

Criminal Appeal (SJ) No.172 of 2002

Against the judgment and order of conviction and sentence passed by Shri Hemant Kumar Srivastava, 1st Additional Sessions Judge cum Special Judge, Patna dated 26.2.2002 in Special Case No. 20/1998.

Smt. Hemlata Yadav wife of Shri Gangadhar Yadav,
Resident of Q/2, Officers Flat, New Punaichak, Patna

----- (Appellant)

Versus

The State Of Bihar

----- (Respondent)

With

Criminal Appeal (SJ) No.162 of 2002

Mritunjay Kumar Yadav @ Babloo son of Gangadhar
Yadav, Resident of Q/2, Officers Flat, New Punai
Chak, Patna

----- (Appellant)

Versus

The State Of Bihar

----- (Respondent)

For the appellant :
(Cr.Appeal No. 172 of 2002)

Mr. Chitranjan Sinha ,Sr.Advocate,
and Mrs. Soni Srivastava

For the appellant:
(Cr.Appeal No.162 of 2002)

Mr. Jitendra Singh, Sr.Advocate
and Mr. Satya Barat Verma and
Mr. Rajesh Kumar

For the State:
(In both the Cr. Appeals)

Mr. Gopesh Kumar, APP

PRESENT

THE HON'BLE MR. JUSTICE MANDHATA SINGH

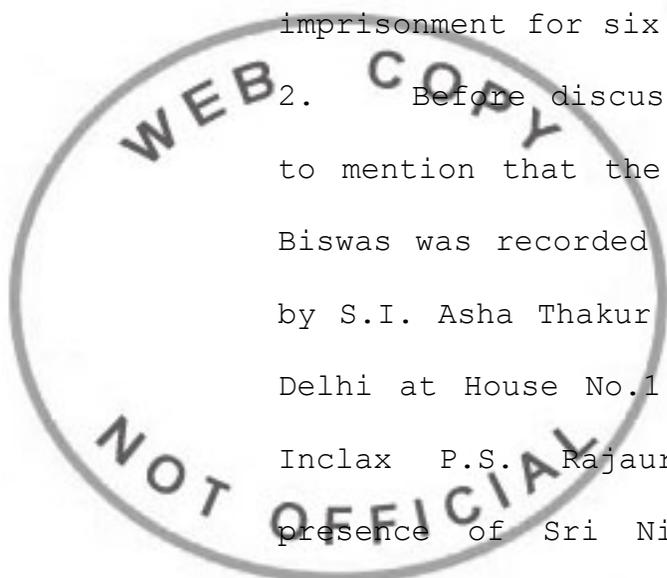
Mandhata Singh,J.

These appeals are directed against the judgment and order of conviction and sentence passed by Sri Hemant Kumar Srivastava, 1st Additional Sessions Judge cum Special Judge, Patna dated 26.2.2002 in Special Case No. 20/1998 convicting the appellant (Smt. Hemlata Yadav) for

offence under section 120B read with sections 376 and 506 of the Indian Penal code and sentencing her to three years and 126 days that is the period undergone by her in custody and the appellant (Mritunjay Kumar Yadav @ Babloo) has been convicted for the offence under sections 376 and 506 of the Indian Penal code and sentenced to undergo rigorous imprisonment for 10 years for offence under section 376 I.P.C. and further 6 months rigorous imprisonment for offence under section 506 I.P.C along with fine of Rs.10,000/- and in default of payment of fine, further to undergo simple imprisonment for six months.

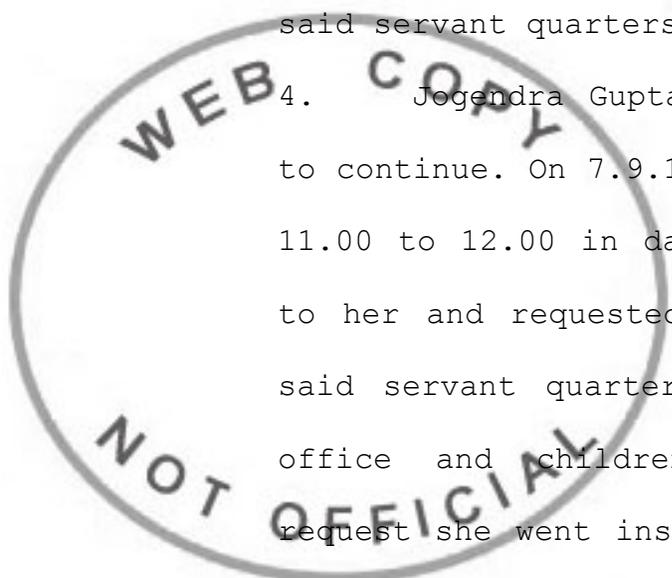
2. Before discussing the case, it is pertinent to mention that the statement of informant Champa Biswas was recorded on 19.8.1998 at about 11.00 AM by S.I. Asha Thakur of Pirbahore Police Station in Delhi at House No.1 Block/B Double Storey, Vishal Inclax P.S. Rajauri Garden, New Delhi-27 in presence of Sri Niraj Sinha, Superintendent of Police (D), Bihar, Patna, Sri Lalit Kumar, Inspector of Police, Patna, Sri B.B.Biswas, informant's husband, elder brother Dinesh Chandra Biswas and one Chiranji Lal which in short is as follows:

3. That her (informant's) marriage was



solemnized on 18.7.1990 with B.B.Biswas (P.W.2). From 2.9.1995 she started to reside in Government Quarter No. 53/60 situated in Bailey Road, Patna along with her husband and other family members. One Jugal Kishore Gupta alias Jogendra Gupta and his wife Reeta Gupta were occupying the servant quarters of informant's quarters from before. They were asked by the informant to vacate the servant quarters with a view to shift her own maid Shefali but Hemlata Yadav and her son Mritunjay alias Babloo Yadav came there in their rescue, pressurized her to allow them to continue in the said servant quarters.

4. Jogendra Gupta and Reeta Gupta were allowed to continue. On 7.9.1995 it is said that in between 11.00 to 12.00 in day time Shefali and Reeta came to her and requested her to see the condition of said servant quarters while her husband had gone office and children to school. Following the request she went inside the servant quarters where the appellant Hemlata Yadav and Mritunjay Kumar Yadav were found sitting from before. She was requested to sit there. She declined but all of a sudden Hemlata, Shefali and Reeta came out of the room stealthily and locked the room from outside. Servant quarters has got a single room with single



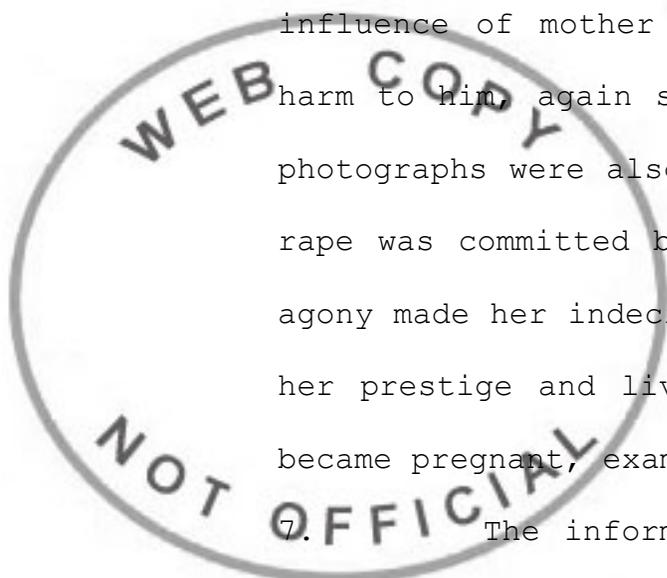
door and window. Appellant Mritunjay Kumar Yadav caught hold of her, she applied force and raised alarm also but rape was committed on her, specifically it is said that none was there in the colony, so none came in her rescue.

