

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.341 of 2014

Arising Out of PS. Case No.-25 Year-2001 Thana- THAKRAHA District- West Champaran

1. Hira Yadav S/o Bhoj Yadav R/o Village-Muradih,
2. Suresh Yadav S/o Chaturi Yadav R/o Village-Rerha,
Both P.S. Thakraha, District West Champaran.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellants : Mr. Vishwajeet Kumar Mishra, Advocate.
Mr. Aakash, Advocate.

For the State : Dr. Mayanand Jha, Senior Advocate (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 29-06-2022

By this appeal, appellant/accused no.1 Hira Yadav and appellant/accused no.2 Suresh Yadav are challenging the Judgment and Order dated 19.02.2014 and 21.02.2014 respectively passed by the learned 2nd Adhoc Additional Sessions Judge, Bagaha, in Sessions Trial No.101 of 2003 thereby convicting them of the offences punishable under Section 376(2)(g) read with 34 of the Indian Penal Code and sentencing them to suffer imprisonment for life apart from a direction to pay fine of Rs.20,000/- each and in default, to undergo rigorous imprisonment for six months. For the sake of



convenience, the appellants shall be referred to in their original capacity as “the accused”.

2. Facts in brief leading to the prosecution of the accused gathered from the police report can be summarized thus:

(a). The prosecutrix, who is examined as P.W.6, is the first Informant. She is resident of village-Premahi falling under the jurisdiction of Police Station-Thakraha, District-West Champaran. She used to reside there along with her family members. The incident allegedly took place at about 11.00 P.M. of 17.04.2001. At that time, according to the prosecution case, P.W.2 Chandradev, who happens to be the father of the prosecutrix, was also staying in her house. It is case of the prosecution that when members of the family of the prosecutrix and her father were sleeping in the house at about 11.00 P.M. of 17.04.2001, three accused persons, namely, Hira Yadav, Suresh Yadav and Naresh Yadav barged in the house. They assaulted P.W.2 Chandradev by means of sticks. When the prosecutrix attempted to save her father, she was also assaulted. P.W.2 Chandradev had suffered bleeding injury to his right knee and finger of the right palm. The prosecutrix was dragged to the grassland by all accused persons and there they committed gang



rape on her. She became unconscious. Her family members traced her out and took out her back to the home. The prosecutrix had suffered injury on the back, both hands and neck. She was suffering pain at her private part.

(b). On 18.04.2001, the prosecutrix went to Bhitaha Police Outpost of Police Station-Thakraha and lodged report, which came to be recorded by Sanjay Kumar, Incharge of the Bhitaha Outpost. That report (Ext.1) was then forwarded to the Police Station-Thakraha where Crime No.25 of 2001 came to be registered for the offences punishable under Sections 452, 341, 323, 376 read with 34 of the Indian Penal Code against the accused persons and the wheels of investigation were set in motion.

(c). During the course of investigation, the Investigator recorded statement of the witnesses. Effected seizure of clothes of the prosecutrix. The prosecutrix was sent for medical examination to the Primary Health Centre, Bettiah where she came to be examined by P.W.5 Dr. Poonam Sinha. On completion of investigation, the accused persons came to be chargesheeted.

(d). In order to bring home the guilt to the accused, the prosecution has examined as many as 7 witnesses. The



defence of the accused persons was that of total denial and false implication. However, they did not enter into the defence.

(e). After hearing the parties, the learned trial court was pleased to convict the appellants/accused and to sentence them as indicated in the opening paragraphs of this Judgment.

3. We heard the learned Advocate appearing for the appellants/accused. By taking us through the records and proceedings, he argued that no independent witnesses are examined to prove the case of the prosecution. It is further argued that the medical evidence is not supporting the case of prosecution. There were no injuries on the person of the prosecutrix. The report of the Forensic Science Laboratory cannot be pressed in service as the Investigator was not examined. It is further argued that evidence of the prosecutrix is not of sterling quality and, therefore, the same cannot be relied upon. To buttress this contention, reliance is placed on the Judgment of the Supreme Court in **Santosh Prasad @ Santosh Kumar Vs. State of Bihar**, reported in (2020)3 Supreme Court Cases 443.

4. As against this, the learned Senior Advocate (A.P.P.) appearing for the State vehemently argued that in a case of sexual offence against a women, broader probabilities of the



prosecution case are required to be kept in mind and, therefore, it cannot be said that the charges are not proved by the prosecution.

