

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.209 of 2015

Arising Out of PS.Case No. -325 Year- 2011 Thana -MAKHDUMPUR District- JEHANABAD

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Santosh Prasad @ Santosh Kumar S/o Sri Indal Raut, R/o Village- Tajpur, P.S. Makhdumpur, Distt.- Jehanabad

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Ravindra Kumar, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 07-02-2018

Appellant, Santosh Prasad @ Santosh Kumar has been found guilty for an offence punishable under Section 450 IPC and sentenced to undergo R.I. for seven years, under Section 376(1) of the IPC and sentenced to undergo R.I. for ten years with a further direction to run the sentences concurrently vide judgment of conviction dated 30.03.2015 and order of sentence dated 31.03.2015 passed by First Additional Sessions Judge, Jehanabad in Sessions Trial No.456 of 2011 / 90 of 2012.

2. Name withheld, PW.5 filed written report on 16.09.2011 at about 10:00 AM before the local police station divulging the fact that in the preceding night at about 11:00 PM she awoken after hearing rattling sound whereupon she flashed her mobile and found Santosh Prasad whereupon, she made query. Instead of giving any reply, he pressed her leg by his leg and then, thrust towel inside her mouth, lifted her Saya-Sari and then committed rape. After completion of the rape, he got up, took out towel and then, ran away. Getting an opportunity, she raised



alarm attracting her neighbours including Suman Devi, her cousin Gotini as well as Shanti Devi, her cousin mother-in-law whom she disclosed the event. She had also informed her mother-in-law, father-in-law who were at Gaya. On their arrival, she came to local police station along with them and submitted written report.

3. After registration of Makhdumpur P.S. Case No.325/2011, investigation commenced during course thereof, her further statement was recorded, her apparels more particularly Saya was seized which was sent to FSL, got the FSL report, visited the P.O., examined the witnesses and then thereafter, submitted charge sheet whereupon, trial began and culminated 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 of complete denial. It has also been pleaded that on account of land dispute appellant has been falsely implicated however, neither oral nor documentary has been adduced on behalf of appellant.

5. In order to substantiate its case prosecution had examined altogether eight PWs who are PW.1-Shanti Devi, PW.2-Dhawanti Devi, PW.3-Jyoti Devi, PW.4-Arjun Mistry, PW.5-Gudia Devi, victim herself, PW.6-Sanjeev Kumar, PW.7-Dr. Renu Singh, PW.8-Rajendra Prasad father-in-law of the victim. Side by side had also exhibited Ext.1-Signature of Kauleshwar Paswan (O/c) on formal FIR, Ext.1/1-Signature of Kauleshwar Paswan (O/c) on written report, Ext.2-Seizure list, Ext.3-Injury Report, Ext.4-Written Report, Ext.5-FSL Report. As stated above, defence had



not adduced ocular as well as documentary evidence.

6. Learned counsel for the appellant while challenging the finding recorded by the learned lower court has submitted that the learned lower court had failed to appreciate the infirmities persisting in the prosecution case properly and that being so, judgment impugned would not survive. In order to substantiate such plea, it has been submitted that all the material witnesses whoever been examined have not supported the case of the prosecution. In likewise manner, it has also been submitted that medical evidence also did not suggest that victim was ever ravished in terms of allegation having made by her. That means to say, the evidence of victim happens to be without any corroboration. It has further been submitted that true it is that the evidence of the victim should not brushed aside as has not been corroborated but when there happens to be an admission at the end of the victim herself that she had grudge on account of land dispute persisting since before, then in that circumstance, projecting the victim by her in-laws in order to pressurized could not be ruled out and so, considering the facts and circumstances of the case, having absence of corroboration either by oral evidence or by medical evidence, did not justify the finding and that being so, the judgment impugned is fit to be set aside.