5. Further it is said that on account of aforesaid rape she became unconscious and when she regained her consciousness, she found the door of servant quarters opened and none was present there. After coming of her in quarters it is said that Hemlata Yadav came, persuaded not to disclose the incident to her husband or any other person otherwise her family members would be murdered and her naked photograph would also be published which was taken by appellant Mritunjay Kumar Yadav. She was consoled also by telling appellant Hamlata's influence as being equivalent to State Minister having influence at State level. Informant did not disclose the incident to any person due to threat and fear of publishing of naked photograph.

6. Further it is said that on 8.9.1995 when her husband and children were absent from the house, Hemlata Yadav, Mritunjay alias Babloo, Shefali and Reeta came in her quarters and entered in her bed room. Mritunjay was holding a Camera in his hand, all persuaded her to marry Mirtunjay as

he was young, smart, educated having influence of his mother with further suggestion to not disclose the occurrence to any body. Her husband was told old man to have no relation with her. Appellant Hemlata Yadav further told her that she was getting a Minister post and then she would be accommodated of any post of chair person. Again she was left with Mritunjay in the room which was bolted from outside who told her about her having naked photographs with threatening to defame on divulgence and her husband and children would be killed. Rape was committed thereafter telling influence of mother of appellant Mritunjay for no harm to him, again she became senseless. Her naked photographs were also taken on 8.9.1995. Repeatedly rape was committed by the appellant Mritunjay. The agony made her indecisive as what she should do for her prestige and lives of her family members. She became pregnant, examined by Dr. Smt. Gupta.

7. The informant further states that in 2nd week of December, 1995 her mother Smt. Padma Rani Biswas came to her house to look after her and one day when her husband and children were out of house and Shefali was preparing food, appellant Mritunjay came, asked her mother about whereabouts of the informant. She did not reply, then she was hugged



and misbehaved. Any how on her protest, Mritunjay left the house. Feeling annoyance, her mother in March, 1996 advised the couple to leave the house and Patna and the husband to leave the job of I.A.S. Her mother left for Bengal.

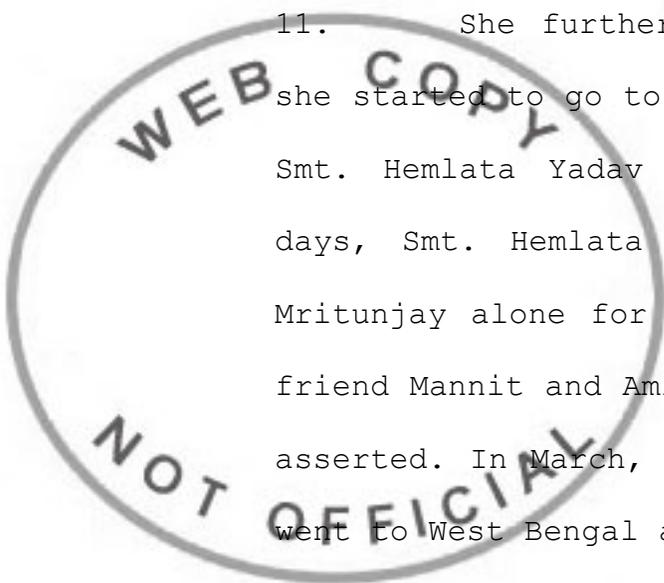
8. She further states that at the cost of threat to defame and kill her husband and children, commitment of rape by appellant Mritunjay continued. She was being consoled by Smt. Hemlata Yadav and Reeta to not worry. On 15.5.1996 she went west Bengal with her husband. She was checked at S.N.R. Corny Wall Nursing Home, admitted on 20.5.1996 due to excessive bleeding, gave birth of female child, after hours she was declared dead whose dead body was buried by informant's cousin Piyush Kanti Biswas and her husband's cousin Sunirmal Biswas. Thereafter she returned back to Patna along with Shefali.

9. She further states that in July, 1996 Piyush Kanti Biswas came to Patna and one day he saw appellant Mritunjay sitting in side of her, felt annoyance also, expressed his desire to return back to Bengal but was gained over by Smt. Hemlata Yadav and Mritunjay. Giving threatening of publicity of the aforesaid incident. Mritunjay got admitted her in Aghore Kamni Silayee Kendra,

thereafter to Sansar Prashikshan Kendra, Rajapul enabling her to fulfil his desire out of her house.

10. Further she states that in November, 1996 one day her husband came earlier from the office when Mritunjay was sitting with her, so he suggested to keep a distance from Smt. Hemlata yadav and Mritunjay, knowing the suggestion a threatening was again given to kill the husband. She became terrified. She suspected some misdeed by Shefali and Reeta in mixing something in her husband's food as his health was appearing deteriorated.

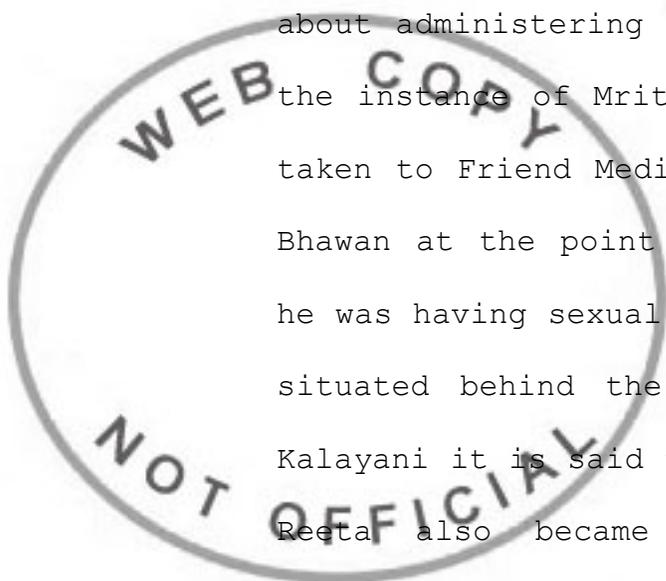
11. She further states that in January, 1997 she started to go to Sanjay Gandhi Javik Udyan with Smt. Hemlata Yadav and Mritunjay but after some days, Smt. Hemlata Yadav left the informant and Mritunjay alone for walking, coming of Mritunjay's friend Mannit and Amit to Mritunjay's house is also asserted. In March, 1997 it is said that Mritunjay went to West Bengal and returned in 2nd week but her husband's niece Kalayani was seen, perhaps was brought by Mritunjay in connivance of Sujit Kumar @ Gopal, specifically it is said that Mritunjay kept her niece at Howrah for one or two days and committed rape twice. Kalayani is said to be brought for facilitating Mritunjay's friend for



sexual lust.

12. Further it is said that in between the night of 21-22nd May, 1997 Mritunjay came to her house, she opened the door out of threat of Mritunjay, went in a room which was a reading room. The door of bed room where her husband was sleeping was blocked by Mritunjay by putting Sofa, indulged in sexual relation. Her husband woke up, tried to open the door, Mritunjay fled away but that incident was also not told on her behalf due to threat of appellant Mritunjay.

