

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.491 of 2014

Arising Out of PS.Case No. -7 Year- 2012 Thana -CHUTIA SAHAYAK District- SASARAM
(ROHTAS)

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Vinod Yadav son of Hira Yadav Resident of Village - Matiyanu, Police Station -
Chutiya, District - Rohtas.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant : Mr. Deovind Kr. Singh, Adv.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 03-08-2017

This appeal is directed against the judgment and order dated 26.7.2014 and 31.7.2014 passed by Sri Durga Prasad Jaiswal, Addl. District and Sessions Judge-I, Rohtas at Sasaram in Sessions Trial No.160 of 2012, by which he has convicted the sole appellant under Section 376 of the Indian Penal Code as well as under Section 3(I)(XI) of SC/ST (Prevention of Atrocities) Act to undergo R.I. for ten years and further fine of Rs.10,000/- and in default of payment, imprisonment for six months and sentence under Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act to undergo simple imprisonment for two years and further directed that in case of deposit of penalty, Rs.5,000/- shall be given to the victim. Both the sentences shall run concurrently.



2. The prosecution story in short is that P.W.5 has lodged a written report before the police on 05.02.2012 stating *inter alia* that the appellant called her in connection with her appointment as LIC Agent and on that she came by Bus and as soon as she got down from the Bus at Mation School, one child taken her to the house of the appellant Vinod Yadav along with her 'Nanad'. Further case of the prosecution is that at the night they were provided dinner and thereafter, they went to sleep in a room. It is also her case that at about 12.30 A.M. in the night, the appellant knocked the door and on opening the gate, he entered in the room and forcefully committed rape upon her and also threatened her of dire consequences as he belongs to a Maoist group. It is also her case that 2-3 miscreants were outside the house also and before leaving the room, the appellant also told her to satisfy the senior Maoist Leader. She has also stated that room was closed from outside and thereafter, the police came in the morning and got them free from the room.

3. On the basis of the aforesaid Fardbeyan, Chutiya P.S. Case No.7 of 2012 under Section 376 and 120(B) of the I.P.C. and Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act has been lodged against the appellant and after investigation, the police has submitted charge-sheet under Section 376 and 120(B) of the I.P.C. and Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act and the cognizance of



the case has been taken, thereafter the case has been committed to the court of Sessions, which ultimately came to the file of Sri Durga Prasad Jaiswal, Addl. District and Sessions Judge-I, Rohtas at Sasaram for trial and disposal.

4. During the course of trial, charges were framed against the appellant under Section 376/120(B) of the IPC as well as Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act.

5. During the trial following witnesses have been examined and they are P.W.1 Rinki Kumari @ Sapna (Nanand of the informant) P.W.2 Trilok Kumar Singh, Deputy Commandant of C.R.P.F., P.W.3, Yuvraj Kumar, Assistant Commandant of C.R.P.F., P.W.4 Ram Pratap Singh seizure list witness, P.W.5 Anita Chero prosecutrix, P.W.6 Arjun Chero seizure list witness, P.W.7 Rajesh Kumar seizure list witness, P.W.8 Dr. Kanchan Singh, who has examined the prosecutrix after her recovery, P.W.9 Dr. Nand Lal Chouhan, a member of Medical Board, constituted for determination of her age, P.W.12 Dr. P.B.K. Sahay, who is member of the Medical Board for determination of her age, P.W.10 Arun Kumar Akela, Officer Incharge of Chutia Police Station, P.W.11 Shashi Bhushan Prasad, Investigation Officer of the present case.

6. Apart from the above oral evidence, following documents have been admitted into evidence on behalf of the prosecution and



they are : Ext.1 Signature of P.W.1 on Fardbeyan, Ext.2 Signature of P.W.1 on seizure list, Ext.3, 3/1 and 3/2 Signature of P.W.4 and 6, 7 on the seizure list, Ext.4 Medical report, Ext. 5 medical report, Ext.6 signature of P.W.11 on Fardbeyan, Ext.7 signature of P.W.11 on formal F.I.R., Ext.8, Case Diary, Ext.9 Pathological test and Ext.10 Call data report.

