

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.48 of 2007

1. Arjun Rai
2. Sunil Rai
3. Birendra Rai
4. Mukesh Rai, 1 to 4 all S/o- Munar Rai
5. Bhushan Rai S/o Jai Narayan Rai
6. Heero Rai S/o Bhushan Rai

All resident of village- Mirpur Juara, P.S.- Awatar Nagar, District- Saran
Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, (*Amicus Curiae*)
For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 16-05-2024

Heard Mr. Vipul Sinha(*Amicus Curiae*), learned counsel
for the appellants and Mrs. Anita Kumari Singh, learned A.P.P
for the State.

2. This appeal has been preferred by the appellants
being aggrieved and dissatisfied with the judgment of conviction
and order of sentence dated 07.12.2006 passed by the learned
Additional District and Sessions Judge, Fast Track Court, I,
Saran at Chapra in Sessions Trial No. 890 of 05, arising out of
Avatar Nagar P.S. Case No. 09/05, whereby and whereunder the
appellants have been convicted under Sections 506/34 and 342 of
the IPC and sentenced to undergo two years of rigorous



imprisonment and six months of rigorous imprisonment respectively. Further, the appellant Arjun Rai was also convicted under Section 354 of the IPC and was sentenced to undergo 2 years of rigorous imprisonment.

3. The prosecution case as per the written statement of Ramanand Manjhi(informant/P.W-5) dated 05.02.2005 is to the effect that on 04.02.2005, the informant's daughter went to *arhar* field for easing out, in the meantime, appellant Arjun Rai attempted to rape with her by catching hold of her hand but on alarm being raised by the victim, Suresh Manjhi(P.W.-2) and Anil Manjhi , the son and nephew of the informant tried to catch hold of Arjun Rai but he escaped from the place of occurrence but subsequently appellants Sunil Rai, Birendra Rai, Mukesh Rai, Bhushan Rai and Heero Rai came armed with lathi, Bhala, farsa and sword and ordered to kill and put the house of the informant on fire but somehow, the informant and his family members fled from there and the informant went to police who said that they will talk to accused. The application was filed before S.P. and consequently the Awatar Nagar P.S. Case No. 09/05 under Sections 342, 34, 506 and 376 and 511 of the IPC was registered.

4. On the basis of written application of the informant(P.W.-5) Awatar Nagar P.S. Case No. 09/05 was registered against the accused persons/appellants for the offence



punishable under Sections 376, 511, 342, 506 and 34 of the Indian Penal Code and after completing the investigation, charge-sheet was submitted against the appellants under Sections 376, 511, 342, 506 and 34 of the I.P.C. Thereafter, cognizance was also taken against the appellants and case was committed to the court of Sessions for trial and disposal.

5. Charge was framed against the accused/appellants under Sections 342, 506 and 34 of the IPC. The accused/appellant Arjun Rai was also charged under Sections 376 and 511 of the IPC. Trial Court explained the charge to the appellants to which they pleaded not guilty and claim to be tried.

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

7. During the course of trial, altogether six witnesses were examined on behalf of the prosecution to substantiate the charge levelled against the accused/ appellant. P.W.-1 Jagarnath Manjhi who is neighbour, P.W.-2 Sudarshan Manjhi@ Suresh Manjhi who is brother of the victim girl, P.W.-3 Bhuwari Devi who is mother of the victim, P.W.-4 Seema Kumari who is victim of this case, P.W.-5 Ramanand Manjhi who is father of the victim and informant of this case and P.W.-6 Rafique Ahmad Khan who is I.O of this case.



8. P.W.-1, namely, Jagarnath Manjhi who is neighbour, deposed in para-5 of his evidence that he has never been examined under Section 161 of the Cr.P.C and further deposed that he heard about the occurrence but had not seen the occurrence.

9. P.W.-2, namely, Sudarshan Manjhi @ Suresh Manjhi(brother of the victim) deposed in his evidence that on the relevant date of occurrence, he heard the noise of his sister then he went there and saw that all the appellants were teasing her sister.

