

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.369 of 2013

Arising Out of PS. Case No.-50 Year-2011 Thana- CHANAN District- Lakhisarai

Ram Sagar Roy, Son of Late Kailash Roy, Resident of Village - Eton, P.S. -
Chanan, District – Lakhisarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Syed Mohammad Shabbir Alam, Advocate Mr. Harun Quareshi, Advocate
For the Respondent/s	:	Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT

Date: 12-11-2024

Heard Mr. Syed Mohammad Shabbir Alam assisted by Mr. Md. Harun Qurashi, learned counsel for the appellant and Ms. Anita Kumari Singh, learned APP for the State.

2. The present appeal have been filed under Section 374 (2) of the Code of Criminal Procedure, 1973 (hereinafter referred as ‘Cr.P.C.’) challenging the Judgment of conviction dated 14.02.2013 and order of sentence dated 16.02.2013 passed by the learned Additional Sessions Judge, Lakhisarai (hereinafter referred to as the learned ‘trial Court’) in Sessions Trial No. 137 of 2012 arising out of Chanan P.S. Case No. 50 of 2011, G.R. No. 1021 of 2011 instituted for an offence



punishable under Sections 448, 354 and 376/511 of the Indian Penal Code, whereby and whereunder the sole appellant has been acquitted of the charges framed under Section 376 read with Section 511 of the Indian Penal Code and convicted the appellant for one year four months and ten days of rigorous imprisonment for offence punishable under Section 354 of the Indian Penal Code and six months of simple imprisonment for the offence punishable under Section 448 of the Indian Penal Code and both the sentences shall run concurrently.

3. The brief facts leading to the filing of the present appeal is that in the night of 05.10.2011 at about 9.30 PM the informant and his family member were sleeping in the house and his daughter Manti Kumari was sleeping on the roof of the house. In the night at about 11.00 PM the informant awoke on the cry of his daughter and saw that the appellant Ram Sagar Roy was attempting to escape from the roof of the house. The daughter of the informant told him that the appellant Ram Sagar Roy came on the roof and started molesting with intention to commit rape on her. The appellant Ram Sagar Roy was apprehended by the informant with the help of his family members. The informant informed the police and handed over the appellant to the police. On the basis of *fardbeyan* of the



informant (Shankar Sao), father of the victim (Manti Kumari), Chanan P.S. Case No. 50 of 2011 dated 06.10.2011 punishable under Sections 448, 354 and 376/511 of the Indian Penal Code was registered against the appellant Ram Sagar Roy.

4. After completing investigation, police submitted charge-sheet under Sections 450 and 376/511 of Indian Penal Code against the appellant Ram Sagar Roy and thereafter cognizance under Sections 450 and 376/511 of the Indian Penal Code was taken against the appellant. This case was committed to the court of Sessions for trial.

5. The charges were framed for offences punishable under Sections 450 and 376/511 of the Indian Penal Code against the appellant for which he pleaded not guilty and thereafter trial commenced.

6. The prosecution examined altogether fifteen witnesses to substantiate the charges levelled against the appellant, out of them, PW-1 Putul Devi, PW-2 Satya Narayan Roy, PW-3 Vijay Roy, PW-4 Usha Devi, PW-5 Renu Devi, PW-6 Ram Dular Roy, PW-7 Dinesh Roy, PW-8 S.I. Shesh Hajra (Investigating Officer of the case), PW-9 Shankar Sao (informant of this case and father of the victim), PW-10 Manti Kumari (victim of this case), PW-11 Ajhola Devi (mother of the



victim), PW-12 Putul Devi (daughter-in-law of the informant), PW-13 Sadanand Sao (son of the informant), PW-14 Babloo Roy, and PW-15 Ramji Mahto. On the other hand, four witnesses have been examined on behalf of the defence to prove the plea of his false implication, they are DW-1 Balmiki Roy, DW-2 Shambhu Prasad Kushwaha, DW-3 Rajesh Kumar and DW-4 Baleshwar Roy. The prosecution brought on record the following documentary evidences also:

- i. Ext.1 is the signature of Officer-in-charge of Chanan P.S. on the F.I.R,
- ii. Ext.2 is the fardbeyan of the informant and
- iii. Ext.2/1 is the signature of the informant on the fardbeyan.

