat but in evening on the following day Ranjan Chaudhary, Shagun Chaudhary, Ruplal Chaudhary entered in her room and assaulted her and damaged the articles present at her home. They also damaged the handle of the hand-pipe. The daughter- in law Sunita Devi and husband Nirendra Lal Chaudhary was also assaulted by the persons who came at her house.

4. On the basis of the *Fardbeyan* of the informant, Pandaul P.S. Case No. 54 of 2010 dated 09.05.2010 was lodged under section 448, 376, 511, 341, 504, 34 of the IPC and thereafter police started further investigation. On completion of the investigation, the Investigating Officer of this case submitted charge sheet against all the aforesaid four accused persons under Section 376, 511 and also under Section 323, 341, 504 of the I.P.C and thereafter the case was committed to the Court of Sessions by the Court of CJM, Madhubani and thereafter it is transferred to the Court of A.D.J 3rd, Madhubani.

During the course of the trial, the prosecution has



examined altogether five witnesses, namely, PW-1 Manorma Devi, PW-2 Amod Devi, PW-3 Purnima Devi (informant), PW-4 Mahendra Chaudhary, PW-5 Sunita Devi. On the other hand, defence has produced the solitary witness, namely, Md. Yasin Ansari.

5. PW-1 is Manorma Devi, who has stated that while she was sleeping then she heard shouting from the house of Purnima Devi and found that Nand Lal Chaudhary assaulting the victim, thereafter on next day Rup Lal Chaudhary, Shagun Lal Chaudhary, Ranjan Kumar Chaudhary came at the house of victim and assaulted her and the accused persons also damaged the handle of hand pipe. The daughter-in-law of victim was also assaulted by the accused persons. In her cross-examination, the PW has stated that under 2 minutes of shouting, she reached on spot and found Nand Lal was surrounded by many people but she failed to state the name of the persons, she has further stated that on 2nd day she reached on spot after hearing shouting. She saw Purnima Devi was being assaulted with fists and slaps.

6. P.W-2, has stated at the time of occurrence,



he was at Narepur-Chowk and on shouting he came on the spot and he found that Wakil Yadav was repairing his wall and Sahdeo Yadav armed with Pagharia and Jalo with Khanti, Mohan with *lathi* were making protest. Wakil Yadav was asserting assaulting his claim over the land and consequently Sahdeo Yadav began to abuse him and Birendra Yadav over- threw the informant and Sahdeo Yadav gave *Pagharia* blow on the head of the informant giving cut injury with oozing of blood. Jalo Yadav gave *Khanti* blow on the hand of the informant, whereas Mohan Yadav assaulted by *lathi* on his leg. Ram Bilash Yadav and Upendra Yadav and others are said to have witnessed of the occurrence. He has stated in his cross examination that due to demolish of the wall it was the informant who sustained the loss. He has further stated that the wall was damaged. He has further stated that his statement was recorded by the police at 5.00 P.M. on the same day.

7. The P.W.2 is Amod Devi, has stated that at the time of occurrence and on hearing the shouting from the house of victim, she reached on spot and found that



Nand Lal Chaudhary was being assaulted and victim asked her that Nand Lal Chaudhary was on her body and wanted to commit wrong with her. She has further stated that on the following day *Panchayati* was organised but accused did not come in Panchayat and on the next day, Shagun Lal Chaudhary, Ranjan Chaudhary, Ruplal Chaudhary assaulted victim again. When the daughter in law of the victim came to rescue her then the accused persons also assaulted her. In her cross-examination she has stated that 150 persons assembled on spot.

8. The P.W.3 is informant/victim Purnima Devi herself, She has stated that she was on her *Varanda* and was sleeping, she was awoken by pinching and in the light of torch saw Nand Lal Chaudhary was found on her body with an intention to commit rape. He wanted to pull out her cloths. She started shouting and thereafter 10-12 persons came and assaulted Nand Lal Chaudhary. In the morning *Panchayati* was organised but Nand Lal Chaudhary did not accept the decision of the Panchayat. On the following day in the evening Ranjan Chaudhary, Shagun Chaudhary, Rup Lal Chaudhary entered in her



room and assaulted her and they broke the handle of hand pipe. She has further stated that she made her *Fardbeyan*. In her cross-examination she has stated that on shouting, the daughter of Ram Khelawan Chaudhary, her daughter Sunita Devi, Raj Kumar Chaudhary, Amod Devi and others came.

9. P.W.4 is the Investigating Officer in this case and he has stated the facts with regards to the investigation carried out by him.

