

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1711 of 2019

In
CRIMINAL APPEAL (DB) No.1459 of 2018

Arising Out of PS. Case No.-102 Year-2016 Thana- MAHILA P.S. District- Madhubani

AMAN RAJ @ BITU SINGH Son of Baidya Nath Singh @ Shiv Nath Singh
@ Baidya Nath Prasad Singh Resident of Village-Hanuman Nagar, P.S-
Khutawna, District-Madhubani. Appellant/s

Versus

The State of Bihar Respondent/s

Appearance :

For the Appellant/s	:	Mr.Rama Kant Sharma, Sr.Advocate
	:	Mr.Dileep Kumar Singh, Advocate
	:	Mr. Sateshwar Prasad, Advocate
For the Respondent/s	:	Mr.Binay Krishna, Special P.P.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 24-08-2021

1. The sole appellant-Aman Raj @ Bitu Singh faced trial before learned Additional Sessions Judge 1st-cum-Special Judge, Madhubani in S.Tr.No.736 of 2018 arising out of Madhubani Mahila P.S.Case No.102 of 2016 corresponding to G.R.No.2521 of 2016.

By the impugned judgment dated 03.10.2018, the learned Trial Judge found the appellant guilty for offence under Section 376(D) IPC and under Sections 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. By the impugned order dated 06.10.2018, the learned Trial Judge sentenced 10 years rigorous imprisonment alongwith fine of Rs.10,000/- for both the aforesaid offences separately. In default of



payment of fine, three months further imprisonment was ordered.

The sentences are to run concurrently.

2. The prosecution case as disclosed in the Fardbeyan of the prosecutrix, recorded on 14.12.2016 at 3.00 P.M. by Sub Inspector, Kanchan Kumari (P.W.4) at Women Police Station, Madhubani, is that on 11.11.2016 at about 12.00 night, the prosecutrix came out of her house to answer the call of nature. Three persons hiding there, namely, Raja Kumar, Pankaj Singh and appellant-Bitu Singh, caught her from ahead and pressed on her mouth. Then lifted her upto $\frac{1}{2}$ Km towards south in Sanskrit Vidyalay, Hanuman Nagar. In a room of the school, all ravished her one by one, thereafter two unknown persons also joined and they also ravished her. Later on, she was left at the bamboo clumps behind her house. The accused persons created video of their act. When the prosecutrix made alarm at the bamboo clumps, the parents, (P.Ws.1 and 2) came and took her to the house where she narrated the incident. The parents took the matter to the Panches, however, no resolution was reached thereat. Hence, the matter was reported to the police.

The fardbeyan is Ext.2 and the formal FIR is Ext.3.

On 16.12.2016, the statement of the victim was recorded under Section 164 Cr.P.C. wherein she supported the



occurrence that five persons had forcefully ravished her on the point of dagger, however, she does not claim to have identified anyone as all had come from behind. The statement under Section 164 Cr.P.C. is Ext.6. The victim was medically examined by the Medical Board on 14.12.2016. The medical report is Ext.5. After investigation, the police submitted chargesheet against the appellant and investigation against the rest was kept pending vide report as Ext.4.

3. The prosecution examined altogether eight witnesses. P.W.1, Dukhan Ram and P.W.2 Savitari Devi are parents of the victim girl. P.Ws.1 and 2 have supported as hearsay witness of what they had heard from P.W.3 i.e. the victim. P.W.4, Kanchan Kumari is investigating officer of the case. She deposed about investigation done by her. P.W.5. Dr.Gargi Sinha and P.W.6 Dr. Rama Jha are members of the Medical Board, who had examined the victim. On the basis of radiological examination, the Board assessed the age of the victim as 19 years. The Board did not find any injury present over the body or private part of the victim. The Board was specific that since occurrence took place one month back definite opinion, whether rape was committed or not, was not possible. The Doctors had noticed hymen ruptured old and no spermatozoa, on the basis of pathological report. The reports on



the basis whereof, these Doctors expressed their opinion are not on the record nor the Doctors, who had performed pathological or radiological examination, were examined in this case.

P.W.7, Ashok Kumar, is the Judicial Magistrate, who had recorded the statement of the prosecutrix under Section 164 Cr.P.C. P.W.8 Balkrishan Singh is a formal witness and had identified the writing of Headmaster of Kuldeep Sanskrit Madhya Vidyalay Hanuman Nagar on a school leaving certificate.