7. It is necessary to mention here that PW-2 Satya Narayan Roy, PW-3 Vijay Roy, PW-4 Usha Devi, PW-5 Renu Devi, PW-7 Dinesh Roy and PW-15 Ramji Mahto all the witnesses have been tendered for cross-examination and these witnesses have not supported the case of the prosecution in their cross-examination. PW-1 Putul Devi, PW-6 Ram Dular Roy and PW-14 Babloo Roy have not supported the case of the



prosecution and they have been declared hostile by the prosecution.

8. After closure of the prosecution evidence, the appellant was examined under Section 313 of the Cr.P.C 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.

9. PW-8 S.I. Shesh Hajra is the Investigating Officer of the case. He fully supported the case diary, F.I.R. and *fardbeyan* of the informant which have been marked as Ext.1 and Ext.2 respectively. He has stated that the occurrence took place on 05.10.2011. He was handed over charge of investigation of this case on 06.10.2011 and he inspected the place of occurrence and recorded the statement of the witnesses. He has given full description of place of occurrence. He stated that the informant told him that his daughter was sleeping on the right side of the roof of his house. He also stated that he has recorded the statement of victim Manti Kumari and statement of



other witnesses on the same day and he further stated that all the witnesses have supported the case of the prosecution before him. He stated in Para-6 of his cross examination that when he reached the police station on 07.10.2011, the appellant was not present there as he was already sent to the Court of Chief Judicial Magistrate, Lakhisarai. This clearly shows that the appellant was apprehended at the place of occurrence and handed to the police on same day.

10. PW-9 Shankar Sao is the informant and father of the victim. He stated that the occurrence took place at 11.00 PM on 05.10.2011. He further stated that at the time of occurrence he was sleeping on the cot in front of the door of his house and he got upon hearing *hulla* of his daughter Manti Kumari and went upon the roof of his house. He and his wife caught hold of Ram Sagar Roy on the stairs. He stated that his daughter narrated to him that Ram Sagar Roy began to press her mouth and tried to untie the lace of her pant. He further stated that all his family members caught the appellant and he went to the police station and informed the S.H.O. and the S.H.O. came with the informant at the place of occurrence and handed over the appellant Ram Sagar Roy to S.H.O who took away the appellant. He further stated that his *fardbeyan* was recorded by



S.H.O. Atul Kumar Mishra. He has proved his signature on the *fardbeyan* and his *fardbeyan* has been marked as Ext.- 2 and the signature of the informant on the *fardbeyan* has been marked as Ext.- 2/1. He stated in his cross examination that appellant Ram Sagar Roy was *Chaukidar* of his village. He further stated that he has no dues amount of Ram Sagar Roy. His house is 75 meters away from the house of the appellant and he has stated that appellant field is 20 meters away from his house and Ram Sagar Roy has boring machine in his field and he has also irrigated the land of other persons. Ram Chandra Mahto's boring is situated adjacent to the west of his house and Nago Mahto's boring machine is near his field. He further stated that his house is at the distance of 40-50 meters from the village. There are two houses near his house but no male member resides there. The villagers did not come to his house on *hulla*. He has given his statement before the police in presence of Hari Nandan Yadav, Sarpanch, Shyam Kishore, Son of Ramchandra Mahto. His statement was read over and explained to him and after understanding the contents he signed on the *fardbeyan*. He denied the suggestion given by the defence that his field was irrigated by the boring machine of the appellant and the appellant kept the goods relating to boring machine in his house.



He also denied the suggestion that on the damaged of dues money he has filed a false case against the appellant. The occurrence took place on the day of Durga pooja and there was moonlight at the time of occurrence.

11. PW-10 Manti Kumari victim of the case stated in her examination-in-chief that the occurrence took place on 05.10.2011 at about 11.00 PM. She was sleeping on the roof of her house. In the meantime, the appellant Ram Sagar Roy came to the roof of her house and molested her. She raised *hulla* then her mother and father reached there and apprehended the appellant Ram Sagar Roy. Her father went to police station and handed over the appellant to the police. She identified the appellant in the Court. She stated in para-6 of her cross-examination that appellant molested her in awaking condition. She stated in para-9 that when Ram Sagar Roy came on the roof and at that time her mother awoke but her father and brother were sleeping. She further stated that Ram Sagar Roy stayed one or two minutes on the roof of her house. She further stated that appellant has a boring machine at a distance of 200 meters from her house. She stated that her field was irrigated by Shyam Kishore's boring and she has stated that her field never irrigated by the boring of the appellant and she has denied the suggestion



of the defence that there were dues of Rs.300/- of the appellant for irrigation of field against her father. She has further stated that none of the villagers came at the time of occurrence there on *hulla*. S.H.O came to her house at 11.30 PM and he enquired about the occurrence from the appellant. She further stated that her statement was recorded by the police after one day of the occurrence. In para-16 of her cross examination she has stated that she received no injury on her body. She stated that she came to know from other *Chaukidar* that appellant was deputed in Durga Pooja duty.

