

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5171 of 2019**

Arising Out of PS. Case No.-398 Year-2008 Thana- ARARIA District- Araria

MANOJ KUMAR TATMA Son of Gulabi Tatma Resident of Village-
Baturbari, Masjid Tola, P.S.-Tarabari, District-Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Vikram Deo Singh, Advocate
	:	Mr.Manish Kumar, Advocate
	:	Mr. Ziaul Quamar, Advocate
For the Respondent/s	:	Mr.Syed Ashfaque Ahmad, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT**

Date : 14-09-2021

The sole appellant-Manoj Kumar Tatma, has challenged, his conviction for offences under Sections 366 and 376 IPC recorded by judgment dated 18.10.2019 passed in S. Trial No.431 of 2009 corresponding to CIS No.3892 of 2014 arising out of Araria (Tarabari) P.S.Case No.398 of 2008. The learned Trial Judge (Additional Sessions Judge-II, Araria) has sentenced the appellant to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5,000/- for offence under Section 366 IPC. Seven years imprisonment has been awarded for offence under Section 376 IPC alongwith a fine of Rs.5,000/-. In default of payment of fine, the appellant would undergo further three months in jail for both the aforesaid offences. The sentences are to run concurrently. There is direction for payment of half of the fine amount to the



victim. The order of sentenced dated 25.10.2019 is also under challenge in this appeal.

2. The prosecution case as disclosed in the written report dated 29.07.2008 of Ram Chandra Tatma (P.W.9) is that on 28.07.2008 at about 10.00 A.M. he was sleeping at his shop in Mumtaj market. The mother (P.W.7) came and disclosed that daughter of the informant has been taken away by the appellant, a co-villager with intent to marry with her. Thereafter, the informant and his brother Kishan Lal Tatma (P.W.6) started searching out the victim girl (P.W.8) at the Registration Office, Araria and the railway station thereat besides at other places including residence of the relatives but could not get trace of the two. The victim daughter of the informant was already married two months back with Raj Kumar Tatma of village Kubari. It is alleged that chaukidar-Gulabi Tatma (father of the appellant), chaukidar-Tara Devi, the step-mother of the appellant, in collusion, abducted the victim with intent to get her married with the appellant.

3. On the basis of written report aforesaid vide Ext.-1, Araria (Tarabari) P.S.Case No.398 2008 was registered and after completion of the investigation, the police submitted chargesheet against the appellant and investigation against the parents of the appellant was kept pending which was subsequently concluded



and the parents faced trial in S.Tr.No.505 of 2010 which resulted in their acquittal as orally informed by learned counsel for the parties.

It is worth noting that informant of this case was examined in S.Tr.No.505 of 2010 on 01.02.2012 as P.W.7. Certified copy of his deposition is Ext.-A which would be referred later on.

4. The defence of the appellant is that probably it was a case of love affairs between the victim an adult and the appellant who are neighbours and the marriage of the victim was solemnized against her wishes. Consequently, she eloped with the appellant and the criminal case was instituted to put undue pressure for wrongful gain.

5. Mr. Vikram Deo Singh, learned counsel for the appellant assails the impugned judgment and order of sentence on the ground that the testimony of the victim lady (P.W.8) would show that she never made any protest in being in physical relation with the appellant even though she had ample opportunity because during alleged period of her abduction she was kept in the family houses of two different persons on two different occasions and in both the families, there were females and the victim lady had opportunity to meet with those females alone but she did not make



any complaint that the appellant had abducted her and was committing sexual assault against her without her consent in the house of those persons. Learned counsel for the appellant submits that there are lots of contradictions in the manner of elopement of the victim lady. Hence, bare statement that the victim was forcefully taken away by the appellant and other co-accused and the appellant forcefully ravished the victim without her consent would not make any difference in coming to the conclusion that the prosecution miserably failed to prove the charges against the appellant. Learned counsel for the appellant contends that the prosecution witnesses have admitted that there is old enmity between the parties. The victim lady had admitted that she had lodged a case of rape against another co-villager and soon she resiled from this statement. The overall, conduct of the victim does not inspire confidence that she is a “sterling witness”.