10. P.W.-3, namely, Ghouri Devi(mother of the victim) deposed in her evidence that on the relevant date of occurrence, her daughter went to defecate then she heard *hulla* of her daughter. After that, her son, namely, Suresh and Anil went there and she also went there. Appellant Arjun Rai fled from there after seeing them.

11. P.W.-4 Victim of this case, deposed in her evidence that on the relevant date of occurrence, she went to defecate in the *Rahar* field then appellant Arjun Rai caught hold her hand and started outraging her modesty. After that, she raised alarm then her brothers came there. After that, appellant Arjun Rai left her hand and fled from there after seeing her brothers. She came back to her home thereafter all the appellants along



with other came to her house and started threatening them to assault and set their house on fire.

12. P.W.-5, namely, Ramanand Manjhi(victim's father and informant) deposed in his evidence that he heard the alleged occurrence from his daughter as well as from his wife. He deposed that his daughter told to her mother about the alleged occurrence. After that, accused persons came to his house and started threatening to set his house on fire and also threatened to assault. He went to police for complaining and due to absence of senior officer, he went to S.P for filing his complain and the same has been registered later on.

13. P.W.-6 is the Investigating Officer of this case vide para-7 he deposed that witness Sudarshan Manjhhi P.W.-1 has not stated before him in respect of outraging the modesty by the accused persons with Seema Kumari/victim. Vide para-8, witness Seema Kumari/victim did not state in respect of outraging the modesty with her before him.

14. Mr. Vipul Sinha is appointed as *Amicus Curiae* for assisting the Court in this appeal who submitted that in this case, according to prosecution case, two persons, namely, Suresh Manjhi and Anil Manjhi came at the the place of occurrence on raising alarm by the victim Seema Kumari. Anil Manjhi was not examined by the prosecution during trial who alleged to be eye



witness of this case. Merely catching hold of hand does not bring the offence under Section 354 of the I.P.C. P.W-1 has also deposed in para-6 of his evidence that he has not seen anything rather he heard only about the occurrence. P.W.-2 Sudarshan Manjhi @ Suresh Manjhi who is the brother of the victim, reached on the spot only after the alarm being raised by the victim and as such he is also a post occurrence witness. P.W.-3 who is mother of the victim, has also not seen the occurrence rather she heard about the occurrence from her daughter(victim). P.W.-4 who is victim who herself admitted in para-4 of her evidence that as soon as appellant Arjun Rai caught hold her hand, she raised alarm and alarm being so raised, appellant Arjun Rai fled from there. Father of the victim and informant of this case who also deposed that he came to know about the incident from his daughter as well as from his wife. It is further submitted from perusal of the evidence of I.O who clearly deposed that Anil and Suresh who claimed to have gone to the place of occurrence on the first alarm, have not said that they have seen accused/appellant Arjun Rai was outraging the modesty of the victim nor victim stated to the I.O that accused/appellant attempted to outrage her modesty. The impugned judgment of conviction and order of sentence are based on conjectures and surmises not based on consistent and cogent evidence. Learned



trial Court failed to appreciate the fact that there was inordinate delay in lodging the FIR and also a land dispute was existing between both the parties. The impugned judgment and order of sentence are out and out illegal, bad in law and fit to be set aside.

15. *In contra*, learned A.P.P. on behalf of the State submitted that the judgment of conviction and order of sentence are based on consistent and cogent evidence. The judgment and order assailed in this appeal require no interference and the instant appeal is liable to be dismissed.

