

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.294 of 2013

Arising Out of PS. Case No.-131 Year-1988 Thana- BARUN District- Aurangabad

Bali Ram Singh S/O Late Ram Dutt Singh Resident Of Village- Masteel
Baroon, P.S- Baroon, District- Aurangabad.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Parasmani, Adv
		Mr. Roushan Kumar, Adv
For the Respondent/s	:	Mr. Bipin Kumar, APP

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

ORAL JUDGMENT

Date : 22-11-2024

Heard learned counsel for the appellants and learned APP
on behalf of the State.

2. The present appeal has been filed under Section 374(2)
of the Code of Criminal Procedure, 1973 (hereinafter referred as
'Cr.P.C.') challenging the Judgment of conviction and order of
sentence dated 18.03.2013 passed by the learned Ad-hoc
Additional Sessions Judge-IV, Aurangabad in Sessions Trial No.
188 of 1995 / 114 of 2011 arising out of Baroon P.S. Case No.
131 of 1988, instituted for an offence punishable under Sections
376, 354, 384 and 347 of the Indian Penal Code whereby and
where under sole appellant has been sentenced to undergo
rigorous imprisonment for period of two years for committing



an offence punishable under Section 354 of the Indian Penal Code and further for rigorous imprisonment for two years for offence punishable under Section 384 of the Indian Penal Code with a direction that both the sentence shall run concurrently.

3. Heard Mr. Sanjay Parasmani, learned counsel for the appellant assisted by Mr. Raushan Kumar and Mr. Bipin Kumar, learned APP for the State.

4. The brief facts leading to the filing of the present appeal is that as per the *fardbeyan* of the informant, on 07.09.1988 at Town P.S. Daltongunj alleging there in that on 30.8.1988, informant boarded bus namely Rup Rekha bearing bus no. BEZ/8182 carrying 15 kg *Kattha* along with her companion Babu Ram Halwai. In the way, conductor of the bus Delip Kumar demanded Rs. 200/- otherwise he will produce her to police for institution of case. Due to non-payment of money conductor of the bus got her down at Baroon and told to owner of the bus Baliram Singh that she has kept illegal *Kattha*. Baliram Singh took the *Kattha* and he also demanded Rs. 500/- in lieu of *Kattha*. Dilip Kumar Singh went to Sasaram and he returned along with bus at Baroon at 3.00 pm. *Kattha* was given to Baliram Singh and conductor of the bus brought the informant and Baburam Halwai from Baroon to Daltongunj.



Dilip Kumar Singh conductor of the bus kept the informant in Koyal hotel at Daltongunj showing her as his mother and committed rape in night. In next morning Dilip Singh brought the informant at Baroon by Rup Rekha bus and told the owner of the bus and asked him to return the *Kattha* without taking money and he went to Sasaram. Baliram Singh was ready to release the *Kattha* after payment of Rs. 6,500/-, but she could not pay the amount, then he brought her in a room by the side of *Atta Chakki* (flour mill) got her undressed and snatched away Rs. 200/- and at about 2.00 PM, he committed rape on informant after threatening. Appellant kept her *Payal* and some quantity of *Kattha* with him and rest handed over to her. After four days, informant returned from Banaras. After receiving Rs. 340/-, Baliram Singh gave her *Payal* and she went to her house. She narrated regarding the occurrence to the persons of Arhat at Daltongunj. Appellant-Dilip Singh was caught with the help of Badri Pandey and he was produced at Town P.S. Daltongunj, where his *fardbeyan* was recorded and the same was forwarded to Baroon P.S. on 07.09.1988 and on 11.9.1988, F.I.R. was instituted accordingly at Baroon P.S.

5. On the basis of *fardbeyan* of informant, F.I.R. was registered as Baroon P.S. Case No. 131 of 1988 on



11.09.1988. After completing investigation, Investigating Officer submitted charge sheet under Sections 376, 354, 384 and 347 Indian Penal Code against the appellant. Accordingly, cognizance of offence was taken by learned Chief Judicial Magistrate and case record was transferred in the court of Judicial Magistrate-Ist Class, Aurangabad, for commitment where the case was committed to the Court of Sessions vide order dated 29.06.1995.

