

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.123 of 2014

Arising Out of PS.Case No. -19 Year- 2013 Thana -CHAND District- BHABHUA (KAIMUR)

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1. Dallu Bind Son Of Hari Bind Resident Of Village- Darupur, P.S- Chand,
District- Kaimur At Bhabua.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajnikant Pandey

For the Respondent/s : Mr. Abhay Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 12-07-2017

This appeal is directed against the judgment and order of conviction dated 20.12.2013, passed by Shri Ashok Kumar, *Adhoc* Additional Sessions Judge – I, Kaimur, Bhabua, in Sessions Trial No. 268 of 2013, by which he has convicted the appellant under Sections 376 and sentenced him to undergo R.I. for 7 years with a fine of Rs. 5000/- and in default of payment of fine, R.I. for six months. Appellant was further sentenced to undergo R.I. for 6 months for the offence punishable under Section 323 Indian Penal Code, S.I. for 1 months for the offence punishable under Section 341 of Indian Penal Code and R.I. for 01 year for the offence punishable under Section 504 of Indian Penal Code. All the above sentences were directed to run concurrently.



Prosecution case as per written report (fardbeyan) of P.W. 3, is that on 01.04.2013 at about 7 P.M., the informant was returning to her house and when she reached near the house of appellant, appellant caught hold her hand and started forcibly dragging her inside his house and on protest, appellant abused her and beaten her, on which she started crying and then appellant gagged her by *gamcha* and took her inside his house. Further case of the prosecution is that she made all efforts to get away from the clutches of the appellant, however, she did not succeed and was forcibly raped by the appellant and about 3. A.M., the appellant set her free and sent her out of his house. Thereafter, the informant met her grandfather and narrated the whole occurrence and when the matter came into knowledge of some villagers, they advised the informant and her family members not to report the matter to police. However, later on she filed her written statement before the police, on the basis of which, Chand P.S. Case No. 19/13 was registered under Section 323, 541, 504 and 376 of Indian Penal Code and police after investigation submitted charge-sheet against the appellant under the aforesaid sections of Indian Penal Code and, thereafter, the cognizance was taken and the case was committed to the Court of Sessions, which ultimately came to the file of Shri



Ashok Kumar, *Adhoc* Additional Sessions Judge – I, Kaimur, Bhabua, for trial and disposal of the case. In this case, charges have been framed against the appellant under Section 323, 341, 504 and 307 of Indian Penal Code.

On behalf of the prosecution, altogether, five witnesses have been examined and they are; P.W. 1-Ramcharan Bind, P.W. 2, Gudiya Devi, P.W. 3- Urmilla Kumari (Informant and victim) P.W. 4- Doctor, Sanghmitra Singh and P.W. 5- Ganga Sagar Singh (Investigating Officer).

Apart from the above following documents have been taking into evidence and they are; Ext. 1- Written Report, Ext. 1/1- Signature on written report, Ext. 2-Medical Report, Ext. 2/1 – Age assessment report and Ext. 3- signature on formal F.I.R.

Defence of the accused person is of innocence and false implication and complete denial of the occurrence, which will appear from the trend of cross-examination as well as statement of witnesses under Section 313 Cr.P.C.

After conclusion of trial learned Trial Court has convicted the appellant under Sections 376, 323, 341 and 504 Indian Penal Code and sentenced him as stated above.

Being aggrieved, the appellant preferred the present



appeal.

It has been submitted on behalf of the appellant that in this case except P.W. 3, there is no eye –witness of the occurrence and so far evidence of P.W. 3 is concerned, there appears to be inconsistencies and contradictions between her evidence in chief and her earlier statement given before the police. Further the evidence of P.W. 3 did not find corroboration from the Medical report as Doctor has not found any sign of rape on her or any injury over her person or on her private parts and further there is also no independent witness of the occurrence. It has further been submitted that in absence of any corroboration and that too when the evidence of P.W. 3 appears to be not probable, as such, conviction of appellant under Section 376 Indian Penal Code and other Sections of Indian Penal Code, on the basis of sole testimony of P.W. 3, is not sustainable in the eye of law.

On the other hand, learned counsel for the State has submitted that prosecutrix has supported the earlier version in her evidence and the evidence of P.W. 1 and P.W. 2, who are mother and father respectively, supports the evidence of P.W. 3 as they have seen P.W. 3, just after the occurrence. It has also been submitted that conviction of appellant under Section 376 Indian



Penal Code on the basis of sole testimony of P.W. 3, can be based as held by Hon'ble Supreme Court in its several decisions. As such the conviction of appellant under the above mentioned Sections of Indian Penal Code is just and proper and does not require any interference.

In the aforesaid background of the matter, this court is going to scrutinize the evidences available on record.

P.W. 3, who is the informant and prosecutrix, has supported the case of prosecution with regard to commission of rape on her. In her evidence in chief, this witness has submitted that when the appellant caught hold her, she cried and further the appellant took her to a room and outraged her modesty and on protest, appellant also assaulted her, thereafter, the appellant took her to his house and kept her in a room first and again kept in another room and raped her. Further evidence of this witness discloses that about 3.30 A.M. on hearing some sound, mother of the appellant woke up and enquired the same but the appellant told her that his friend has come for sleeping with him and, thereafter, the appellant ousted her from his house. Further evidence is that she met her grand father and informed about the occurrence and her family members. Further evidence is that she lodged a case on next



day as her father was not interested as the reputation of the village was involved.

P.W. 1 and P.W. 2 are mother and father of P.W. 3 respectively. Though from their evidence, it appears that they are not the eye-witness of the occurrence, however, their evidence in chief shows that in the next morning P.W. 3 came to them and told them about commission of rape by the appellant. As such P.W. 3 is the only eye witness of the occurrence.