5. We have considered the submissions so advanced. We have also perused the records and the proceedings including the oral as well as documentary evidence.

6. The case in hand is of a gang rape of a married women by abducting her from her house by three adult males. Way back in the year 1983, in the matter of **Sheikh Zakir Vs. State of Bihar, reported in AIR 1983 SC 911, the Supreme Court** had observed that even though a victim of rape cannot be treated as an accomplice, the evidence of victim of rape case is to be treated almost like the evidence of an accomplice requiring corroboration. Hence, there must be an indication in the course of a Judgment that the Judge had this rule in his mind when he prepared Judgment and if in a given case the Judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity of such corroboration. It is further observed that in a case relating to the married women it is always safe to insist on such corroboration. Whenever a corroboration is necessary, it should be from an independent source but it is not necessary that every part of the evidence of



the victim should be confirmed in every detail by independent evidence. Similarly, in the matter of **Raju Vs. State of M.P., reported in (2008) 15 SCC 133**, the Supreme Court has observed thus in paragraph-11 and 12 of the Judgment:

“11. 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, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of



consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

It is, thus, clear that only when the evidence of the prosecutrix is found to be truthful and trustworthy then there is no requirement of corroboration to her evidence. What is necessary is that her version must be clear and cogent and the



prosecutrix must be a sterling witness. Keeping in mind these principles, let us examine whether the accused persons or any of them have committed gang rape on the prosecutrix/P.W.6.

7. Undisputedly, all three accused persons were resident of village-Premahi. The prosecutrix and her in-laws were also resident of the said village-Premahi. P.W.2 Chandradev, who happens to be father of the prosecutrix, was, however, resident of village-Hariharpur in Kushinagar District of the State of Uttar Pradesh. At the time of the incident, he claims to be staying with the prosecutrix at her matrimonial house. However, his evidence is not disclosing the reason of his stay at the relevant time in the matrimonial house of the prosecutrix. Similarly, neither in his evidence nor in any other evidence adduced by the prosecution including that of the prosecutrix (P.W.6) there is any clarification regarding the period for which P.W.2 Chandradev was residing at the house of his daughter, i.e. the prosecutrix. Evidence on record is conspicuously silent regarding any personal enmity between P.W.2 Chandradev and the accused persons in the light of the fact that this witness is not even resident of the Bihar State. Evidence on record goes to show that apart from this witness, the father-in-law and the brother-in-law of the prosecutrix were



also present in the house at the time of the incident.

8. On this background, it is in evidence of P.W.6, the prosecutrix, that on the day of the incident, after having the dinner she as well as other family members slept at about 10.00-11.00 P.M. Thereafter, accused, namely, Hira Yadav, Suresh Yadav and Naresh Yadav belonging to the 'Ahir caste' came and assaulted her. She, therefore, shouted and then her father P.W.2 Chandradev came for saving her. At that time, the accused assaulted Chandradev, who suffered bleeding injury to his finger. The prosecutrix further stated that she was then forcibly taken to the grassland where she was subjected to the gang rape by the accused persons. She became unconscious and then, as per her version, she was brought back by the inmates of her house. She has also deposed about lodging the F.I.R. and taking treatment at the Hospital at Bettiah. She stated that her back, legs and ears were injured and she had also suffered internal injuries. She claimed that because of fear of the accused persons they left the village leaving behind 12 Bighas of land. To test her credibility, the prosecutrix was subjected to the cross-examination. It is revealed from her cross-examination that because of flood of the river, her house, houses of the accused persons as well as the entire village came to be



submerged in the river water. It is further revealed from her cross-examination that the agricultural land of her family members also came to be submerged in the water. On the background of this material, it is hard to believe that because of fear of the accused persons, the prosecutrix and her family members had left the village. No Motive has been attributed in her chief examination by the prosecutrix for the incident in question wherein she claims that selectively she herself and her father have been assaulted by the accused persons leaving all other family members untouched. Her evidence is not explaining what was the reason for this incident though in the F.I.R. lodged by her, she claimed that because of previous enmity, the incident took place. Her substantive evidence is totally silent on this aspect.

9. Evidence of the prosecutrix coming on record from the cross-examination further shows that at the place of her in-laws, she was never going out of her matrimonial house. She was not going to the house of other co-villagers. She never visited house of the accused persons nor the accused persons ever came to her house. She stated that she never talked with the accused persons. Thus she claimed that she used to live her life by confining herself inside her matrimonial house. With



this material, it is hard to believe that the prosecutrix would know the rapist by name. We have no advantage of any evidence regarding dock identification of the accused as at the relevant time, they were exempted from personal appearance before the court. Evidence of the prosecutrix is not clarifying how she was in a position to identify or to know the accused persons despite the fact that she never used to step out of her own house and the accused were never visiting her house.

