

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.397 of 2002

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Krishna Chourasiya

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 403 of 2002

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Mukesh Chaurasiya

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.397 of 2002)

For the Appellant/s : Mr. Pankaj Kumar Sinha, Adv.
Mr. Kamal Kishore Jha, Adv.

For the Respondent/s : Mr. Binpin Kumar, APP
(In CR. APP (SJ) No.403 of 2002)

For the Appellant/s : Mr. Pankaj Kumar Sinha, Adv
Mr. Kamal Kishore Jha, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 04-01-2018

Both the above appeals arise out of judgment of conviction and order of sentence dated 27.05.2002, passed by Shri Abdul Nasir Khan, learned Additional Sessions Judge –VII, Munger, in Sessions Trial No. 1047 of 1999/ 62 of 2001, by which the appellants were held guilty under Section 366, 342 and 376 of the Indian Penal Code (hereinafter referred to as “the IPC”) and were sentenced to undergo R.I. for seven years, S.I. for one year and R.I. for seven years respectively. All the sentences were directed to run concurrently.



2. Prosecution case as per the fardbeyan of Satendra Chourasia (P.W. 7) recorded by Shri B.N. Singh (S.I.) on 3.12.1998 at 10. A.M. in short is that the informant was married with the victim – Sarojni Devi (P.W. 3) and she was in her *Maike* and the informant was a daily wage labourer in Delhi. It is alleged, on 01.12.1998, informant came to his *Sasural* for *Bidai* of his wife at village *Dobadih*. Mother – in – law of the informant told him that on 21.11.1998, nephews of the informant, namely, Krishan Chourasia and Mukesh Choursia had already taken her with themselves on the plea that informant was ill. Thereafter, the informant enquired from the house of his nephews but the lady could not be traced. It is further alleged the wife of the informant had gone with the appellants with 40 grams of gold ornaments, 150 grams of silver ornaments and a cash of Rs. 3500/-. On the basis of the aforesaid *fardbeyan* Barbigha P.S. Case No. 319/98 was registered under Sections 365, 366 and 34 of IPC against the appellants. After investigation police submitted charge-sheet under Section 366, 342 and 376 of IPC.

3. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Abdul Nasir Khan, learned Additional Sessions Judge –VII, Muner, for trial and disposal.

4. During the trial, altogether nine witnesses were examined from the side or prosecution. They are: P.W. 1- Suma Devi (Mother of the victim), P.W. 2 – Krishna Murari Lal, who was declared hostile, P.W.



3- Sarojni Devi (Victim) P.W.4- Yogendra Lal, who was declared hostile, P.W. 5 – Ram chandra Mahton, who was declared hostile, P.W. 6 –Satish Chourasia, who was also declared hostile, P.W. -7 Satendra Chourasia, the informant and husband of the victim, P.W. 8- Ram chandra Mahton, the Civil Surgeon, who assessed the age of victim as 19 years as on 27.03.1999. P.W. 9 – Dr. Manju Kumari Bhaduri, the doctor, who examined the victim.

5. Apart from that following documents have been brought on record and marked as: Ext. 1- Signature of informant on fardbeyan, Ext. 2- report of Medical Board regarding assessment of age of victim, Ext. 3- Examination report of Sarojini Devi.

6. When examined under Section 313 Cr.P.C., appellants pleaded not guilty and completely denied the allegations.

7. Post trial, the learned trial court convicted both the appellants under Sections 366, 342 and 376 of the IPC and sentenced them in the manner stated above relying on the evidence of P.W. 3, the victim, supported by the evidence of P.W. -7 and P.W. -1.