6. To contra, Mr. Syed Ashfaque Ahmad, learned A.P.P. for the State contends that once the victim says that she was sexually exploited without her consent the court would presume “no consent” and for trivial infirmities or lapses in the prosecution evidence the victim cannot be disbelieved. The law is settled that the testimony of the victim of rape stands to some extent on better footing to that of an injured witness for the reason that no lady



living in tradition bound non-permissive Indian society would speak against her own dignity and self-respect just to falsely implicate some innocent person.

7. The prosecution has examined altogether 11 witnesses. P.W.1-Samir Ansari, P.W.2-Sk. Fekan and P.W.3 Gulai Tatma have deposed that they known nothing about the occurrence. These witnesses have been declared hostile by the prosecution and their attention has been drawn to the statement made under Section 161 Cr.P.C. before the police.

A witness is said to be hostile when he has made some statement supporting case of the prosecution in the past and is not consistent with his earlier statement while deposing before the court. Besides confronting the hostile witnesses with his earlier statement as required under Section 145 of the Evidence Act, the earlier statement must also be brought on the record to ensure that the witness is really hostile. Attention, of P.W.11-Narendra Kumar the investigating officer, was not drawn to the statement made by these witnesses before him, hence, evidence of previous statement is not on the record. Therefore, it cannot be treated that these witnesses are really hostile witnesses.

8. P.W.-4 Shiv Lal Tatma is cousin brother of the informant and is a hearsay witness on the occurrence. P.W.5-



Manki @ Manti Devi is wife of P.W.6-Kishan Lal Tatma. Kishan Lal Tatma is full brother of the informant of this case. P.W.7-Ugiya Tatma is mother of the informant. These witnesses claimed to be eye witnesses of the occurrence of taking away of P.W.8 by the appellant and others. According to P.W. 5, the mother of the appellant namely Tara Devi, a co-accused took P.W.8 on the pretext of plucking vegetables. Thereafter, Gulabi Tatma and Tara Devi, both parents of the appellant, forcefully got the victim seated on the motorcycle and appellant fled away alongwith the victim. In para-7 of the cross-examination, the witness deposed that when the appellant was taking away the victim lady on the motorcycle only she and her husband P.W.6 were there. Others had gone to work in their field or at the place of their duty. According to P.W.6 he was not at the place of occurrence alongwith P.W.5 at the time rather he was at Mumtaj Chowk in his shop. He had only seen the appellant and victim going on the motorcycle. This witness not only contradicts the claim of his wife P.W.5 that both were there at the time of alleged abduction of the victim lady rather P.W.6 contradicts the victim lady P.W.8 also, as victim lady had deposed that when the appellant was carrying her on the motorcycle, father of the appellant, namely, Gulabi Tatma was also sitting behind her on the same motorcycle, and was there all along till they got a boat



to cross the river to go to Katihar. P.W.7-Ugiya Tatma has deposed that Gulabi Tatma and Tara Devi the parents of the appellant came to her house and took P.W.8 to their own house and thereafter the appellant took the victim lady on a motorcycle to village Belbat. In para-3, she deposed that she had seen the appellant going alongwith the victim lady but she did not protest or obstruct them. According to this witness, P.Ws.5 and 6 were not there at the time of occurrence. In para-8 she admitted that only appellant-Manoj Kumar Tatma had taken the victim on the motorcycle.

9. P.W.8 the victim lady deposed that Gulabi Tatma, the father of the appellant was also there on the motorcycle alongwith the appellant and they took her to Hasanpur. If P.W.8 is believed that Gulabi Tatma was also there all along up to Kisanganj, it falsifies the claim of other witnesses, as referred above, to have witnessed any part of the occurrence. This is a material contradiction in the prosecution evidence and cannot be separated to record guilt of the appellant and innocence of Gulabi Tatma rather creates serious doubt on the trustworthiness of the prosecution witnesses to be eye witness as claimed.