The defence examined two witnesses. D.W.1, Anirudh Mandal, who deposed that in Panchayat election, Manoj Singh and Baidyanath Singh i.e. father of the appellant, both were candidates. In the election of Chairman of PACS the appellant and Balkrishan Singh, the maternal uncle of Manoj Singh were candidates. The appellant had lost the election. After result of the election, there was quarrel between the two families and cases were lodged by both. The father of the prosecutrix i.e. Dukhan Ram, is a permanent help of Manoj Singh and due to political rivalry, at the instigation of Manoj Singh, Dukhan Ram got this false case lodged. No such incident as alleged had in fact taken place. In the cross examination, there is no suggestion to this witness that Dukhan Ram is not a permanent help of Manoj Singh.



D.W.2 Batari Mandal has also supported about the political rivalry between the two and thereafter criminal cases between the two families. The witness is specific that Dukhan Ram is a helper of Manoj Singh and at the instigation of Manoj Singh and one Dhananjay Singh, the appellant was falsely implicated in this case. In the school situated south of the village, the teachers and students reside day and night. In the cross examination also, the witness stated that the students and the teachers reside in that school 24 hours.

4. Mr. Rama Kant Sharma, learned senior counsel for the appellant contends that this case is based on sole evidence of the prosecutrix and she is not a “sterling witness”, evidently, for the reason that she is not consistent in the matter of manner of occurrence, place of occurrence and identity of the perpetrators of the crime, as P.W.3 she deposed that only three named persons had ravished her whereas in the FIR she stated that five persons including two unknown persons had ravished her. In her statement under Section 164 Cr.P.C. she does not claim to have identified any of the perpetrators of the crime. Learned senior counsel contends that it is specific case of the defence that the present false case was lodged at the instance of Manoj Singh, the political rival of the appellant as well as of the father of the appellant.



There is inordinate delay of more than one month in information to the police or to any other authority only on false pretext of Panchayat. No one turned up to say before the court to say that they were party to the Panchayat. Such a serious matter was not a subject matter of Panchayati because it was not a case of affairs between the two rather allegation is apparent of commission of Gang rape. It would have been matter of news for everyone of the locality including the police station at Khutauna situated at 01 Km but for one month nothing happened. The prosecution witness has admitted that employer asked the informant's family to come to Madhubani for institution of this criminal case after one month of the alleged incident. Learned senior counsel contends that the defence witnesses have deposed that the said school, where the occurrence was alleged, is a residential school and teachers and students reside there 24 hours. The investigating officer did not make any investigation on this point. Otherwise, the matter would have gone against the prosecution. The learned Trial Judge has not considered the aforesaid doubtful circumstances of the prosecution case while recording the judgment of conviction.

5. Mr. Binay Krishna, learned Special Public Prosecutor for the State contends that the victim is consistent that Gang rape was committed against her and for trivial lapses on the



part of investigating officer, her testimony cannot be thrown away. The statement of the victim of rape is considered on par with an injured witness and sometimes more reliable than an injured witness because no woman especially unmarried girl is expected to make a statement which would not only be against the accused rather against herself also as the statement amounts to disclosure of something against self-respect of a woman residing in tradition bound non-permissive, Indian society. Since she was examined after one month of the occurrence, by the Doctors, if they are of the opinion that no recent sign of sexual assault was there, the opinion was natural.

6. The law is well settled that the evidence of victim of sexual assault needs no corroboration, if she is a “sterling witness. The law does not require that corroboration is must for placing reliance on the trustworthiness of the prosecutrix in every case, however, 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 Vs. Gurmit Singh and Ors**, reported in (1996)2 SCC 384.



However, in a case where the testimony of the prosecutrix and prosecution case otherwise suffers from inherent and material improbabilities, the Court may insist/look for corroboration to lend assurance that no innocent is made to punish.

In **Raju & Ors. Vs. State of Madhya Pradesh**, reported in **(2008) 15 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, false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against possibility of false implication.

In the case of **Rai Sandeep @ Deepu**, 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 caliber 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 everyone 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 similar such tests to be applied, it can 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".

7. In this case, the main prosecution evidence is testimony of the prosecutrix (P.W.3). According to P.W.3, the occurrence allegedly took place on 11.11.2016. At mid-night the prosecutrix came out to her house to attend the call of nature.



Three boys, Raja Kumar, Pankaj Singh and appellant-Bitu Singh pressed on her mouth and by putting her in threat of dagger. They took her to Sanskrit Madhya Vidyalay. The key of the room was with the appellant, who opened the room and forcefully thrashed her inside the room. Thereafter, all the three ravished her one by one and took photographs of their act. Thereafter, they took her behind the bamboo clumps of her house and left her thereat. On weeping of the prosecutrix, her mother came out and she narrated the incident. Thereafter, whenever the prosecutrix attempted to lodge the case with the police, the accused persons threatened her by saying that they would make the photographs viral. For that reason, after few days, she went alongwith her parents to Madhubani Mahila Police Station and lodge the case.