8. Contention of the appellants is that there is no eye-witness of the occurrence to support the case of prosecution with regard to commission of rape on the victim and the conduct of the victim of remaining with the appellants for three months and not making any effort or approaching anyone for her help and further the conduct of informant as even in spite of knowing the fact that she was traceless, he made no attempt to search her, whereas, F.I.R. discloses that at the



time of *Bidai* by the appellants, the victim herself has taken away the ornaments and cash. All these facts creates serious doubt about the manner of occurrence. Further the evidence of P.W. 7 also disclosed that at that time, she was in her *Sasural*, which was even admitted by P.W. 3 in her statement under Section 164 Cr.P.C. before the Magistrate as she has stated that she was taken to her *Sasural* first and she remained in *Sasural* for six days and, thereafter, she was brought back to her *Naihar* where her husband was also present and after dropping her to her *Maike* appellants had returned to their home. P.W. 7 had also stated that when he came from Delhi, he lodged the case and in that period he remained in his *Sasural* and in own house as well and further stated he remained in his house for ten days and his wife was with him. If the aforesaid evidence is believed to be true, it will demolish the whole prosecution story. It has further been contended that no independent witness of the place, where the victim was allegedly kept for three months, were examined to prove the prosecution case of abduction and rape and these facts clearly show that it is a case of elopement of victim with the appellants. Further her age was assessed as 19 years and the doctor, who examined the alleged victim, has not found any sign of rape, however, the learned Trial Court without appreciating these vital contradictions, inconsistencies has convicted the appellants under Sections 366, 342 and 376 of the IPC, which is not sustainable in the eye of law.

9. Per contra, learned counsel for the respondent – State has



contended that evidence of P.W. 1 and P.W. 3 clearly establish that it is the appellants, who took the victim to Delhi with themselves on the plea that the husband of the victim was ill. Evidence of P.W. 3 shows that she was confined for three months in Delhi, where she was subjected to rape by these appellants and so far contention of the appellants that there is no independent eye-witness, it clearly appears from evidence of P.W. 3 that she was confined in a house for three months and as such there cannot be any independent witness. It has also been submitted by learned counsel for the State that the doctor on examination of the victim has not found any sign of rape on her persons, however, the fact cannot be overlooked that the victim was examined after a lapse of three months of the occurrence and in this situation, there is nothing uncommon if the rape was not established in the medical examination. Hence there is no infirmity in the finding of guilt recorded by learned Trial Court and the appellants have rightly been convicted under Sections 366, 342 and 376 of the IPC.

10. Considering the evidence on the above background, it appears that the fardbeyan was recorded on 03.12.98 and though it is alleged that appellants have taken the victim on the plea that *Mamu* (Uncle) was ill but it appears from the fardbeyan that at the time of *Bidai*, it is the wife (victim), who had taken the ornaments and cash with herself and had gone with the appellants. Evidence further discloses that she remained for three months with the appellants, she never tried to flee away nor made any effort to inform anybody else, especially when her



evidence shows that her husband was living in Delhi at Ranjit Nagar. The above conduct certainly casts a serious doubt about the prosecution story of abduction and commission of rape by the appellants. P.W. 7 has supported the prosecution story in his evidence in chief and also identified his signature on fardbeyan and also admitted that appellants were his nephews. However, his statement in para -5 of his cross-examination disclosed that in the month of *Kartik*, he had come from Delhi and lodged the case just after coming to his house. His evidence further disclosed that he remained in his house and *Sasural* for ten days, where his wife was also with him. His evidence further shows that he came to his house from Delhi and he received the custody of his wife from Sheikhpura Court. Evidence of this witness also shows that at the time of lodging of F.I.R the victim was at her *Sasural* and *Maike* with the informant (P.W. 7), falsifies the prosecution story.

11. So far evidence of P.W. 3 is concerned, she has also supported the case of her abduction and commission of rape by these appellants at *Sahadra* (Delhi) but when her attention was drawn towards her statement under Section 164 Cr.P.C, she has also stated in para -7 that she had disclosed before the Magistrate that both appellants had taken her to *Sasural* at Jalalpur and, thereafter, brought her back to her *Naihar* and she has also admitted that at that time, her husband was at her *Sasural* and he was not ill. However, she has further stated that her husband went back to Delhi after three days, thereafter, the



appellants again came to her *Naihar* and took her to Delhi on the plea that her husband was ill, if the same is believed to be true, it creates a serious doubt on the prosecution story. It further appears from her evidence that she was forcibly raped on the point of dagger and was also threatened. However, doctor P.W. 9 had examined the victim on 26.03.1999 and found that there was no sign of rape on the victim. The doctor in her cross-examination disclosed that the victim did not complain to her about any violence on her person by any person. P.W.8, the doctor, who presided the Medical Board assessed the age of victim as 19 years and P.W. 3 (victim) has also stated her age in the court as 20 years as on 26.05.2000.