10. The sole testimony of the victim lady on the point of the occurrence of her abduction cannot be relied upon in view of the deposition of the informant of this case recorded in



S.Tr.No.505 of 2010 vide Ext.A wherein he stated that the mother (P.W.7) disclosed that the victim lady fled away. The prosecution witnesses including the victim lady are consistent that on the date of occurrence she was in between 21-22 years. Ext.-A would show that the informant admitted that he had several litigations with the father of the appellant and now all the matters have been compromised and settled including the trial of co-accused-Gulabi Tatma. The witness said that under some misconception he had lodged the case. There is no reason that the appellant would not rely on the aforesaid testimony to raise doubt against the prosecution version. Besides admission of the informant, the three prosecution witnesses P.Ws.1,2 and 3 have admitted that there are lots of cases between Gulabi Tatma, the father of the appellant and Ram Chandra Tatma, the informant of this case. The prosecution has drawn attention of P.W.1 to his statement under Section 161 Cr.P.C. wherein P.W.1 stated that on the date of occurrence, he was at the Bank and Chaukidar Gulabi Tatma was also there at 10.30 A.M. on his duty. This suggestion of the prosecution goes to make out a case that in fact Gulabi Tatma was not there at the time of so called abduction of the prosecutrix and the prosecutrix is not making truthful statement of the entire occurrence.



11. According to P.W.8, after abduction she was taken to Hasanpur. She was kept at Hasanpur for one day and thereafter taken to Kisanganj. At Kisanganj, she remained for 5-6 days. Thereafter, she came to village-Belbat and remained there for 4-5 days and in these periods, the appellant was in physical relation with her. In para-11 of her deposition, she admits that when Tara Devi had come to call her she was alone in her house. The aforesaid statement belies the claim of other witnesses that they had actually seen the incident. The witness admitted in para-21 that at Hasanpur she stayed in the house of one Dharkab. The females were also in that house. The appellant had slept alongwith the victim in the night. In para-16, she stated that at Kisanganj she stayed for 4 to 5 days in a house. She does not know the name of owner of the house, however, one male, a female and children were there in the house. There also she used to share bed with the appellant. For attending call of nature, she used to go outside alongwith female member of the family. She did not make any complain of the act of the appellant in ravishing her. From Kisanganj she came to village Belbat on the motorcycle of the appellant sitting behind the appellant. At Belbat, the police came and found the appellant and the victim lady in the house. At village Belbat, she stayed in the house of a family where female members



were also there. There also she did not disclose about the previous act of the appellant committed at Kisanganj or at Hasanpur.

P.W.9 the informant of the case has supported the occurrence as hearsay witness. P.W.10-Dr.Husne Ara Begum had medically examined the victim lady on 09.08.2008. The Doctor did not find any recent sign of sexual assault, however, noticed that the victim lady was carrying pregnancy of 1 ½ to 02 months. P.W.11- Narendra Kumar is investigating officer of the case, he has deposed about the investigation done by him.

12. Thus on careful scrutiny, of the prosecution evidence, it is noticed that the prosecution evidence is conflicting and contradictory on the manner of leaving the house by the victim lady alongwith the appellant. What the victim has deposed regarding manner of her abduction is not corroborated by her own family members who claimed that they were also present in the house at the time of occurrence. Therefore, the prosecution evidence is doubtful to prove the charge under Section 366 IPC against the appellant.

On consideration of the sole testimony of the prosecutrix and her conduct, as deposed by her, would reveal that she was not only a major knowing the consequences of her relationship with the appellant rather was in consensual



relationship with the appellant if she is believed at all. Therefore, charge under Section 376 IPC also fails.

13. 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”.

14. To sup up, in the case on hand, prosecution evidence discloses that the parties are next door neighbours, however, old litigations are there. Sharp contradictions in the testimony of the eye witnesses regarding manner of alleged abduction and identity of the person involved leaves a lot of room to doubt the real incident. The prosecution case suffers from suppression of material facts on the real incident.

Since the victim was married two months back and was neighbour of the appellant, the prosecution evidence suggests that the chances of elopement with freewill cannot be completely ruled out. The conduct of the victim in not making any protest or disclosure of the act of the appellant to others though she had enough opportunity and occasion for the same, goes to show that



she was in consensual relationship with the appellant and old enmity between the two families might be a reason for this case. Moreover, the testimony of the victim suggests that she is not a “sterling witness”. The aforesaid circumstances leaves the prosecution case doubtful and unworthy of acceptance to prove the charges. The learned Trial Judge has not considered the aforesaid infirmities in the prosecution evidence. Hence, the appellant deserves benefit of doubt.

15. In the result, the impugned judgment and sentence are hereby set aside and the appellant is acquitted of the charges levelled against him. The appellant is in jail, hence, let him be set free at once.

(Birendra Kumar, J)

Nitesh/-

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