

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.718 of 2015

Arising Out of PS.Case No. -249 Year- 2011 Thana -KARAKAT District- SASARAM (ROHTAS)

Chandan Kumar Sah Son of Ashok Sah Resident of village - Bensagar, P.S.
Karakat, District - Rohtas

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr.Amrendra Narayan Rai, Advocate.

Mr. Sanjay Kumar, Advocate.

For the Respondent/s : Mr.S.Hoda, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 23-06-2016

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor for the State.

2. The appellant has been convicted for the offence under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.10,000/- and in case of non-payment of fine to undergo simple imprisonment for one year. The appellant has further been convicted for the offence under Section 323 I.P.C. and sentenced to undergo simple imprisonment for three months. He has further been convicted for the offence under Section 379 of I.P.C. and sentenced to undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently.

3. The prosecution case, in short, as per the F.I.R. is that the informant Priyanka Kumari @ Shintu Kumari aged 15 years had alleged therein that on 17.12.2011 at about 9.45 A.M. proceeded from her house for Gauri Shankar High School for appearing in examination. She is a student of Class 10th. When she reached near Canal of Mathiya at Chaibar at about 9.45 A.M. in the mean time one person aged about 25 years, named, Chandan Kumar Sah caught hold of her finding her alone. The said person assaulted her and committed rape upon her by force at Chaver. She shouted at the top of her voice but the appellant closed her mouth. Further prosecution case is that the victim returned to her house and disclosed about the occurrence to her mother at her house. She has further stated that after the occurrence while in the way she was returning weeping two persons of village Mathiya enquired her about her weeping but she did not disclose anything to them. Thereafter about quarter to twelve (11.45 A.M.) she went along with her brother to the school to appear in the examination. She reached at the examination centre bit late. So, after appearing in the examination she returned to her house at 1.45 A.M. The further case of the prosecution is that the mother of the informant disclosed the entire occurrence to the villagers and so, on 18.12.2011 the villagers caught hold of the said Chandan Kumar Sah from his house and took him to Ben Sagar. Further case of the prosecution is

that the accused was caught hold and during catching hold of the accused appellant some persons assaulted him with fists and slaps causing injury to appellant.

4. The fardbeyan of the informant was recorded on 18.12.2011 at 1.30 P.M. whereas the occurrence is said to have taken place on 17.12.2011 at 9.20 A.M.

5. On the basis of the fardbeyan of the informant, the First Information Report was lodged as Karakat P.S. Case No.249 of 2011 and the investigation was started by the Investigating Officer, P.W.8, Irfan Ahmad who during course of investigation recorded the statement of the victim girl and thereafter other witnesses were examined. Thereafter the I.O. investigated the P.O. and got the statement of the victim recorded under Section 164 Cr.P.C., medically examined and procured the report and as per the supervision note charge sheet was submitted against the accused appellant, Chandan Kumar Sah. The fardbeyan has been marked as Ext.4. The formal F.I.R. is marked as Ext.5 and endorsement of the fardbeyan was marked as Ext.6.

6. After submission of the charge sheet the cognizance was taken and case committed to the court of Session. After commitment charge framed and trial proceeded.

7. In course of trial altogether eight witnesses were

examined on behalf of the prosecution. Prosecution has examined P.W.1, Shakuntala Devi, though she has been declared hostile by prosecution as not supported the prosecution case. P.W.2, Urmila Devi has supported the prosecution case that Priyanka Kumari (P.W.3) came weepingly to her house. P.W. 3 is the victim herself and she is the sole witness to support the prosecution case as alleged in the F.I.R..

8. P.W.4 is Jitendra Kumar who is the brother of the victim and he is also hear say witness and his evidence is that after the occurrence the victim Priyanka Kumari came to the house and then disclosed about the occurrence.

9. P.W.5 , Ram Pravesh Sah is the father of the victim and has deposed that after the occurrence the victim came to the canal where she met a person who took her on motor cycle to the house of the informant when he saw the victim weeping then he asked the victim and then the victim disclosed about the occurrence.

10. P.W.6 is the Dr. Kumari Rupam who examined the victim and found Valva normal, hymen partially torn, no bleeding, vagina does not admit 1 finger. Spermatogoa was not found and has finally opined that it is very difficult to say whether rape has been committed on her or not, though in her cross examination she has stated that she did not find any sign of bite on the cheek of the victim.