10. The prosecutrix claimed that she was dragged by the accused persons for taking her to the secluded place of the incident. At that time, she claimed that she was crying loudly. She stated that because of such dragging, she suffered injuries to her back, heels of both lower limbs, to her hands and ears. She stated that she was also assaulted by the accused persons. As per her version, she was admitted at the hospital at Bettiah for five days for her medical treatment. The prosecutrix further claims that because of dragging by the accused persons, her buttocks were lacerated. We will test the veracity of this part of her evidence by comparing it with her medical evidence in subsequent paragraphs but suffice to state that the prosecutrix claimed to have sustained several injuries in the incident of ravishing her by three adult males. In her cross-examination,



the prosecutrix also claimed that her petticoat and blouse came to be stained with blood and also with semen of the accused persons.

11. Now, let us examine whether evidence of the prosecutrix is gaining corroboration from other evidence and more particularly the medical evidence on record. At this juncture, it is apposite to note that P.W.1 Satya Narain, who happens to be father-in-law of the prosecutrix, has stated that the prosecutrix was found to be lying on the ground drenched in blood during their search after the incident. Similar is the version of her father P.W.2 Chandradev. He has also added that the prosecutrix was initially treated medically at Sahebganj and thereafter at Bettiah.

12. P.W.5 Dr. Poonam Sinha, Medical Officer of the Primary Health Centre, Bettiah, had examined the prosecutrix on 21.04.2001. The incident allegedly took place after 11.00 P.M. of 17.04.2001. The F.I.R. came to be lodged by the prosecutrix on 18.04.2001. Why the prosecutrix was referred belatedly i.e. on 21.04.2001 to the Primary Health Centre, Bettiah, for her medical examination is a fact which is not explained by the prosecution in its evidence. However, it is apparent that the prosecutrix came to be examined medically



after three days from the alleged incident. It is a matter of common knowledge that superficial injuries sustained in such type of incident normally heals within a period of two or three days leaving behind no evidence regarding the same. However, the case in hand is having peculiar facts. The prosecutrix is claiming to have been raped by three adult males successively by dragging her from her house to the place of the incident which was the grassland outside the village. Her father as well as father-in-law have stated that she was found drenched in blood at the grassland after the incident. The prosecutrix herself claimed that her buttocks were lacerated and she suffered injuries to her upper and lower limbs apart from the back and the ears. Thus according to the prosecutrix she had suffered severe injuries in the incident for which she took treatment for 5 days as indoor patient at the Hospital at Bettiah. This Medical Officer of the Primary Health Centre, Bettiah has not spoken that the prosecutrix was taking treatment at the said hospital as indoor patient for five days and during that period she had examined the prosecutrix. P.W.5 Dr. Poonam Sinha, who examined the prosecutrix on 21.04.2001, could not find any injuries on the person of the prosecutrix. This Medical Officer further deposed that even no injuries was found on the private



part of the prosecutrix and there was no evidence of recent sexual assault on her. During her medical examination, the prosecutrix was found to be a lactating mother. However, the prosecutrix has not spoken about her child during the course of her evidence. Rational mind expects at least few mark of violence on the person of the prosecutrix had she been subjected to such brutal sexual violence by three adult males and that too by dragging her all the way from her house to the scene of the occurrence. No such evidence is forthcoming in the case in hand cropping a reasonable doubt in the case of the prosecution.

13. P.W.2 Chandradev, father of the prosecutrix, has not given any reason for his presence in the matrimonial house of his daughter at the relevant time. He claimed that when at about 11.00 P.M., he was sleeping in the front portion of the matrimonial house of his daughter, accused Hira, Suresh and Naresh Came and assaulted him. He further stated that then they forcibly took his daughter and committed rape on her. It is worthwhile to mention here that this father has given diagonally opposite version to that of the prosecutrix. His daughter is stating that the accused persons assaulted her and when she shouted her father, P.W.2 Chandradev came to save her. However, P.W.2 Chandradev has not spoken about any assault



by the accused persons on his daughter in the house. He has only stated that the accused persons, after assaulting him, forcibly took away his daughter i.e. P.W.6. Evidence of P.W.2 Chandradev further shows that because of injuries suffered in the assault, he was required to get himself admitted to the Hospital at Sahebganj for his medical treatment for two days. He claims to have sustained 5-7 blows of sticks resulting in his unconsciousness. He also states that he has with him the papers of his medical treatment. However, for the reasons best known to it, the prosecution has not adduced any medical evidence regarding medical treatment of P.W.2 Chandradev nor furnished medical evidence regarding injuries suffered by him, if any, in the incident to corroborate his version and to demonstrate his presence at the time of the incident.