6. The prosecution examined altogether 2 witnesses in this to substantiate the charges against the appellants, out of them PW-1 Amna Khatoon (informant and victim) and PW-2 Dilip Kumar Singh has proved formal F.I.R. which has been marked as Ext.1. It is necessary to mention here that the Doctor along with Investigating Officer has not been examined during the trial and no medical report has been submitted by the prosecution to substantiate that informant/victim sustained any injury.

7. PW-1 in her examination-in-chief stated that on the day occurrence at about 8.00 am, she along with Ram Babu Halwai boarded in Rup Rekha bus at Pandwan mor. She was carrying 15 kg *Kattha* in a bag. Conductor-Dilip Singh saw the *Kattha* after opening the bag and demanded Rs.200/-



otherwise would be produced to police at Baroon. Bus reached at Baroon then Dilip Singh got her down and gave bag of *Kattha* to owner of the bus Baliram Singh and told him not to return *Kattha*, if money is not paid and he went to Sasaram. Owner of the bus demanded Rs. 300/- and at that time Babu Ram Halwai was also with her. Conductor-Dilip Singh returned from Sasaram and after boarding in bus, brought them at Daltongunj, where he kept her in Koyal Hotel at night. Dilip Singh committed rape on her during night. Babu Ram was kept in another room with an assurance to get the *Kattha* returned from owner of the bus and he told him for giving the *Kattha* but appellant did not return the same, thereafter, Dilip Singh went to Sasaram. Then appellant brought her in a house of *Atta Chakki* (flour mill), undressed her and committed rape on her at 10.00 PM to 11.00 PM and at that time Babu Ram was outside. Appellant took her Payal and demanded Rs. 300/- Owner of the bus kept three kgs. *Kattha* and returned twelve kgs *Kattha* to her along with bag. Then after she went to Banaras along with *Kattha* and after returning she paid the money which has been demanded by the owner of bus and after payment of the demanded money she got her Payal back and she went home. After that she narrated the occurrence to Pandeyji, who came at



bus-stand along with her and his men and conductor Dilip Singh was caught and her *fardbeyan* was recorded at Town P.S. Daltongunj Case which was filed against Dilip Singh at Daltongunj and case was forwarded at Baroon P.S. Her statement was recorded by police. P.W. 1 identified appellant Bali Ram Singh in dock. In her cross examination P.W. 1 stated that she has four sons. Her elder son Islamuddin is married who has six children. She was not asked that who was the owner of the bus nor any person told her about this fact. Bus was full of passengers but she cannot tell the number of bus. She did not know that owner of the bus was Rupa Singh. Bus reached at Baroon at 1.00 p.m. and she got down from the bus alone. After that she went to Sasaram along with bus conductor. About 20-25 Laborers were working in the mill but she cannot tell the name of owner of the mill. House of appellant Bali Ram Singh is in the village at the distance of 200 metre from G.T. road and *Atta Chakki* (flour mill) is adjacent to G.T. road. Appellant was not previously known to her. Badri Pandey is resident of Daltongunj and he had dispute with Baliram Singh but she did not know the cause of dispute. Badri Pandey was present at the police station when case was instituted. No case was instituted for her *Kattha*. She had not raised alarm at the time of occurrence. She cannot



tell the date of her restatement. She cannot tell the boundary of mill and place of occurrence. Long time has been elapsed. She cannot get examined Babu Ram Halwai and Badri Pandey. Case was instituted at the instance of Badri Pandey.

8. After the prosecution evidence was closed, the statement of the appellant was recorded under section 313 of the Cr.P.C in which the appellant had claimed to be innocent and demanded the trial.

9. Learned counsel for the appellant, at the outset, submits that the trial Court erred in convicting the appellants for the charges, in-spite of having no material available on record, except for the oral evidence of prosecution witnesses. He next argued that he has falsely been 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, as appellant is not the owner of the said bus nor he is any way connected with the alleged crime and he is also not concerned with Dilip Singh conductor of Rup Rekha bus against whom rape case has been filed at Town P.S. Daltongunj, when he was caught at the bus stand, PW-1 herself admitted in her cross examination that she was not knowing the name of owner of the bus nor any person told his name to her.



