

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.262 of 2014

Against the judgment of conviction dated 20.02.2014 and order of sentence 25.02.2014 passed by Sri Krishna Kumar Srivastava, the learned 1st Additional Sessions Judge, Buxar in Sessions Trial No. 230 of 2011,(in G.R. No. 333 of 2011 arising out of Buxar (M) P.S. Case No. 35 of 2011).

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Saral Tatwa, Son of Late Kishun Tatwa Resident of Village Panday Patti, Police Station Buxar (Muffasil), District Buxar.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Sudama Singh, Advocate.
Mr. Rajani Kant Singh, Advocate.
Mr. Shamsheer Bahadur Pandey, Advocate.
For the State : Mr. Sijit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 03-05-2016

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

2. This appeal arises out of the judgment of conviction dated 20.02.2014 and order of sentence 25.02.2014 passed by Sri Krishna Kumar Srivastava, the learned 1st Additional Sessions Judge, Buxar in Sessions Trial No. 230 of 2011,(in G.R. No. 333 of 2011 arising out of Buxar (M) P.S. Case No. 35 of 2011) by which the appellant had been convicted for offence under Sections 452 and 376/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for

seven year for offence under Section 376 of Indian Penal Code. Further ordered since the offender has been sentenced for major offence under Section 376 of Indian Penal Code, no need is found to pass separate sentence for offence under Section 452 of Indian Penal Code.

3. The prosecution case as alleged in the written report by the informant, Reena Devi, the victim on the basis of which F.I.R. lodged, at present she was residing at Buxar at Village Pandey Patti on the back of F.C.I. Godown along with her children. It is further alleged that on 22.02.2011 in the night she was sleeping along with her son Dhru Kumar Rai, P.W.10 aged about 12 years old. At about 1.00 A.M. in the night one Saral Tatwa along with his three associates whom she does not know by names but can identify them came to her house and starting knocking the door, but she did not open the door out of fear. Further case is all the accused persons disclosed that they were relatives of the informant. Further case is that when the informant wanted to know their names and address then they disclosed if she did not open the door they will go to station to sleep. Further case is that the informant through the hole of davarja see that all the four accused persons standing behind the door, then she told them to go to the coal shop of Rajee and sleep there. In the meantime all the accused persons pushed the door entered into the room and



took out her son sleeping on the cot thereafter, Saral Tatwa and his three associates lifted her out of the room and thrown her on a chouki then committed rape on her one after another. Further case is that when the Dhruv Kumar resisted and protested then they threatened him to kill and asked to keep quite on the point of pistol. Thereafter, she tried to inform the neighbourer on mobile, but the accused persons snatched her mobile then she went to the neighbour Pradeshi and from his mobile she informed Rajesh Singh, who came along with some associates on the house of the informant and informant disclosed about the occurrence and it is alleged that all the accused persons committed raped her. It has further been mentioned that during the rape semen falls on Saya of the victim and bears the sign of semen.

4. On the written report of the informant, an endorsement was made to register Buxar (M) P.S. Case No. 35 of 2011. After lodging the F.I.R. investigation proceeded. The I.O. during investigation recorded further statement of the victim and the written examined by a doctor. The I.O. inspected the place of occurrence. He found wooden door which was newly constructed. Further he found Chouki in the room and found a cot in the verandah attached with the room. He has given boundary in the north field of Babban Pandey, in the south saw mill of Rajendra Yadav, in the east field of Manoj Pathak and in the west open land of Pappu Tiwari and door of F.C.I.



godown. The medical officer who examined the victim as P.W. 7 Dr. Namita Singh and he had deposed that no external bodily injury of face, chest, abdomen, back and thigh, no injury on vaginal wall, but she is mother of two children and in course of her examination no spermatozoa was found either alive or dead. The age of the victim was assessed as 35 years and it is opined that it is difficult to say whether rape was done or not. She has further deposed the victim was fully physically well and hearty and if force is applied in committing rape there is possibility of external and internal injuries. Further without resistance, rape cannot be committed or done. If rape is done resistance will apply. If resisted by her, there is possibility of injuries. Further opined libia mazora in a vaginal wall may be affected and cannot be affected and she did not find any single injury by which it can be said rape has been committed.

5. A medical board was constituted for examination of the victim by P.Ws. 1, 2 and 3 and they proved the report and signatures and have deposed that victim was examined by P.W. 7 Dr. Namita Singh. Further, it has been opined that if any physical injury is caused to libea mazora or lebia, it will take at least four days. Further opined that it is not necessary that there must be any physical injury for committing rape.