P.W.7 is Dr. Nand Lal Chauhan who had come to depose that a Medical Board was constituted for examination of the victim Priyanka Kumari with respect to assess her age which empowered him to assess the age of the victim and he assessed the age of the victim as 19 years. P.W.8 Irfan Ahmad is Investigating Officer who conducted the investigation and submitted charge sheet and has deposed that on an information the I.O. went to the place of occurrence and found Chandan Kumar Sah was caught hold by the local people at Panchayat Bhawan and the I.O. had also seen some injuries on the person of the accused appellant Chandan Kumar Sah and the Officer-in-Charge had sent him to the hospital for treatment. However, P.W.8 has not stated about the occurrence in his examination-in-chief. He had also not seized the cloths of Chandan Kumar Sah.

11. The defence of the accused persons as apparent from the trend of cross examination and suggestion to the witnessed that the appellant has been falsely implicated as no rape was committed by the appellant and has been implicated in false case. It has been asserted that a person who brought the victim to her house after a person committed rape on her and falsely instituted a case against the petitioner.

12. Trial court convicted the appellant and sentenced as mentioned above.

13. Learned counsel for the appellant further challenged the order of sentence recorded by the trial court on the ground that the sole witness to the occurrence allegedly is the informant. P.W.1 is declared hostile and other witnesses are not the eye witness to the occurrence and are deposing what they learnt from the victim. It has further been contended that there was delay in filing the F.I.R., as the occurrence took place on 17.12.2011 whereas the F.I.R. was lodged on 18.12.2011. Learned counsel for the appellant has further submitted that the victim in her evidence has stated that she was not knowing the appellant by name since before the occurrence. When the victim was not knowing the appellant by face then how she could identify him and the appellant was identified to catch hold of him. It has further been contended that though the victim has stated in her evidence that at the time of rape appellant gave a bite on her cheek causing mark of bite on her cheek but the doctor has not find any such mark on her cheek. It has further been contended that the clothes of the victim were neither seized nor sent to the Forensic Science Laboratory but the victim was examined very next day under Section 164 Cr.P.C. but examination of the appellant under Sections 53 and 53A of Cr.P.C. has not been conducted to find out the sign of rape however, non-examination of the accused also casts a missing link or an evidence of corroboration.

14. Learned counsel for the State however, submits that the victim has specifically alleged and deposed regarding the rape on her person and the sole testimony of the victim inspired the confidence then the conviction can be recorded on the sole testimony of the victim and no corroboration is required.

15. It has further been submitted that it is true that there is no eye witness to the occurrence except the victim and in this context the corroboration regarding the rape may not be required if the evidence of the victim found reliable. In a case of rape the corroboration is not a rule of law but is only of rule of prudence and the conviction can be recorded on sole testimony of the victim.

16. Having heard the respective submissions the question for consideration is conviction whether the prosecution has been able to prove charge and the conviction can be recorded on the sole evidence of victim.

17. However, according to the prosecution itself, while the victim was going to appear in the examination she was apprehended by a person, named, Chandan Kumar Sah, and he forcibly raped the victim after assault using the force. The victim even shouted at the top of her voice but none could come to her rescue as the appellant closed her mouth and after the occurrence she returned to her house and disclosed about the occurrence to her mother. She



has further submitted that while she was going to her house after the occurrence then two persons asked her the reason for her weeping but she did not disclose anything to them. Thereafter she said that she went to the school to appear in the examination with her brother and there she gave examination. In the evening her mother disclosed to the villagers about the occurrence and then the appellant was caught hold by the villagers and assaulted him.

18. The victim examined as P.W.3 in her evidence has specifically stated that the accused appellant caught hold of her, closed her mouth, assaulted her and committed rape after untying her Salwar. She has further stated that the appellant gave a bite on her cheek and snatched her payal. However, in her cross examination she stated that she did not know whether Sachhida Sah is her co-villager or no. However, in her cross examination at para 9 she stated apparently that she did not know whether the appellant had relation with her villager Sachhida Sah or not. She told that in the north of her house there was house of Sachhida Sah whereas in south the house of Tegri Sah, in the east the house of the brother of Sachhida Sah and in the west there was rasta. In para 11 of her cross examination the victim stated that her father never talked about her marriage with Chandan Sah through Sachhida. However, P.W.2 the mother of the victim has stated that she knows co-villager Sachhida Sah and

Sachhida is relative of the accused appellant and the accused used to come to the house of Sachhida and the house of Sachhida Sah is situated near her house.

19. P.W.5 Ram Pravesh Sah, is the father of the victim and he has also stated that he knows Sachhida and his house is adjacent to his house. Hence, the victim tried to conceal the fact in her evidence that Sachhida Sah is her co-villager and the Chandan Kumar Sah is not related to Sachhida.

