

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.482 of 2006

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Ram Briksha Ram, Son of Late Nirdhan Ram, Resident of Village Hurrahi,
P.S. Harlakhi, District Madhubani.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur Mrs. Vaishnavi Singh
For the State	:	Mr. Abhay Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 18-03-2024

Heard Mrs. Vaishnavi Singh, *learned counsel*

for the appellant and Mr. Abhay Kumar, learned A.P.P

for the State.

2. This appeal has been preferred by the appellant being aggrieved and dissatisfied with the judgment of conviction dated 25th of April, 2006 and order of sentence dated 27th of April, 2006 passed by the learned Additional Sessions Judge, F.T.C. I, Madhubani in Sessions Trial No. 245 of 2002 and 07 of 2006, arising out of Harlakhi P.S. Case No. 102 of 2000, whereby and where-under the appellant was found guilty and convicted for the offences punishable



under Section 376 of the Indian Penal Code and he was sentenced to undergo rigorous imprisonment for a period of seven years under Section 376 of I.P.C.

3. The prosecution case as per the written report of the victim/informant is that on 27th day of September, 2000, at about 12:00 noon, while she was returning to her house from *Dhatta badh* after cutting grass and reached near the boring of one Shobhit Ram, accused/appellant Ram Briksha Ram, having sickle in his hands, suddenly came there and caught hold of her. It is alleged that he fell her down on the ground of the paddy field and at the point of sickle, threatened her of dire consequences, ravished her. Informant/victim could not resist the accused/appellant owing to fear of death. After committing rape, he threatened her not to disclose the same anywhere, otherwise, she would be killed. It is further alleged that when the accused/ appellant began to go away from there, informant/victim raised alarm which attracted co-villagers, namely, Shobhit Ram and



Yadunandan Das, who saw the accused fleeing away. Thereafter, victim went to her house and narrated the entire incident to her husband and father-in-law. After that, a *panchayati* was convened in the village but the accused person/appellant did not obey the order of the *panches*.

4. On the basis of written report of the informant/victim, initially Harlakhi P.S. Case No. 102 of 2000 was registered against the accused person/appellant. Initially this case was registered under Section 376 of Indian Penal Code and after completing the investigation, charge-sheet was submitted under Sections 376/511 I.P.C. cognizance was also taken under Sections 376/511 of Indian Penal Code but learned trial Court stands charged u/s 376 of the Indian Penal Code for committing rape with the victim (P.W. 12).

5. The plea of defense is total denial of the prosecution case and innocence and false implication



with concocted allegations due to grudge and previous animosity.

6. The point of consideration in this appeal is whether the prosecution is able to prove the charges levelled against the appellant beyond reasonable doubt or not.

7. During the course of trial, altogether eight witnesses were examined on behalf of the prosecution, to substantiate its case.

8. P.W. 1 Naresh Das, P.W. 2 Biltu Ram, P.W. 3 Brahmdeo Singh, P.W. 4 Chandeshwer Ram, P.W. 6 Ram Rati Devi and P.W. 7 Jiwachh Ram have not supported the prosecution case and they have been declared hostile.

9. P.W. 5 Vijoy Kumar Singh is hearsay witness. He has deposed that in the evening of 27.09.2000, when he went to the *chauk of the* village, he heard about the occurrence that when the victim had gone to Dhatta Badh for cutting grass, she was ravished



by the accused/appellant at the point of sickle.

8. P.W. 8 Kamla Kant Mishra is doctor. He was posted at Sadar Hospital, Madhubani as a Radiologist on the relevant date. On the basis of radiological findings, he has opined the age of victim at that time as 15 years.

9. P.W. 9 Dr. Rama Jha is medical officer who has examined the victim. She has deposed that she was posted at Sadar hospital, Madhubani. On that day at about 4:15 PM, she examined the victim. Vide para 3 of her deposition she has deposed that she has not find any external or internal injury on the body or private part of the victim in her medical examination. Vide para 4, she has stated that she has not find any sign of rape at the time of examination and in her opinion, allegation of rape by anyone with the victim girl is entirely false.

10. P.W. 10 Yadunandan Das is cousin father-in-law of the victim. He has deposed in para 6 of his deposition that there are two groups in his village. He is the leader of one group whereas, Shiv Ratan Prasad



Mukhiya is the leader of other group. Ram Briksha Ram (convict) and Shiv Ratan Prasad Mukhia are of two different groups. He is member of Shiv Ratan Prasad Mukhia. There are almost 50 cases between these groups and also two-three cases of rape. He has also deposed vide para 7 of his deposition that on the relevant date and time of occurrence, while he was going to his village from the chouk and reached near the orchard of Ram Ashish Thakur, he found the victim weeping and collecting grass. She was alone and he remained there about 10-15 minutes and, thereafter, she came along with him.

11. P.W. 11 Dasai Das is father-in-law of the victim and he is a hearsay witness. He has deposed vide para 5 of his deposition that on the next day after breakfast he left for going to police station and at about 3-4 P.M. He reached at Harlakhi Police Station and gave information that Ram Briksha Ram had committed rape with her daughter-in-law. His statement was recorded by



Daroga Ji on which his thumb impression was taken and his statement was read over to him.

