

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.96 of 2006

HIRA KHARAWAR, son of Late Wakil Kharwar, Resident of Village-
Mahuwar, P.S. Ramgarh, Distt. Kaimur (Bhabua) Appellant/s

Versus

STATE OF BIHAR Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Sunil, Adv.

For the Respondent/s : Ms. Amita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 19-02-2024 .

Heard Mr. Kumar Sunil, learned counsel appearing

for the appellant as well as Ms. Amita Kumari Singh,

learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant challenging the judgment of conviction and order of sentence dated 28th day of November, 2005 passed by learned Additional District & Sessions Judge, F.T.C.-5, Kaimur (Bhabua) in Sessions Trial no. 87/2003 and 234/2004 arising out of Ramgarh P.S. Case No. 07 of 2003, G.R. No. 67 of 2003) whereby and whereunder appellant-Hira Kharawar has been convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 2,500/-. In default of payment of fine, to undergo further simple imprisonment for six



months.

3. The FIR was registered on the basis of fardbeyan given by victim/informant, namely, Rambha Devi, (P.W.-3) aged about 24 years and the same was recorded by police in-charge, namely, Anil Kumar Singh at 1:00 P.M.. Recapitulating the prosecution case, in short, is that on 19.01.2003 at about 5.30 - 6 A.M., victim went outside for the purpose of ease herself in a sugarcane field, which is at the distance of about 500 yard towards south from her house. When the victim was about to sit, appellant came there and caught hold her hand and took her near the bamboo clamp, tightened her mouth with towel and tossed her down on earth and committed rape on her. After the occurrence, when she was proceeding to her house, she unconsciously fell down in the field of Kripa Shankar Singh, from where, her mother-in-law and neighbor Shanti Devi took her to her house.

4. On the basis of fardbeyan of the informant/victim, Ramgarh P.S. Case No. 7 of 2003 dt. 19.01.2003 was registered and after completing the investigation, I.O. has submitted chargesheet against the



appellant under Section 376 of the Indian Penal Code. Thereafter cognizance has been taken and the case was committed to the court of Sessions for trial and disposal.

5. Charge has been framed u/s 376 I.P.C. on 24.8.2004 against the appellant. Trial court explained the charges to the accused u/s 307 IPC to which he pleaded not guilty and claimed to be tried.

6. To substantiate the charge leveled against the accused, altogether four witnesses have been examined by the prosecution. P.W.-1, Sugiya Devi (mother-in-law of the victim), P.W.-2 Shanti Devi (neighbour), P.W.-3 Rambha Devi (informant-victim) and P.W.-4 (doctor) Dr. Meri Puspa Bara. One witness has been examined on behalf of defence as D.W. 1, namely, Kripa Shankar Singh.

7. P.W. 1, Sugiya Devi (mother-in-law of the victim/informant) is a hearsay witness of the incident. She has stated in her evidence that on the alleged date of occurrence, there was foggy weather and at about 5-6 a.m. her daughter-in-law went away from her house to ease herself and when she did not return to home, she went to search her and she found that informant was lying un-



conscious in the field of Kripa Shankar Singh. Then Kripa Shankar Singh and Shanti Devi also reached there and thereafter Sugiya Devi and Shanti Devi took the victim/informant to her house. After getting sense, she disclosed that accused Hira Kharwar committed rape on her.

8. P.W. 2. Shanti Devi stated in her evidence that she had helped the Sugiya Devi (P.W.-1) to carry the victim/informant from the field of Kripa Shankar Shankar, where she was lying unconscious to her home.

9. P.W.-3 Rambha Devi (informant/victim) stated that between 5:30-6:00 a.m. on the alleged date of occurrence, she went away outside in a field to ease herself, in the meantime, accused reached there and caught hold her hand and took her to nearby bamboo clamp. She tried to raise alarm but accused tightened her mouth with towel and committed rape on her forcibly. She further stated that after the incident, while she was proceeding towards her house, she fell down unconsciously in the field of Kripa Shankar Singh from where her mother-in-law (P.W.-1) and Shanti Devi (P.W.-2) took her to her home. After getting sense, she narrated the incident to them. She identified the appellant



during trial. Her petticoat laced with semen and blood stained, was seized by the police and marked as (exhibit-I) and sent for forensic examination. Victim had shown the place of occurrence to darogaji.

10. P.W.-4 (doctor) Dr. Meri Puspa Bara stated that she had examined the victim. Her medical examination was conducted on 19.01.2003. Victim was found conscious and there was pain and tenderness in her left arm and left knee. She has not found any foreign hairs, no bruise abrasion, redness or swelling over perineum and valve. No vaginal tenderness was present. She further stated that two vaginal swab were sent for pathological examination and found that vaginal swab was wet with blood. Neither dead or alive spermatozoa were found. Petticoat of the victim was handed over to the police for forensic examination but the forensic report is not available. In conclusion, on the basis of above findings, few signs of external injuries at left arm and left knee were present and microscopic examination report of vaginal swabs, does not show either dead or alive spermatozoa. She further deposed that and no sign of rape was found. She proved medical report as Ext. 1.