16. I have gone through the entire evidence which adduced on behalf of the prosecution. P.W.-1 Jaggarnath Manjhi vide para-6, he deposed that he stated before police that he heard in respect of occurrence but he had not seen the occurrence. It is apparent that this witness is not eye witness. P.W.-2 Sudarshan Manjhi @ Suresh Manjhi did not depose properly in respect of occurrence. He saw that Arjun Rai, Mukesh, Sunil, Bhushan Rai and Hero Rai were outraging the modesty of his sister. This witness has not deposed according to prosecution story. According to prosecution story, the only appellant Arjun Rai outraged the modesty of the victim Seema Kumari whereas this witness deposed in respect of outrage the modesty by all appellants/accused persons. This witness is not reliable and trustworthy. Anil Manjhi who is alleged to have seen the



occurrence, has not been examined by the prosecution during trial. P.W.-3 who is the mother of the victim deposed in her evidence vide para-2 that she heard about the occurrence from her daughter/victim. It seems that this witness is also not the eye witness of this case. P.W.-4(victim) she deposed that the appellant Arjun Rai attempted to take her in the field but after raising the alarm by her, Anil and Suresh came there and after that appellant Arjun Rai fled away from there. Vide para-3, she deposed that she made a noise on catching her hand by the appellant Arjun Rai. Further, she told about the catching of her hand by the appellant to Anil and Suresh Manjhi (P.W.-2). It means, both witnesses mentioned in the written application given by the informant/father of the victim(P.W.-5) came at the place of occurrence after committing the offence as alleged. P.W.-5 informant vide para-2, he deposed that when victim returned to her house then she stated about the occurrence to him. Informant is not eye witness. Vide para-5 in his cross-examination, he deposed that he acknowledged in respect of occurrence happened with his daughter by his wife as well as from his daughter/victim.

17. P.W.-6 is the Investigating Officer vide para-7 he deposed that witness Sudarshan Manjhi P.W.-1 has not stated before him in respect of outraging the modesty by the accused persons with Seema Kumari/victim. Vide para-8, witness Seema



Kumari/victim did not state in respect of outraging the modesty with her before him.

18. There are major contradictions and discrepancies in the evidence of P.W.-4 victim and P.W-5 informant in respect of commission of offence and manner of occurrence and during cross-examination, the defense is able to discredit the trustworthiness of their evidence and there are major contradictions in respect of statement which made before the I.O(P.W.-6) during investigation.

19. The prosecution is not able to prove the ingredients of the offence under Section 342, 506 and 354 of the I.P.C. by their evidence. In respect of outrage the modesty, the prosecution failed to prove the fact that appellant Arjun Rai has malice intention to commit the offence with the victim. Mere catching the hand could not be said that the prosecution established its case under Section 354 of the IPC against appellant Arjun Rai. As far as offence of Section 342 of IPC is concerned, there is no cogent and consistent evidence that the accused/appellants have confined to the victim and other family members of the victim. As far as offence of Section 506 of IPC is concerned, the prosecution failed to prove the ingredients that the accused/appellants specifically intimidated to the victim and her family members.



20. There are major contradictions in the evidence of witnesses and they are interested and hearsay witnesses.

21. The prosecution case has not been corroborated by any independent and eye witnesses. The prosecution has not been able to prove the charge levelled against the accused/appellants.

22. 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 appellants are entitled to get the benefits of doubts. The judgment of conviction and order of sentence passed by the trial Court only on the basis of hearsay evidence not on the basis of cogent and consistent evidence. Hence, the judgment of conviction and order of sentence are not sustainable and fit to be set aside.

23. In that view of the matter, judgment of conviction and order of sentence dated 07.12.2006 passed by learned Additional District and Sessions Judge, Fast Track Court, I, Saran at Chapra in Sessions Trial No. 890 of 05, arising out of Avatar Nagar P.S. Case No. 09/05, are hereby set aside.

24. The appellants are acquitted after giving benefits of doubts.

25. The appellants are on bail. They are discharged from the liabilities of the bail bonds.

26. Accordingly, the instant appeal is hereby allowed.



27. Mr. Vipul Sinha (*Amicus Curiae*) was appointed to represent the appellants/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court Legal Services Committee is hereby directed to pay a sum of Rs. 7,000/-(rupees seven thousand only) to Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

Shubham/-

AFR/NAFR	NAFR
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