

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.22 of 1992

Arising Out of P.S..Case No. -381 Year- 1988 Thana –Banka(Barhet) District- BANKA

Fuchia Manjhi, son of Jitu Manjhi, resident of village-Nighri, P.S.-Panjbara
(Banka), Distt.-Banka.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Shri Krishna Prasad Singh, Sr. Advocate
Shrimati Meena Singh, Advocate
Shri Bipin Kumar, Advocate

For the Respondent/s : Shri Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

C.A.V. JUDGMENT

(Per: HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL)

Date: 16-07-2015

The convict-appellant has preferred this appeal against the judgment of conviction and sentence dated 25.2.1992 passed by the learned Additional Sessions Judge, Banka, in Sessions Case No. 611 of 1990/Tr. No. 440 of 1992 by which the appellant has been convicted and sentenced to undergo imprisonment for life under Section 376 of the Indian Penal Code (hereinafter referred to as 'I.P.C.')

2. The prosecution case, in brief, is that in the night of



8/9th September, 1988 the prosecutrix was sleeping on the verandah of her house. Her mother-in-law, namely, Yasoda Devi (P.W.6) and brother-in-law, namely, Suresh Paswan (P.W.4) aged about ten years were also sleeping there. All of a sudden, she heard the sound of stomping. She woke up and saw that three persons were coming towards her flashing torch light. She moved from her cot and rushed to the cot of her mother-in-law (P.W.6). In the meantime, three persons caught hold of her and took her to her own cot and thrashed her on the cot at the point of pistol and asked her to keep quite failing which she would be killed. She tried to move but two persons caught hold of her. She identified them in the flash of torch light and of their voice as Fuchia Manjhi (appellant), Ashok Paswan and Bhairo Paswan. Fuchia Manjhi (appellant) removed her lower garment and committed rape upon her and Ashok Paswan was catching hold of her one hand and closed her mouth. Thereafter, Ashok Paswan committed rape upon her and Fuchia Manjhi caught hold of her. Thereafter, Bhairo Paswan, who was threatening her mother-in-law at the point of pistol and had overpowered her, came to her (prosecutrix) and he also committed rape upon her and Fuchia (appellant) continued to catch hold of her. Later on, they moved from there giving threatening not to complain about the occurrence to any one, failing which the prosecutrix and the members of her family would be killed.

It has further been alleged that two persons were also standing in the courtyard who could not be identified.

After the occurrence the prosecutrix and her mother-in-law raised alarm. The neighbours came there and the occurrence was narrated to them. Sheetal Manjhi, husband of the prosecutrix, had gone to Punjab four days prior to the occurrence for earning livelihood.

3. The fardbeyan of the prosecutrix was recorded by the S.I., Sri P. K. Singh (officer-in-charge of Panjbara police station) on 9.9.1988 at 1.00 hour which was witnessed by Yasoda Devi (P.W.6), Adhik Paswan (P.W.3) and Badri Paswan (P.W.5). The fardbeyan was forwarded to the Officer-in-charge of Banka Police Station and Banka(Barahat) P. S. Case no. 381 of 1988 was instituted for the offence punishable under Section 376/34 I.P.C. After investigation chargesheet was submitted against the sole accused Fuchia Manjhi and the remaining two named accused, namely, Ashok Paswan and Bhairo Paswan, who remained absconding. Cognizance was taken and the case was committed to the court of sessions. Charge was framed against the accused for the offence punishable under Section 376/34 I.P.C. which was denied by the accused and the trial proceeded.

4. The defence of the appellant is that he (Fuchia Manjhi) was notorious and therefore the members of the paswan community,

to get rid of him, had falsely implicated him in this case.

5. After the trial the appellant has been convicted and sentenced as aforesaid.

6. Learned counsel for the appellant has submitted that the appellant has falsely been implicated in this case due to enmity. The doctor has not found any sign of rape. The doctor has not been examined by the prosecution and it has prejudiced the defence case. It has also been submitted that there is allegation that three persons had committed rape but no injury has been found on the person of the prosecutrix by the doctor. The witnesses are interested and they are not reliable.