13. Further she states that Shefali confessed about administering drugs in her husband's meal at the instance of Mritunjay and Reeta. She was being taken to Friend Medical Store situated near Indira Bhawan at the point of said threat and there also he was having sexual intercourse with her in a room situated behind the aforesaid Medical Store. For Kalayani it is said that she became pregnant twice. Reeta also became pregnant. Both ladies were aborted by one Dr. Smt. Mukherji at the instance of Mritunjay. Rajesh Kumar Singh, a teacher coming to teach informant's children, stopped to come due to fear of Mritunjay. Thereafter Awadh Kishore Sinha started to teach her children but was gained over by Mritunjay. Now Awadh Kishore Sinha was keeping



vigil while Mritunjay indulged with sexual intercourse with the informant.

14. Again it is said that in the month of March, 1997 one day her husband suddenly came at about 1.30 PM on which Awadh Kishore Sinha was quick in entering the house by bolting the same from inside which facilitated Mritunjay to flee away from the house through back door. His unnatural behaviour was inquired by Awadh Kishore Sinha but with no reply. In May, 1997 also informant's husband came at 1.30 PM, switched the bell while Mritunjay was indulged in sexual intercourse, so the door could be opened only after escape of Mritunjay. On knock and dash, colony people assembled there, then Kalyani opened the door, delay in opening the door was replied, their remaining in bath room while Shefali was washing utensils. Children on query reported that they were stopped to open the door. They were threatened by Shefali, Mritunjay and Kalyani even not to disclose anything to her husband.

15. Further it is said that on their return in the month of June, 1997 informant along with her husband, children and Kalyani from Delhi on L.T.C., Shefali told her not to work in her house rather to Smt. Hemlata Yadav as Rs. 600/- per month was

offered on her behalf with Government job to her son, so Shefali was brought by them to her village Patti Khali. Informant and Kalyani used to talk appellant Mritunjay on telephone was seen by her husband's cousin, talk on telephone is also said due to threat. Further their statement is about coming of Jamuna Biswas, again in July, 1997 coming of Deepak Biswas, Kalyani's elder brother and his returning to Patti Khali.

16. She further states that in the month of July, perhaps on 19.7.1997 Mritunjay while was to go Calcutta asked her to meet at Railway Station, New Market in the evening with threatening. On the pretext of purchasing medicine and eggs, she went there along with her elder son and Jamuna Biswas on car which was being driven by his private driver, who was kept/engaged by Mritunjay on the point of same threat. Absence was queried on return by the husband who did not satisfy with her answer and removed the aforesaid driver.

17. She further states that in the month of July, her husband came across the incident from officials of his office and others. He expressed his annoyance and thereafter in the 3rd week of July. Sujit Kumar Biswas was asked by the informant on telephone to send husband's sister Rewa Biswas

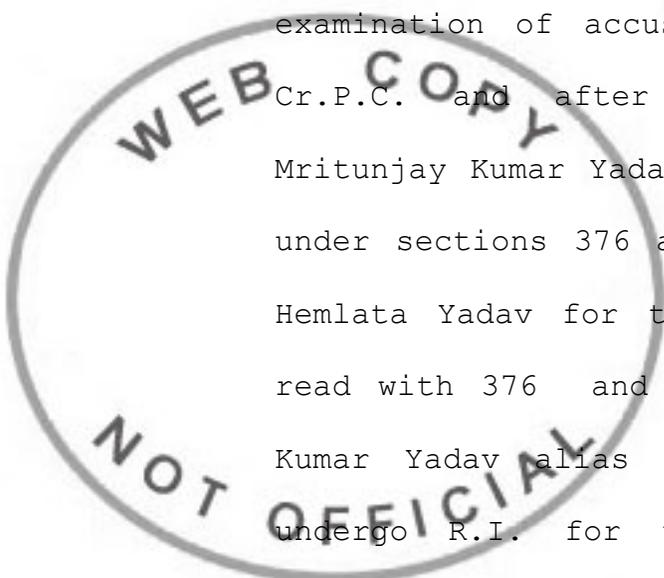
and cousin Sunirmal. Again husband asked Sujit to come along with Shefali and Kalyani. Informant's brother was also informed on telephone in Delhi. He came next day while Rewa Biswas and Sunirmal came next day, non-coming of Shefali and Kalyani was answered that same was not told by Sujit. Kalyani had informed Nityagopal Biswas, husband's cousin on telephone no. 76545 from phone no. 222574 on 22.7.1997 about proceeding of Rewa Biswas and Sunimal for Patna. Husband's nephew Anikhan and Pintu and other ladies had heard Kalyani informing on telephone. Kalyani had told Pintu that she was talking on phone with Babloo Bhaiya who had studied from Delhi in English medium and had wrote a book in English also. His mother was Chairperson of the Board having political influence and rich also. Nearby staff and people had also knowledge about the incident but were keeping mum due to political influence of accused persons Mritunjay and her mother or their group.

18. She further states that one day her husband saw her children preparing bomb and gun from toys who told to kill Mritunjay, humiliating thereof she disclosed all the incidents to her husband.

19. After knowing that informant's husband had come to know about all the incidents, he

(Mritunjay) became more aggressive. They came to know that conspiracy was being hatched up to eliminate her husband and her children. Some of the staffs, neighbours and others were part of conspiracy. They felt helpless alone and threatened. It was decided by her husband to leave Patna and they left for Delhi and were residing at different places. Lastly it is said that they belong to scheduled caste community for that only such act was being done.

20. After cognizance charge framed, trial commenced followed by examination of witnesses, examination of accused persons under section 313 Cr.P.C. and after concluding trial, appellant Mritunjay Kumar Yadav is convicted for the offence under sections 376 and 506 IPC and appellant Smt. Hemlata Yadav for the offence under section 120B read with 376 and 506 IPC. Appellant Mritunjay Kumar Yadav alias Babloo Yadav is sentenced to undergo R.I. for ten years for offence under sections 376 and 506 IPC with a fine of Rs. 10,000/-, in default to undergo S.I. for six months and appellant Smt. Hemlata Yadav is sentenced for a period of three years and 126 days for offence under sections 376 read with 120B IPC which was already undergone by her and there is no separate



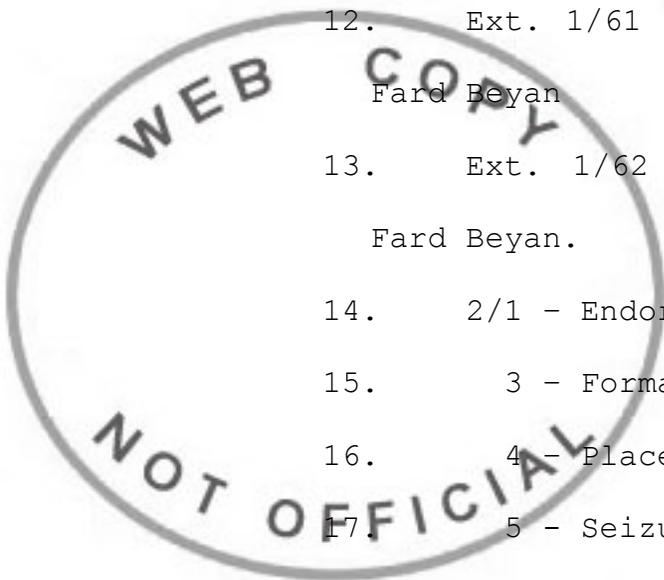
sentence for the offence under section 506 IPC.

