

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.33 of 2019**

Arising Out of PS. Case No.-420 Year-2006 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Ratan Kamti son of Late Gango Kamti Resident of village- Aarut, Police
Station - Rosera, District- Samastipur.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Shosho Devi wife of Rajendra Shahu Resident of village- Aarut P.S.- Rosera,
Distt.- Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Awadhesh Kumar Singh, Advocate Mr. Pramod Kumar Singh, Advocate
For the Respondent/s	:	Mr. Sujit Kumar Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT
Date : 05-07-2021**

The sole appellant has challenged the judgment of conviction and order of sentence dated 19.11.2018 passed in Sessions Trial No.1011 of 2008, arising out of Complaint Case No.420 of 2006, whereby learned Additional Sessions Judge, Rosera, Samastipur, found the appellant guilty for offences under Sections 448, 341, 504 and 376/511 of the Indian Penal Code. Simple imprisonment of six months was awarded for offence under Section 448 of the Indian Penal Code, simple imprisonment of one month was awarded for offence under Section 341 of the Indian Penal Code, simple imprisonment of



one year was awarded for offence under Section 504 of the Indian Penal Code and rigorous imprisonment of four years was awarded for offence under Section 376/511 of the Indian Penal Code along with fine of rupees two thousand. In default of payment of fine further one month imprisonment was ordered. The sentences have been ordered to run concurrently.

Two others had also faced trial along with the appellant. They were acquitted by the same judgment. The lower Court record reveals that the appellant was all along on bail as cognizance was not taken under Section 376/511 of the Indian Penal Code. However, after conviction the appellant is serving out the sentences since 19.11.2018.

2. The background of the complaint based allegation is that husband of the complainant, namely, Rajendra Sahu and this appellant were working at Guwahati vide evidence PW 1 the complainant, PW 4 Gorakh Paswan and DW 1 Sachin Kumar. Old dispute was there between the parties as the appellant had allegedly borrowed Rs.5,500/- from the complainant and was not refunding the same vide statement of the complainant on oath. In the very first paragraph of the complaint petition the complainant stated that about 20 days prior to the alleged occurrence there was an act of abuse



and assault committed by the accused persons including the appellant.

3. So far present case is concerned the prosecution allegation is that on 03.07.2006, at about 11:00 PM, the appellant entered into the house of the complainant in village Araut, P.S. Rosera, District- Samastipur, and attempted to ravish her. The complaint petition was filed on 04.07.2006 itself simply stating therein that the complainant went to the police station but the police refused to institute the case. The complaint petition is not on affidavit.

4. In support of the complaint case, during trial, the prosecution examined altogether four witnesses. PW 1 the prosecutrix, PW 2 Bulanti Devi, PW 3 Manju Devi and PW 4 Gorakh Paswan. DW 1 Sachin Kumar, a co-villager of the parties, deposed that the appellant was working in Asam and on 01.07.2006 he fell ill and was ailing for a week.

5. Mr. Awadhesh Kumar Singh, learned counsel for the appellant, contends that a careful scrutiny of the complaint petition and testimony of the prosecutrix would reveal that there are major contradictions on the manner of occurrence and place of occurrence. Her conduct in not reporting the matter to the police in writing or not making a complaint to the senior police



officer in writing against the alleged refusal of the police station to institute the FIR is in utter violation of Sub-section (3) of Section 154 Cr.P.C. Institution of police case was deliberately avoided as the police investigation would have collected the medical evidence and other independent evidence in support and against the charge. Therefore, the whole criminal prosecution was itself bad-in-law in view of the Judgment of Hon'ble Supreme Court in the case of **Priyanka Srivastava and Another V. The State of Uttar Pradesh and Others** reported in **(2015) 6 SCC 287**. Learned counsel contends that other prosecution witnesses who claim to have witnessed the part of the occurrence, namely, PW 2 Bulanti Devi and PW 4 Gorakh Paswan are not reliable as their testimony improbabilises their presence at the time of occurrence. The learned trial Judge has ignored the serious infirmities creating doubt on the prosecution version and has recorded judgment of conviction in absence of trustworthy evidence on the records.

6. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor, contends that for trivial infirmities the prosecutrix cannot be disbelieved especially when she has consistently supported before the Court as PW 1 what she had disclosed in the complaint petition. Since the victim was an



illiterate lady the burden of adherence of the legal requirement should not be thrown upon her to frustrate the demand of justice.