7. Learned counsel for the State submits that the occurrence has taken place in the night and in the village there is no provision of electric light. The prosecutrix as well as the inmates of her house had identified the appellant and other two accused in the flash light of torch as well as by their voice. Co-villagers have also found the appellant and others running away from the side of the house of the prosecutrix. It appears from the prosecution evidence that the victim/prosecutrix has been examined by the doctor in the hospital at Bhagalpur on Saturday whereas the occurrence had taken place on Thursday. The Forensic Science Laboratory report shows that semen was found on the sari and saya (lower garments) of the

prosecutrix. There is no material on the record to show that the appellant had any enmity prior to the occurrence to falsely implicate him in the case. The learned trial court has rightly convicted and sentenced the appellant.

8. In view of the divergent submissions of both the parties, this Court is required to reappraise the evidence as to whether the prosecution has been able to substantiate its case beyond all reasonable doubts.

9. It appears that the prosecution has examined nine witnesses in this case. Prakash Paswan (P.W.1), Mahendra Paswan (P.W.2) and Adhik Paswan (P.W.3) are the neighbours, who are said to have arrived at the house of Yasoda Devi, mother of Sheetal Paswan and mother-in-law of the prosecutrix. Suresh Paswan (P.W.4) is the younger brother of the husband of the prosecutrix. Badri Paswan (P. W. 5) is the elder brother of the husband of the prosecutrix and is the eye witness to the occurrence. Yasoda Devi (P. W.6) is the mother-in-law of the victim. Rekha Devi (P.W.7) is the prosecutrix/victim of the occurrence. Yoganand Thakur (P.W.8) is the Technical Officer of the Forensic Science Laboratory, Patna, who has proved the Forensic Science Laboratory report (Ext.1). Ram Nandan Paswan (P.W.9) is the investigating officer.

No witness has been examined on behalf of the

appellant.

10. P.W.7 is the prosecutrix and the victim of the occurrence. She has stated that it was the night of Thursday two years ago from the date of her deposition on 20.2.1991. It was about the midnight. She was sleeping on the eastern verandah on a cot. On the same verandah her mother-in-law, namely, Yasoda Devi (P.W.6) and Suresh Paswan (P.W.4) were sleeping on another cot. On the stomping of feet she woke up and saw three persons in the light of their torch that they were carrying torch and pistol. They came towards her. She rushed to the cot of her mother-in-law (P.W.6). All the three came to her. Appellant Fuchia Manjhi and another accused Ashok dragged her to her own cot. Another accused Bhairo Paswan was catching hold of her mother-in-law (P.W.6). Accused Ashok caught hold of her hand, closed her mouth and asked not to raise alarm. The appellant Fuchia Manjhi removed her sari and saya (lower garments) and committed rape on her. Thereafter, Fuchia (appellant) caught hold of her and closed her mouth and another accused Ashok committed rape on her. Thereafter, another accused Bhairo came to her and Ashok (another accused) caught hold of her mother-in-law (P.W.6) and Bhairo also committed rape upon her. After committing rape by the aforesaid three accused, they moved away and at that time they threatened her not to raise alarm, else, she would be killed. She



has also stated that there was altogether five culprits and one of them was standing on the outskirts of the courtyard and another was standing near her Bhaisur, Badri Paswan (P.W.5). The other two accused were not identified. She has identified the appellant, who had faced the trial. On raising alarm Prakash Paswan (P.W.1), Mahendra Paswan (P.W.2) and Adhik Paswan (P.W.3) came there and her mother-in-law (P.W.6), Badri Paswan (P.W.5) and Dewar, Suresh Paswan (P.W.4) narrated about the occurrence. Thereafter, the prosecutrix, her mother-in-law (P.W.6), brother-in-law (P.W.5) and Adhik Paswan (P.W.3) went to the police station. She narrated about the occurrence to the officer-in-charge which was recorded by him. Thereafter, it was read over to them and they put their thumb impression. On the next day she gave her garments, such as, sari, saya and blouse which she had put on at the time of the occurrence to the police officer. She has also stated that lady doctor was not available at Banka hospital and as such, her medical test was not done and she was sent to Bhagalpur for medical examination where medical examination was held. She has also stated that four days prior to the occurrence her husband had gone to Punjab. In her cross-examination, she has stated that five years ago she was married. Thereafter, she came to her marital home and also went to her nuptial home. She has been cross-examined in question and answer form at a