Evidence of P.W. 4, who is Doctor has stated in his evidence that no injury was found over any part of the body or genetelia or any its neighbourhood area of the body and on examination no pubic hair meted with blood or semen wet or dry, was found no tear of clothes. This witness has further stated that vaginal swab was taken and send for pathological examination, result of which showed no spermatozoa either dead or alive, hymen membrane found already ruptured and further on examination, no sign of recent sexual intercourse was found. Further medical report shows that on examination, age of the girl was found between 15 to 18 years. This witness has been cross examined by the prosecution and on cross-examination, he has stated that he has not found any bruise, aberration or laceration over the body of the victim.



P.W. 5 is the Investigation Officer of the this case and this witness has stated in his evidence in chief that he has inspected the place of occurrence, which is a three rooms house of the appellant facing east and his evidence further discloses that there are two rooms adjacent to the room in which, it is alleged that the victim was raped and in the last portion, there is no *darwaza* (door). He has also stated that the distance of the house from the road is about thirty meters.

This witness has also stated in his cross-examination that he has not seized any clothes as it was not produced.

On close scrutiny of evidence of P.W. 3, who is the prosecutrix as well as sole eye witness of the occurrence, it appears that her evidence is full of improvement as in the court she has stated that she was first raped in a room and, thereafter, she was taken by the appellant to his house, there she was again raped. However, there is no such statement in her earlier version in written report, in which she has stated that she was raped only once and in her statement recorded under Section 164 Cr.P.C, she has stated that she was first taken to a under construction house, there she was first raped and, thereafter, she was taken by the appellant to his house, where she was again raped. As such her evidence is self



contradictory. Apart from that evidence of P.W. 3 does not find any corroboration from the medical evidence as the medical evidence negates the factum of rape. Further in the cross-examination, doctor has admitted that there was no bruise, aberration or injury over the body of the prosecutrix and further her age was assessed between 15 to 18 years and in cross-examination, doctor has admitted that her age may be between 17 to 18 years. It is also a well settled principle of law that on the basis of sole testimony of prosecutrix, conviction can be made under Section 376 Indian Penal Code, if the evidence of prosecutrix is found free from any embellishment, contradictions. Hon'ble Supreme Court in the case of **Raju v. State of M.P.** reported in **AIR 2009 SC 858** in para -9, which reads thus:

“9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the



accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged



on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.

Hon'ble Supreme Court in the case of ***Tameezuddin alias Tammu v. State (NCT of Delhi)*** reported in **(2009) 15 SCC 566** held as under:-

“9. It is true that in a case of rape the evidence of the prosecutrix must be given predominant consideration, but to hold that this evidence has to be accepted even if the story is improbable and belies logic, would be doing violence to the very principles which govern the appreciation of evidence in a criminal matter. We are of the opinion that story is indeed improbable.”

Further in the case of **Narender Kumar v. State (NCT of Delhi)** reported in **(2012) 7 SCC 171**, Hon'ble Supreme Court in para 20 and 21 held as follows:-

“20. It is a settled legal proposition that once the statement of prosecutrix inspires confidence and is accepted by the court as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the court for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies



should not be a ground for throwing out an otherwise reliable prosecution case.

21. A prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject matter being a criminal charge. However, if the court finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or substantial, which may lend assurance to her testimony. (Vide: Vimal Suresh Kamble v. Chaluverapinake Apal S.P. & Anr., AIR 2003 SC 818; and Vishnu v. State of Maharashtra, AIR 2006 SC 508)."

The ratio of the aforesaid judgments clearly shows that if the court finds it difficult to accept the version on the prosecutrix on the face value, the corroboration is required in support of her contention. In the present case, as discussed above, there are contradictions between the evidence of P.W. 3 from her earlier version as well as from her statement under Section 164 Cr.P.C. and apart from that if the prosecution story is believed to be true, occurrence took place at 7.00 P.M. in the month of April and generally in the month of April, at 7.00 P.M. complete darkness does not prevail and as per the prosecutrix, when appellant caught hold her, she raised *hulla* and further she was taken to some other



house and she was raped and, thereafter, she was taken by the appellant to his house and there also, she was raped but nobody from the village came forward to help her and to depose in the present case. Further as per the evidence of prosecutrix in the court, mother and sister of the appellant were also living and as per the evidence of I.O. there was no *darwaza* (door) in the room, in such a situation committing rape repeatedly, when other family members are also present in the house, itself appears to be suspicious. Further though P.W. 1 and P.W. 2 has stated that prosecutrix came and told them about the occurrence but no step was taken by them for lodging F.I.R. on the same day. No doubt explanation has been given that F.I.R has not been lodged, as the reputation of the village was involved. It also appears that prosecutrix was absent from her house for whole night, however, there is no evidence that either of the family members of the prosecutrix tried to search in the village. Moreover, in spite of claim that she was repeatedly raped, the evidence of doctor does not show any sign of rape or any injury either external or internal was found on the person of the prosecutrix.

Considering the facts and circumstances discussed above, prosecution case is full of improbabilities and appears to be false



and concocted. In view of the same, conviction and sentence of the appellant does not appear to be sustainable.

Accordingly, this appeal is allowed, impugned judgment and order of sentence dated 20.12.2013, passed by Shri Ashok Kumar, *Adhoc* Additional Sessions Judge – I, Kaimur, Bhabua in Sessions Trial No. 268 of 2013, is hereby set aside.

As the appellant is in custody, he is directed to be released forthwith.

(Vinod Kumar Sinha, J)

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