7. The law is well settled that the evidence of a victim of sexual assault stands on a par with the evidence of an injured witness. Corroboration is not an imperative component of judicial credence in every case of rape. The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since the prosecutrix is a witness who is interested in the outcome of the charge levelled by her. Reference may be made to **the State of Punjab V. Gurmit Singh** reported in (1996) 2 SCC 384.

However, in a case where the testimony of a prosecutrix suffers from inherent and material improbabilities, and her conduct depicts a case of suppression of material fact, the Court may insist/look for corroboration to lend assurance that no innocent is punished.

In **Raju V. State of M.P.** reported in (2008) 5 SCC 133, the Hon'ble Supreme Court said that 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.

8. In the case of **Rai Sandeep V. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court said that before relying on the sole testimony of the prosecutrix the Court must be satisfied that the prosecutrix is a "sterling witness". Para 22 of the judgment is being reproduced below:

"22. In our considered opinion, the "sterling witness" should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of



such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials,



namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

9. No doubt, the prosecutrix has supported as PW 1 about the occurrence what she had stated in the complaint petition that on 03.07.2006, at about 11:00 PM, the prosecutrix was sleeping in her house along with her children. At the time the appellant broke open the door and entered into her house. When the complainant asked about the reason for his entrance the appellant took out a pistol and thrashed the complainant on the Chauki in the room. Then opened her garments, the appellant also opened his lower garment and started pressing on her breast. When the complainant made alarm the people nearby reached there, snatched the pistol of the appellant thereafter the family members of the appellant came and got release of the appellant as well as the pistol and fled away.

10. The aforesaid allegation have been levelled in the background that husband of the complainant and this appellant were working in the State of Asam to earn their livelihood. The complainant suppressed this fact that the



appellant was also working at Asam whereas PW 4 has admitted this fact and DW 1 also supported that the appellant was working thereat. The prosecutrix stated in her statement on oath before the Court that rupees fifty-five hundred was due with the appellant and the appellant was not returning the same and for that reason the occurrence of abuse and assault was committed twenty days ago. In the cross-examination, PW 1 said that his house is one-room thatched hut. After putting a Chauki in the room there was little space which was used to cook food and at the time of occurrence the children were sleeping on the Chauki. Hence, the appellant threw her on the ground; whereas in the complaint petition as well as in her examination-in-chief she stated that the occurrence was committed on the Chauki. No female is expected to forget this material fact about the nature of occurrence alleged. PW 2 Bulanti Devi is own Nanad (sister of the husband) of the complainant. She has admitted that the complainant is her Bhaujai and this witness was also in the same house wherein complainant along with children were sleeping in a separate room. It is highly doubtful that this witness, who is already married in another village, was available in the one room house especially when the witness is saying that she was in a



separate room at the time of occurrence. PW 3 Manju Devi is own Gotni of the complainant and she has not supported the case of the complainant and has been declared hostile. House of PW 4 Gorakh Paswan is about half kilometer away from the house of the prosecutrix. If the witness would reach after hearing the alarm of the occurrence; he must not have seen the occurrence. Moreover, he has given a quite different description of the house of the prosecutrix and number of her children to that of disclosed by the prosecutrix.

11. A careful scrutiny of the prosecution evidence it is evident that the prosecutrix is not a “sterling witness” as she has contradicted herself in material particular about the place of occurrence and manner of occurrence. Moreover, in the background of the allegation of old dispute and old quarrel, the chances of false implication cannot be completely ruled out. Non-compliance of mandates of law regarding first information to the police in the matter of cognizable offence and complaint to the senior police officer for non-registration of the police case as well as directly filing a complaint petition and producing witness of her choice creates doubt on the trustworthiness of the prosecutrix. Presence of PW 2 and PW 4 at the time of occurrence is highly doubtful as PW 2 is own



relative of the prosecutrix does not appear to be there in a one-room house; rather she was set up as witness to harass the appellant. Likewise PW 4 who does not know about the family history of the prosecutrix especially the number of children, whereabouts of her husband, does not appear to be a trustworthy witness. PW 3 the own relative has turned hostile and no plausible reason is there as to why this witness did not support the claim of the prosecutrix.

12. The learned trial Judge has overlooked the aforesaid infirmities in the prosecution case. Hence, in my view, the appellant deserves benefit of doubt especially when two other co-accused were acquitted on the very same evidence. Accordingly, the conviction of the appellant by the impugned judgment and sentence is hereby set aside and this appeal is allowed.

13. Let the appellant, who is in custody, be set free at once.

(Birendra Kumar, J)

Mkr./-

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