6. However, the occurrence alleged to be happened on



24.02.2011 at 1.00 A.M. and written filed report on 24.02.2011. However, P.W.4 Amar Nath Dubey, P.W. 5 Chuna Nut, P.W.6 Lal Mohan Yadav @ Lal Mohan Singh and P.W.11 Rabindra Singh have deposed that they did not know nothing about the occurrence and they have declared hostile, though, the house of P.W.6 was situated in the back of F.C.I. godown. P.W. 8 Reena Devi, the victim, P.W. 9 Rajesh Kr. Singh @ Rakesh Kumar who was said to be neighbourers of the informant. P.W. 10 is Dhruv Kumar Rai, the son the informant. P.W.12 is the I.O. who conducted the investigation and submitted charge sheet. P.W. 13 is Sheo Kumar, the Senior Scientific Officer of F.S.L., Bihar, Patna, P.W. 14 is Das Ashok Kumar, Senior Scientific Officer of F.S.L., Bihar, Patna, and they have deposed that Saree and Saya was sent for chemical examination it was marked as Exhibit A and Exhibit-B and same were smeared with semen spot and in the article marked as Exhibit-A which was found A group and exhibit-B which was found B group.

7. P.W.8 Reena Devi is the informant-victim. The prosecution case regarding the occurrence of rape and she had deposed that after the occurrence she went to the house of her neighbour Pradeshi along with her son and his wife called Rakesh Kumar Yadav on mobile then Rakesh came to the house of the informant and the informant disclosed about the occurrence and on



the next day they went to the police station. However, Pradeshi had not been examined and Rajesh Singh @ Rakesh Kumar Yadav has been examined as P.W. 9. P.W.9 had deposed that Pradeshi informed him on mobile regarding the rape on the person of Reena Devi, then he went along with 3-4 persons to the house of Reena Devi and Reena Devi disclosed that three persons have committed rape on her, but this witness had been declared hostile and had not supported the prosecution case regarding the name of the appellant. P.W. 10 is the son of the informant and deposed that he heard the sound of knocking the door and by knocking the door, the Chitkani was opened then accused persons entered into the room and he identified one of the accused namely, Saral Tatwa and one accused tight him in muffler and all the accused persons had taken his mother. After half an hour his mother came inside the room and she disclosed nothing. However, in his cross-examination he disclosed that his mother bearing Churi in both of her hands and when she returned back in the room her churi was broken and he saw blood had oozed out.

8. The trial court taking into consideration the evidence of witnesses convicted and sentenced the appellant as mentioned above.

9. Learned counsel for the appellant however challenged the order of conviction and sentence recorded by the trial court. Further it has been contended that except the informant-victim and her son none



have come to support the prosecution case, but I.O. did not find any hole in the door. It has further been contended that on the same date of occurrence, the victim was examined by the doctor and there is no specific sign of rape. P.W. 7 Dr. Namita Singh had deposed in her cross-examination in paragraph 17 that in my examination, I find that no single injury was found on the person of the victim which it can be said that rape has been committed whereas her deposition in paragraph 10 she deposed that it is difficult to say that rape had been done or not and it is great emphasis in paragraph 17 of her deposition. It has further been contended that, though, the prosecution case was that the victim stated that after the occurrence she went to the house of her neighbour Pradeshi and he telephoned to Rajesh Kumar Singh and when Rajesh came in the house of the victim she disclosed about the occurrence, but neither Pradeshi came to support the prosecution case regarding disclosure the name of the appellant nor Rajesh Kumar Singh had come to support the prosecution case, particularly regarding the name of the accused disclosed by the victim. Hence, there is no corroboration. It has further been contended that the victim in her evidence had specifically stated that during rape, she got injuries on her legs as well on her body as per deposition in paragraph 44 that her both legs were got injured and she also got injury on her body. Further the victim in her deposition stated that during rape she



was raped by four persons one after another and they caught hold of her hands and feet and all the four persons bite on her breast by teeth. She has further stated in paragraph 14 that bite on her breast is still alive. Further, it has been contended that no injury was found by the doctor on her chest, buttock or legs. It has further been contended that P.W. 7 the doctor also not found any external or internal injury on the person of the victim and I.O. also not found any objective evidence particularly, the name of the appellant. Though, P.W. 10 is the son of the victim and he stated that her mother bearing the churi and during rape the churi was broken, but I.O. did not find any broken churi in the place of occurrence. Hence it is contended that circumstance pointed out in the prosecution story has not been corroborated by the evidence. It has further been contended that, though, it is alleged that saree and saya was present alleged to be signed of semen. However, it has been contended that appellant was arrested on 16.06.2011, the semen found in the saree and saya was not compared with the semen of the appellant.

