

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.594 of 2015

Arising Out of PS.Case No. -10 Year- 2004 Thana -FATUHA District- PATNA

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SANJU SINGH SON OF LATE GURUSHARAN SINGH RESIDENT OF
VILLAGE - SIKANDARPUR, P.S. FATUHA, DISTRICT – PATNA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Ashwani Kumar Sinha, Advocate

Mr. Dinkar Kumar, Advocate

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 04-07-2017

Sole appellant Sanju Singh has been found guilty for an offence punishable under Section 376 IPC and sentence to undergo R.I. for ten years as well as to pay fine of Rs.25,000/- and in default thereof, to undergo imprisonment of nine months additionally vide judgment of conviction and sentence dated 31.08.2015 passed by Additional Sessions Judge, VIIth, Patna City, Patna relating to Sessions Trial No.723/2004.

2. Bereft of unnecessary details, victim (name withheld), PW.1 filed written report on 27.01.2004 for an occurrence dated 16.01.2004 at about 07:00 PM alleging *inter alia* that while she was in her room, Sanju made house trespass, closed the door and then, committed rape upon her as a result of which, she became unconscious. After regaining her sense, she found the Sanju over 'Chali' in order to hide himself. On her cry her cousin brother Bichandar Kumar has locked the room from outside. Furthermore, it has also been alleged that seeing her, they have opened the door



caught hold Sanju, taken to Gali, wherefrom he escaped. Subsequently thereof, the caste people convened panchayati which was also dishonored. Lastly, seeing no an alternative, filed instant case.

3. Fatuha P.S. Case No.10/2004 was registered under Section 376 IPC whereupon investigation commenced and after concluding the same, charge sheet was submitted facilitating the trial which concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial and to substantiate the same, one DW, Ranjeet Kumar has also examined.

5. In order to substantiate its case prosecution had examined three PWs out of whom PW.1 is victim, PW.2 is Kanti Devi her mother and PW.3 is Nagina Singh, her father. Side by side had also exhibited Ext.I- Signature of victim over written report, Ext.2-Signature of victim over statement recorded under Section 164 Cr.P.C.

6. Learned counsel for the appellant has submitted that victim happens to be major and from her conduct, it is evident that she happens to be a consenting party as, the appellant is none other than younger brother of her brother-in-law Dharam Nath. Therefore, question of rape does not arise. Furthermore, it has also been submitted that though there happens to be deficiency at the end of the conducting counsel who failed in specific term to suggest the victim to be major and further, that appears to be



simply a mistake expecting presence of doctor during trial who never been produced by the prosecution, even then, the victim was cross-examined on that very score under para-7 and so, due to non-examination of the doctor appellant has been forbidden to bring on record the sufficient evidence which could have exonerated the appellant from the criminal liability and so, not only the victim be considered to be a major as well as a consenting party who subsequently been influenced by her parents to drag the appellant under criminal prosecution, simultaneously the court should also hold that on account of non-examination of the doctor, interest of appellant has been prejudiced.

7. Furthermore, it has also been submitted that in likewise manner, non-examination of Investigating Officer has also caused prejudice to the interest of the appellant. To substantiate such plea, it has been submitted that had there been examination of Investigating Officer the development in the prosecution case properly been surfaced along with doubtfulness over prosecution version in consonance with objective finding relating to the place of occurrence.

8. Now coming to merit of the case it has also been submitted that virtually neither rape was committed nor the parties have had indulged in physical relationship rather they happens to be love birds in the background of inter-se relationship and some sort of activities were found perceived by her family members and on account thereof, she has been forced to instituted this case. Had there been an occurrence of rape then in that circumstance the Brother, the Bhabhi of victim whose presence



were in adjoining room, would not have allowed themselves to slave on that score and in likewise manner, would not have allowed the appellant to be spared alive. There happens to be no disclosure that after apprehension of the appellant from the said room, he was even given a slap. The other circumstances, which the learned counsel for the appellant has argued that had there been an occurrence of rape, then in that circumstance the mother would not have allowed herself to stay away from her house for nine consecutive days that too in the background of the fact that none was to care her. In the aforesaid background, it has been submitted that happens to be reason behind that neither own brother, Bhabhi has been cited as charge sheet witness nor Birchandar, the cousin brother who is said to have apprehended appellant has been made. Why not those persons at least the family members came forward to support the case of the prosecution that the victim was raped in their presence or they have had apprehended the appellant after the occurrence in a room where his presence was on account of committing rape over the victim and in likewise manner corroborating the fact of the rape that means to say deposing over physical condition of victim, any kind of spot (saver) over Salwar, bed sheet and further, those items were handed over to the Investigating Officer during course of investigation.

9. It has also been submitted that delay in institution of the case more particularly relating to rape in the background of Indian social fabric whereunder the prestige of a girl happens to be of paramount consideration and is tagged with the prestige of the



family, has not been considered unusual nor on that very score the prosecution case is to be brushed aside but, in the peculiar nature of the case whereunder victim had properly identified presence of his brother, Bhabhi along with children in a room adjacent to the room wherein she was raped, having no place of occlusion, and even then unhindered opportunity of free access instead of accused galloping therefrom, put his presence till his apprehension and then an explanation at the end of the prosecution over his absence that he managed to escape therefrom is something to say over which the delay has got an important role to play and has to be seen in the background of aforesaid context. So, in the aforesaid facts and circumstances of the case, it has been submitted that virtually no rape was committed. May be, they have been found in awkward situation and for that, due to pressure having exhorted upon the victim, this case has been, filed. So submitted that in the facts and circumstances of the case, the findings so recorded by the learned lower court is to be erased by way of allowing appeal.