21. Witnesses examined on behalf of prosecution are P.W.1 Champa Biswas, informant of the case, P.W.2 Sri Bhupati Bhushan Biswas, informant's husband, P.W.3 Shyam Sundar Dubey, P.W.4 Munni Lal Prasad, P.W.5 Suresh Yadav, P.W.6 Jitendra Kumar, P.W.7 Rakesh Ratnam, P.W.8 Ashish Kumar, P.W.9 Sheo Prasad Mahto, P.W.10 Raj Kishore Prasad Singh, P.W.11 Ramoo Ram, P.W. 12 Matiur Rahman, P.W.13 Ramdeo Prasad, P.W.14 Piyush Kanti Biswas, P.W.15 Jjayant Biswas, P.W.16 Sujeet Kumar Biswas, P.W.17 Dular Chand Biswas, P.W.18 Rewa Biswas, P.W.19 Ashima Biswas, P.W.20 Nitya Gopal Biswas, P.W.21 Jai Ram Baboo alias Ram Baboo Yadav, P.W.22 Om Prakash Sharma, P.W.23 Sunirmal Biswas, P.W.24 Anirman Biswas, P.W.25 Pintoo Biswas, P.W. 26 Subimal Biswas, P.W.27 Dr Pramila Gupta, P.W.28 Dr Anil Kumar Sinha, P.W.29 Asha Thakur, P.W.30 Lalit Kumar, P.W.31 Devendra Kumar Sharma, P.W.32 Subhash Kumar, P.W.33 Faiz Ahmad, P.W.34 Kesri Kishore Tiwari, P.W.35 Md. Hasnain.

1. Ext.I - Photo of a child
2. 1 to 1/9 - Signature of Champa on Fardbeyan.
3. 1/10 to /19 - Signature of Dinesh
4. 1/20 to 1/29 - Signature of Chiranjee
5. 1/30 - Signature of Champa on seizure cum

production list

6. 1/31 to 1/40 - Signature of a witness on Fardbeyan
7. 1/41 to 1/46 - Signature of witness on seizure cum production list.
8. 1/47 - Signature
9. 1/48 - Signature of Champa on the back of material ext.
10. 1/49 to 1/54 - Signature of Shiv Prasad on seizure list.
11. 1/55 to 1/60 - Signature of Raj Kishore on seizure list.
12. Ext. 1/61 - Signature of Lalit Mohan and Fard Beyan
13. Ext. 1/62 - Signature of Mritunjay and Fard Beyan.
14. 2/1 - Endorsement on Fard Beyan
15. 3 - Formal F.I.R.
16. 4 - Place of occurrence.
17. 5 - Seizure list
18. 6 - Report of D.N.A. Test
19. 7-7/1 - carbon copy of letter written for sending blood stained cloth to Forensic laboratory.
22. Two witnesses examined on behalf of defence are D.W.1 Deep Narain Singh and D.W.2 Ram Balak



Singh.

Defence:

1. Ext.A - application for admission.
2. Ext.B -letter of Forensic Laboratory, Patna
3. Mark Y - photo copy of Advocate's notice
4. Ext.C - Notice sent by Advocate
5. Ext.D - Order of Governor
6. Ext.E - Signature of Vikash Ayukt
7. Ext.F - Notification no.3 legal.
8. Ext.Mark Z - Notification

23. To discuss the allegation if rightly have been decided, it is necessary to mention the offences under which accused appellants have been convicted. Accused appellant Mritunjay Yadav has been convicted for the offence under sections 376 and 506 IPC while accused appellant Smt. Hemlata Yadav is concerned, she is convicted for the offence under section 376 read with 120B and 506 IPC. For the offence under section 506 IPC the rape is inter-linked, threatening if is excluded, the act alleged discussed later comes to consented sexual intercourse, rape is defined under section 375 IPC which runs as follows:

"375. Rape.- A man is said to commit "rape" who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

- First- Against her will
 Secondly- Without her consent
 Thirdly- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.
 Fourthly- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.
 Fifthly- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.
 Sixthly- With or without her consent, when she is under sixteen years of age."

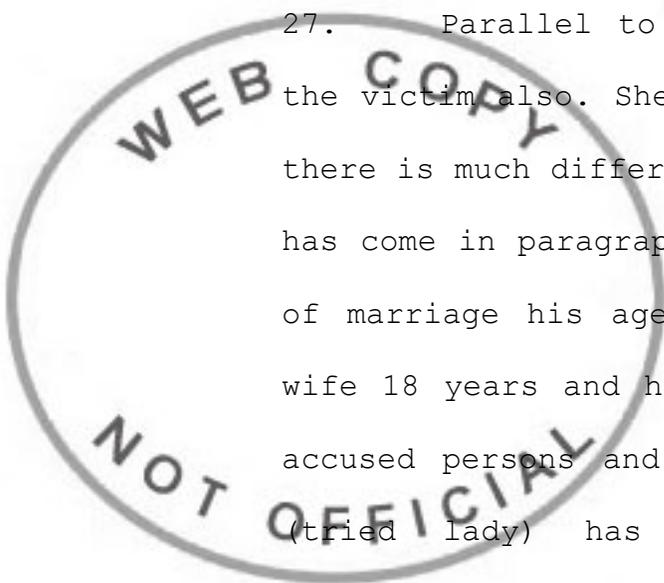
24. The said section clearly goes to show that sexual intercourse in itself is not crime. It is crime when it is done against will, without consent, with consent, when consent has been obtained by putting her (victim lady) or any person in whom victim is interested in fear of death or of hurt.

25. Third ingredient is only applicable in the case. She is stating, consenting for all time, save and except first two occasions but under threat. For the first and second occasion it was against her will and without her consent. For rest if the consent is obtained under threat, indirectly it can be said that it was against will also. Rest of the ingredients i.e. fourth, fifth and sixth are not

applicable in the case.

26. Once it appears that rape is committed, something more is attached that is social repercussion, backward looking by Indian society, danger of being ostracized and survival difficulties, the resultant psychology of an Indian girl or woman and something more is added with victim of the case that appellant Smt. Hemlata Yadav was chair person of a committee/Board, a leader of political party. Accused appellant Mritunjay Yadav is shown as muscleman having fire arms also able to give threatening.

27. Parallel to it something is there against the victim also. She is wife of an I.A.S. Officer, there is much difference in age with her husband as has come in paragraph 26 of P.W.2 that at the time of marriage his age was 41 year and that of his wife 18 years and his second wife. Several of the accused persons and one tried are lady also, she (tried lady) has created circumstance rather conspiracy to commit rape upon the victim but by her son. Rest come from lower strata or house wife or maid. None of the witnesses including ladies are supporting prosecution case save and except the informant and her husband. Sexual intercourse was continuing. These are circumstances to favour the

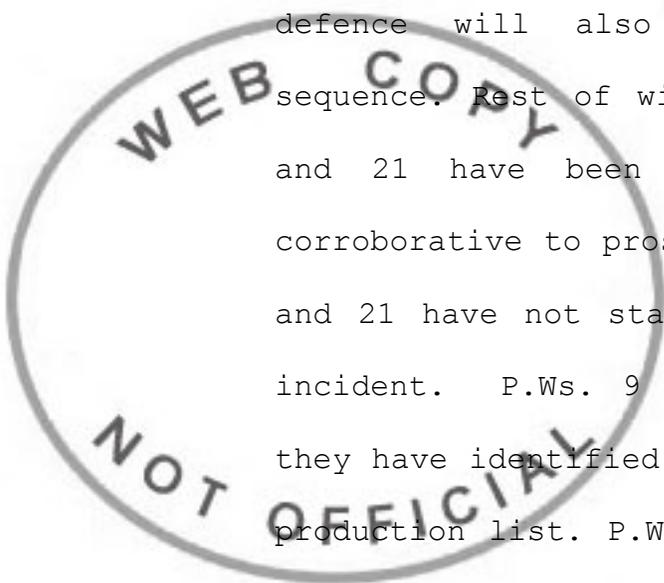


prosecution case as well to doubt it.