7. It has also been submitted that Ext.5, the FSL report would not take in bliss the prosecution taking in account the medical evidence which negatived the allegation and further, as the prosecution failed to produce the material exhibit, that means to say 'Saya' in court. Apart from this, it has also been pleaded that when the evidence of victim is properly scrutinized, it is



evident that it does not inspire confidence in the background of presence of severe infirmities. So, the over all prevailing circumstances are found sufficient to delible the finding recorded by the learned lower court whereupon, same be annulled.

8. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that there happens to be no visibility of deep-rooted animosity amongst the parties rather, relates with partition as the appellant happens to be close agnates of the victim, in the facts and circumstances of the case, did not compages the act of false implication because of the fact that no woman, irrespective of her age, status, would come forward to put such kind of allegation in order to carry stigma till her life and that happens to be reason behind that unless and until there happens to be inherent improbability in the prosecutrix version, it could not be rejected, irrespective of having no corroboration. That being so, the judgment of conviction and sentence recorded by the learned lower court happens to be in accordance with law and is fit to be confirmed.

9. Times without number it has been reiterated, virtually it has been settled at rest that in ordinary course of nature so far Indian panorama is concerned were chastity of a lady is as important as her soul, would not volunteer herself to carry such stigma till her life. That happens to be reason behind that the evidence of the victim, even without corroboration is found to be accepted unless and until there happens to be inherent infirmities. In **State of Punjab vs. Gurmit Singh & Ors.** reported in **(1996) 2 SCC 384**, the Apex Court has observed as



follows in para-8:-

“...The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook...”

The present scenario is to be adjudged in the background of the aforesaid settled principle of law.

10. PW.7 is the doctor who had examined the victim on 17-09-2011 while occurrence as alleged happens to be 15/16-09-2011 at 11:10 AM. Being a married woman the doctor findings happens to be usual one. Furthermore, on pathological examination of the vaginal swab, there was no presence of spermatozoa and so, the doctor had opined that having not found physical or pathological evidence of rape but possibility of rape was not ruled out at her end. During cross-examination she had stated that she had not found mark of violence over the body of the victim. She had further stated that in each and every case mark of violence would not be found even there happens to be forceful rape. She had further stated that if the victim alleges the use of violence then in that circumstance there would be presence of mark of violence.

11. PW.5 is the victim. She had deposed that on the



alleged date and time of occurrence she was sleeping at her house. Eastern wall of her house at fallen down. Through the aforesaid passage Santosh came and got her leg locked with his leg, pushed her down, lifted her Saya and during course thereof, she identified her in the light flashed by mobile. Then, thereafter, he committed rape. Then had stated that she had informed her father-in-law, mother-in-law who came from Gaya and after their arrival, she had gone to Makhdumpur police station where made statement to the police which was scribed, read over to her and then put her thumb impression. She had identified the accused in dock. She was medically examined treated at Jehanabad Hospital. Her Saya was taken away by the police. During cross-examination at para-5 she had stated that at that very time none of her family members were present at her house. Boundary wall of her house had fallen down and the accused had made his entries through the same. When she was about to raise an alarm, her mouth was gagged by towel. She had further stated that on her cry mother and Bhabhi of Santosh came. Shanti Devi and Suman Devi also arrived. She had further stated that Santosh happens to be her cousin Bhaisur. In para-6 she had stated that her husband resides at Mumbai. Her Debar also resides outside. She had further stated that save and except Santosh, he has got no animosity with others. She had further stated that she had not locked her door. It was simply shut. There was no source of light at that very moment. Mobile was there which was handed over to her by her in-laws, She was unable to disclose its company name. In para-7 she had disclosed the boundary of her house North-House of Chunna (Gotiya), South-Field of Mantosh, East-House of Shanti



Devi and West-House of Santosh. Then there happens to be cross-examination relating to land dispute and during course thereof, she shown ignorance regarding recording of the land in name of grand mother of Santosh whereupon, her house lies (para-9). At para-12 she had further stated that Pannu, Baldeo, Saghan, Makku are her Gotiya. She had further stated that she had herself informed her in-laws. She had noted down number of her in-laws which she had shown in the court itself on query. In para-14 she had stated that her in-laws came and then they have gone to police station where she had recorded her fardbeyan. In para-15 she had stated that her statement was taken thrice and at all the occasion she had put her thumb impression. In para-16 she had stated that she had disclosed to the police that her eastern boundary wall had fallen down and the accused came through the same. In para-18 she had denied the suggestion that as they have grabbed the land of Santosh which, Santosh is willing to retain and on account thereof, this false case has been instituted. In para-19 she had stated that she had found some jerk at her waist.