12. PW-11 Ajhola Devi is the mother of the victim and wife of the informant. She stated that the occurrence took place on 05.10.2011 on the day of Durga Pooja. She stated that she along with her daughter Manti Kumari went to the roof of her house for sleeping. After sometimes she came back from the roof but her daughter did not come from the roof and after ten minutes Ram Sagar Roy came on the roof of her house and flashed torch on her face then her daughter raised an alarm then appellant began to flee away from the roof. She and her husband went to police station then S.H.O. arrived at her house and appellant was handed over to the S.H.O. She stated in her cross examination that her son Sadanand and his daughter-in-law



Putul Devi were present at the place of occurrence and at the time of occurrence, who also caught the appellant. The villagers did not come at the place of occurrence. She stated that the S.H.O did not record her statement at night and recorded their statement in the next morning. She has land adjacent north of appellant's boring machine and there are 4-5 boring machines of different persons and the boring of Shyam Kishore and Nago is nearest from her field. She also stated that she did not irrigate her land from the boring machine of Ram Sagar Roy and there is no animus with the appellant before the occurrence. She also denied the suggestion of defence that her land was irrigated by the boring machine of appellant and there was a dues of Rs.300/ of irrigation charges and he was demanding his dues amount which was not paid by her husband. She also denied that at the time of occurrence the appellant went to her house for demanding his dues amount. So, the informant has filed a false case on the day of Dusshera. There was a Durga pooja festival in Mananpur and the villagers went to see Durga pooja at Mananpur on that day. The villagers did not come on *hulla* because the village is far away from her house. She denied the suggestion given by the defence that there was no occurrence took place on that night of Vijya Dashami.



13. PW-12, Putual Devi wife of Sadanand and sister-in-law of victim. She has supported the case of the prosecution in her evidence. She stated that on hearing *hulla* and cry of Manti Kumari, (victim) she went to the roof of her house. She further stated that Manti Kumari told her that Ram Sagar Roy put his hand on her mouth and was molesting her. Ram Sagar Roy was caught hold by her mother-in-law and father-in-law and he was handed over to the police. She stated in her cross-examination in para-5 that the occurrence took place in the night of Durga Pooja. In para-10, she stated that Ram Sagar Roy was coming down from the roof of her house. The appellant was kept in her *Angan* but he did not try to escape. The appellant told her that when he flashed torch then Manti Kumari frightened. She also denied the suggestion of the defence that there were dues of irrigation charge against her father-in-law and the appellant came to her house and demanded his dues amount. She stated that the villagers did not come to her house and there is no house in the vicinity of her house.

14. PW-13 Sadanand Sao, is the brother of the victim Manti Kumari. He stated that the occurrence took place at 11.00 P.M. He further stated that he slept in his house and on hearing *hulla* he came out and saw that his sister Manti Kumri is



weeping and crying and Ram Sagar Roy was fleeing away from the stairs and his mother and father caught hold of Ram Sagar Roy. His father called the police and the appellant was handed over to the police. He stated in his cross examination that the appellant Ram Sagar Roy has a boring machine near his land and there are 3-4 boring machines near his land. He also denied the suggestion of the defence that his land was irrigated by the boring of the appellant and there was a dues of Rs.300/- for irrigation charges which has not been paid by the informant. When the appellant demanded dues amount, the informant lodged false case against him in collusion with S.H.O.

15. On the other hand, the defence has examined four witnesses in support of the plea of his false implication due to demand of dues amount.

16. DW-1 Balmiki Roy has stated that the informant's land was irrigated by the boring of Ram Sagar Roy and Rs.300/- was dues against the informant and to the dues amount between the informant and appellant for which the informant threatened him to implicate him in a false case. He has stated in his cross-examination that his house is at a distance of 500 - 600 *Baas*.

17. DW-2, Sambhu Kumar has also supported the



version of DW-1 that Sankar Sao's field was irrigated by the boring of Ram Sagar Roy and there was a dues of Rs. 300/- of irrigation charge of Ram Sagar Roy against the informant. He further stated that Ram Sagar Roy demanded his dues amount from Sankar Sao two days prior to the occurrence but Shankar Sao did not pay his amount and filed a false case.