28. In that context it is to be taken into consideration whether conclusion reached by Additional Sessions Judge is liable to be sustained or not?

29. Material witnesses are P.W.1, the informant, victim of the case and P.W.2 her husband who have supported the prosecution case in Court. P.W.35 is I.O. of the case. Statement of P.W.1 and 2 if finds corroboration by rest of witnesses, will be discussed later at appropriate stage. The evidence of I.O. is of any relevance for prosecution or defence will also be discussed in the same sequence. Rest of witnesses namely P.Ws. 4, 9, 10 and 21 have been declared hostile finding no corroborative to prosecution case. Of them, P.Ws. 4 and 21 have not stated any thing on the point of incident. P.Ws. 9 and 10 though are hostile but they have identified their signature on seizure cum production list. P.Ws. 11 and 13 are stating about their remaining at the quarters of informant from 7.00 am to 2.00 pm and from 2.00 pm to 7.00 pm. P.Ws 3, 5, 6 and 12 state nothing relevant concerning the incident. P.Ws 8 and 22 are tendered witnesses stating nothing on the point of incident.

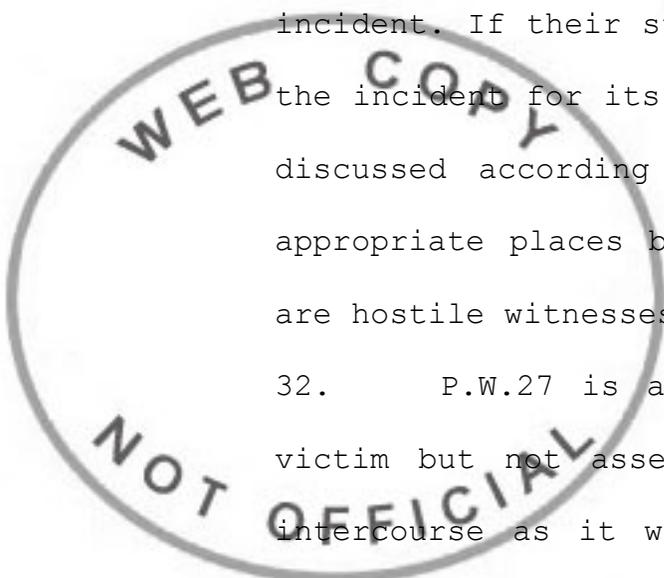
30. P.W.7 is owner of Friends Medical Store, is



only on the point that the victim and accused were not coming to his shop nor there was any room behind his shop, is taken to doubt the prosecution case to that extent that Mritunjay was going there with victim for having sexual intercourse.

31. P.Ws 14, 15,16,17,18,19,20,23,24,25,26 and 27 are witnesses who are in any way related with the victim or her husband and none of them is on the point of incident if committed in their presence. Of them, P.W.19 Ashima Biswas is stating only about hearing the incident but while was queried detail, she states about not remembering any part of the incident. If their statements have any concern with the incident for its believe or disbelieve, will be discussed according to relevancy of the case at appropriate places but of them P.Ws 23, 25 and 26 are hostile witnesses.

32. P.W.27 is a doctor, who had examined the victim but not asserted any commitment of sexual intercourse as it was health and usual check up. P.W.28 is Dr. Anil Kumar states about taking of blood sample of accused Mritunjay Yadav and the victim. P.W.30 states about recording of Fardbeyan of victim in his presence. P.W.31 Devendra Sharma has attached property of Smt. Hemlata Yadav, P.W.32 states about going to attach Reeta's property.

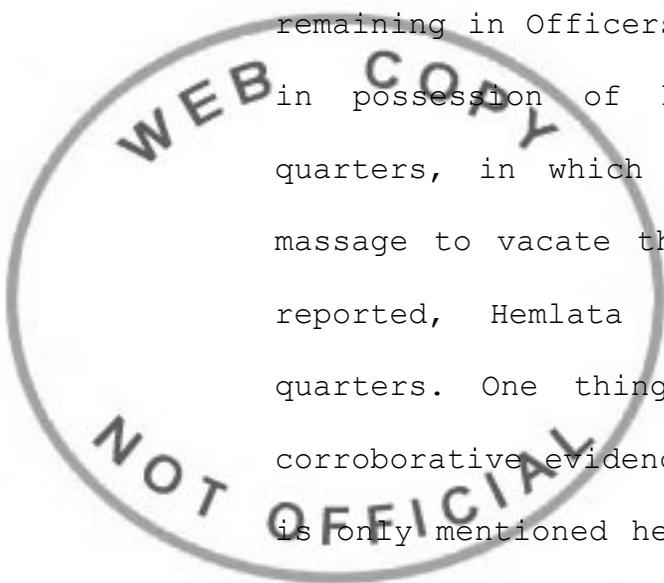


P.W.33 states about attachment of Shefali's property and P.W.34 states for attachment of property of Awadhesh Kumar Sinha.

33. P.W.29 Asha Thakur, S.I.Gandhi Maidan police station is Police official recorded the statement of informant and that she is supporting. Now that is not doubted also rather is taken as one of the circumstances about not recording of the F.I.R. in reasonable time and at reasonable place.

34. With minor variation, P.W.1 informant of the case has supported the prosecution case making supporting statement in Court also regarding her remaining in Officers Quarters No. 53/60 was to put in possession of her maid Shefali in servant quarters, in which some Gupta was residing. Her message to vacate the quarters was turned down as reported, Hemlata opposed not to vacate this quarters. One thing I want to clear here that corroborative evidence regarding commitment of rape is only mentioned hereinafter, rest evidence is of any use can be discussed at appropriate place.

35. She further states that on 7.9.1995 Reeta Gupta came to her Flat with a request to come to her quarters. After a little objection she came to servant quarters where accused-appellant Babloo and Hemlata Yadav were found sitting. As she took her



seat, Hemlata, Kali and Reeta Gupta came out from the quarters and locked the door. Babloo and the informant remained alone but none opened the door. Thereafter rape was committed upon her. Due to shock she became unconscious, after regaining conscious she found the door opened and she came to her quarters. Thereafter for interval for a short Hemlata, Shefali and Reeta came to her, consoled her that the incident was part of life, to forget the same and further with threat that on her disclosure her children and husband would be eliminated. Further she was told that her naked photo was taken while she was unconscious.

36. Again on next day i.e. 8.9.95, she states further that after going of her husband to office and children to school, Hemlata, Babloo, Reeta and Kali came to her at about 11.30 P.M., entered into her bed room. Hemlata Yadav consoled her again to forget all the things stating that her husband was of old age, Babloo was young one, literate, she would feel better with him, further alluring that she was going to become Minister and she would be accommodated. The informant opposed thereafter Reeta, Kali and Smt. Hemlata, all left the room, closed the door, thereafter Babloo committed rape upon her. There was no response of her alarm. Her

naked photograph was again taken and thereafter the act of rape continued under threat of Babloo.

