

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2348 of 2017

Arising Out of PS. Case No.-10 Year-2001 Thana- DANIYAWAN District- Patna

1. Jagdip Beldar and Anr son of Late Soman Beldar
2. Moti Paswan son of Late Sharan Paswan Both residents of Arai Benipur, P.S.
- Daniwan, District - Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 1028 of 2018

Arising Out of PS. Case No.-10 Year-2001 Thana- DANIYAWAN District- Patna

Jai Nandan Paswan son of Late Bhajan Paswan resident of village - Arai
Mustafapur, PS Daniawan, District – Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2348 of 2017)

For the Appellant/s : Ms. Mili Kumari, Amicus Curiae

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 1028 of 2018)

For the Appellant/s : Mr. Anurag Kumar, Amicus Curiae

For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 10-01-2024

1. At the outset, it is important to mention that both
above named appeals are disposed herewith through this
common judgment, as same arises out of S. Tr. No. 801 of
2002/S. Tr. No. 490/2003 (Arising out of Daniawan P.S. Case
No.10 of 2001), disposed by Learned Additional District &



Sessions Judge-IV, Patna City.

2. Heard learned counsel Ms. Mili Kumari, (*Amicus Curiae*) appearing on behalf of the appellant and learned APP Mr. Binod Bihari Singh appearing on behalf of the State in Cr. APP (SJ) No. 2348 of 2017 and learned counsel Mr. Anurag Kumar (*Amicus Curiae*), appearing on behalf of the appellant and learned APP Ms. Anita Kumari Singh appearing on behalf of the State in Cr. APP (SJ) No. 1028 of 2018.

3. Both above mentioned appeals have been preferred under Section 374(2) of Criminal Procedure Code (in short “Cr.P.C.”) by above named all accused/appellants, challenging the judgment of conviction dated 12.06.2017 and order for sentence dated 17.06.2017 passed in connection with S. Tr. No. 801 of 2002/S. Tr. No. 490/2003 (arising out of Daniawan P.S. Case No.10 of 2001), whereby and whereunder learned Additional District & Sessions Judge-IV, Patna City convicted under Section 376/34 and under Section 452 of I.P.C. and ordered to be sentenced to undergo R.I. for a period of Ten years for the offence under Section 376/34 of I.P.C. each and a fine of Rs.15,000/- each and in default of payment of fine, they shall further be served one year imprisonment. Further all the convicts are sentenced to undergo R.I. for a period of 5 (five)



years each for the offence under Section 452 of I.P.C. and a fine of Rs. 5000/- each and in default of payment thereof, they have to serve sentence of three months. Both sentences shall run concurrently.

4. The crux of prosecution case as it springs from the *fard-e-beyan* of informant that on 3/4.5.2001 at about 12 A.M., while the informant was sleeping in her house alongwith her two children, three accused persons entered into her house, to whom she recognized as Jagdip Beldar, Moti Paswan, Jhandu Dusadh. She has further stated that all three persons entered in her room and raped her one after another, where 4-5 unknown persons were standing in "Angan" (court-yard) armed with "Lathi" & "Danda". She has further stated that her husband had gone to other village for installing pump and her mother-in-law was sleeping in another room in the same house. It had been further stated that Jagdip Beldar tied her mouth with a "Gamcha", Moti Dusadh caught hold her hands and Jhandu Dusadh caught hold of her legs and they have committed rape upon her one after another. It had been further stated that after committing rape all the accused persons fled away alongwith the 'Gamcha'. It has been further stated that upon raising alarm Lal Bahadur Das (Bhaisur/brother-in-law), Smt. Gunja Devi and



