

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4237 of 2018

Arising Out of PS. Case No.-4 Year-2016 Thana- BABUBARHI District- Madhubani

=====

Pawan Kumar Mahto @ Pawan Kumar Singh Son of Ramvilas Mahto,
Resident of Village-Hanuman Nagar Bathnaha, Police Station-Phulparas,
District-Madhubani.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr.Ramakant Sharma, Sr.Adv
	:	Mr.Rakesh Kumar Sharma, Adv
For the Respondent/s	:	Mr.Sujit Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date : 23-03-2021

1. The sole appellant, above named, faced trial for offences under Sections 366(A) and 376 of the Indian Penal Code as well as for offence under Section 4 of the POCSO Act before learned Additional Sessions Judge-Ist-cum-Special Judge, Madhubani in connection with Babubarhi P.S.Case No.04 of 2016 corresponding to G.R.No.02 of 2016.

By the impugned judgment dated 24.09.2018, the learned Trial Judge found the appellant guilty for all the aforesaid offences and by the impugned order of sentence dated 01.10.2018, sentenced the appellant to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.10,000/-under each of the offences under Sections 366(A)and 376 of the Indian Penal Code. In default of payment of fine, three months imprisonment was ordered.



Under Section 4 of the POCSO Act, the appellant was sentenced to 07 years rigorous imprisonment and to pay a fine of Rs.10,000/-. In default of payment of fine, three months imprisonment was ordered. The sentences have been directed to run concurrently.

2. The prosecution case as disclosed in the written report dated 09.01.2016 of Mr. Hari Narayan Yadav (P.W.8) is that on 05.01.2016 at about 6.00 P.M., his minor daughter, aged about 16 years, had gone towards east of her house to answer the call of nature but she did not return. The informant searched her hither and thither including to the relatives but she could not be found. On 08.01.2016, one Deo Narayan Yadav (P.W.4), a co-villager stated that the daughter of the informant was seen on a motorcycle with the appellant. The informant further disclosed that the daughter was carrying a mobile phone in which SIM card purchased in the name of appellant was being used. On the date of occurrence, the victim had talked to the appellant, hence had belief that the appellant had induced the victim to go with him and the appellant might throw her in flesh trade or use her for immoral purpose.

3. On the written report aforesaid, Babubarhi P.S. Case No.04 of 2016 was registered and after completion of investigation, the police submitted chargesheet only against the



appellant whereas investigation was kept pending against other co-accused.

4. During trial, the prosecution examined altogether 13 witnesses. P.W.1 Ram Autar Singh. P.W.2 Ram Vilash Mahto. P.W.9 Vijay Kumar Singh and P.W.10 Babloo Kumar Singh were tendered by the prosecution for cross examination.

P.W.1 stated that the victim used to sit at the shop of the appellant and there was dispute between the victim and the appellant for dues of the cost of articles purchased from the shop of the appellant. P.W.2 stated that appellant was not involved in the occurrence. P.W.9 deposed that he knows nothing about the occurrence and P.W.10 also deposed that he knows nothing about the occurrence.

5. In **Raja Ram Vs. State of Rajasthan**, reported in **2005 (5)SCC 272**, the Hon'ble Supreme Court held 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. The view in Raja Ram was reiterated in **Mukhtiar Ahmad Ansari Vs. State (NCT of Delhi)**, reported in **2005 (5)SCC 258**.

6. Thus the evidence of the aforesaid tendered witnesses on which the prosecution has relied upon, seriously tells



upon the trustworthiness of the prosecution case because the witnesses have completely denied knowledge about the occurrence rather one of the witnesses stated that the appellant was not involved in the occurrence.

7. P.W.3 is the victim girl, her evidence would be discussed later on. P.W.4 Deo Narayan Yadav deposed that on 05.01.2016, when he was returning from the shop of the appellant as the shop was closed, he saw that the appellant, the victim and one Sanjay were going on a motorcycle. When the witness came to the village, he heard about the kidnapping of the victim, then he disclosed what he had seen. The witness was confronted with his statement before the police and the attention of Investigating Officer-P.W.11 was also drawn that the witness had not stated that he had seen the trio going on a motorcycle. Even if the testimony of this witness is believed to the aforesaid extent, it is evident that the victim was not seen making any protest or alarm.