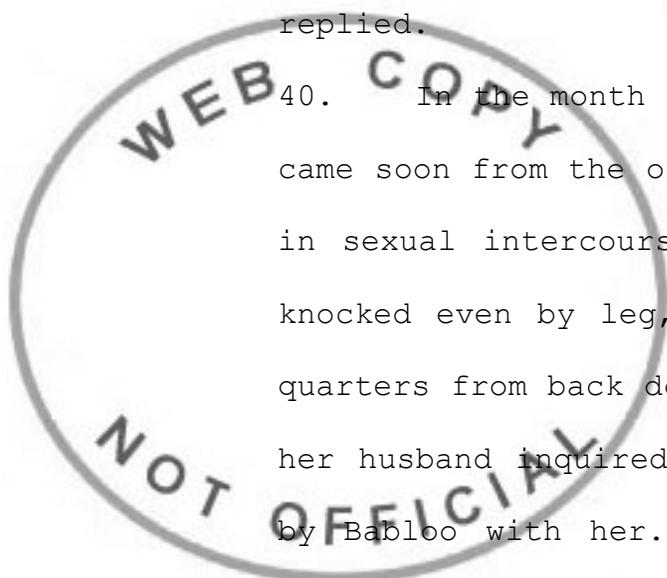
37. After 4-5 days her naked photo was shown. There is statement of her becoming pregnant, her mother came to care her. She was misbehaved also when she did not disclose whereabouts of the informant while she was there in bath room. In the month of March, her mother left her home. Further there is statement of her giving birth of abnormal child in Nursing Home in Calcutta who was cremated. Further coming of her Fufera brother Piyush Kanti Biswas, his information about coming of Babloo with Kalyani Biswas, Bhagni of informant's husband. There is assertion of commitment of rape upon Kalyani at Howrah.

38. Beyond commitment of rape this witness is stating about some occasions and circumstances relying commitment of rape or doubting the same that will be discussed at the relevant stage. Specific occasions while this witness remained indulged in sexual relation with Mritunjay Kumar is given that is in November, 1996 her husband came earlier to his quarters, Babloo was sitting in her side forcibly that was objected on his behalf. In paragraph-14 she states that in May, 1997 accused Babloo entered her quarters forcibly. Her husband

was sleeping in his bedroom which was blocked by keeping Sofa. She was taken in a room indulged in activity of his choice (sexual intercourse). Her husband awoke, tried to open the door but that took time and Babloo left the house with threatening.

39. Again in the month of May, 1997 her husband came soon from the office, second teacher of her children Awadh Kishore Sinha rushed inside the quarters and closed the door as Babloo was indulged in sexual intercourse and opened the door only after leaving of Babloo from the quarters. Late opening the door could not be satisfactorily replied.

40. In the month of July, 1997 her husband again came soon from the office while Babloo was indulged in sexual intercourse with this witness. Door was knocked even by leg, any how he (Babloo) left the quarters from back door. In the month of July, 1997 her husband inquired that something was being done by Babloo with her. Later she found her children preparing bomb and pistol from toys and on inquiry told that they would kill Babloo by those weapons. This witness felt humiliation due to incident of preparation of bomb and pistol by her children, so all the happenings were informed to the husband. Reaction was also there from the side of Babloo.



Conspiracy to kill the husband was reported by her husband. Thereafter she states informing about other family members and relations and then only F.I.R. was lodged while they were in Delhi.

41. P.W.2 is husband of informant-victim. This witness is not an eye witness of the real incident rather hearsay of some of the happenings including other materials including his marriage age and relation with his wife. In this connection he states that on 20.7.1997 he asked his maid Jamuna about returning late who replied that his wife and son had gone to leave Babloo on train. On the same day he again inquired Jogendra Gupta about relation of his wife with Babloo and he was told that relation was illicit. His one of the peons Ramu told him that he had seen the informant in lap of Babloo at 4.00 PM who was pressing her breast. Again he states about information of the driver Om Prakash Sharma that he was taking daily the informant to Friends Medical Hall where Babloo was coming and indulging in outrageous activity (sexual intercourse) with the informant. Thereafter he states about calling of family members and relations.

42. Further he states about receiving information from his wife about the incident of 7.9.1995 that

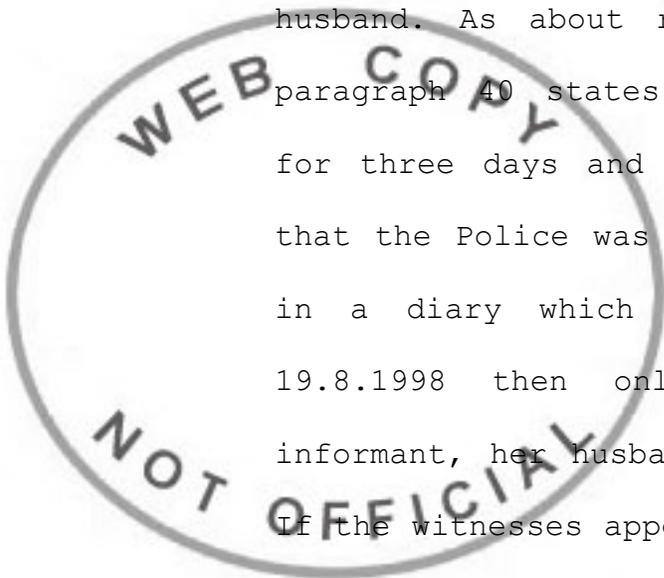
Reeta came to her with request to coming her house she was residing. There Babloo, Hemlata were seen sitting. Reeta, Hemlata and Shefali left the room, closed the same from outer side and Babloo committed rape upon her. She came to her quarters where she was consoled by Hemlata and Reeta with a threatening also. On 24.11.1996 at about 4.30 PM he returned from his office and saw his wife sitting in side of Babloo. Babloo left the quarters and informant was chided that such activity would not be tolerated. Again in between 21-23 July, 1997 he asked his wife as on 21.5.1997 why his bed room was closed and then it was disclosed by the informant that it was Babloo who had closed the door and had committed rape upon the informant and Kalyani. On further query his wife told that the teacher was not opening door in time that Babloo was in habit to commit rape on her and Kalyani. Body Guard of Hemlata was committing rape upon Shefali and after coming out of them only door was being opened.

43. Further he states about commitment of rape upon Kalyani at Howrah while she was on way to Patna. Her conceiving and abortion. Further it is stated that in the night Kalyani was being taken on Tata Sumo, Babloo, Amit, K.Mani and Babloo's other friends were committing rape upon Kalyani, again

leaving her to quarters before morning. He further states that his wife told him about commitment of rape by the then Chief Minister, Lalu Prasad Yadav. He identified his signature on fardbeyan.

44. Prosecution case is doubted from very beginning of filing of the F.I.R. that the same was filed after inordinate delay. The matter was first informed to the Human Right Commission that has come in paragraphs 28, 29, 32, 45, 58 of P.W.1 and paragraph 38 of P.W.2. For the same P.W.1 in paragraphs 29 and 32 states about getting it prepared from Calcutta based Advocate in absence of husband. As about recording of F.I.R., P.W.1 in paragraph 40 states about recording of Fardbeyan for three days and in paragraph 39, P.W.2 states that the Police was recording his wife's statement in a diary which she drafted and re-write on 19.8.1998 then only that was signed by the informant, her husband, her children and landlord. If the witnesses appear credible and confident then only this F.I.R. cannot be doubted otherwise the time taken and manner adopted in lodging the F.I.R. after such a long interval is doubted.

