

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 951 of 2012

Against the judgment of conviction dated 16.11.2012 and order of sentence dated 22.11.2012 passed by Shri Bipin Bihari Lal, learned Additional Sessions Judge-I, Nawada in connection with Special (H) 62 of 2010 arising out of Govindpur P.S. Case No. 29 of 2010

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Happu Singh, S/O Late Faudari Singh, Resident of Village - Kohila, P.S. - Akbarpur, District - Nawada

.... Appellant

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Appellant : Shri Ajay Kumar Thakur, Advocate
Shri Amit Kumar, Advocate

For the Respondent : Shri Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

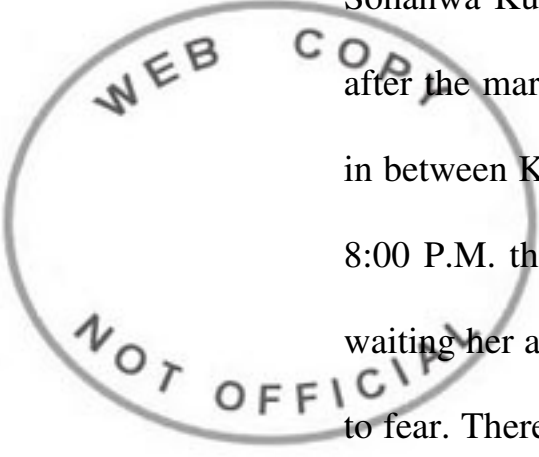
ORAL JUDGMENT

Date: 29-09-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. The appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs.10,000/- and in default of payment of fine has further been directed to undergo simple imprisonment for five months.

3. The prosecution case, as alleged in the First Information Report by the informant Shanti Kumari is that she is daughter of Gujar Ram, resident of village Khaira Khurd, Tola Horil Dih, post Kuhiya, police station Govindpur under Nawada district and on 30.05.2010 she had gone to attend the marriage of her cousin (maternal uncle's



daughter) at 12:00 noon along with Kiran Kumari, Puja Kumari, Sohanwa Kumari, Dulari Kumari to village Akbarpur Kanoj Bagi and after the marriage while they were returning from Kanoj Bagi reached in between Khaira Khurd and Kohila near Kohila Ahar at about 7:00 to 8:00 P.M. then Happu Singh (appellant), who was sitting from before waiting her arrival, caught hold of her and the other girls fled away due to fear. Thereafter he lifted the informant and took her at a lonely place towards northern side and committed rape with her and when she protested her mouth was pressed and her nose ring was taken away and was left after rape threatening not to disclose the said fact to anyone. Thereafter she returned to her house in upset state and informed the said fact to her family members. Her family members were under hesitation to lodge the case for the reason of social stigma attached whether to file a case or not, therefore, on 31.05.2010 she came to the police station along with her brother Shailendra Ram and gave her written report to lodge the First Information Report.

4. On the basis of written report of the informant First Information Report lodged on 31.05.2010 for the offence under Sections 376 and 379 of the Indian Penal Code. Thereafter, investigation proceeded, the place of occurrence was inspected by the Investigating Officer. The statement of the informant was recorded under Section 164 of the Cr.P.C. and the victim was taken to the

hospital for her medical examination. The victim was examined by the Medical Board in Sadar Hospital, Nawada and after completion of investigation the Investigating Officer submitted charge-sheet. After submission of the charge-sheet, cognizance was taken and the case was committed to the Court of Sessions.

5. After commitment the charge was framed. During trial, five witnesses were examined by the prosecution. P.W. 1 Puja Kumari deposed in her evidence that she does not know about the occurrence and has been declared hostile. P.W. 2 Soni Kumari has also deposed in her evidence that she does not know anything about the occurrence and has been declared hostile. P.W. 3 Shanti Kumari is the informant of the case and has supported the prosecution case as alleged in the First Information Report and even identified the appellant in Court. She has also deposed about the occurrence in her statement recorded under Section 164 of the Cr.P.C. and she was medically examined by the doctor at Sadar Hospital, Nawadah. P.W. 4 Shailendra Rajbanshi is the brother of the informant. He is not the eye-witness to the occurrence and has deposed about the occurrence as disclosed by her sister as well as the other girls and regarding his role of making out search of the victim in the night on the date of occurrence. P.W. 5 Shailender Kumar is the Officer-in-Charge of Govindpur police station, the Investigating Officer of this case who lodged the First Information Report as

Govindpur P.S. Case No. 29 of 2010 and investigated the case, got the statement of the victim recorded under Section 164 of the Cr.P.C. and further got her examined by the Medical Board at Sadar Hospital, Nawadah.