10. The learned Additional Public Prosecutor controverted the submission and submitted that victim was a minor on the alleged date of occurrence, which has not been challenged at the end of appellant, therefore, the consent has got no role to play and that being so, the conviction and sentence recorded by the learned lower court happens to be justified. Furthermore, it has also been submitted that from the cross-examination having been made on behalf of appellant, it is apparent that victim has been able to face the litmus paper test and so, on flimsy grounds, her evidence should not be discarded. That being so, the judgment of conviction



and sentence recorded by the learned lower court is fit to be confirmed.

11. It is well settled that evidence of prosecutrix if inspires confidence, would require no corroboration. Event of rape happens to not only pernicious to the victim rather it causes physical, psychological as well emotional scar which survives till her lifeline virtually ruining her persondism, as it is found a kind of stigma and that happens to be reason behind acceptance of evidence of prosecutrix without any immurement. However, if the evidence of the prosecutrix is found deficient on its face value then in that event, certainly the court will require for corroboration.

12. From the evidence of the prosecution witnesses, it is evident that appellant happens to be younger brother of brother-in-law of victim, PW.1. Furthermore, it is evident that on account of death of daughter, the prosecution party has become aggrieved. Though Investigating Officer has not been examined but from the evidence of PW.1, it is apparent that the house is being occupied by her family as well as family of her uncle. Two rooms have been allotted to share of her father out of which, one was occupied by her elder brother Santosh who, at the relevant time was present along with his wife and children. Both the rooms are adjacent to each other. The room in which occurrence is said to have committed has got so many windows without being grilled and so, one could have free access. There happens to be no evidence that curtain was there. Furthermore, no independent witnesses have come forward to say that they have seen the appellant going inside the house of the victim. Own elder brother who was present with



his family in the adjoining room has not come forward to corroborate the evidence of victim and in likewise manner, the cousin brother who had locked the room from outside caught hold the accused and from whose custody accused managed to flee. Apart from this, when the victim had himself disclosed that there was window at all sides without having grill, full having unobstructed opportunity to passage then in that event, presence of appellant inside the room till his apprehension and then got himself found in a Gali where he was taken, is another circumstance. In the aforesaid background the delay, although is found non cognito so far rape is concerned, has to be explained considering the conduct of remaining two witnesses who are non-else than parents of the victim. In the background of aforesaid deficiency, now the evidence of PW.2 as well as PW.3 her parents is to be looked into. Certainly they are not an eye witness to occurrence as they were not present. PW.2 while was at the place of his elder daughter PW.3 Nagina Singh was also at the place of another daughter they have not disclosed that they were informed by their son with regard to such kind of incidence. PW.2 mother had stated that villagers have informed her that some misfortune occurred whereupon she came and then was informed. Panchayati was also convened but could not materialized. At the other end, PW.3 the father had said that when he returned back from the place of his daughter then victim had disclosed regarding the event. Panchayati was convened which could not materialized and on account thereof case has been registered.

13. PW.1 is the victim who had deposed that on the



alleged date and time of occurrence she was alone at her house. Her father who works at brick-kiln had not returned so doors were open. After sometime door was closed over which she thought that her father has come but she became surprise to see that it was Sanju (appellant) whereupon she raised alarm. Then thereafter, Sanju caught hold, gagged her mouth, threw her over chowki, untied her string and then committed rape as a result of which she became unconscious. After regaining sense she raised alarm whereupon her cousin brother locked the room from outside and then, collected the other caste name who caught hold Sanju from the room. Sanju, subsequently escaped their custody. Villagers also convened panchayati which could not materialized. Then thereafter, after eleven days, this case has been filed at her end. Apart from divulgence of fact during course of cross-examination, it is apparent from the evidence of PW.1 that she had not disclosed with regard to absence of her mother on account of staying at Kolkata and in likewise manner, absence of her father who had gone to the place of her another sister, instead thereof had deposed that she was awaiting her father who had gone to brick-kiln where he works. Furthermore, during her cross-examination at para-25 had disclosed that she had suffered from diarrhoea and for which, satine was given to as a result of which, she was very weak. Had she suffered such kind of illness then in that event, possibility of absence of PW.2 as well as PW.3 was not at all a normal phenomena. At the other end PW.1 herself disclosed that she was awaiting presence of her father who had gone to brick-kiln where he works. Apart from this, when both situation is being perceived



then in that circumstance non-response of Santosh, her elder brother, her Bhabhi and children who were present in adjacent room within the same periphery of the house gives a peculiar picturization. It should also be seen considering that, appellant being a handicapped (Ext.A) and further without having allegation that he was armed with deadly weapon victim was terrorized, put under threat of life, and further, the victim perceived the lascivious attitude of accused when he closed the door, was really a situation, faced by her. In likewise manner cousin brother Bichandar's presence who had locked the room, caught hold the appellant, along with other members of her castemen, and getting free from their clutch, is another circumstance to consider, when the aforesaid event has not been flashed by the parents PW.3 & PW.3.

14. In *Aman Kumar v. State of Haryana* reported in **(2004) 4 SCC 379** it has been held:

“5. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would suffice.”



15. Giving anxious consideration to the facts and circumstances of the case, it is apparent that prosecution failed to substantiate its case beyond the shadow of reasonable doubt consequent thereupon, the finding recorded by the learned lower court is set aside. Consequently appeal is allowed. Appellant is on bail, hence is being discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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