45. As stated specific occasion of having relation (sexual intercourse) with the informant by the appellant Mritunjay @ Babloo are (1) 7.9.95 (2)

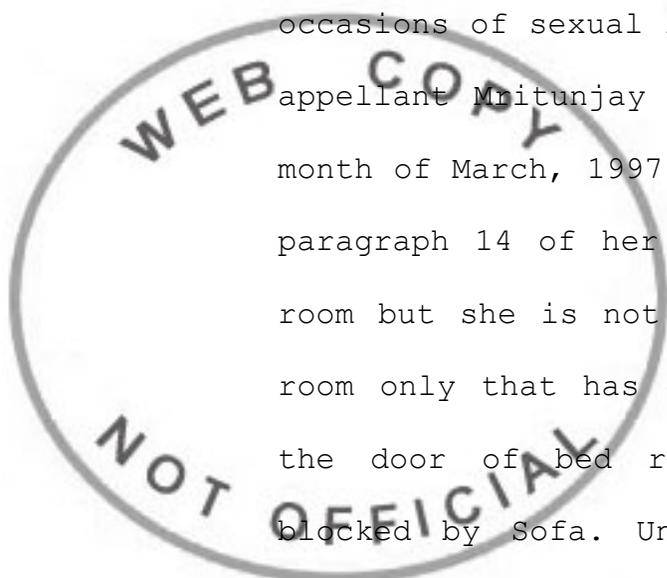


8.9.95 (3) in between the night of 21-22 of May, 1997 (4) March, 1997 and last one is of May, 1997. Thus, F.I.R. come in existence only after a period of near about a year. Relation (sexual intercourse) of the informant during this period continued. Relation of appellant Mritunjay with the informant was continuing inside her quarters and outside her quarters for which she was admitted in Abhor Kamini Silp Vidyalay and Ghar Sansar Silp Vidyalay. Again she was being taken to Friends Medical Store which is disbelieved basing statement of P.W.7 owner of Friends Medical Store. Paragraph 14 of P.W.2 is about her admission in above institution. Paragraph 2 of P.W.2 is relevant on the point of his strain relation with his wife after knowing her activity.

46. Semen on a cloth has been found of Mritunjay. Putting the informant under fear or threat is doubted on the ground also that some of the occasions are belying commitment of rape rather appears explanation given by P.W.1 to her husband and relations specifically it is said that after the last rape within few months the matter came in knowledge of husband. Then only relation of both the wife and husband needed some decision which was taken also but not to take action against Babloo

rather the informant was forced to explain all the circumstances appeared and occurred in between 1995 and 1997 not concerning actual act of sexual intercourse only rather other acts/circumstances also. Those acts/circumstances are informant's walking with Babloo in Botanical Garden paragraph-2 of P.W.2. Her going to leave appellant Mritunjay on train and returning late, talking Babloo on phone while she had gone to her husband's village her admission to Aghore Kamini Shilp Vidyalay and Ghar Sansar Shilp Vidyalay.

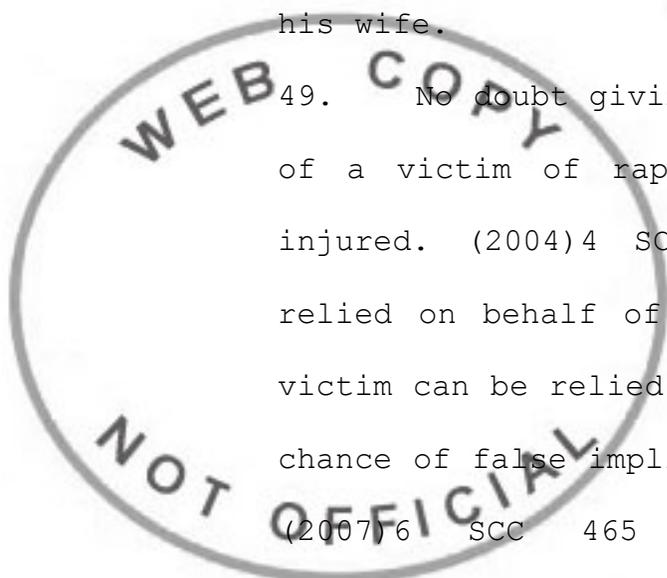
47. Further it is submitted that of specific occasions of sexual intercourse one is of coming of appellant Mritunjay in informant's quarters in the month of March, 1997 dated 21-22 as P.W.1 states in paragraph 14 of her statement. Husband was in bed room but she is not disclosing that he was in bed room only that has come in cross examination that the door of bed room was opened and door was blocked by Sofa. Unfortunately husband arose and found the door closed from outside. In paragraph 56 she states that she, her husband and children were sleeping in bed room. Really if she was not allowing appellant Mritunjay to have sexual intercourse with her own sweet will, there could not be occasion for her coming out in the night



from her husband's bed.

48. Something abnormal was happening in informant's quarters and it appears it was known to all the family members. P.W.2 in paragraph 14 states that in the night her Bhagni Kalyani was being taken on Sumo by appellant Mritunjay, his friend Amit Kumar and other friends while Kalyani remained at Patna and leaving her back after committing rape (can be said sexual intercourse) on her in the night and during that period this witness is stating about Babloo's coming in her quarters and indulging in sexual intercourse with his wife.

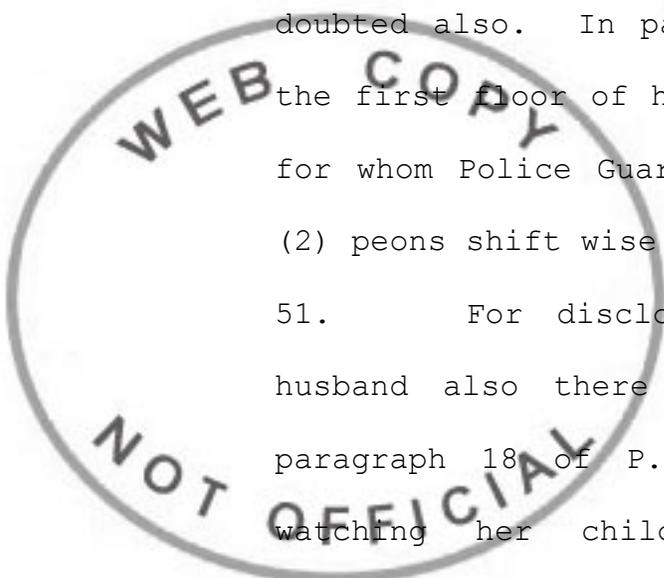
49. No doubt giving no credence to the statement of a victim of rape is equivalent to injury to injured. (2004)4 SCC 379, AIR 2008 SC 572 are relied on behalf of prosecution that statement of victim can be relied on without corroboration or no chance of false implication. While (2007)2 SCC 170, (2007)6 SCC 465 are relied for need of corroboration. In (2002)5 SCC 424, (2009)14 SCC 541 act of sexual intercourse is observed consented. In (2009)15 SCC 566 improbable and in AIR 1998 SC 2694 disbelieved. None of the case's fact is similar to the fact of instant case. In (2008)10 SCC 69 their Lordships have observed that in the matter of



appreciation of evidence in criminal case principle of precedent is not applicable as the case is to be decided on facts.