6. The defence of the appellant is that he has falsely been implicated in this case and further the father of the informant was a labourer of the appellant and had taken loan in the marriage of his son and when the appellant demanded to return the money the false case has been instituted.

7. The trial Court after taking into consideration the evidence of the witnesses convicted the appellant as mentioned above holding that the prosecution has proved the charge under Section 376 of the Indian Penal Code but acquitted the appellant for the offence under Section 379 of the Indian Penal Code and Section 3(i)(x)(xi)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

8. Learned counsel for the appellant has challenged the judgment of conviction and order of sentence passed by the learned trial Court. It has been submitted that the witnesses or the girls, who were along with the informant, have not come to support the prosecution case nor they informed the family members of the informant. P.Ws. 1 and 2 have been declared hostile by the prosecution. It has further been contended that it has come in evidence that the informant was

unmarried known to the appellant from before and the defence of the accused that the informant and the appellant both were consenting parties and the doctor has not come to prove the medical evidence or even the report of the Medical Board and hence, the offence under Section 376 of the Indian Penal Code is not made out.

9. Learned counsel for the State, however, countered the argument advanced by the learned counsel for the appellant that it is true that the witnesses have not come to support the prosecution case. It is also true that the doctor has not been examined and though the informant has been examined by a team of doctors, i.e., the Medical Board but the prosecution has neither brought the report of the Medical Board nor the evidence of the doctor and submitted that this argument can well be countered with the fact that the informant has come to support the prosecution case and there is nothing in her evidence to disbelieve her testimony and if the evidence of the informant is reliable and worthy of credence then her evidence cannot be rejected on the basis that there is no corroboration as there is no rule of law that unless there is corroboration accused cannot be convicted on the sole testimony of the informant.

10. Having heard the respective submissions of the parties, I proceed to consider the evidence of the witnesses. However, the prosecution case as alleged in the First Information Report is that while

the victim along with Kiran Kumari (not examined), Puja Kumari (P.W. 1 hostile), Sohanwa Kumari @ Soni Kumar (P.W. 2 hostile) and Dulari Kumari (not examined) were returning after attending the marriage ceremony from Kanoj Bagi in between Khaira Khurd and Kohila near Kohila Ahar at about 7:00 to 8:00 P.M. appellant, who was sitting from before waiting her arrival caught hold of her and other girls fled away. Thereafter he lifted and took her at a lonely place and committed wrong with her and when she protested her mouth was pressed and her nose ring was taken away and she was left after threatening not to disclose the said fact to any person. P.Ws. 1 and 2 though named in the First Information Report but have been declared hostile as they have not supported the prosecution case.

11. P.W. 3 is the informant. She in her evidence stated that on the alleged date of occurrence she had gone to Kanauj Bagh to attend the marriage of her sister and after attending the said marriage ceremony she along with Kiran Kumari, Puja Kumari, Sohanwa Kumari @ Soni Kumar were returning back then the appellant caught hold of the informant and took her towards Bandh and on raising hulla the appellant also assaulted her and threw her on the ground, untied her cloth and committed rape. She further deposed that when the appellant left her after committing rape, the informant went to her house and narrated the story of alleged occurrence to her family members. She

further alleged that the informant went to police station with her brother and lodged the case. She has further deposed that her statement was also recorded under Section 164 of the Cr.P.C. before the Magistrate which has been marked as Ext. 2. During the cross-examination in para 8 this witness has again stated the fact of assault at the hands of the appellant and she has also stated that the above named girls were present when the appellant was carrying her. She has also deposed in cross-examination that the above named girls fled away and her mother was not alive.