14. P.W.2 Chandradev has candidly stated that he was not acquainted with the accused persons. His evidence does not show any reason with the accused persons to target him for assault, without touching other members of the family of his daughter. Why he was selectively isolated for the purpose of assault by the accused persons is also not explained by the prosecution. Suffice to state that evidence of P.W.2 Chandradev is not inspiring confidence and the same is inherently



improbable. His presence on the spot of the incident is highly doubtful. It cannot therefore be said that this evidence is corroborating the version of his daughter, the prosecutrix (P.W.6).

15. P.W.1 Satya Narain is father-in-law of the prosecutrix. He has stated that when he himself and P.W.2 Chandradev were sleeping at the door of his house, accused Hira, Suresh and Naresh came and assaulted P.W.2 Chandradev by stick. He claimed that they took the prosecutrix forcibly. It is seen from his evidence that not a single blow was given by the accused persons to him. He claims to have met the accused persons at the door of his own house. His house, as stated by him, is surrounded by 8-10 houses. P.W.1 Satya Narain has candidly accepted the fact he had no enmity with the accused persons. Evidence of P.W.1 Satya Narain is not explaining as to whether the accused persons were having enmity with his Samdhi, i.e., P.W.2 Chandradev and what was the reason for such enmity, if any. Similarly, no reason is stated by this witness to justify the presence of his Samdhi P.W.2 Chandradev at his house at the time of the incident when P.W.2 Chandradev is resident of the Uttar Pradesh. It is hard to digest that accused persons who belong to the own village of P.W.1 Satya Narain



would choose his Samdhi P.W.2 Chandradev for assault by leaving him, his son and other inmates of the house untouched. P.W.2 Chandradev, as stated earlier, is resident of Uttar Pradesh and obviously was not having any connection or acquaintance with the accused persons. Element of improbability as such creeps in the prosecution case because of attributed role of indulging in the selective assault by the accused persons during the course of the incident to a person with whom they had no acquaintance or concern.

16. P.W.3 Rajendra Mukhiya is brother-in-law of the prosecutrix. In his evidence, he has stated that accused persons entered in his house and assaulted P.W.2 Chandradev as well as the prosecutrix (P.W.6). Thereafter, as per version of this witness, the prosecutrix was dragged by the accused persons to a distance of 3 kilometers by tying her mouth. He stated that he was not assaulted during the course of the incident. This witness had not made himself available for further cross examination and, therefore, evidence of this witness was ignored from consideration quite rightly by the learned trial court. No use of his evidence can be made in favour of the prosecution.

17. P.W.4 Ram Prasad Kushwaha had turned hostile



to the prosecution.

18. P.W.7 Vinod Yadav is a clerk of an Advocate, who came to be examined for proving some documents. His evidence is of no assistance for proving the charge. Except this, no other evidence is adduced by the prosecution.

19. The prosecution, for the reasons best known to it, has not even examined the Investigating Officer. There is no evidence regarding seizure, if any, of clothes of the prosecutrix. Similarly, no evidence has been adduced by the prosecution to show that seized articles were sealed and forwarded to the Forensic Science Laboratory. In absence of such link evidence, report of the Forensic Science Laboratory cannot be used to infer guilt of the accused persons.

20. In the result, evidence adduced by the prosecution is not free from reasonable doubt. The prosecutrix cannot be termed as sterling witness whose evidence can be accepted as it is. Other evidence adduced by the prosecution is not trustworthy. Case of the prosecution seems to be inherently improbable. The accused are therefore entitled for the benefit of doubt. The prosecution has failed to prove the charge beyond all reasonable doubt.

21. In the result, we are unable to uphold finding of



the guilt of both appellants/accused recorded by the learned trial court. Therefore, we proceed to pass the following orders:

(I). The appeal is allowed.

(II). The impugned Judgment and Order is quashed and set aside.

(III). The appellants/accused before this Court are acquitted of the offences held to be proved against them and they be set at liberty forthwith, if not required in any other case.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

P.S./-

AFR/NAFR	AFR
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