20. She has further stated in her evidence that when she proceeded for school then along with her there were several girls of the village but they were on bicycle, but she could not mention the name of any of the girls and again tendered to say that they were residents of different village –Dehri, though they used to go to school through her village. She has further tendered to say that those girls were her class mate. She has further stated that she asked the girl to take her on bicycle. But they refused. She again stated that she cannot say the name of the girls to whom she asked for favour to take her on bicycle. Hence from her evidence it is apparent that she requested girl who were her class mate to take her on bicycle but she is unable to disclose the name of any one of them casts a serious doubt regarding veracity regarding the fact that she had gone to school in time along with. She has further stated in her evidence that she reached Mathiya



at 9 A.M. She has further deposed that she was not knowing Chandan Sah from before. She has further stated that when he caught hold of her at that time he covered his face but while catching hold of her cloth of face fell down and then saw it was Chandan but in her evidence her denial that one Sachhida Sah was his neighbor and Chandan his relative casts a doubt on the veracity of the victim.

21. P.W.5 the father of the victim has stated in para 17 that the girl had disclosed the name of Chandan. He has further stated that the girl was not knowing the name of Chandan since before. He has further stated that the name of Chandan was disclosed by the residents of that place and cannot say who was the person who disclosed the name of Chandan. Hence, from his evidence it is apparent that who disclosed the name of Chandan is again a mystery as the father of the victim and thereafter he says that the victim was knowing the name of Chandan. But none has come forward to say that he saw the occurrence or even part of the occurrence of catching hold of Chandan and the victim herself is not saying the name of Chandan and, hence, mystery remains that how Chandan was identified and how he was apprehended by the villagers even prior to the lodging of the F.I.R. there is no reason why the victim was concealing the fact that one Sachhida Sah was her neighbor and Chandan his relative.



22. The further evidence of the victim that when she reached the Mathiya then the people were working near by the field but they were at a distance and she had tendered to say that they were at a distance of 5 lathi at the time when the accused ran to catch hold of her and she shouted loudly but none of the people working near by in the field come for her rescue. This itself creates a doubt about the veracity of the prosecution case. However, it is strange that a female was shouting at top of her voice and fleeing away on being chased by the appellant and at a distance of 5 lathi people were working in the field but none turn up even when the victim was raped.

23. This evidence shows the fact that the victim has stated in her evidence that at the time of occurrence of rape on the victim the accused appellant gave a bite on cheek causing injury on her cheek . However, Dr. Kumari Rupam, P.W.6 who examined the victim but she did not find any sign of bite on her face or cheek and there is specific averment in para 5 of P.W.6 that during the examination of her face there was no sign of bite on the cheek. Further it is stated that the victim was raped and at the time of rape her salwar was untied and committed rape. However, neither her cloths were given to the police nor any seizure list was prepared and it was disclosed that the said cloths were washed. Further the fact that the

appellant was apprehended on that very date or the next date of the occurrence but the appellant was also not examined as per Section 54 and 54A Cr.P.C..

24. It is true that conviction can be recorded on the sole testimony of the victim and no corroboration is required if the same is found trustworthy and worthy of confidence. There is no doubt in the proposition that the sole testimony of the victim can be the basis of conviction but if there is any supporting material available then the rule of prudence require that such supporting material is required to be proved by cogent, reliable and unimpeachable vide as corroborator to the evidence of the victim.

25. However, herein the facts and circumstances of the case, the evidence of the victim suffers from the various infirmities as pointed out. It is stated that the appellant gave a bite on her cheek But neither the doctor nor the I.O. found any such injury on the face of the victim and to the contrary the evidence of doctor that he did not find any sign of bite on cheek. The appellant who was apprehended on the very next day was not examined under Sections 53 and 54 of the Cr.P.C. The doctor also did not find any sign of rape and the conduct of the appellant that she is concealing the fact that the relation of the appellant is the next door neighbor of the victim and the appellant used to come there. And, hence, having regard to the fact that the

supporting materials likely to avail has neither been produced nor having been corroborated and in the light of the evidence of the victim as the rule of prudence required when the evidence of the victim is such corroboratable material and even that has not been proved to corroborate and hence, I give the appellant benefit of doubt as the prosecution has not been able to prove the charges beyond all reasonable doubt and, hence, the order of conviction passed by the trial court is hereby set aside and the appellant who is in jail custody is ordered to be released forthwith, if he is not required in any other case.

(Gopal Prasad, J)

AnilKrSinha/-
A.N.F.R.
23.06.2016

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