P.W.5 Ugra Narayan Yadav is a hearsay witness about the actual occurrence, however, he stated that when he went to the house of the appellant in the night, the appellant was there and appellant stated that he had no knowledge about whereabouts of the victim rather one Sudha D/o Ahilya Devi should be contacted, to know the whereabouts of the victim. This witness stated that the



informant had lodged a subsequent FIR of kidnapping of the same daughter against Ahilya Devi. According to P.W.5 the call details disclosed that the victim and the appellant were found talking for a long duration and on frequent intervals.

P.W.6 Sahdeo Yadav is also a hearsay witness. Likewise, P.W.7 Raudi Yadav is a hearsay witness on the point of actual occurrence.

P.W.8 Hari Narayan Yadav has supported his FIR as well as occurrence as a hearsay witness. The witness had admitted that in a subsequent act of inducement to the same victim girl by Ahilya Devi and the appellant, a subsequent case has been lodged which is pending in the court of learned Fast Track Court- I.

P.W.11 Ramnath Prasad, the Investigating Officer of the case, has simply supported the investigation done by him.

P.W.12 Dr. Gargi Sinha and P.W.13 Dr. Rama Jha are Doctors, who had medically examined the victim and were of the opinion that there was no recent sign of rape. The age of the victim was assessed on the basis of radiological examination report as 18 years. The Doctor, who had performed radiological examination and opined about the age of the victim was not produced by the prosecution.



8. Learned counsel for the appellant would submit that the prosecution case is based on the sole testimony of the prosecutrix and her testimony is shrouded with suspicion and the conduct of the victim would make it abundantly clear that she has not come up with clean hands rather is suppressing some real facts about the incident. According to learned counsel, in aforesaid situation, in absence of corroboration of the testimony of the victim, conviction cannot be sustained. Learned counsel for the appellant contends that the testimony of the victim would reveal that she was in consent and the prosecution has failed to establish that the victim was not of the age to give valid consent. Hence, for this reason also, the prosecution case is fit to be disbelieved.

9. Learned counsel for the respondent-State contends that if the victim says that she had not consented, the court would presume that she had not consented and the burden is on the accused to establish that she was a consenting party. For minor discrepancies, the evidence of prosecutrix cannot be thrown away in absence of corroboration because the law does not require plurality of evidence to prove a charge of rape nor a self-respecting girl would be expected to make in a casual manner, a statement which is self-humiliating against her honour. The learned Trial



Judge has examined in threadbare the prosecution evidence and there is no cogent material to disagree with that.

10. The law is well settled that the evidence of 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 Vs. Gurmit Singh & Ors.**, reported in **(1996) 2 SCC 384**.

11. However, in a case where the testimony of the 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 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 the possibility of false implication.

12. 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”.

13. Now the question is whether prosecutrix of this case is a “sterling witness”. In the statement recorded under Section 164 Cr. P.C. (Ext.1), the victim stated that on 5th of January in the morning, she got a mobile call. She received the call and the caller abused her, then she dropped the call. On the same day at 6.00 P.M., she had gone to attend the natural call. Two boys were coming on a motorcycle, the boy, who was sitting on the rear, took the victim in clutches, put his hands on her mouth and got her seated on the motorcycle. They took her to the college nearby and both, the appellant and co-accused-Sanjay Singh, ravished her. Thereafter, the two took her to Jai Nagar Railway Station and all boarded on a train. The appellant and co-accused Sanjay asked her to sit while they would return after taking betel but they fled away



and the train moved on. When the train reached at Khathauli Railway Station, a 3rd boy Sunil Das asked her to accompany him and Sunil assured her that he would marry with her. The name of Sunil was disclosed by the female passenger sitting there. Sunil took her to Gujarat at Gandhi Dham. Sunil took her to the house of a friend and asked her to wait till Sunil searches out a room. When the “Seth Jee” got information that Sunil had eloped the girl, he telephoned to the uncle of the victim at Bangalore, then uncle came and took the victim to Bangalore and from there they reached to Patna.