50. Informant of instant case has no care or honour for other ladies, she is making allegation against Kalyani frequently she is stating that Kalyani was being raped by Babloo and his friends same with Shefali and Rita. In this context if her statement is taken into consideration followed by the circumstance that there was sufficient security in the compound on that ground threatening by the appellant Mritunjay for obtaining consent is doubted also. In paragraph 48 she states that on the first floor of her Flat, a D.I.G. was residing for whom Police Guards were there on duty and two (2) peons shift wise to her quarters.

51. For disclosure of the incident to her husband also there is explanation as stated in paragraph 18 of P.W.1 that she felt humiliated watching her children manufacturing bomb and pistols of toys. She disclosed all the incidents to her husband. Thereafter there was reaction and in reaction some action was there that the matter was informed to husband's cousin and sister to his village as her husband was harassed and annoyed. At the same time, husband called informant's brother



on telephone from Delhi. This much is corroborated in paragraph 18 of P.W.1 and paragraph-3 of P.W.2. There is mention in paragraph 18 of P.W.1 that Kalyani and Shefali were also asked to be brought by informant's cousin but that was not obeyed. What happened after gathering of all the relations that is mentioned in paragraph 3 of P.W.2. The matter was discussed, condemned/criticized, informant was advised not to have any relation with appellant Mritunjay.

52. Then only the F.I.R. much thereafter came appearing on explanation by the informant as discussed making allegation against appellant Babloo, his mother and other ladies. One incident is there to show that no threatening was possible to be given by Babloo as has come in paragraph 4 of P.W.2 that on 26.7.1997 Babloo tried to enter informant's quarters, he was asked never to come nor to have talk with any family member was obeyed as he returned back.

53. This much is admitted to the informant also in paragraph 58 of her statement that in her application to Human Right Commission she had mentioned that she confessed her guilt and assured never to repeat the sins committed by her after catching her husband's legs. It is specifically

submitted on behalf of learned counsel appearing for the appellants that if really she had allowed to have sexual intercourse under any threat there should be some tension on her face but that never was felt by the husband, specifically a question is put by the defence from P.W.2 which he replies in paragraph 32 that after coming to know the acts he never asked his wife to divorce rather he never saw his wife earlier to coming in knowledge of the incident in tension. In my view, also after disclosure of the act of the informant and Babloo an explanation is given on her behalf by giving explanation of her morning walk with appellant Mirtunjay, her going to leave him on train, talk with him from husband's native village explaining the circumstance under which she was going to Friends Medical Store.

54. Now there remains to discuss the two incidents which have been taken against appellant Henlata for her conspiracy/instigation. What is submitted is accepted also that from any corner of imagination even it cannot be accepted that a mother would allow his son to commit rape upon a married lady having no qualification. She was hardly matriculate having no other qualification. In paragraph 23 she states about her matriculation

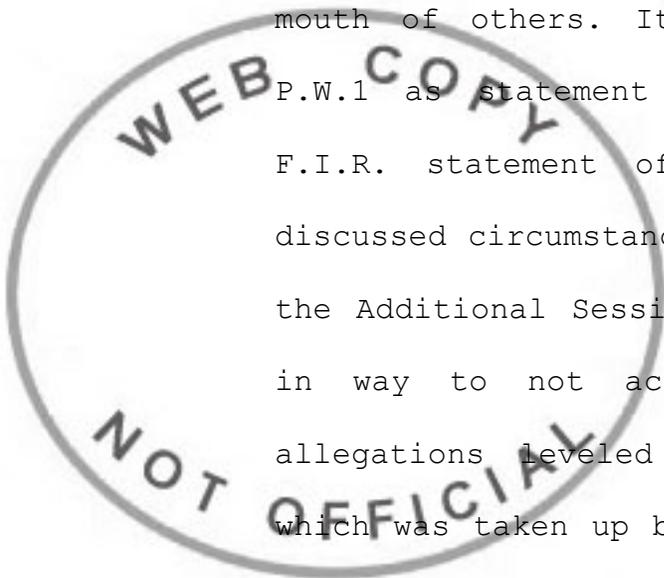
in the year 1990 when she was married with P.W.2 and specifically in paragraph 24 she states that hardly she can read English. Something more is added after incident of 7.9.1995 and 8.9.1995 on the next day i.e. 8.9.1995 when this appellant went to her quarters, she advised the informant to marry her son, if really she was intending to marry then rape would have not been suggested/instigated at all.

55. Another circumstance is that the appellant Hemlata was also residing in same compound as appeared in paragraph 48 she if was intending to have relation of her son with the informant why she did not allow her quarters for the purpose, no where has come that this witness (P.W.1) went to appellant's quarters. At one hand, informant was a lady is stating herself victim contrary to it she has accusationed her husband's Bhagni Kalyani, maid Shefali and a house wife Reeta Gupta for their indulgence in same act. Finding improbability the incidents of 7.9.1995 and 8.9.1995 is doubted, if not consented. It finds corroboration that the informant and her husband came to that Flat only on 2.9.1995 as has appeared in paragraph 1 of P.W.1 and F.I.R. What was their relation with Reeta and her husband that she was intending to oust them



from quarters where they were residing. She insisted also that was opposed not with request rather with threatening of appellant Hemlata. Both the appellants were present there. If the relation was strained then how it was possible for her going in the quarters only within 5 days of her occupying the quarters.

56. At one hand the informant was married, having no specific qualification matriculation only, on the other hand, appellant Mritunjay was charming, having every qualifications, educated promising as has come from P.W.1 itself but through mouth of others. It has come in paragraph 5 of P.W.1 as statement of appellant Hemlata and in F.I.R. statement of Kalyani. All the materials discussed circumstances have not been considered by the Additional Sessions Judge-1. What more appears in way to not accept the averment concerning allegations leveled by P.W.1, it became a case which was taken up by Media, Politicians also took interest in the same. As discussed before lodging of the F.I.R. Human Right Commission was informed about the occurrence. That has come in paragraph 34 of P.W.2 that he had read about the press conference by Sushil Kumar Modi, much thereafter this case was lodged, appears a case of Media



investigated on instigation of politicians.

57. In this connection one thing more is relevant which has come in paragraph 46 of P.W.1 that she had accusationed two persons only for sexual intercourse with her and another name has come of Lalu Yadav. Further in paragraph 45 she states that in her Human Right Commission application she has written that Kalyani Biswas was told by her that it was easy for her to befool her husband as her husband was so simple and she was frequent with her relation (illicit).

58. Further there is no mention about whereabouts of two of the peons of P.W.2. P.Ws 11 and 13 are two peons. Their undisputed statement is about their remaining on duty at the quarters from 7.00 AM to 2.00 PM and 2.00 PM to 7.00 PM along with presence of house guard of D.I.G.. Thus it is clear that circumstances and materials are existing to doubt commitment of rape on 7.9.1995 and 8.9.1995 that also on instigation or conspiracy of appellant Hemlata which has also been ignored by the trial court. Similarly further it is doubted that consent to have relation for sexual intercourse is given under threat, in absence of which the act for which Mritunjay and Hemlata are alleged, no offence under section 376 IPC or its conspiracy is made out.

59. In the result, both the appeals are allowed. Judgment and order of conviction and sentence passed by the trial court in Special Case No. 20 of 1998 is set aside. Both the appellants Mritunjay Kumar Yadav alias Babloo and Smt.Hemlata Yadav are acquitted of their respective offences/charges and ordered to be set at liberty.

60. However, there shall be no order as to cost.

61. Let lower court record be sent back to the Court below.

(Mandhata Singh,J.)

PATNA HIGH COURT
Dated 21.05.2010
AI/ AFR