8. In the case on hand, the following circumstances appearing on the record creates doubt on acceptance of the prosecution case:-

(a) The prosecutrix does not appear a “sterling witness”. She is not consistent in the matter of identity of the perpetrators of the crime. In the FIR, she alleged that three known and two unknown persons had ravished her whereas in her statement under Section 164 Cr.P.C., she stated that she could not identify the perpetrators of the crime as she could not see their face. The



prosecutrix was confronted with her statement under Section 164 Cr.P.C. regarding identity of the perpetrators of the crime and the Judicial Magistrate (P.W.7), who had recorded her statement under Section 164 Cr.P.C., is specific that the prosecutrix had not named anyone including the appellant as perpetrators of the crime. P.W.7, Ashok Kumar, the learned Judicial Magistrate, is not a hostile witness. Prosecution has relied upon his evidence. In **Raja Ram Vs. State of Rajasthan**, reported in (2005) 5 SCC 272, the Hon'ble Supreme Court said that if a witness is not declared hostile by the prosecution, the defence can rely upon the evidence of such witness and it would be binding on the prosecution.

(b) The occurrence allegedly took place on 11.11.2016 whereas the matter was reported to the police on 14.12.2016. The court is conscious that only for delay in reporting the matter to the police would not defeat the prosecution case. However, in the peculiar circumstances of this case wherein delay was deliberate without any reasonable explanation rather contradictory explanation, it cannot be lightly ignored. The parents of the prosecutrix, who are P.Ws. 1 and 2, are specific that at Khutauna there is police station as well as hospital. Khutauna is approximately 01 Km from the place of occurrence. There is no explanation as to why the matter was not reported immediately to



the police at Khutauna and the matter was reported to Mahila police station at Madhubani which is 50 Kms away from the place of occurrence vide P.W.2 and the formal FIR. In the fardbeyan and in the statement under Section 164 Cr.P.C., the prosecutrix stated that since Panchayat of the occurrence was to be held the report to the police was delayed. P.W.4, the Investigating Officer, is specific in para-14 that he could not ascertain the identity of the Panches nor could record their statement. Other prosecution witnesses have also not stated anything as to who were the Panches to resolve the cognizable offence. The prosecutrix, (P.W.3) vide para-17, deposed that whenever she attempted to lodge the police case, the accused persons threatened her that the video created during occurrence could be made viral. However, the prosecutrix or her parents or any other prosecution witness have not stated that they had seen any such video. The prosecution witnesses are specific that prior to lodging of the criminal case, they had not reported the matter to any authority including Sarpanch and Mukhiya of the village. The defence version is that Baidya Nath Singh, the father of the appellant and Manoj Singh a co-villager are political rivals facing case and counter criminal case. The defence has produced Ext.A and Ext.A/1. Copy of the FIR of Khutauna P.S.Case No. 66 of 2015 lodged by the appellant against Manoj Singh and others and



copy of FIR of Khutauna P.S. Case No.76 of 2015 lodged by Manoj Singh against the appellant and others to support old rivalry including criminal cases. P.W.2, the mother of the prosecutrix, has deposed that her husband (P.W.1) is a labour of Manoj Singh and the employer had asked to come to Madhubani to lodge the case after a month of the occurrence. P.W.3, the prosecutrix, denied that her father was a labour of Manoj Singh. The denial is deliberate as she has already admitted that there was political rivalry between Manoj Singh and the father of the appellant.

(c) The prosecution case is unworthy of credence as regards place of the occurrence. According to D.W.2, the school, where incident allegedly took place, is a residential school and teachers and students stay there day and night. The witness has not been confronted on the aforesaid statement. The investigating officer has admitted the lapses committed by him that the said Coaching Classes run in five rooms. However, he could not mention while making inspection of the P.O. as to whether those rooms were occupied by boarding students and how many students were residing in those rooms. It was also not mentioned as to how many students were there in the rooms on the date of occurrence. Evidently, the place of occurrence which was a boarding school must have other students and teachers residing there and if the



matter would have been reported at the earliest, the police could have ascertained the correctness of the claim of the prosecution that the Gang rape was committed in the said school premise.

9. In view of the aforesaid infirmities, I am of the view that the prosecution has failed to prove the charges against the appellant beyond reasonable doubts. The benefit, whereof, must go to the appellant.

10. Accordingly, the impugned judgment and sentence are hereby set aside and this appeal is allowed. Let the appellant be set free at once.

(Birendra Kumar, J)

Nitesh/-

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