7. Apart from the above, following documents have been brought on record as material exhibits and they are – Mat. Ext. 1. *Petti-coat*, Mat. Ext.2 Chaddhi, Mat. Ext. 3. Chadar, Mat. Ext. 4. Nokia Mobile with SIM and Mat. Ext. 5. Lemon Mobile without SIM.

8. On behalf of the defence, neither any oral defence nor any documentary evidence has been brought on record.

9. From examination of the statement under Section 313 of Code of Criminal Procedure, it appears that the defence of appellant is of false implication. It appears from the record that the statement of the appellant has been recorded first on 14.02.2013 and later on 05.07.2014.

10. The learned court below after conclusion of the trial has convicted the appellant under Section 376 of the IPC and Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act and also sentenced him as stated above.

11. Being aggrieved by the impugned judgment of conviction



and order of sentence, the present appeal has been preferred by the appellant.

12. From perusal of the record, it appears that the trial court has relied upon the evidence of P.W.5, prosecutrix as well as on the evidence of P.W.1 and convicted the appellant under Section 376 IPC Section 3 (I)(XI) of SC/ST (Prevention of Atrocities) Act.

13. Submission of the learned counsel for the appellant is that evidence of prosecutrix is highly improbable and untrustworthy and the same has also not been corroborated by the evidence of the Doctor. It has also been submitted that in such a circumstances, the conviction of the appellant under Section 376 IPC on sole testimony of the prosecutrix, which is full of inconsistencies and improbabilities, does not appear to be just and proper. Further submission of learned counsel for the appellant is that the evidence of P.W.5 (prosecutrix) is self-contradictory to the evidence of P.W.1, who is '*nanad*' of P.W.5 in para 7 shows that that as the appellant had given assurance to get her employed LIC Agent and he failed to do so she has lodged the case.

14. Further submission of the learned counsel for the appellant is that whole prosecution story is not believable as the prosecutorix has stated that she along with her "*Nanad*" came in the house of the appellant and she slept there in the night along with her



“*Nanad*” and the family members of the appellant were also there and thereafter there is story of rape. If the appellant had given assurance for providing a job of the Agent to her, she might have come with her husband or any male member and coming alone with her “*Nanad*” makes the prosecution case unbelievable and improbable. The prosecution story of appellant committing rape of P.W.5 and doing nothing to her ‘*Nanad*’ also creates shadow of doubt of the prosecution. It has also been submitted that police has not examined her family members nor they have been examined as a witness in the case, whereas and P.W. 5 has stated that she was brought to the court by the police for deposing before the court and they are present in the court. All these facts show that prosecution case is manufactured and concocted one at the behest of police and appellant has falsely been implicated in the case.

15. It has also been submitted on behalf of the appellant that no independent witness has been examined except one witness on two seizure lists. On the basis of aforesaid submission, it is submitted that the prosecutrix is full of absurdity and improbability and un-reliance.

16. In support of his contention that no reliance can be placed on solitary witness of prosecution, which is full of inconsistencies and improbabilities, learned counsel for the appellant has referred decisions of Hon’ble Apex Court in a case ***Roja & Others- Vrs. State***



of Karnataka reported in SCC (Cri) 2017 (1) (SC) 153 and also cited decision reported in *2017 (1) PCCR 309 in the case of Gopal Prasad & Laddu Mian – Vrs.- The State of Bihar* also cited unreported decision of the Hon'ble Supreme Court in the case of *Vineet Kumar & Ors.- Vrs.- The State of U.P. & Ors.* in *Cr. Appeal No.577 of 2017*, in case under Section 482 of the Code of Criminal Procedure.