12. P.W. 1 is the mother of victim and she has also supported the case of prosecution. However, her evidence stands falsified from evidence of P.W. 7 as the victim girl was taken to *Sasural* first and she remained there with her husband and, thereafter, she came back to her *Maike* and, thereafter, she was again taken to Delhi, where alleged occurrence took place, which is contradictory to evidence of P.W. 3. Further in this case I.O. has not been examined as had he been examined he would have exert light with regard to the place, where the offence was committed and also with regard to recovery of the appellants and the victim.

13. Considering the entire discussions made above, evidence of P.W. -3 (victim), who is a major and married lady, appears to be not free from reasonable doubts. There are material contradictions



between the evidence of PWs and from the conduct of the witnesses, it appears to be a case of elopement of victim with the appellants and being a consenting party lived with the appellants for three months. So far allegation of rape is concerned, except the evidence of P.W. 3, there is absolutely nothing on record and though the conviction can be based on the sole testimony of the victim, however, the same has to be corroborated by other circumstances and the evidence of P.W. 3 (victim) does not inspire confidence as the victim was confined for three months and was forcibly subjected to rape but medical examination of the victim negates the factum of commission of rape. Similarly, though it is the story of prosecution that she was kept in Delhi for three long months, however, there is absolutely nothing to show that she made any attempt or inform anyone so as to get herself freed from the clutches of the appellants. In these circumstances burden is on the prosecution to prove the commission of offence through consistent and reliable evidence but in the present case, there are several inconsistencies in the evidence of P.W. 3 and in the manner of occurrence, which suggest some different story. No doubt, for conviction under Sections 376, IPC solitary evidence of victim is sufficient, if found free from embellishments. Hon'ble Apex Court in the case of Dilip And Another v. State of M.P. reported in (2001) 9 SCC 452, while dealing with the similar facts as in the present case held in para 12 and 13 as follows:-

“12. The law is well-settled that prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony



cannot be acted upon and made basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. In State of H.P. Vs. Gian Chand -, on a review of decisions of this Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and worth being relied on. This Court further held:

"If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material 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..."

13. In Madan Gopal Kakkad Vs. Naval Dubey and Anr. - this Court has held (vide para 23) that lack of oral corroboration to that of a prosecutrix does not come in the way of a safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case medical evidence can be expected to be forthcoming".

14. Learned trial court has not considered the aforesaid inconsistencies in the evidence of P.W. 3 as noticed above and also failed to notice that manner of occurrence is falsified by evidence of P.W. 7, as well as by the statement of victim (P.W. 3) recorded under Section 164 Cr.P.C, according to which, she was first taken to her *Sasural* and there she came back to her *Maike* and again appellants aken her to Delhi on the plea of P.W. 7 being ill, which is not the prosecution case. Further evidence of P.W. 7 discloses that after coming from Delhi in the month of *Kartik*, he lodged the case and further stated that during that period P.W. 3 was with him in his house



and *Sasural* . All the above evidences create a reasonable doubt about the manner of occurrence. In view of the discussions made above, in my opinion, the prosecution has failed to prove its charges against the appellants under Sections 366, 376 and 342 of IPC, beyond all reasonable doubts and hence the appellants are entitled for benefit of doubt.

15. Accordingly, these appeals are allowed. Judgment of conviction and order of sentence dated 27.05.2002, passed by Shri Abdul Nasir Khan, learned Additional Sessions Judge –VII, Munger, in Sessions Trial No. 1047 of 1999/ 62 of 2001, is hereby set aside.

16. As the appellants are on bail, they are discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

sunil/-

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