Mithlesh Das reached there to whom the complainant/victim narrated the incident. The complainant/victim had stated that on the following day i.e. on 3.5.2001 Lal Bahadur Das (Bhaisur/brother-in-law) went to bring Lal Bihari Das, the husband of the complainant and they come back to the house at 6:00 P.M. on 3.5.2001 and the complainant's Bhaisur informed about the occurrence to his brother Lal Bihari Das. It is further stated in the complaint petition that both the brothers alongwith complainant went to the house of accused and asked them why they had committed the crime, upon which the accused threatened them to face consequences if they would report the matter to the Police, upon which they returned to their houses. It is further stated that on the following day ie. on 4.5.2001 at 9 A.M. the complainant alongwith her husband went to Police Station Daniawan and matter was reported to the Police, upon which the Police said that it would come to the place of occurrence at the evening but the Police did not come. It had also been stated that the complainant's husband again visited to the Police Station on 19.5.2001 and learnt that the Police has not registered the case in collusion with the accused.

5. Due to aforesaid non co-operation of police, having no option left a complaint Case No. 354(c)/2001 was lodged



before CJM Patna, which was transferred to concerned police station to investigate after lodging FIR under Section 156(3) of Cr.P.C., where police registered a case being Daniwana P.S. Case No. 10 of 2001 for the offence under Sections 376/448/504/345 of the I.P.C. After completion of investigation, the police submitted charge-sheet against all accused persons including appellants under Sections 452/376/504/34 of I.P.C., where learned Jurisdictional Magistrate took cognizance for afore-mentioned offences and after compliance of Section 207 of Cr.P.C., committed case to session court for trial and disposal as per mandate available under Section 209 of Cr.P.C.

6. Learned trial Court after perusal of record and materials/evidences collected during course of investigation framed charges against accused persons under Sections 452/376/504/34 of I.P.C, which were duly explained to accused persons including accused/appellants, where they pleaded “not guilty” and claimed trial.

7. On commencing trial, to establish its case before the learned trial court, the prosecution altogether examined four witnesses, namely, Lal Bahadur Das (PW-1), Mahazani Devi/victim(PW-2), Lal Bihari Das (PW-3), Mithilesh Das (PW-4).



8. After closure of the prosecution case, the statement of accused/appellants were recorded under Section 313 of Cr.P.C. by putting all incriminating circumstances/evidences as surfaced during trial, where they had shown their complete innocence by denying all incriminating circumstances/evidences explained to them.

9. In defense no evidence was produced.

10. After conclusion of trial, learned trial court by taking note of evidences available on record, legal positions and argument advanced by the parties, convicted the accused/appellants for the offence under Sections 376/34/452 of I.P.C. and sentenced to undergo R.I. for a period of ten years for the offence under Section 376/34 of I.P.C. each and a fine of Rs.15,000/- each and in default of payment of fine, they shall further to undergo one year imprisonment. Further all the appellants were sentenced to undergo R.I. for a period of 5 (five) years each for the offence under Section 452 I.P.C. and a fine of Rs. 5000/- each and in default of payment thereof, they have to serve sentence of three months. Being aggrieved, with aforesaid order of conviction and sentence accused/appellants preferred the present appeals.

11. Hence, the present appeals.



12. Learned counsel appearing on behalf of the appellants-convicts submitted that the trial court has erred in convicting the accused for the offences under sections 376 and 452 of the IPC. It is submitted that neither the I.O. of the case has been examined nor the lady doctor who had medically examined the victim, had been examined by the prosecution. It is stated that the learned trial court has erred in properly appreciating the fact that medical report does not support the case of the prosecution. As per the medical report, no injury whatsoever, either on external part of the victim or on the private part of the victim was found during examination and even it is difficult to say that victim is sexually assaulted as also no spermatozoa was found near genital organ of the victim. Clothes of the victim was also not sent for chemical analysis, but this aspect has not been fully considered by the trial court to reach on the conclusion as to whether the alleged incident has been committed or this is a case of false implication due to previous enmity on the issue of Tar-tree. Even the chemical examination did not reveal anything to substantiate the offence of rape on the victim. While concluding the argument, learned counsel submitted that no doubt, conviction in case of rape can be secured on the basis of sole testimony of victim/prosecutrix



but she must qualify the criteria of “Sterling Witness”, which is calling in present case.