17. On the other hand, the learned counsel for the State has submitted that the prosecutrix has supported the prosecution case in her statement and the statement of the prosecutrix has been corroborated by the evidence of P.W.1, who is 'Nanad' of the victim and also an eye witness of the occurrence and there is nothing in their cross examination to discredit her evidence, further their evidence found corroboration from the statement of P.W.1 & P.W.5 under Section 164 of Code of Criminal Procedure. It has also been argued that non-finding of any sign of rape does not make prosecution evidence untrustworthy or unreliable as it depends on many other circumstances, such as age of prosecutrix as well as whether she resigned to the faith due to fear and further if she is habitual of sex. On the other hand, there was seizure list of the 'petti-coat' and 'chadar' shows some spots on them and that also supports the prosecution case and in such a situation, conviction of the appellant under Section 376 I.P.C. as well as Section 3(I)(XI) of SC/ST



(Prevention of Atrocities) Act is just and proper and does not require any interference. It is also submitted that as the prosecutrix belongs to S.C./S.T. category, as such conviction of appellant under Section 3(I)(XI) of SC/ST (Prevention of Atrocities) Act is also just and proper.

18. Considering submission of both the parties, let me examine the evidence available on record.

19. P.W.5 is the prosecutrix in this case and she has stated that on a call from the appellant on phone for assuring that he will get her appointed as LIC Agent, she came along with her sister-in-law (P.W.1) by a Bus and when she got down from the Bus at Matiaan School, one boy escorted her to the house of the appellant. Further evidence is that in the night she was provided meal and thereafter she was asked to sleep by the appellant and he will talk in the morning. Her evidence further discloses that at the night he knocked the door and when she opened the door, he came inside the room and forcibly committed rape upon her. Her evidence also shows that thereafter the appellant went out putting chain from the outside. The aforesaid evidence of the prosecutrix in his chief supported the earliest prosecution versions in the F.I.R. In her cross examination, she has stated in para 7 that she is married and she has her husband, mother in law, 'Dewar' and 'Gotani'. She has further stated in para 9



that after occurrence, she was taken to Sasaram. In para 10 she has stated that at present she has come from village for deposing in this case and para 11 shows that at 3rd day, she was sent back to her village. Her evidence in cross examination further discloses that her '*petti coat*' was taken by the Officer Incharge.

20. Evidence of P.W.1, who is sister in law of P.W.5 also supports the prosecution case as stated by P.W.5 and she has also identified her signature on Fardbeyan and she has further stated that her statement was also recorded by police and by Magistrate. She has also proved her signature as well as the seizure list. She has also stated in para 13 that she had shown the place of occurrence to the police personnel and this witness has also denied the suggestion that no rape was committed to P.W.5.

21. On consideration of the above evidence, it appears that P.W.1 has corroborated the evidence of P.W.5, on the point of genesis of occurrence and manner of occurrence. Learned counsel for the appellant has raised objections with regard to her evidence and argued that this witness has stated in para 6 and 7 that her '*bhabhi*' is smart and clever and further stated in para 7 that she became angry by not getting her appointment as Agent so she lodged the case and appellant has also drawn my attention towards para 8 and 9 to show that at the place of occurrence, there are some houses and this witness



has stated that she raised '*hulla*' but in spite of that no witnesses came forward. The above circumstances create doubt about prosecution story.

22. In this case as I have stated that the evidence of P.W.5 has been corroborated by the evidence of P.W.1 and so far the evidence in which she has said that her '*bhabhi*' was smart and clever and being angry she lodged the case is concerned, P.W. 1 is aged about 15 years and she appears to be trapped in art of cross examination, otherwise she has supported the prosecution case and in her cross examination she has even denied the suggestion made by the defence in para 16 that no rape has been committed and she has also denied that she made evidence on the direction of any person. As stated above, P.W. 1 is a minor girl and she had supported the prosecution story of rape and her evidence is corroborated by her statement U/S 164 Code of Criminal Procedure.

23. P.W.8 is a Doctor who has examined the prosecutrix (P.W.5) on 6.2.2012 and she has stated in his evidence that on the basis of clinical examination and vaginal examination, it is difficult to say that intercourse has been done. She has also stated that according to the opinion of the medical report, she is aged about 20-22 years.

24. The other Doctors are P.W.9 Dr. Nand Lal Chouhan and P.W.12 Dr. P.B.K. Sahay, who were members of the medical board ,



constituted for determination of age of prosecutrix and found her age 22-23 years.

