

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.29 of 2011

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Yugesh Chauhan @ Yogesh Chouhan, S/O Late Chhedi Chouhan, R/O Village-
Makaipur, P.S.-Korha, Distt.-Katihar

.... Appellant/s

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Binod Kumar Singh, Advocate.
Mr. Satyendra Prasad Singh, Advocate.

For the Respondent/s : Mr. Parmeshwar Mehta, APP.

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 20-02-2018

Heard learned counsel for the petitioner and learned
counsel for the State.

2. The sole appellant has preferred the present appeal
against judgment of conviction and order of sentence dated
18.11.2010 and 20.11.2010 respectively passed by the learned
Additional District and Sessions Judge-F.T.C.-V, Katihar in Sessions
Trial No. 324 of 2006; whereby appellant has been convicted under
Section 376 of Indian Penal Code and sentenced to undergo seven
years of rigorous imprisonment and in addition fine of Rs. 3,000/- to
be paid to the victim and in default of payment of fine, to further
undergo rigorous imprisonment of four months.

3. The prosecution case arising out of complaint filed by
the prosecutrix (PW-3) is that father of the appellant once had



outraged the modesty of the complainant's mother so information in this regard was given by her and police recorded a Sanha entry No. 1549 of 2003. Once family members of the accused persons had trespassed into her house, assaulted family members of the complainant and in that connection her mother filed a Complaint Case No. 1779 of 2003. In context of the present allegation, according to her, seven months prior to lodging of the complaint, she had gone to collect the dry leaves, in the meanwhile the appellant came from behind put clothes in her mouth and forcibly raped her. He asked her not to disclose this fact to anyone and promised to get the case withdrawn filed against them, further also promised to marry with her later on. On such false promise, he used to rape her for last seven months consequently, she became pregnant and carrying pregnancy of six months, so asked for marriage, however, the appellant refused, a *panchayati* was also held in this matter, but ultimately refused to marry with the complainant, so complaint was filed.

4. Learned counsel appearing on behalf of the appellant assails the impugned judgment of conviction on the ground that out of three prosecution witnesses examined in the complaint case, trial court has passed the conviction relying on sole testimony of the prosecutrix (PW-3). There is no other eye witness; moreover, there was enmity prior to the alleged occurrence, as both sides, the father of



the appellant as well as mother of the complainant, had instituted complaint case against each other. However, there is considerable delay in lodging the present complaint is another relevant factor. There is no evidence on record showing existence of fact of pregnancy carried by the prosecutrix.

5. Learned counsel places reliance to *Vijayan v. State of Kerala* reported in (2008) 14 SCC 763 and submits that the ratio applied in that case squarely fits in the case of the present one as the facts of both cases are almost identical and the Apex Court held that it is not safe to convict the accused on sole testimony of the prosecutrix in absence of any corroborative evidence inclusive of the medical evidence.

6. Contrary to this, learned counsel appearing on behalf of the State submits that prosecution has examined 03 witnesses and the testimony of the prosecutrix (PW-3) is sufficient to convict the appellant accordingly, the trial court has convicted the appellant relying on the evidence of the complainant.

7. Having considered the rival submissions and on perusal of record, the court finds that prior to the occurrence the complainant as well as the appellant both families were on inimical terms and there is no other relevant evidence in the case except the testimony of PW-3, the prosecutrix. It is settled principle of law that if



there is any enmity in between the accused and the prosecution side or in between the prosecution witness and the accused, critical scrutiny of prosecution evidence is required to ascertain the truthfulness of the evidence; such evidence must be unblemished.

8. The allegation made in the complaint shows that she had been raped by the appellant for seven months prior to the institution of the case thereafter she continued sexual relationship on the promise of marriage. Further, case of the prosecutrix is that she carried pregnancy of seven months at the time of institution of the case but there is no substantive evidence on record to prove the factum of pregnancy. In absence of any medical evidence, in this regard, it is not safe to rely on her bare statement. Had she been examined by the doctor then DNA could have been matched with the appellant in order to establish that he had fathered the fetus. Moreover, there is no evidence that she delivered any child also. The case of *Vijayan* (supra) is almost similar on factual matrix with the present case. In the said case, the Apex Court observed as follows:-

“5. The present case depends upon the testimony of the prosecutrix. The incident in the present case took place seven months prior to the date of lodging the complaint as a realisation dawned upon her that she has been subjected to rape by the appellant-accused. No complaint or grievance was made either to the police or the parents prior thereto. The explanation for delay in lodging the FIR is that the appellant-accused promised her to marry therefore the FIR



was not filed. In cases where the sole testimony of the prosecutrix is available, it is very dangerous to convict the accused, specially when the prosecutrix could venture to wait for seven months for filing the FIR for rape. This leaves the accused totally defenceless. Had the prosecutrix lodged the complaint soon after the incident, there would have been some supporting evidence like the medical report or any other injury on the body of the prosecutrix so as to show the sign of rape. If the prosecutrix has willingly submitted herself to sexual intercourse and waited for seven months for filing the FIR it will be very hazardous to convict on such sole oral testimony. Moreover, no DNA test was conducted to find out whether the child was born out of the said incident of rape and that the appellant-accused was responsible for the said child. In the face of lack of any other evidence, it is unsafe to convict the accused. Therefore, we are of the opinion that the view taken by the trial court and the learned Single Judge of the High Court in convicting the appellant-accused under Section 376 IPC cannot be sustained. Consequently, we set aside the judgment and order of the trial court as also of the High Court and quash the conviction and sentence of the appellant-accused under Section 376 IPC. The accused may be released forthwith from custody if not required in any other case.”

9. The most relevant point in the judgment is delay in lodging the case, particularly, with reference to the fact that availability of only sole testimony in the form of prosecutrix. In the present case also, there is no other evidence except testimony of the prosecutrix, PW-3. Moreover, there was enmity between both parties as earlier a complaint case was lodged by prosecutrix father prior to



the present case, so it's not safe to rely on the testimony of the prosecutrix in absence of any corroborative evidence particularly in absence of any medical evidence⁴ of carrying pregnancy by the prosecutrix.

10. Consequently, the impugned judgment of conviction dated 18.11.2010 and order of sentence dated 20.11.2010 passed by the Additional District and Sessions Judge-F.T.C.-V, Katihar are set aside giving benefit of doubt to the appellant. The appellant is on bail, so also stands discharged from the liability of bail bonds.

11. The appeal stands allowed.

(Arun Kumar, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	NA
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