13. Learned counsel while arguing the matter relied upon the legal report of Hon. Supreme Court in the matters of [*Raju and others v. State of Madhya Pradesh (2008) 15 SCC 133*] and *Rai Sandeep @ Deepu v. State (NCT) [(2012)8 SCC 21]*.

14. Learned Additional Public Prosecutor while arguing for the State submitted that learned trial court has rightly convicted the appellants/convicts under section 376 and 452 of the IPC. Learned A.P.P. further submitted that the victim except minor contradiction appears to be “Sterling Witness” having no apparent reason to disbelieve her. It is pointed out that on the ground of sole witness of rape victim, conviction can be secured and in support of his submission, he relied upon legal report of *Vishnu @ Undriya (2006) 1 SCC 283*.

15. Lower Court records and proceeding was perused and also upon consideration of arguments as canvassed by the learned counsel appearing on behalf of the parties, it appears apposite to discuss evidences for the sake of re-appreciation, which is as under:-

16. PW-1 Lal Bahadur Das is Bhaisur/brother-in-



law of prosecutrix/victim and he has deposed that occurrence is of 2/3-5-2001 at 12-1 hrs. night. By that time he was on the roof of Ramdeo Das together with Mithilesh and 2-4 children. He heard the sound of wife of his younger brother (Bhabhu) Mahajani Devi and mother Gunja Devi and thereafter, he along with one, Mithilesh Das came to his house where his Bhabhu and mother told that Jagdip Beldar, Moti Paswan, Jhandu Paswan and Jai Nandan Paswan all the four persons have raped her one by one. He has further stated that accused Jagdip Beldar had covered her mouth with Gamcha and Moti Paswan had caught her hand and Jhandu Paswan had caught her legs. He has further stated that due to night, he could not go anywhere. The husband of Mahajani Devi(victim) was not at home and he had gone to affix hand pump at village Faldawa and on next morning, he went to call him and returned along with his brother at 6-7 hrs. evening and then they went along with 2-4 villagers to ask the accused Jhandu and Moti as why they have committed such occurrence, but they threatened to kill his whole family, if case is filed. Then his brother and Bhabhi went to Daniawan police station to lodge the case, but the police did not register the case and told them to go and he will come in the evening but the police did not come to his home and thereafter,



they filled the case in the court on 22nd, whereafter, the police recorded his statement.

16.1. In cross examination he has stated that from the roof of Radeo Das, the house of Mahajani Devi is at distance of 50 meters and there is KHAND in between them and he used to sleep on the roof due to hot weather. Further he has stated that his Bhabhu has two children one is son aged about 8-9 years and another is girl child aged about 1- 1½ years. Further he has been cross-examined on the point of boundary of the PO house. Further he has denied the suggestion put by the defence by negating false implication.

17. PW-2, Mahazani Devi, is victim herself. She has stated that on the day and time of occurrence, she was sleeping in the room, where accused Jagdip Beldar, Moti Paswan, Jhnadu Paswan and Jai Nandan Paswan entered and tied her mouth with red Gamcha. Accused Moti Dusadh tied her hands and Jhandu Dusadh caught her legs and all the four accused persons committed rape with her one by one and threatened that if she filed any case then they would kill her. Her husband and bhaisur were also threatened by accused persons on next day for not to file any case. When the police failed to register the case then only then, she filed the case in the court



from where the case was sent to police station for institution of case. She has stated that she put her LTI on complaint petition and police has also recorded her statement.

17.1. In cross examination she has stated that the occurrence was held inside her house and there is no any gate affixed in the door, consequently the door was opened and at the time of occurrence, no other persons were present except her and accused persons as on the day of occurrence her husband had gone to village Falnana to affix the hand pump. Further she has stated that she filed the case after two days of the occurrence and after occurrence she came at Kankarbagh Colony where her Nandosi(sister-in-law) lived. She has no any dispute with accused persons. Further she has stated that at the time of occurrence she had slept on the ground and she had wore sari, which was stained during occurrence but due to poverty she washed that sari. She has further stated that the blood was not oozed from her hands, legs or from any part of her body and that the occurrence is of 12 hrs. night and due to fear she could not chase the accused persons.