18. DW-3 Rajesh Kumar has also stated that there was a dues of Rs.300/ of irrigation charge against Shankar Sao when the appellant demanded his money, the informant has filed a false case against him.

19. DW-4 Baleshwar Roy has also stated that there was a dispute between Ram Sagar Roy and Shankar Sao prior to the occurrence dues of irrigation charge. The informant did not want to pay Rs.300/- dues amount of the appellant and filed a false case against him.

20. All the DWs have stated that there were dues of Rs.300/- of irrigation charge against the informant and for this there was altercation took place between the appellant and the informant prior to two days of the occurrence but the informant did not pay the amount of Rs.300/- to the appellant. On the day of festival, Ram Sagar Roy demanded Rs.300/- from the informant and the informant Shankar Sao filed a false



case. This plea of false implication was denied by the PWs in their evidence.

21. Learned counsel for the appellants submits that the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. He further submits that the non-official witnesses are close family members, hence, they are interested and not reliable witnesses. He has also submitted that the testimony of the non-official witnesses is full of contradictions. The learned counsel has submitted that the most of the witnesses have not supported the prosecution case and the informant has filed a false case due to demand of dues amount by the appellant. Other witnesses PW-1 to PW-7 have not supported the case of the prosecution. So, the case of the prosecution becomes doubtful and they should be granted benefit under Section 3 of the Probation of Offenders Act in the light of the principle as laid down by the Hon'ble Apex Court in the judgment of *Rajbir vs. State of Haryana* passed in *Cr. App. No. 449 of 1985*, reported in *AIR 1985 (SC) 1278*.

22. However, learned APP for the State defends



the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellant beyond all reasonable doubts. The learned APP has taken a plea that the defence is baseless because the victim is 15 years old unmarried girl and the informant has a social status and reputed man of the society, so, he will not file such type of case against the appellant for taking Rs.300/- which is very low amount and it is also clear that at 11.00 P.M. at night, demand of dues amount by the appellant on the roof of her house is not acceptable whereas all the family members were sleeping. So, the conduct of the appellant also established his intention for committing illicit intercourse with Manti Kumari (victim)

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

24. On perusal of all evidences, it is evident to note that the occurrence took place at night around 09:30 PM and informant upon hearing *hulla* of the victim, he went upon the roof of his house along with his wife and caught hold of Ram Sagar Roy (appellant) on the stairs. Victim (PW-10) in her



deposition also stated that appellant tried to outrage her modesty which has fully supported the case of the prosecution and her evidence was corroborated by PW-9 PW-11 PW-12 and PW-13. It is well settled principle of law that the testimony of any family members of the victim cannot be discarded only on account of his/her relationship with the victim and there are less chances that other witnesses will be present at the place of occurrence at night. So that related witnesses is natural witness. If other witnesses are produced before the trial Court, that can make his presence doubtful at the place of occurrence. It is also clear that at 11.00 PM at night, demand of dues amount by the appellant on the roof of her house is not acceptable whereas all the family members were sleeping. So, the conduct of the appellant also established his intention for molesting the victim and no ground for false implication is made out and all the prosecution witnesses are also consistent in their evidences. Hence, they are natural and trustworthy and the trial Court has rightly convicted the appellant for one year four months and ten days of rigorous imprisonment for offence punishable under Section 354 of the Indian Penal Code and six months of simple imprisonment for the offence punishable under Section 448 of the Indian Penal Code.



25. From the judgment of conviction passed by trial Court, it appears that the sentence imposed was for one year four months and ten days of rigorous imprisonment for offence punishable under Section 354 of the Indian Penal Code and six months of simple imprisonment for the offence punishable under Section 448 of the Indian Penal Code. Before the 2013 amendment, maximum punishment under Section 354 of the Indian Penal Code, was imprisonment of either description for a term which may extend to two years, or with fine, or with both. Moreover, after perusal of the trial Court record, I find that this is the first offence of the appellant and appellant has got sufficient judicial custody since 06.10.2011 till 16.02.2013 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 and the age of appellant at the time of trial was 52 years and at present he would be about 63 years. 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 16.02.2013. So, this court does not find any infirmity to disbelieve the judgment of conviction passed by the trial Court.

26. Accordingly, the judgment of conviction dated 14.02.2013 passed by the learned Additional Sessions Judge, Lakhisarai is upheld and affirmed. The appellant stands discharged of the liabilities of his bail bonds, if any.

27. Accordingly, the appeal is partially allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2024
Transmission Date	14.11.2024