great length from which it appears that in her marital home she was also doing household works as well as she used to go outside of her house for earning in the agricultural field. She was wearing plastic bangles at the time of occurrence. She stated that during rape her blouse was torn and lower garments (sari and saya) were stained with semen. At the time of occurrence she had no issue. She had felt pain during rape. She wanted to raise alarm but she was not allowed by the accused. She has also stated that the medical examination was held at Bhagalpur on Saturday at 10 A.M. It appears that she has further been examined on recall after the return of sari and saya from the Forensic Science Laboratory. She has identified the sari and saya which she had worn at the time of occurrence. They have been marked as material Exts. I and II. She has been further cross-examined and she has pointed out the stain on her sari. She has also stated that her blouse was taken by the police and it was not produced before her. It appears from her evidence that at the time of occurrence her age has been estimated between 18/20 years by the court. It appears that her evidence is quite natural, convincing and fit to be relied upon.

11. The evidence of P.W.7 stands corroborated by P.W.6, Yasoda Devi, the mother-in-law of the prosecutrix and the mother of P.W.4, Suresh Paswan and P.W. 5, Badri Paswan. P.W.6 has also supported the prosecution case that she woke up after hearing the



sound of tramping and identified the accused Fuchia (appellant), Ashok and Bhairo in the flash of torch light which they were carrying. She has stated that the occurrence took place at about 11 P.M. on Thursday two years prior to her deposition on 24.1.1991. At that time she was sleeping with her son Suresh Paswan(P.W.4) on a cot and her daughter-in-law, Rekha Kumari, (P.W.7) was sleeping on another cot on the verandah. She identified the three accused with the flash of torch light which they were carrying. Her daughter-in-law (P.W.7) rushed to her cot. Thereafter, the accused Fuchia and Ashok dragged her to her own cot and thrashed her. The accused Bhairo was catching hold of her (P.W.6) and threatened her that if she raised alarm, she would be killed. First of all Fuchia (appellant) committed rape on P.W.7. and Ashok was closing her mouth. Thereafter, Ashok and Bhairo committed rape on her. Badri (P.W.5) was also sleeping on the verandah, who was also threatened by another culprit. The accused were threatening not to raise alarm, failing which they would be killed. After the occurrence the accused moved giving threatening. On raising alarm the neighbours, namely, Prakash (P.W.1), Mahendra (P.W.2), Adhik (P.W.3) and two to four persons/co-villagers came there and they were narrated about the occurrence. She also accompanied the prosecutrix to the police station where her statement was recorded by the police officer. She, the prosecutrix, Adhik and

Badri put their thumb impression. She has also been cross-examined at length. She has also given minute details of the occurrence in her evidence.

12. P.W.5, Badri Paswan, is also an inmate of the house of the prosecutrix. He has also supported the prosecutrix's version. He has also stated that one of the culprits came to his cot and flashed light on him and asked to keep quite, failing which he would be killed. The accused were identified in the torch light of the accused. He has also stated that after the occurrence he raised alarm. Prakash (P.W.1), Mahendra (P.W.2), Adhik (P.W.3) and a few persons of the village came there. The prosecutrix and the inmates of the house narrated about the occurrence to them. He has also stated that husband of the prosecutrix had gone to Punjab for his livelihood four days prior to the occurrence. He has also been cross-examined at length. From his evidence it appears that the prosecutrix used to go to work in the village for harvesting paddy crops and also for doing other agricultural works as the prosecutrix and others were poor.

13. P.W.4, Suresh Paswan, is dewar of the victim and his age has been estimated as 14 years at the time of deposition. He has stated that when the accused were dragging the prosecutrix (P.W.7) towards her cot, he woke up and saw three persons in the light of the torch. He identified them as Fuchia Manjhi, Ashok Paswan and

Bhairo Paswan from his cot. Bhairo Paswan was catching hold of his mother (P.W.6). The accused asked him to keep quite, failing which he would be killed. He has also stated that Fuchia Manjhi, Ashok Paswan and Bhairo Paswan committed rape on his bhabhi (P.W.7). He has also supported the prosecution case. In paragraph-5 of his cross-examination, he has stated that he did not go to the police station. The police had come to his house on the next day and took his statement. He has also stated that there is no enmity with Fuchia (appellant). Fuchia is wicked man.