12. P.W. 12 is the victim herself, who is the prime witness of this case and also the informant of this case. She has deposed before the trial Court that on alleged date of occurrence at about 12:00 noon while she was returning from *dhatta badh* after cutting grass and when she reached near the boring of one Shobhit Ram, accused/appellant covered her face with her saree and at the point of sickle, giving threatening of fear of death, he committed rape on her. Thereafter, she went to her house and narrated the incident to her husband and father-in-law. She further deposed that her husband and father-in-law went to search the accused but he could not be traced out. After that, a *panchayati* was convened in the village but the accused person/appellant did not obey the order of the *panches*. She went to the police station where *Daroga ji* recorded her statement and she put her thumb impression. She has also been



subjected to lengthy cross examination by the defense/appellant.

13. P.W. 13 Sambhu Das is husband of prosecutrix. He has deposed vide para 1 of his examination-in-chief that at the relevant time while he was at his house, his wife (victim) came weeping and narrated the incident to him and his father that she has been raped by the accused Ram Briksha Ram. He has further deposed that he went to search the accused person but he could not be traced out. He has also stated that a *panchayati* was convened on the advice of the villagers but the accused person/appellant refused to obey the order of the *panches* and thereafter, her wife/victim went to police station and lodged the case. He stated vide para 6 of his deposition that he saw injury on face, chest and thigh of his wife. He further stated that injuries were found over several parts of the body and blood was oozing out. Vide para 7, he has stated that he has quarrel with the accused Ram Briksha



Ram.

14. P.W. 14 Umesh Thakur has proved the written report.

15. P.W. 15 Subhash Chandra Mishra has proved the charge-sheet (Ext. 4)

16. Mrs. Vaishnavi Singh, learned counsel for the appellant has raised manifold contention and submitted that there is no other eye witness of the alleged occurrence except the victim and her evidence has not been corroborated by the medical evidence. The evidence of P.W. 10, P.W. 11 & P.W. 13 are also not reliable and acceptable in view of the fact that they are interested witnesses and they had grudge with the accused. It is further submitted that due to non examination of the I.O. the prejudice has been caused to the defence because the accused has been deprived of his valuable rights to weigh the credibility of the witnesses and that there is inordinate delay in lodging the F.I.R.



17. *In contra*, learned A.P.P. on behalf of the State submitted that the judgment of conviction and order of sentence is based on consistent and cogent evidence. There is a settled principle that in rape cases conviction can be recorded merely on the basis of sole testimony of the prosecutrix, provided it inspires confidence and does not suffer from any basic infirmity.

18. I have gone through the entire case records, oral and documentary evidence adduced on behalf of the prosecution during trial and considering the rival submissions raised on behalf of the learned *counsel for the appellant*. The defence drew the attention towards para 4 of the cross examination of the victim in which she has stated that her husband has been falsely implicated in a case by Raj Kumar Mandal and accused Ram Briksha Ram and that's why he has implicated Ram Briksha Ram in this case.

19. On the basis of submission made by learned counsel for the appellant, it is clear that a case



was lodged by the accused against the husband of the victim. So, the victim has filed the present case against the accused with false and concocted allegations with a view to harass him. It is admitted fact by the victim which would not be able to falsify by any adversarial evidence. It is proved by the victim in her admission that in retaliation this case has been filed against Ram Briksha Ram (appellant) to implicate him in this case. In this case, the conviction is only on the basis of sole evidence which has been deposed by the victim. There is no other eye witness of this case. All the witnesses are interested with the victim. It is settled law that the conviction might be based on the sole witness but it is prudent rule that the conviction on the basis of sole witness would be unsafe and it should be corroborated by any independent and eye witness. The victim is a wedded lady. From evidence of the victim, it is evident that the victim has lodged this case against the accused/appellant on retaliation. The evidence of the



victim have to be corroborated or supported by any independent eye witness but in this case there is no eye witness except the victim. All other witnesses are hearsay and some witness are declared hostile.

20. On behalf of the appellant, attention has been drawn on several contradictions which are elicited in the evidence of prosecution. Due to non examination of Investigating Officer, the defense caused prejudice and deprive of its valuable rights to contradict in respect of contradiction made in the evidence which are available in this case. The factum of non-examination of the Investigating Officer by the prosecution goes to show that the prosecution has not come up before the Court with clean hands and the conviction of the appellant is not safe. By evidence of doctor, the prosecution case is not corroborated by the medical evidence. Doctor Rama Jha (P.W. 9) has deposed that she has not find any external or internal injury on the body or private part of the victim in her medical examination. She has further



deposed that she has not find any sign of rape at the time of examination of victim and in her opinion, allegation of rape by anyone with the victim is entirely false. In absence of proving the fact of the rape by medical evidence the conviction of appellant would be unsafe.

21. After discussion of the above, I am of this view that the prosecution has measurably failed to prove its case beyond reasonable doubt by its evidence and the appellant is entitled to get the benefit of doubt. Hence, the judgment of conviction and order of sentence is not sustainable and fit to be set aside.

22. In that view of the matter, judgment of conviction dated 25th of April, 2006 and order of sentence dated 27th of April, 2006 passed by learned learned Additional Sessions Judge, F.T.C. I, Madhubani in Sessions Trial No. 245 of 2002 and 07 of 2006, arising out of Harkakhi P.S. Case No. 102 of 2000 are set aside.



23. The sole convict/appellant is acquitted and
appellant is on bail. He is discharged from the liability of
the bail bonds.

24. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
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