There was 20 to 25 persons in the flour mill, where commission of rape is alleged to be committed which itself appears improbable. PW-1 has also admitted in her evidence that there was enimical relation of Badri Pandey with the appellant and Badri Pandey was instrumental for filing of the case on whose instance the case was filed. Only PW-1 informant who is victim lady of the case has been examined by prosecution and there are several contradictions and infirmity in her evidence and no reliance can be placed upon her evidence, who was engaged in illegal *Kattha* selling. PW-2 is a formal witness who has proved formal F.I.R. marked as Ext.1. None of the independent witnesses and Investigating Officer of the case have turned up in support of prosecution case. This is an old case of the year 1988 and appellant is facing agony of trial since long time, while appellant is aged about 50 years and victim is above the age of sixty years and her elder son is father of six children, Prosecution has been failed to establish the charges against appellant beyond all reasonable doubts.

10. Learned counsel for the appellant 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**, whose relevant paragraph Nos.-28 and 39 of the



said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law.’ These are:

(a).

(b).....

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.

(e).....

“39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not



being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case”.

11. Learned A.P.P. appearing on behalf of the State submitted that PW-1 informant herself is victim of the case and sexual harassment has been committed against her. Criminal force has been used against PW-1 informant with intent to outrage her modesty and she has been dishonestly induced for *Kattha* to put her into fear. PW-1 has fully supported the



prosecution case and evidence of solitary witness is sufficient for offence of such nature. This is an old case and other material witnesses could not be examined. Learned A.P.P. has fairly conceded that though there is some minor contradiction on the point of rape but evidence of PW-1 victim lady of such solitary witness cannot be discredited and probability of the occurrence is not to be disbelieved, so prosecution has been able to substantiate the charge against the appellant. 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.

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

13. As per the Criminal jurisprudence, the burden is always on the prosecution to prove the guilt of the accused beyond reasonable doubt and the accused shall be presumed to be innocent till the guilt is proved.

14. On the basis of evidences available on record and after considering the submissions made by the learned counsel for the respective parties, it appears that during the course of trial, the Learned Trial Court pleased to absolve the



appellant from criminal liability under Section 376 of the Indian Penal Code, but so far as Sections 354 and 384 of the Indian Penal Code are concerned, the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the scene of the incident. Further, it appears that there is vital contradiction in manner of occurrence and genesis of the case which has not been proved by the prosecution as PW-1 herself admitted in her cross examination that she was not knowing the name of owner of the bus nor any person told his name to her and there were 20 to 25 persons in the flour mill, where commission of rape is alleged to be committed which itself appears improbable. PW-1 has also admitted in her evidence that there was enimical relation of Badri Pandey with the appellant and Badri Pandey was instrumental for filing of the case on whose instance the case was filed. Only PW-1 informant who is victim lady of the case has been examined by prosecution and there are several contradictions and infirmity in her evidence and no reliance can be placed upon her evidence,



who was engaged in illegal *Kattha* selling. PW-2 is a formal witness who has proved formal F.I.R. marked as Ext.1. None of the independent witnesses and Investigating Officer of the case have turned up in support of prosecution case. Investigating Officer has also not been examined during the course of trial as it was vital since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case. It is also clear that F.I.R. is not duly proved so prosecution had suffered material lacuna. Moreover, the delay in filing the F.I.R. is also not explained satisfactorily.

15. In the present case, it does not appear from the records that the incriminating evidence was put to the appellant. Taking into consideration the entire material on record, it can be constrained that there is no sufficient corroborating evidence i.e. either oral or documentary to convict the appellant. Therefore, conviction granted by the trial Court is not sustainable and is liable to be set aside. Further, the prosecution has miserably failed to prove the guilt of the accused/appellant for the charges levelled against him.

16. In view of the above, the Judgment of



conviction and order of sentence dated 18.03.2013 passed by the learned Ad-hoc Additional Sessions Judge-IV, Aurangabad in Sessions Trial No. 188 of 1995 / 114 of 2011 arising out of Baroon P.S. Case No. 131 of 1988, 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.

17. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Sunnykr/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