The prosecutrix examined as P.W.3 stated that on 05.01.2016 at about 6.00 P.M., she had gone to attend the call of nature, co-accused Sanjay Singh and the appellant were coming on a motorcycle from the eastern side, co-accused Sanjay Singh shut the mouth of the prosecutrix and forcefully got her sit on the motorcycle. They took her to the college near Belhi Pool and both ravished her. Thereafter, they took her to the Jai Nagar Railway Station and boarded on a train. The accused persons told her that they would return after eating betel but they did not return and the train left the Station. When the train reached at Khathauli Station, Sunil Das started insisting her for marriage and took her to Gujarat. Sunil Das kept her in the house of one Ram Babu and



went to search for a room. When the “Seth Jee” of the Company got information that she was made to elope by Sunil Das, he telephoned to the father of the victim and the father reported the matter to the uncle of the victim at Bangalore and then the victim was brought to the village. She stated that she had made statement before the Magistrate under Section 164 Cr.P.C. On her identification, the same was made as Ext.1. During cross examination, she admitted that Sunil Das took her from Madhubani to Delhi and thereafter to Gujarat. She did not make any alarm while travelling alongwith Sunil Das.

14. The Investigating Officer P.W.11 stated that the prosecutrix was recovered from nearby the Gate of Madhubani police station on 22.01.2016. Then her statement under Section 164 Cr.P.C. was recorded on 23.01.2016 and on the same day her medical examination was done.

15. In the case on hand, the conduct of the victim, in accompanying, the accused persons even after commission of rape by them, to the Jai Nagar Railway Station and boarding train thereat alongwith the accused, relying on the statement of the accused that they would return after taking betel, leaves impression that she was a willing party. Moreover, on the train, she met with an unknown person and accompanied him to Gujarat on



assurance of that person to marry with her knowing well that someone had just cheated her, creates serious doubt that the victim is not disclosing some more real facts about the case. The conduct of the father of the victim, who got knowledge about kidnapping of his daughter on 05.01.2016 itself as per P.W.2, but reporting the matter to the police only on 09.01.2016 even after searching her to different places including to the house of the relatives residing in different villages, does not inspire confidence that the family members were unaware of the actual affairs and if they were really unaware, they levelled allegation against the appellant in an afterthought and pre-planned manner. It is the prosecution case that the victim went to Bangalore alongwith her uncle and then came to Patna by flight. From there it is missing whether uncle took her to the police station or to her village or to which place rather she alone was found at the Gate of Madhubani Police Station on 22.01.2016.

16. On the touchstone of the test of “sterling witness” and on consideration of the testimony of the prosecutrix, I do not find that she is a “sterling witness”. Since there is lack of corroboration on material particulars, conviction of the appellant is not sustainable on shaky evidence of the prosecutrix. The learned



Trial Judge has not considered the aforesaid serious infirmity in the prosecution case.

17. In the case of State of **Madhya Pradesh Vs. Munna**, reported in **2016 (1)SCC 696**, the Hon'ble Supreme Court said that evidence of approximate age of the prosecutrix would not be sufficient to any conclusion about the exact age of the prosecutrix. In the case on hand, the prosecution has failed to prove the exact age of the prosecutrix to substantiate that she was incapable of giving a valid consent. If there is inkling of chances of consent of the victim, the benefit of doubt must go to the accused.

18. Accordingly, the appellant is acquitted of the charge levelled against him giving benefit of doubt. The appeal stands allowed. Let the appellant, who is serving out the sentence, be set free at once.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	18.03.2021
Uploading Date	23.03.2021
Transmission Date	23.03.2021

