

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.338 of 1994

Against judgment and order dated 07.05.1994 in Sessions Trial No. 522 of 1992 passed by the learned 9th Additional Sessions Judge, Patna

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Bhuneshwar Yadav @ Bhuneshwar Rai, son of Jaipal Rai, resident of Village Adalatganj Jhoparpatti, PS Kotwali, District Patna

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mrs. S B Verma, Advocate

For the Respondent/s : Mr. A Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 09-01-2018

Challenging the conviction ordered by the learned 9th Additional Sessions Judge, Patna on 07.05.1994 in Sessions Trial No. 522 of 1992 and sentencing him to life imprisonment for an offence under Section 376 IPC and rigorous imprisonment for 10 years for an offence under section 450 of the Indian Penal Code, this appeal has been filed by the appellant.

It is the case of the prosecution that the prosecutrix was sleeping in her house at 1.30 in the afternoon on 30th March, 1992 on a cot in the chouki. She was disturbed by certain commotion that took place and when she woke up she saw the appellant herein who stayed nearby and identified standing near her. When she was about



to raise an alarm he caught hold of her, took out a dagger, threatened her with it, closed her mouth with his hand, raised her shari and committed the offence in question. The incident took about 10 minutes. Thereafter she came out immediately, made a commotion, when people in the locality came they were informed about it and then she went to the police station and lodged the F.I.R. herself. The prosecutrix has been examined as PW 2 and she had narrated the story as detailed hereinabove and reported to the police. Her relative Gautam Kumar, PW 1 supports the story. Based on the aforesaid testimony the accused has been convicted. However, in the trial neither the lady doctor who examined the prosecutrix nor the Investigating Officer was examined. In spite thereof, it is argued that the conviction was ordered on the basis of the sole testimony of the prosecutrix. However, records indicated that during the pendency of the matter as ordered by this Court in this appeal, evidence of the lady doctor and the Investigating Officer were recorded. However, from the statement of the doctor which has now been recorded, after more than 22 years of the occurrence, it is seen that the doctor only speaks about having examined the victim, she does not find any mark of injury on her person and also does not give any definite opinion about rape having been committed. The incident is said have taken place on 30.03.1992 and the doctor is said to have examined



the prosecutrix on the next day. Her evidence was recorded in the court after direction in the present appeal on 16.05.1995.

Learned counsel representing the appellant tried to argue that in the absence of strong evidence to show that the rape has been committed, conviction of the appellant-accused is not advisable. On the contrary, learned counsel for the State invites our attention to the judgment of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh vs. Babulal* (2008 Criminal Law Journal 714), wherein it was held that if the evidence of the victim is straightforward and believable and if her statement inspires confidence of the Court then conviction solely based on the testimony of the victim can be made. In paragraph-14 in the aforesaid judgment earlier judgments of the Supreme Court in the case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* [(1983) 3 SCC 217] and *State of Rajasthan v. Narayan* [(1992) 3 SCC 615] have been relied upon and it has been held that the evidence of the prosecutrix is truthful, trustworthy and reliable and conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary. In paragraph-15 another judgment of the Supreme Court is referred to and the finding recorded in paragraph-15 reads as follows:-

“15. In the first case, this Court, speaking through



M P Thakkar, j. stated :1992 AIR SCW 2365

“9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focused on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the same concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere,



attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical. It is conceivable in the western society that a female may level false accusation as regards sexual molestation against a male for several reasons such as:

- (1) The female may be a 'gold digger' and may well have an economic motive to extract money by holding out the gun of prosecution or public exposure.*
- (2) She may be suffering from psychological neurosis and may seek an escape from the neurotic prison by phantasizing or imagining a situation where she is desired, wanted, and chased by males.*
- (3) She may want to wreck vengeance on the male for real or imaginary wrongs. She may have a grudge against a particular male, or males in general, and may have the design to square the account.*
- (4) She may have been induced to do so in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta.*
- (5) She may do so to gain notoriety or publicity or to appease her own ego or to satisfy her feeling of*



self-importance in the context of her inferiority complex.

(6) She may do so on account of jealousy.

(7) She may do so to win sympathy of others.

(8) She may do so upon being repulsed.”

If we analyze the facts and circumstances of the present case, in the backdrop of the aforesaid principles of law, we find that the prosecutrix has been examined as PW 2 and was she clearly narrates the story as detailed by her in the F.I.R. She speaks about the incident took place in the afternoon of 1.30 PM. It is her statement that in the afternoon of 1.30 PM when she was lying down in her house on a cot in the chouki, initially her children were with her, they went away and when she was sleeping the accused entered the house, she woke up hearing the commotion and when she was about to make an alarm the accused forced certain cloth into her mouth, took out the dagger, threatened her and committed the offence and thereafter went away. She further states that after he left she started crying, made commotion and hearing the same her cousin Tunna Sao, *Bhagina* Gautam Kumar and others came there and she narrated the story. She was taken to Kotwali Police Station where the complaint was lodged. She has withstood the detailed cross-examination and there is nothing to disbelieve her story. That being so, even if the report of the doctor is vague but if the statement of the prosecutrix PW 2 is rights it its



totality, it is trustworthy and there is nothing to disbelieve the same. That apart, PW 1 Gautam Kumar is nephew of the prosecutrix and he had come to the place of incident immediately after hearing the commotion. He has stated that he was returning from the shop and when he came home his *mamani*, the prosecutrix, narrated the storey to him. He further states that police came to the spot, seized the shari, blouse and other cloths of the victim and he had signed on the seizure memo Ext. P/1. He also speaks about some people coming to the place of occurrence and on their advice the prosecutrix going the police station and lodging the complaint.

From the statements of these two witnesses, i.e. PW 1 and PW 2, story as made out by the prosecution is established and merely because in the manner of evidence that has come on record there is no specific finding of the offence being committed, we see no reason to exonerate the appellant of the charges levelled against him when the law permits conviction in such cases based on the sole testimony of the prosecutrix and when in the instant case testimony of the prosecutrix is trustworthy, inspires confidence and there is nothing to disbelieve her statement, we see no reason to discard her statement and grant any benefit to the appellant. On the contrary, the story as put forth by the prosecutrix in our considered view depicts the correct sequence that have been taken place and in our considered



view it is sufficient enough to uphold the conviction made.

Accordingly, we find no reason to interfere into the matter. The prosecution having proved the case against the appellant beyond any reasonable doubt we find no merit in this appeal and therefore we see no reason to make any indulgence.

The appeal is dismissed. The bail bond of the appellant be cancelled and he be taken back to custody to undergo the remaining period of sentences.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

mr1/-

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