14. P. W.1, Prakash Paswan has stated that after hearing noise he came to his darwaja and saw that 4/5 persons were running away from the courtyard of Sheetal Paswan. He went to the courtyard of Sheetal Paswan and saw that the wife and mother of Sheetal Paswan were weeping and came to know that rape had been committed to the wife of Sheetal Paswan. Fuchia, Ashok and Bhairo had committed rape on her. The villagers also came there after hearing hulla. He and others followed the absconders. In his cross-examination, he has stated that after him, Adhik Paswan (P.W.3), Mahendra Paswan (P.W.2) came to the place of occurrence.

15. P.Ws. 2 and 3 are also hearsay witnesses. They have also supported the evidence as P.W.1.

16. P.W.8, Sri Yoganand Thakur , a Technical Officer in



the Forensic Science Laboratory, Patna, has stated that a sari and a saya were received in the office for forensic examination. After scientific examination the sari and saya were marked as Exts. A and B respectively. On the sari there was some greyish semen, bluish white fluorescence in ultra violet light. Saya (Ext.B) also had some greyish white stains which produced bluish white fluorescence in ultra violet light. After examination a report was prepared by him and it was approved by Sri R.S. Singh and it was countersigned by Sri P.B. Sharan, Dy. Director, Forensic Science Laboratory, Govt. of Bihar, Patna (the report has been marked as Ext. 1). It appears that human semen was detected in the exhibit marked 'B'.

17. P.W.9, Ram Nandan Paswan is the investigating officer. He has recorded the fardbeyan (Ext.2) and formal F.I.R. (Ext.2/1). He has stated that he took further statement of the prosecutrix and statement of the witnesses, such as, Yosada Devi and Badri Paswan and went to the place of occurrence in the morning at 7-30 A.M. on 9.9.1988. The place of occurrence is the mud-built house of the prosecutrix facing west. The place of occurrence is the verandah. In the western side of the place of occurrence is the courtyard and in the western side of the courtyard there is house of Badri Paswan (P.W.5) facing east and the entrance of the courtyard is towards the northern side. He also took the statement of Suresh

Paswan (P.W.4), Mahendra Paswan (P.W.2) and Prakash Paswan (P.W.1). He tried to arrest the accused Fuchia and others but they were found absconding. He took the worn clothes, saya, light yellow colour and old colourful sari. In presence of Adhik Paswan (P.W.3) and Badri Paswan(P.W.5) he prepared the seizure list (Ext.3). Rekha Devi was sent for medical examination with chowkidar and her mother-in-law, Yasoda Devi at Medical Hospital, Banka. On 10.9.1988 the chowkidar returned and informed him that the lady doctor was not available at Medical Hospital, Banka. Thereafter, the prosecutrix/victim was sent to Bhagalpur Medical College for her medical test but report was not submitted due to strike. He also took the statement of Adhik Paswan (P.W.3). On 13.10.1988 Fuchia was found absconding and on the same day he came to know that Fuchia Manjhi was arrested by the officer-in-charge of Banka police station for some other crime. On 21.11.1988 an application was filed for remand of Fuchia Manjhi in the present case. On 23.12.1988 he went to the Bhagalpur Medical College Hospital to obtain the medical report of the prosecutrix and received the same. The received clothes were sent to Forensic Science Laboratory, Patna, on 15.2.1989. The house of Bhairo and Ashok was raided but nothing was found. After investigation chargesheet was submitted against Fuchia showing Ashok and Bhairo absconders. In his cross-examination he has stated

that he took the charge of investigation on 9.9.1988 at 5 A.M. and took the statement of the prosecutrix at 5-30 A.M. He has stated that he had found stains on the seized clothes. He has stated that the witnesses had stated that the accused were identified in the flash of their torch light.

18. The doctor who has done the medical test of the prosecutrix has not been examined. The learned trial court has mentioned in paragraph-20 of the judgment which is as follows :-

“ It was argued that doctor could have thrown light about the injuries, but Doctor was not examined by prosecution that this has prejudiced the defence. In fact summons was sent for Doctor, but he was reported transferred and his address was not furnished by hospital. It would not be out of place to discuss the report of doctor kept at page 40 of case diary. He found no evidence of rape. The date of examination is said to be 10.9.1988 at 10-45 A.M. But the report is signed on 19/12/1988 and there is no doubt that the original report was suppressed by the doctor and he is liable to be prosecuted for tampering with evidence as his report about examination on 10.9.1988 was not furnished by him. Hence in fact prosecution was prejudiced more than the accused.”