25. Apart from the medical evidence, a bed-sheet has also been recovered from the room of the appellant and P.W.7 has stated that a seizure list of those articles have been prepared and he has identified his signature on the same. P.W. 4 and 6 are witness on the seizure list of Mobile Phones.

26. Argument of the learned counsel for the appellant is that no independent witness has been examined of the village of the appellant nor of village of the prosecutrix. The evidence has come that the appellant belongs to a Maoist group and in such a situation if no any independent witness has come forward, in support of the prosecution case, that can be well understandable as in the present days, no one is coming forward to become witness, out of fear of complication and being put to harassment by the police and then to court and as any person want to be aloof from the happenings in the society does not to get himself involved in any legal tangle, especially when it relates to hardened criminal or prohibited organizations. In such a situation, doubting the prosecution case on non-examination of independent witness does not appear to be proper, especially when there are consistent evidence of P.W5 and P.W.1 available on record.

27. P.W.2 and P.W.3 are senior Officers of C.R.P.F. and their



evidence also disclose that both the girls were recovered from the house of appellant and they have stated that P.W.1 and P.W. 5 disclosed about the commission of rape of prosecutrix by appellant. P.W.10 is the Officer Incharge of Chutia Police Station and he has also supported the case of prosecution of recovery of P.W.1. No doubt P.W.2, 3 and 10 are police witnesses but law is well settled that evidence of Police witness is as reliable as the other witness but evidence of Police have to be scrutinized with care and caution and if they appear to be free from embellishment, they can be relied upon.

28. Learned counsel for the appellant has also submitted that in this case the conduct of the prosecutrix is not free from doubt and that creates serious doubt about the whole prosecution case as she claims that on the phone call of the appellant, she went there along with the sister-in-law in the evening in spite of evidence that in her family, there are husband, '*Dewar*' and other male members but not taking any male member for coming to the house of the appellant and coming herself along with P.W.1 creates doubt about the conduct of the prosecution. Further it is submitted that she has stated in her evidence that she raised '*hulla*' whereas as per her evidence in the vicinity of the house of the appellant there were houses, but none of the villagers have assembled and it is also submitted that the police has not examined the independent witnesses of the village nor even



tried to visit the village of the appellant and the police though claim to have seized ‘petti-coat’ and ‘chadar’ but the same have not been sent to the F.S.L. for its examination and all these facts certainly shows falsity of the prosecution case.

29. So far conduct of the prosecutrix is concerned, when there are consistent, cogent and reliable evidence of P.W.5 and P.W.1 about commission of rape on P.W.5, supported by their statement under Section 164 Cr.P.C. and evidence of their recovery from the home of the appellant, the whole prosecution case can not be doubted on the ground of conduct of prosecutrix. So far non-examination of independent witnesses by the I.O. and not sending the seized ‘petti-coat’ and ‘chadar’ for FSL Examination are concerned, to my opinion, the evidence of the prosecutrix can not be brushed aside on the ground of negligence on the part of Police in investigation. The Hon’ble Supreme Court in a decision in the case of State of **Punjab-Vrs.- Gurmit Singh, reported in 1996 AIR (SC) 1393 in para 7** of the judgment has held that -

“If the Investigating Officer did not conduct the investigation properly or was negligent in not being able to trace out the driver of the car, how can that become a ground to discredit the testimony of the prosecutrix ?

30. So far inconsistency and contradictions are concerned, I



have already noticed that those contradiction is minor in nature and that also does not goes in to the root of the prosecution case. At this point, I would like to refer a decision of Hon'ble this Supreme Court in a case of ***Vijay @ Chinee- Vrs. State of Madhya Pradesh, reported in 2010 (4) PLJR 01*** has already considered this aspect of the matter and after considering a large number of judgments has come to conclusion -

“15. Thus, in view of the above, the law on the point can be summarized to be that the evidence of the witnesses must be read as a whole and the cases are to be considered in totality of the circumstances and while appreciating the evidence of a witness, minor discrepancies on trivial matters, which do not affect the core of the prosecution case, should not be taken into consideration as they can not form grounds to reject the evidence as a whole.”

