

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.897 of 2006

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Tejan Yadav Son of Suresh Yadav resident of Village-Kewatia, P.S.-
Krishnagarh, District- Bhojpur.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Kumar Uday Singh

For the Respondent/s : Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 22-03-2024

Heard Mr. Kumar Uday Singh, learned counsel for
the appellant and Mr. A.M.P Mehta, learned A.P.P for the
State.

2. This appeal has been preferred by the appellant
being aggrieved and dissatisfied with the judgment of
conviction dated 19.09.2006 and order of sentence dated
20.09.2006 passed by the learned Additional Sessions Judge,
Fast Track Court, IInd Ara, Bhojpur in Sessions Trial No.
102/04, arising out of Krishnagarh P.S. 145 of 2002, whereby
and whereunder the appellant was found guilty and convicted
for the offences punishable under Section 376(I) of the
Indian Penal Code and he was sentenced to undergo



rigorous imprisonment for a period of ten years and fine of Rs. 3,000/- for the said offence. In default of payment of fine, the convict will further undergo rigorous imprisonment for further period of three months.

3. The prosecution case as per the written report of the victim/informant(P.W.-5), namely, Kunti Devi is that on 03.10.2002 at 6.P.M. while she was returning after taking bath in the river Ganga and at that time she was alone and as soon as she reached the *Bagicha* of Beni Singh towards the south of village-*Kewatiya* then accused Tejan Yadav(appellant) came there and called her. She has also stated that appellant caught hold her wrist and dragged her in the field of *arhar* and threw her on the ground and naked her and committed intercourse by penetrating his male organ in her vagina for about 10-15 minutes and thereafter he threatened her that if she will tell anyone about this occurrence then her parents will be killed. The informant/victim further stated in her fardebeyan that she has narrated the occurrence before her parents and his father made hue and cry and also told before the local Mukhiya.

4. On the basis of written report of the informant/victim, Barhara (Krishnagarh) P.S. Case No. 145 of 2002 was registered against the accused person/appellant



for the offence punishable under Section 376 of the Indian Penal Code and after completing the investigation, charge-sheet was submitted against the appellant under Section 376 of the I.P.C. Thereafter, cognizance was also taken against the appellant and case was committed to the court of Sessions by the learned C.J.M. for trial and disposal.

5. Charge was framed against the accused appellant(Tejan Yadav) under Section 376 of the IPC. Trial Court explained the charge to the appellant to which he pleaded not guilty and claim to be tried.

6. The plea of defense is total denial of the prosecution case and innocence and false implication with concocted allegations due to grudge and previous animosity.

7. The point of consideration in this appeal is whether the prosecution is able to prove the charge levelled against the accused appellant beyond reasonable doubt or not.

8. During the course of trial, altogether eight witnesses were examined on behalf of the prosecution to substantiate the charge levelled against the accused/ appellant. P.W.-1 Rajmuni Devi, P.W.-2 Shambhu Choudhary, P.W.-3 Rajesh Choudhary, P.W.-4 Smt Chandrawati Devi(mother of the victim), P.W.-5 Kunti Devi(informant/victim), P.W.-6 Ram



Ram Sakar Choudhary(father of the victim), P.W.-7 Dr. Madhu Bala Sinha and P.W.-8 Tarkeshwar Prasad(formal witness).

9. In this case, the prime witness is P.W.-5 who is the victim and informant of this case. She deposed in her evidence that the occurrence took place one year before her *gauna* and she is now residing in her *sasural* village Nenua for the last three years to be completed in the month of *Fagun*. She does not whisper about the occurrence in respect of commission of rape with her by the accused/ appellant Tejan Singh. She specifically stated that Tejan Singh accused/appellant did not call her and the police never recorded her statement. Vide para-4, she specifically stated that when she reached nearby the field of *rahar* which belongs to Kamla Singh where, four/five persons were present, out of them some were her villagers and some were outsiders. Out of them, who is the co-villager, she did not recognize. Vide para-5, she could not say about the house of Ashok Yadav(appellant's father) situated where from her maternal house. She was not aware about of the house of Suresh Yadav(father of the appellant). Vide para-6 she stated that the Darogaji merely gave her a written paper over which she put her thumb impression. Vide para-8, she specifically



deposed that she did not say before police that Tejan Yadav son of Suresh Yadav was standing there who asked the victim to come before him, upon this, she said that Kubera is happening. On request of prosecution, this witness declared hostile. She stated that the contents of the writing on the paper were never read out to her by Darogaji. Vide para-7, she denied having gone to hospital for her medical examination.

