

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.89 of 2016

Arising Out of PS. Case No.-76 Year-2009 Thana- DURGAWATI District- Kaimur (Bhabua)

Sanjay Ram Son of Late Nagina Ram Resident of village - Madanpura, P.S.
Durgawati, District - Kaimur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Yugal Kishore, Advocate

Mr. Parwej Khan, Advocate

For the Respondent/s : Mr. Mukeshwar Dayal, Advocate

CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT

Date : 22-10-2024

The present appeal has been preferred by the appellant against the impugned judgment of conviction and order of sentence dated 23.01.2016 passed by learned Additional Sessions Judge-III, Kaimur at Bhabua, whereby the sole appellant has been acquitted of the charge framed under Section 376 read with Section 511 of the Indian Penal Code, but found guilty for the offence punishable under Section 354 of the Indian Penal Code and sentenced to R.I. for one year and directed to pay a fine of Rs. 1,000 and in case of default to pay the fine, to further undergo additional S.I. for one month.

Prosecution case.

2. The prosecution case as emerging from the written report of the informant/victim is that she was 15 years of age on



the date of occurrence. In the night of 14/15.06.2019, she was sleeping in her courtyard along with her younger sister and grand mother and younger brother were also sleeping separately adjoining her. Her mother and father were not at home in that night. At about 12:00 O' clock in the night, the appellant came and gagged her mouth by her *odhni* (scarf) and started dragging her from the courtyard with ill intent. In struggle, her mouth got opened and she raised *hulla* and upon *hulla*, the appellant fled away and her villagers, namely, Jokhan Ram, Chandrika Ram, Indra Ram and others came. She told about the occurrence to them and the occurrence was also informed to her father.

Factual background.

3. On the basis of the written report, Durgawati P.S. Case No. 76 of 2009 dated 17.06.2009 was registered against the appellant for the offence punishable under Section 376 read with Section 511 of the Indian Penal Code. After investigation, charge-sheet was submitted against the appellant. After cognizance, the case was committed to the Court of Sessions and charge was framed under Section 376 read with 511 of the Indian Penal Code. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. Hence, the trial commenced.



4. During trial, altogether five prosecution witnesses were examined on behalf of the prosecution. P.W.-1, Chandrika Ram, knows nothing about the occurrence. P.W.-2, Dhanman Ram, aged about 14 years, is brother of the victim/informant. P.W.-3, Jokhan Ram, is cousin of the informant. P.W.-4, Hanuman Ram, aged about 15 years, is also brother of the informant. P.W.-5 is informant/victim herself.

Statement under Section 313 Cr.PC

5. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination, he admitted that he had heard the evidence of prosecution witnesses against them. But he did not explain any circumstance, though he claimed that the prosecution evidence is false and he is innocent and has been falsely implicated.

Findings of the Trial Court.

6. Learned Trial Court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby the appellant has been found guilty and sentenced



accordingly.

7. I have heard learned counsel for the appellant and learned APP for the State.

Submissions of the parties.

8. Learned counsel for the appellant submits that the appellant is innocent and has been falsely implicated. He further submits that the impugned judgment of conviction and the order of sentence passed by learned Trial Court are not sustainable in the eyes of law or on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned judgment of conviction and order of sentence.

9. He further submits that except P.W.-1, other witnesses are either the informant or her close family members who are interested witnesses and not trustworthy. He further submits that only P.W.-1 is an independent witness, but as per his testimony, he knows nothing about the occurrence. The testimony of P.W.-1 that he knows nothing about the occurrence is very important in view of the written statement of the informant wherein she has stated that on *hulla* having been raised by her, Chandrika Ram (P.W.-1) had also come to the place of occurrence. He further submits that P.W.-2 and P.W.-4 are brothers of the informant, but they are below 18 years of



age. But learned Trial Court has not examined their deposing capacity as required under Section 118 of the Indian Evidence Act. Hence, their evidence cannot be relied upon for passing the judgment of conviction. He further submits that P.W.-3, Jokhan Ram, claimed to be eye-witness, but his presence on the place of occurrence is doubtful, because as per the written report of the informant/victim, he is stated to have come on the place of occurrence on *hulla* having been raised by the informant. Moreover, his house is separate from the house of the informant/victim and as per the testimony of the informant/victim, the occurrence had taken place swiftly and there was no possibility of coming by any neighbour who could see the occurrence. But as per testimony of P.W.-3, he reached the place of occurrence on *hulla* and saw that the informant was being dragged by the appellant by holding her waist which is not possible seeing the time span of the occurrence.

10. Learned counsel for the petitioner further submits that there is unexplained delay of two days in reporting the occurrence to the Police. As per written report, occurrence had taken place in the night of 14/15.06.2009 whereas written report was given to the police on 17.06.2009. Moreover, as per testimony of the informant herself, the written report was



prepared by Daroga Ji himself as dictated by her father and she put her signature on the written report on asking by Daroga Ji. Such facts and circumstances show concoction and embellishment in the written report making the whole prosecution case unreliable. The appellant is entitled to get benefit of doubt.

11. However, learned A.P.P. for the State defends the impugned judgment of conviction and order of sentence submitting that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence because the prosecution has proved its case against the appellant beyond all reasonable doubts and he has been appropriately sentenced.

12. I have thoroughly perused the relevant materials on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

13. From the perusal of the evidence on record, I find that as per the written report, occurrence had taken place in the night of 14/15.06.2009. However, the matter has been reported to the police by way of written report on 17.06.2009. This delay together with testimony of the informant that this written report was prepared by Daroga Ji on dictation of her father and she had



put her signature on asking by the police, the whole prosecution case becomes unreliable, because in such situation, there is possibility of concoction and embellishment in the written report.

14. I find the prosecution case further doubtful in view of the testimony of P.W.-1 who says that he knows nothing about the occurrence, whereas in the written report, the informant had stated that on *hulla* having been raised by her, he was one of those persons who had assembled at the place of occurrence. The testimony of P.W.-1 nullifies such claim of the informant rendering the prosecution case doubtful.

15. I further find that P.W.-2 and P.W.-4 are child witnesses. But before their examination, they have not been examined as required under Section 118 of the Indian Evidence Act to find their deposing capacity. Hence, their evidence cannot be relied upon by the Court.

16. Considering the aforesaid facts and circumstances, there is reasonable doubt created in the prosecution case against the appellant and hence, the appellant is entitled to get benefit of doubt.

17. Accordingly, the impugned judgment of conviction and order of sentence are set aside. The appellant



stands acquitted of the charge leveled against them.

18. The appeal stands allowed.

19. The appellant is already on bail. He is discharged from his liabilities under his bail bond.

20. The record of the case be returned to the Trial Court forthwith.

21. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J)

shoaib/-

AFR/NAFR	NAFR
CAV DATE	NA
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