19. It is not out of place to mention that for committing offence punishable under Section 376 I.P.C., injury on the prosecutrix is not required to be proved. The offence rape has been defined in Section 375 I.P.C. It is construed that in case of offence



of rape, it is not necessary that there should have complete penetration of penis and emission of semen and rupture of hymen. It has been found earlier that the occurrence had taken place in the night of Thursday on 8/9th September, 1988 and the medical examination of the prosecutrix was held on 10.9.1988 (Saturday) as the prosecutrix was referred to Bhagalpur Medical College and Hospital as there was no female doctor at Government Hospital at Banka. The injury on the prosecutrix is immaterial. The prosecutrix has specifically stated in her deposition that the appellant first of all committed rape upon her after removing her lower garments and the another accused Ashok was catching hold of her. After the appellant and other accused Ashok and thereafter Bhairo committed rape upon her. Her evidence has been supported by P.W.4, P.W.5 and P.W.6, who are the eye witnesses of the occurrence and the inmates of the house of the prosecutrix. P.Ws. 4, 5 and 6 are certainly interested witnesses and they are also close relatives of the prosecutrix. The eye witnesses to the occurrence, who have seen the accused committing rape on the prosecutrix, their evidence cannot be discarded on the ground that they are relatives of the prosecutrix or interested witnesses. On careful consideration of their evidence it appears that there are some contradictions in their evidence which do not go to the root of the case. On the whole their evidence appears

to be trustworthy which cannot be discarded.

The evidence of the prosecutrix stands corroborated by Forensic Science Laboratory report (Ext.1) and the evidence of P.W.8. The report shows that on 15.2.1989 in connection with Panjbara (Barahat) P. S. Case no. 381 of 1988 dated 9.9.1988, the old sari and old saya were received in the laboratory. The aforesaid old sari was marked as 'A' and the old saya was marked as 'B'. The report shows that semen has been detected in the cloth marked as 'B'. The prosecution has failed to show any motive for false implication of the appellant. There is corroboration of the testimony of the prosecutrix that rape was committed on her. The learned trial court has rightly held that there was penetration which has caused the stains on the lower garments of the prosecutrix.

20. It is settled principle of law that a prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particular. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her



evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If a prosecutrix is adult and of full understanding, the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. Therefore, ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. In support of this contention a reference may be made to a decision in the case of State *of Maharashtra v. Chandraprakash Kewalchand Jain* reported in *AIR 1990 SC 658*. We think it better to quote paragraph-17 which is as follows :-

“ We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the



notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realize that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.”

21. In the case of *Parminder @ Ladka Pola v. State of Delhi* reported in (2014)2 SCC 592, the occurrence of rape was committed on 30.1.2001 at about 8 P.M. and the medical



examination of the prosecutrix was held on 31.10.2001. The doctor found no sign of injury on the prosecutrix and hymen was found intact. It was held that to consider evidence of rape it is not necessary that there should be sign of injury on the prosecutrix and the rupture of hymen is necessary. The evidence of rape was supported by the report of the Central Forensic Science Laboratory.

22. In the case in hand it appears that the prosecutrix was aged about 18 years and she was married to Sheetal Paswan five years ago from the date of her deposition (20.2.1991) and she came to her marital home and she used to go to her nuptial home and marital home several times and she was living with her husband, who had gone to Punjab for his livelihood four days prior to the occurrence. The prosecutrix (P.W.7) has given the minute details about the penetration by the appellant and other two accused, who were found absconding and have not faced trial. The evidence of the prosecutrix stands corroborated by the eye witnesses, i.e., P.Ws. 4, 5 and 6 and also by the report of the Forensic Science Laboratory (Ext.1) and P.W.8. P.Ws. 1, 2 and 3 are the hearsay witnesses who have also come to the place of occurrence soon after the departure of the accused from the courtyard of the prosecutrix.

23. Considering the facts and circumstances stated above, we do not find any ground to interfere with the impugned

judgment. This appeal has got no merit. It is accordingly dismissed.

The bail bond of the appellant is cancelled and he is directed to surrender before the trial court within a month to serve out the sentence. The learned trial court will also take all necessary steps to see that the appellant serves out the sentence as imposed by the impugned judgment.

(Amaresh Kumar Lal, J)

Dharnidhar Jha,J. I agree.

(Dharnidhar Jha, J)

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