10. From perusal of the entire evidence of the victim/informant, it is apparent that she has not supported the prosecution case in respect of commission of offence. She has not deposed the place of occurrence, manner of occurrence and the name of the accused, namely, Tejan Yadav in her evidence.

11. P.W.1 Raja Muni Devi and P.W.2 Sambhu Choudhary are relatives of the alleged victim girl and they have expressed their ignorance of the occurrence and as such, they declared hostile by the prosecution.

12. P.W.-3 Rajesh Choudhary has not supported the prosecution and he deposed that he did not see the alleged occurrence. He said that appellant committed only *cherkhani* with his sister. No allegation of rape made by him against the appellant. This witness deposed that information about the



occurrence was gathered from his mother and his sister respectively.

13. P.W.-4 is the mother of the victim who is not the eye witness of the alleged occurrence but she deposed that her daughter Kunti Devi P.W-5 stated her about the commission of rape committed by the appellant. But, evidence of this witness has no importance because, her deposition is based upon the hearsay.

14. P.W.-6 Ram Sakal Choudhary (father of the victim) vide para-5, he specifically deposed that occurrence occurred by whom, he was not aware about this, as such, he turned hostile.

15. P.W.-7 Dr. Madhu Bala Sinha who examined the victim girl and proved the medical report as Ext-1. She deposed that it is not possible to say whether the rape has been done or not with the victim. So, the medical evidence is not corroborated with the prosecution case. Vide para-7 during cross-examination, this witness deposed that at the time of examination of the victim, the external or the internal injury in the private part of the victim was not found. There was no sign of recent rapture of hymen. Ultimately, did not find any sign of rape.



16. In this case, P.W.-8 Tarkeshwar Prasad is formal witness, who has proved Exts-2, 3, 3/1 and 3/2.

17. Learned counsel appearing on behalf of the appellant submitted that the prime witness who is the victim and informant adduced the evidence as P.W.-5 not supported the manner of occurrence, time of occurrence, place of occurrence and also not supported the version in respect of commission of rape with her by the appellant. There is delay of 5 days in lodging the FIR which raises suspicion in respect of the alleged occurrence.

18. *In contra*, learned A.P.P. on behalf of the State submitted that although, the victim has not supported the prosecution case during trial but the fardebeyan which was given by the victim/informant in which she stated that the appellant committed rape with her. The judgment of conviction and order of sentence are based on consistent and cogent evidence passed by learned trial Court and the appeal is fit to be dismissed.

19. I have gone through the entire oral and documentary evidence adduced on behalf of the prosecution during trial and considering the rival submissions raised on behalf of the learned counsel for the appellant as well as



learned APP for the State.

20. Learned trial Court while considering the evidence of the prosecution witnesses, especially, the evidence of P.Ws.-3, 4, 5 and 6 has totally ignored which has been made by them and considered only selected evidence made by them while passing the impugned judgment. Trial Court has ignored the fact that P.W.-5(victim/informant) has not supported the allegation of rape against the appellant/accused in her evidence. The evidence of her mother P.W.-4 who is mere hearsay witness, who received information about the alleged occurrence from none other than her own daughter(P.W.-5) carries no importance at all.

21. After discussion of the above, I am of this view that the prosecution has miserably failed to prove its case beyond reasonable doubt by its evidence and the appellant is entitled to get the benefit of doubt. Hence, the judgment of conviction and order of sentence are not sustainable and fit to be set aside.

22. In that view of the matter, judgment of conviction dated 19.09.2006 and order of sentence dated 20.09.2006 passed by learned learned Additional Sessions Judge, Fast Track Court, IInd Ara, Bhojpur in Sessions Trial



No. 102/04, arising out of Krishnagarh P.S. 145 of 2002 are hereby set aside.

23. The appellant is acquitted after giving benefits of doubt.

24. The appellant is on bail. He is discharged from the liabilities of the bail bonds.

25. Accordingly, the instant appeal is hereby allowed.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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