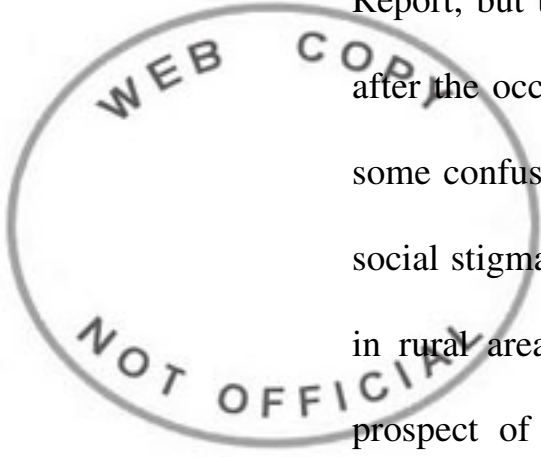
12. P.W. 4 stated that the informant disclosed about the occurrence and he went along with the informant at Govindpur police station. He has further stated that he learnt in the evening from Puja Kumari, Kiran Kumari and Dulari Kumari that his sister has not returned. He has further stated that he made out a search of his sister in the light of lantern and torch and that Puja Kumari and Kiran Kumari have disclosed that the appellant has lifted the informant and took her away. He has further stated that he remained making out the search of his sister till 12:00 in the night along with his villagers, hence, from his evidence, it is apparent that the informant had not returned and the girls who were along with the informant had disclosed about lifting by the appellant and further the brother of the victim remained searching her in the night.

13. P.W. 5 stated in his evidence that he signed the written report of Shanti Devi, lodged the First Information Report bearing Govindpur P.S. Case No. 29 of 2010 and recorded the further statement of the informant and his brother Shailendra Rajbanshi. He inspected the place of occurrence and got the statement of the victim recorded under Section 164 of the Cr.P.C. and after investigation submitted charge-sheet.

14. Hence, going through the entire evidence, it is apparent that the informant has supported the prosecution case regarding rape. It is true that the girls who were along with the informant have though examined as P.Ws. 1 and 2 but have not supported the prosecution case. The doctor who examined the informant has also not come to support the prosecution case or depose about the medical evidence and hence, the medical evidence is missing.

15. However, the sole question is whether the conviction can be sustained only on the basis of the evidence of the victim who is also the informant. It is true that there is no corroboration of the statement of the informant except her statement under Section 164 Cr.P.C. recorded on 01.06.2010, i.e., the next date on which the First Information Report lodged. The occurrence alleged to be on 30.05.2010, the written report submitted on 31.05.2010, First Information Report lodged on 31.05.2010 and her statement recorded

on 01.06.2010, though there is delay in lodging the First Information Report, but the delay has well been explained that when she returned after the occurrence she disclosed the fact to his father and there was some confusion whether to lodge a case or not for the reason that the social stigma was attached. It is well known that in Indian society and in rural areas stigma has a sever consequence as the girl loses her prospect of being married in a good family, the family loses the prestige and not even the victim but the entire family suffers as even the marriage of the other sister(s) in the family comes to a peril and hence, in such circumstances at times it is difficult to decide whether a case should be filed or not. Hence, the delay has properly been explained. However, there is no rule of law that for convicting a person for the offence under Section 376 of the Indian Penal Code corroboration is must. If the evidence of the victim is found to be reliable and trustworthy and there is nothing in her evidence to disbelieve her testimony then even in absence of any corroboration, a conviction can be recorded as the corroboration is not the rule of law, but a rule of prudence. Moreover, the statements of the informant in the Court as well as the statements recorded under Section 164 of the Cr.P.S. are corroboration to each other as the informant supported the prosecution case. There is nothing in her evidence to disbelieve and even the conviction can be recorded when the evidence of the



informant is found to be reliable and worthy of confidence.

16. Hence, taking into consideration the entire evidence, I find and hold that there is nothing in the evidence of the informant to disbelieve and the prosecution has been able to prove the charge against the appellant beyond all reasonable doubt and hence, I do not find any merit to interfere with the impugned judgment of conviction dated 16.11.2012 and order of sentence dated 22.11.2012 passed by Shri Bipin Bihari Lal, learned Additional Sessions Judge-I, Nawada in connection with Special (H) 62 of 2010 arising out of Govindpur P.S. Case No. 29 of 2010. Accordingly, the appeal is dismissed.

(Gopal Prasad, J)

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