11. D.W.-1, Kripa Shankar Singh was examined and he deposed in his evidence that he went to the place of occurrence and saw the victim/informant, daughter-in-law of Rameshwar Kharwar was lying in senseless condition. He further stated that victim was a patient of Mirgi and on the relevant date of occurrence, the husband of the victim was present at his village as stated in para 1 of his examination-in-chief. During investigation, his statement is mentioned in para 33 of the case diary. He was also cross examined in detailed by the prosecution.

12. Learned counsel appearing on behalf of the appellant has submitted that learned trial court wrongly drawn the inference that the prosecution has established the charge leveled against the appellant and illegally relied upon the evidences of so called witnesses i.e. P.W.- 1, 2 and 3. The court below acted illegally in relying upon the evidence of the prosecution witnesses in convicting the appellant and reasons given are entirely erroneous, unsound and illegal and the learned court should have held that the evidence of prosecution witnesses are self contradictory and do not inspire confidence and ought to have rejected their evidence



in toto. The husband of the victim was present on the day of occurrence as substantiated by D.W.-1 in para 1 of his examination-in-chief, but surprisingly he had not visited the place of occurrence. According to the prosecution case, the time of occurrence is about 5:30 to 6:00 a.m. and the occurrence has taken place merely 500 yards away from the house of the informant and even after raising alarm, none of the villagers nor the family members came there to rescue the victim, which creates doubts and suspicion. He further submitted that neither in the FIR nor during the course of investigation either the informant or any other witnesses disclosed this fact that they informed the police about this occurrence. The medical evidence is not in consonance with the ocular testimony of the victim as the doctor (P.W.-4) did not found any sign of rape. Victim/informant was a wedded lady. P.W. 1 and P.W. 2 are hearsay witnesses. Investigation Officer of the case was not examined and due to non-examination of I.O. the defense has caused prejudiced at all. It is desirable that prosecution has to examine the Investigation Officer. Defense has lost the opportunity to raise the question in respect of contradictions elicited in the



prosecution evidence. During cross-examination made by the defense, informant did not disclose the name of the appellant immediately after the occurrence to her mother-in-law or before Kripa Shankar Singh on whose field, she fell down unconsciously. For the first time she has taken the name of the appellant in her fardbeyan, which creates doubt in authenticity of the prosecution story. The learned trial Court's findings lack material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence should be set aside.

13. The learned A.P.P. appearing for the State has submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellants by relying upon the evidence brought on record by the prosecution during trial. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

14. I have gone through the entire prosecution



evidence, documents, exhibits and defense evidence. Learned trial court ignored the fact that the time of occurrence mentioned in the FIR is 5:30 to 6:00 A.M. and the occurrence has taken place merely 500 yard away from the house of the informant and even raising hue and cry, none of the villagers or the family members came at the spot for rescue the victim, which creates doubts and suspicion. Victim is a married lady. She has deliberately concealed the fact that there was land dispute between the appellant and the family of the informant. Notably, the statement of D.W.-1 recorded by the I.O. during investigation in para 33 of the case diary and this fact stated by him in para-1 of his examination-in-chief. Learned Judge should have appreciated the evidence of D.W.-I (Kripa Shankar Singh), who was present at the place of occurrence on the relevant date and time. This witness disbelieved the prosecution story and stated in his deposition that the victim was a patient of '*Mirgi*' and on the relevant date of occurrence, the husband of the victim was present at his village though he had not come to the place of occurrence. Hence, his testimony should have been scrutinized carefully before



coming to the conclusion. Trial Court did not appreciate the fact that the ocular evidence is inconsistent with the medical evidence, as the doctor (P.W.-4) did not find any sign of rape. Investigating Officer of the case was not examined by the prosecution, whose evidence was vital for determination of the case. Hence, defense had prejudiced to raise questions to the I.O. in respect of contradictions which elicited in the evidence of prosecution witnesses. In such situation, benefit of doubt goes in favour of the appellant. Appellant was not apprehended on spot and except victim/informant, no one is the eye witness of the alleged occurrence. There is vital contradictions and hypothecation. Evidence of the doctor is not in consonance with the victim's evidence, which is available on record. According to P.W.-4, neither injuries were found on the person of the victim nor any dead or live spermatozoa were found by the doctor. Petticoat of the victim/informant marked as Ext. 'I' was handed over to the police and the same was sent for forensic examination but FSL report is not available on record. P.Ws. 1 and 2 are not the eye witnesses and they reached at place of occurrence, after alleged commission of crime, which is apparent from



perusal of their evidence. The prosecution has failed to prove the charge levelled against the appellant by the consistent and cogent evidence, the appellant is entitled to get the benefit of doubt. According to prosecution evidence, there are major contradictions in the evidence deposed by the prosecution witnesses in respect of place of occurrence and manner of occurrence.

15. The ordeal of trial faced by the appellant since beginning of the case and considering, that the prosecution has failed to prove the charge levelled against the appellant by the consistent and cogent evidence and defense has succeeded to raise the doubt in the prosecution version and the appellant is entitled to get the benefit of doubt. The impugned judgment of conviction and order of sentence is hereby set aside and the instant criminal appeal is allowed. The appellant, who is on bail, is discharged from the liabilities of the bail bonds.

(Sunil Kumar Panwar, J)

sushma/-

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CAV DATE	
Uploading Date	22.02.2024
Transmission Date	22.02.2024