10. Learned counsel for the State however contends that the victim had supported the prosecution case and it has been corroborated and supported by the son of the informant. Further it has been contended sole testimony of the victim if found reliable and trustworthy then conviction can be recorded on the sole testimony of

the victim and no corroboration is required in the matter for offence under Section 376 of Penal Code in case of rape and there is nothing in the evidence of the victim to disbelieve the sole testimony. Hence, the trial court rightly records the conviction on the basis of sole testimony of the victim itself.

11. However, on the respective submissions of both the parties, the question for consideration as to whether the prosecution has been able to prove the charges beyond all reasonable doubt.

12. However, the prosecution case is that while the victim was sleeping in the night along with her son Dhru Kumar then all the accused persons came and knocked the door when the victim not opened the door all the accused persons using force to open the door by thumping. Thereafter, all the accused persons took the victim out of the room and committed rape upon her one by one. Out of four accused persons, the victim identified one of the accused person. Further case is that after the occurrence the victim went to the house of Pradeshi, there she called Rajesh Kumar Singh and Rajesh Kumar Singh came to the house of the victim along with 3-4 of his associates. However, Rajesh Kumar Singh has not been supported the prosecution story regarding the name of the appellant. It is true that on the corroborative statement of the victim the sole testimony can be based on the allegation then it is save, reliable and worthy of

acceptance. It is also reasonable to assume that no woman would falsely implicate a person in sexual offence as the honour and prestige also would remain at stake.

13. Furthermore, the evidence of the victim should be cogent, reliable and convenient if there is any supportive material likely to be available then rule of prudence requires that evidence of the victim may be supported by such corroborative material and this view referred in decision reported in 2002 Volume X (SCC) 746.

14. However, having regard to the fact, the victim supported the prosecution case that she was raped by four persons and she identified only one accused person. After rape, the victim went to the house of Pradeshi and there she disclosed about the occurrence then she called Rajesh Kumar Singh and Rajesh Kumar Singh came to the house of the victim. Thereafter, the victim disclosed about the occurrence. However, neither Pradeshi has been examined nor Rajesh Kumar Singh as P.W.9 has corroborated the fact regarding disclosure of the victim. Further the evidence of the victim is that during the rape, she got injuries on her legs as well as she had specifically stated that four accused persons who raped her gave good bite on her breast, but the doctor who examined the victim did not find any sign of bite on her chest or breast. She specifically stated the fact about injuries on her person to the doctor who examined her and as per evidence of

P.W.7, the doctor that victim was examined on the same day i.e. on 24.02.2011, but as per report of the doctor, there was no injury on her person at all.

15. Having regard to the fact, this circumstances and materials likely to be available to be corroborated, but there was no corroboration and in such case rule of prudence is required that the evidence of the victim may be supported by the corroborative materials which finds absence in the evidence of the doctor P.W.7, though, she stated in her evidence in paragraph 7, that it is difficult to say whether rape has been done or not, but she had specifically stated that there is not external or internal injury on face, chest, buttock and thigh of the victim. Hence, it caste a situation calling for benefit of doubt to the accused. As per allegation, the alleged rape committed forcibly and four accused persons caught hold of her hands and legs and committed rape upon the victim one after another and the victim was resisting and there is specific evidence that victim had specifically stated that she got injuries on her legs, buttock and chest, but the victim had been examined on the same date of occurrence itself, but no injury was found on the person of the victim. Further, saree and saya bears the sign of semen but semen found in saree and saya of two groups as A and B. However, the appellant was apprehended on 16.06.2011, but there was no matching of semen of

the appellant which has been found in the saree and saya as per evidence of P.W. 13 and 14 as they did not compare the semen found in the saree and saya with the semen of the appellant.

16. Having regard to the fact and circumstance, since the circumstance pointed out did not corroborate with the circumstance pointed out of any finding in the corroborative material.

17. Having regard to the fact and circumstance, the appellant is entitled for benefit of doubt and I give benefit of doubt, as the prosecution has not been able to prove the charges beyond all reasonable doubt, I acquit the appellant on the charges. Learned trial court did not take pain not to go to the entire facts and circumstances of the case or give any explanation of F.S.L. Hence, conviction and sentence recorded by the trial court is hereby set aside. The appellant is in jail custody be released forthwith if not required in another case.

18. As a result, the appeal is allowed.

m.p.

(Gopal Prasad, J)

AFR/NAFR	NAFR
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