12. PW.6 is the I.O. who had deposed that after registration of the case, he was entrusted with the investigation. He had exhibited the endorsement over the written report, formal FIR, seizure list having prepared by the officer-in-charge, Kameshwar Paswan. During course of investigation, he had examined the witnesses. He had gone to the place of occurrence and inspected the place of occurrence which happens to be the house of the informant. He had detailed the topography of the inside rooms. Then had disclosed the boundary of the P.O. as North-House of Badri Raut, South-House of Chunna, East-Pankaj



and West-Indar Raut who happens to be father of the appellant. Victim was subjected to medical examination. Her Saya was sent to FSL and received FSL report. After completion of investigation submitted charge sheet. During cross-examination at para-10 he had stated that wife of Badri Raut has been examined by him. Other neighbours were not examined. In para-13 he had stated that during course of investigation, victim had not placed before him mobile set. She had further stated that she is mother of a child. In para-14 he had stated that from perusal of medical report, it is apparent that doctor had not found mark of violence over the person of victim, no sperm was found in the vaginal swab of the victim. Then had denied the suggestion that he had not conducted fair investigation.

13. PW.2, PW.3, PW.4 have not supported case of the prosecution and on account thereof, they were declared hostile. PW.1 is the Shanti Devi who halfheartedly supported the case of the prosecution by way of stating that in the following morning victim had disclosed regarding commission of rape over her. During cross-examination she had stated that she had not heard sound of alarm in night. On the following morning victim had raised alarm that in the preceding night she was raped. In para-6 she had further stated that land dispute is prevailing amongst both the families since before.

14. Giving minute observation on the evidence available on the record, it is apparent that PW.1, whatever she had stated during course of examination-in-chief had reiterated during course of cross-examination to the effect that on the following morning victim had raised hue and cry on account of having been



raped in the preceding night. The factum of rape has not been challenged nor question nay victim PW.5 has been subjected to test. In likewise manner PW.6, I.O. also not been cross-examined with regard to physical feature of the place of occurrence more particularly whether boundary wall of the house, (eastern side) had fallen down since before. Had there been such kind of cross-examination then in that circumstance, the veracity of the evidence of the victim would have been tested as, the I.O. had confined the inspection of the P.O. only towards the inner side of the house. Furthermore, the FSL report Ext.5 does support presence of blood as well as semen over the Saya and for that, neither the victim PW.5 was cross-examined on that very score nor she was suggested. Contrary to it, the evidence happens to be that her husband at the relevant time was at Bombay. So far medical evidence is concerned, certainly it would not have given any positive finding as, she was examined on 17.09.2011 at about 11:00 AM while the occurrence is of dated 15/16.09.2011 at 11:00 PM. Because of the fact that victim was not at all cross-examined on the point of rape that being so, the factum of rape has not been put under challenge at the end of the appellant and on account thereof, the evidence of the victim remained intact corroborated by Ext.5, the FSL report. So far *inter se* relationship is concerned, it is evident that victim happens to be cousin Bhabho (wife of younger brother) of the appellant, and they were carrying strained relationship over partition. But whether aforesaid eventuality was initiative for false implication, did not been properly exposed moreover, non-cross-examination of victim over factum of rape, suggest otherwise.



15. As such, this appeal lacks merit and is accordingly dismissed. Appellant is on bail hence his bail bond is hereby cancelled with a direction to surrender before learned lower court within fortnight to serve out remaining part of sentence, failing which the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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