10. The P.W. 5 is the daughter-in-law of the informant. She has stated that while she was sleeping then after hearing the shouting of mother-in-law, she saw Nand Lal Chaudhary was fleeing away. Thereafter, her mother-in-law asked her that Nand Lal Chaudhary wanted to commit rape with her. Thereafter on the next day, Rup Lal Chaudhary, Ranjan Chaudhary, Shagun Lal Chaudhary came at her house and damaged the articles of the house and Ranjan assaulted her and the victim. She has further stated that she has not seen the attempt of rape from her eye. She has further stated in her cross-examination that she had given statement before the



police.

11. The defence has produced the solitary witness Md. Yasin Ansari, who has stated that no shouting was raised and there has been dispute in between Purnima Devi and Nand Lal Chaudhary with regard to the homestead land.

12. The learned counsel for the appellants argued they have falsely implicated by the informant in a criminal case. There is vital contradiction in manner of occurrence and genesis of the case has not been proved by the informant. There was no injury on caused to the victim or her family members whatsoever.

13. Learned APP for the state vehemently, oppose the contention of the learned counsel for the applicant and has submitted that the witnesses are eye witness and it cannot be discarded. All the witnesses have deposed that they have seen the accused/appellant Nand Lal Chaudhary fleeing from the spot on the night of the first incident and have also seen the incident happening on the second date. The entire evidence and the witnesses substantiates the prosecution case and the exhibits along



with other witnesses and evidence is available on record are conclusive in nature and of the accused persons/appellants is proved beyond all reasonable doubt.

14. From perusal of the entire materials and evidence is available on record. It is apparent that the informant has stated that Nandlal Chaudhary pinched the victim/informant and she was awakened due to that, in the light of torch she saw that the accused Nandlal Chaudhary was sitting on her body and was trying to pull out her dress. Thereafter, the PW5, who is Sunita Devi has also stated that she saw Nandlal Chaudhary flying away from the place of occurrence, further other witnesses who were present, do not seeing the incident happening, but they saw that Nandlal Chaudhary was present in the house of the victim at late night. Further, it is worth mentioning that the conviction of the appellant before the trial court has been based under section 448 and 323 of the Indian penal code. Basing the opinion on the facts that the accused persons/appellant entered into the building of the victim with an intention to commit offence and accused persons also entered the house of the



victim and assaulted the informant and her daughter-in-law. The fact that Nandlal Chaudhary entered the house of the victim late night and thereafter on the next date, other appellants / accused persons assaulted the victim and her daughter-in-law, causing hurt. Thus, the trial court concluded that the prosecution has succeeded to prove the charge punishable under section 323 and 448 of Indian penal code that was levelled against the accused persons and convicted the appellants. Considering the facts and circumstances and the materials available on record, the charges levelled against accused persons/applicants is proved and hence the conviction order given trial court is correct and the reasoning of the trial court which has proceeded to render a conviction against the appellant is endorsed.

15. This court is of the view that the prosecution has proved its case beyond all reasonable doubt and in such circumstances, it may be proper to acquit the appellant/accused on the materials available on record.

16. From the judgment of conviction passed by trial Court, it appears that the sentence imposed was for



one year of rigorous imprisonment for offence punishable under Section 323 of the Indian Penal Code and one year rigorous imprisonment for the offence punishable under Section 448 of the Indian Penal Code. Moreover, after perusal of the trial Court record, I find that this is the first offence of the appellant and further has not been convicted earlier in any matter. There is no adverse report against them about their conduct and character otherwise the same would have been brought to our notice by learned counsel for the State. In my opinion having regard to the circumstance of the case including the nature of the offence, and the character of the offender, it is expedient so to do instead of sentencing him to any punishment or releasing him on probation of good conduct, release him after due admonition under Section 3 of the Probation of Offenders Act, 1958. In such condition there is no need to interfere in the judgment of conviction dated 20.03.2013. So, this court does not find any infirmity to disbelieve the judgment of conviction passed by the trial Court.

17. Accordingly, the judgment of conviction



dated 20.03.2013 passed in Sessions Trial No. 390 of 2010, arising out of Pandaul P.S. Case No. 54 of 2010 (G.R. No. 1023 of 2010), by learned Adhoc Additional Sessions Judge III, Madhubani is upheld and affirmed. The appellant stands discharged of the liabilities of his bail bonds, if any.

18. Accordingly, appeal is partly allowed.

(Ramesh Chand Malviya, J)

Mayank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.11.2024
Transmission Date	21.11.2024