18. PW-3, Lal Bihari Das is the husband of preecutix/complainant and he has deposed that the occurrence is of 2-5-2001 at hrs. night. By that time his wife was sleeping in



room where Jagdip Beldar, Moti Paswan, Jhandu Paswan and Jai Nandan Paswan came and tied the mouth of his wife Mahajani Devi and caught hold her hands and leg and raped her one by one and told to kill her, if any case is filed. On non-registration of case in police station, the complaint case was filed in court and from where the same was sent to the P.S. for its institution and his statement was recorded by the police and his wife got medically examined in Guru Govind Singh Hospital, Patna City.

18.1. In cross examination he has stated that on the day and at the time of occurrence he was at village Falnama (Harnaut) and he came back from there in the evening on 3-5-01 and his wife had told about entire occurrence. He has further stated that on 7-5-01 he had gone to PS to lodge the case, but the police told him to go and he is coming. Further he has denied to have remember that the case was filed in the court 5-6 days after of the occurrence.

19. PW-4 is Mithilesh Das, who has been declared hostile by the prosecution. This witness has stated in his evidence in chief that occurrence is of 2-5-01 at 12 hrs. night. By that time he was in Patna and when he went after 3-4 days of occurrence, he knew about that, but he has not remembered



about said knowledge and that his statement was not recorded by the police. Learned Addl. P.P. has cross examined this hostile witness with the permission of the court and drawn this attention towards statement allegedly made by him before the police previously supporting the prosecution case, but he has denied to have made any such statement before the police. In cross examination by the defence he has stated that since he was in Patna, hence he did not get any information about the occurrence. This witness has further denied about dispute with accused persons of Tar tree and false implication rather he has given his statement voluntarily. In the court question he has stated that he was at Patna at Musllahpur Haat to the house of Girja Babu where he was doing the work of painting, but he denied to have remember the exact date of doing said work there. Although this witness has been declared hostile but his whole evidence cannot be discredited.

20. As per the statement in the complaint petition, the alleged occurrence was said to had been taken place at 12 A.M. in the night of 2/3-5-2001 and the complaint in question had been filed before the court of A.C.J.M., Patna City on 22.5.2001. The trial court has failed to appreciate that there is no iota of evidence to support the case of the prosecution that the



and her husband on the next date i.e. on 4.5.2001, had gone to the Police Station-Daniyama and matter was recorded there upon which the Police said that they would come to their residence, in the evening but the Police did not turn up and on 19.5.2001, when they again visited Police Station Daniyama, they learnt that F.I.R. was not registered, then they filed complain petition on 22.5.2001. For that statement of the had been recorded by the Police on 27.05.2001 at Para-4 of the case diary wherein the has stated that after the occurrence the and her husband alongwith her children had fled to Patna and stayed there in the residence of her "Nandoshi" and from there she has lodged the complaint on 22.5.2001. She has also stated that she had not gone to Police. For that trial Court has failed to appreciate and consider that the P.W.2 has stated in her deposition that she had gone to Kankarbagh Colony (Patna) after the occurrence and this falsify the explanation that the Police did not lodge the F.I.R.

21. From the impugned judgments and orders passed by the learned trial court, it appears that the appellants have been convicted solely relying upon the deposition of the prosecutrix. Neither any independent witness nor even the medical evidence supports the case of the prosecution. It has



also come on record that there was a dispute going on between both the parties. It further appears that there is no eye witness in this case and the only private witness who had been named as witness in complaint petition namely Mithlesh Das has been declared hostile as he did not support the case of the .

22. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

23. With aforesaid factual aspects, oral and documentary evidences in hand, it appears apposite to discuss the legal ratio settled through different legal reports of Hon'ble Supreme Court as under:

In the matter of [*Raju and others v. State of Madhya Pradesh (2008) 15 SCC 133*], it was held while answering the reference in the following terms:

"11. It cannot be lost sight of that rape



causes the greatest distress and humiliation to the 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 [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] 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."