31. In the present case, the prosecutrix is rustic villager and she has supported the case as made in the F.I.R. and the evidence of the prosecutrix has been corroborated by the evidence of P.W.1, who is her ‘*nanad*’ and she is minor, aged about 15 years and the aforesaid evidence has further been corroborated by the statement of both P.W. 5 and P.W.1 under Section 164 Cr.P.C. No doubt the medical evidence shows that the Doctor has opined that it is difficult to say that rape has been committed or not and the learned counsel for the appellant has also assailed the judgment on the ground that the



evidence of P.W.5 (prosecutrix) not corroborated by the evidence of Doctor and it falsifies the prosecution story. However, the prosecutrix was aged about 22-23 years as found in determination of age by the Medical Board and she is married lady and rape has been committed by putting her in fear, in such a situation, if no sign of rape was found that can not falsifies the prosecution case. This aspect of the matter has been considered in various judgments of the Hon'ble Supreme Court and in a case of *Vijay @ Chinee- Vrs. State of Madhya Pradesh (supra) in para 26 and 27*, the learned Court taking notice of this fact considered several judgments of Hon'ble Apex Court in para 26 and 27 of the judgment.

“26. In the case of Gurcharan Singh vs. State of Haryana, AIR 1972 SC 2661, this Court has held that ‘the absence of injury or mark of violence on the private part on the person of the prosecutrix is of no consequence when the prosecutrix is minor and would merely suggest want of violent resistance on the part of the prosecutrix. Further absence of violence or stiff resistance in the present case may as well suggest helpless, surrender to the inevitable due to sheer timidity. In any event, her consent would not take the case out of the definition of rape”

27. In Devinder Singh & Ors. Vs. State of Himachal Pradesh, AIR 2003 SC 3365, a similar issue was considered by this Court and the court took into consideration the relevant evidence wherein rape was alleged to have been committed by five persons. No injury was found on the body of the prosecutrix. There was no matting on the pubic hair with discharge and no injury was found on the genital areas. However, it was



found that prosecutrix was used to sexual intercourse. This Court held that the fact that no injury was found on her body only goes to show that she did not put up resistance.”

32. Considering the above aspect and other aspect of the matter, in detail in the judgment of *Vijay @ Chinee – Vrs. State of Madhya Pradesh (supra)*, the Hon’ble Supreme Court has come to a conclusion in para 15 that-

“Thus, the law that emerges on the issue is to be effect that statement of prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.

33. Hon’ble Supreme Court in the above judgment also reminds the trial court of their duty while dealing with such cases, which is as follows :

“The courts should examine broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution caes. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in materials particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with



cases involving sexual molestations.”

34. In the present case as I have stated above, allegation of rape has been corroborated by the evidence of P.W.I who is sister in law of the P.W.5 and so far prosecution story of rape is concerned, the other witnesses, who are police officials has also supported the story of rape of prosecutrix as well as recovery of the prosecutrix and her sister in law from the house of the appellant as well as ‘*petti-coat*’ and the ‘*chadar*’ was also recovered from that place.

35. Considering the entire discussions as above, I find that there are ample cogent, reliable and consistent evidence on record to show beyond reasonable doubt that appellant has committed rape upon prosecutrix, who belongs to the scheduled tribe.

36. In such view of the matter, the impugned judgment of conviction of appellant under Section 376 IPC and Section 3 (1)(xi) of S.C./S.T. (Prevention of Atrocities) Act does not require interference. In the result, the impugned judgment of conviction is affirmed.

37. So far sentence of the appellant is concerned, submission of the learned counsel for the appellant is that he is in custody continuously for five years and six months and the age of the appellant at the time of delivery of judgment was 35 years, as such



now he is aged about 40 years of age and as such some leniency be shown towards the sentence.

38. Considering the age of the appellant from the date of delivery of judgment as well as he is in custody for about 5 ½ years, the sentence of R.I. for ten years imprisonment under Section 376 of IPC is modified to the extent of R.I. for seven years. Sentences under Section 3 (1)(xi) of S.C./S.T. (Prevention of Atrocities) Act and order of fine and consequential sentence shall remain same.

39. Accordingly, with the above modification in sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
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