In the context of "sterling witness", it would be further apposite to refer Paragraph 22 of the legal report in the matter of ***Rai Sandeep alias Deepu v. State (NCT) [(2012)8 SCC 21]***

"22 In our considered opinion, the "sterling witness" should be of a very high quality and calibre 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 every one 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 such similar tests to be applied, can it 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."

24. No doubt from the above discussed legal propositions, conviction can be secured on the basis of sole testimony of prosecutrix/victim of the rape but she must qualify the criteria of "sterling witness" in view of aforesaid legal propositions. This court finds that victim, who was examined as PW-2 in present case does not qualify the criteria of sterling witness for the following reasons:

25. Firstly, this case was instituted on the basis of complaint, which was filed on 22.05.2001 for the occurrence which was lodged to be committed on intervening night of 02.05.2001, this delay at the first instance makes a doubt regarding the occurrence as alleged. Secondly, in complaint petition, it is averred categorically that accused persons, namely, Jagdeep Beldar, Moti Paswan and Jhandu Dusad entered into the house of victim and thereafter, they committed rape one after another but during the course of trial victim stated that Jai Nandan Paswan also committed rape upon her, which makes material contradiction regarding allegation of rape as how a victim can miss the name of person in her complaint petition



who committed rape upon her alongwith other co-accused persons. Thirdly, victim categorically stated in her cross-examination that at the time of occurrence, no one was present in room but she stated in complaint petition, which is the basis of present FIR that in very next room her mother-in-law, namely, Gunja Devi was sleeping with her son, she is also a charge-sheeted witness but could not be examined before the Court. She also stated in her cross-examination that on the date of occurrence her mother-in-law was not present in the house but subsequently, she stated that she was sleeping in next room. Fourthly, she stated in her examination-in-chief that after the occurrence, she went to her Bhaisur (Brother-in-law), who was examined as PW-1 and narrated the occurrence but PW-1 stated that he came to place of occurrence on alarm, which was raised from his house and thereafter, occurrence was narrated to him by victim. Fifthly, PW-1 stated that her wife was also present in the next room of the house but victim is silent in her deposition about her presence. Sixthly, PW-1 is Lal Bahadur Das, who stated that at the time of occurrence, he was sleeping at the roof of house of Ramdev and after hearing the alarm of his mother and victim, he came to place of occurrence whereas, PW-2/Victim nowhere stated in her deposition that she raised any



alarm after the occurrence, she did not even follow up the accused persons and remain inside her house even after the occurrence.

26. Having aforesaid evidence in hand, it cannot be said that prosecution established its case during trial beyond reasonable doubts and, as such, the judgment of conviction and order of sentence is hereby quashed and set-aside.

27. Accordingly, the present appeals stand allowed.

28. The impugned judgment of conviction dated judgment of conviction dated 12.06.2017 and order of sentence dated 17.06.2017, passed by the learned Additional District & Sessions Judge-IV, Patna City in Sessions Trial No. 801/2002/Sessions Trial No. 490/2003, are set aside. All above named accused/appellants are acquitted of the charges levelled against them. They are directed to be set at liberty forthwith unless their detentions are required in any other case.

29. Before parting with the appeal, I record my appreciation for the able assistance rendered by Ms. Mili Kumari, learned *Amicus Curiae* and Mr. Anurag Singh, learned *Amicus Curiae*.

30. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five



Thousand Only) each to Ms. Mili Kumari, learned *Amicus Curiae* in Cr. APP (SJ) No. 2348 of 2017 and Mr. Anurag Kumar, learned *Amicus Curiae* in Criminal Appeal (SJ) No. 1028 of 2018 as consolidated fee for rendering their valuable professional service for the disposal of present appeals.

31. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be returned to them immediately.

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.01.2024
Transmission Date	24..01.2024

