

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.280 of 2007

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Shyam Mehata, Son of Shri Chetnath Mehata, Resident of Village- Kamalpur,
P.S.- Kunauli, District- Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrit Abhijat, Advocate
For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 13-03-2024

Heard Mr. Amrit Abhijat, learned counsel
appearing for the appellant as well as Mr. Abhay Kumar,
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 23.12.2006 passed by learned Additional
Sessions Judge, F.T.C.-I, Supaul in Sessions Trial no.
154/2003 arising out of Kunauli P.S. Case No. 10 of 2002,
G.R. No. 366 of 2002) whereby and whereunder appellant-
Shyam Mehata 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.

3. The prosecution case is that the informant Bulanti Devi (P.W. 2) was sleeping the night of 23.06.2002 in her house with her husband Jagdish Marik (P.W. 1), one person entered in her house and started to make her awake by catching her hand. She woke and found that the person was the Shyam Meheta (Appellant) armed with fire-arm. He took the informant (Bulanti Devi) and her husband west to her house on the point of fire-arm. The accused tied hands and feet of her husband and left him on mud road, took the informant (Bulanti Devi) at some distance from her husband in isolation and committed rape on her.

4. In respect of this occurrence, Kanauli P.S. Case No. 10 of 2002 was registered against the appellant u/s 376 of the Indian Penal Code and 27 of the Arms Act and after completing the investigation charge-sheet has been submitted under Section 376 of the Indian Penal Code and Section 27 of the Arms Act. Thereafter cognizance has been taken after finding the *prima facie* case against the appellant/accused, the case was committed to the court of Sessions for trial and disposal.



5. Charge has been framed u/s 376 I.P.C. against the appellant and did not frame under Section 27 of the Arms Act.

6. The case of the defence is the denial of the prosecution case and that of the false implication at the instance of the villagers due to village politics and animosity.

7. The point for determination is whether the prosecution has been able to bring home the guilt of the accused beyond the shadow of reasonable doubts or not.

8. Altogether ten witnesses examined on behalf of the prosecution: P.W. 1 Jagdish Marik (husband of the victim); P.W. 2 Bulanti Devi (informant/victim); P.Ws. 3 and P.W. 4 (Independent Witnesses) are charge-sheet witnesses and also villagers of the victim; P.W. 5 Kusum Lal Dhankar, P.W. 6 Binod Dhankar; P.W. 7 doctor (Bibha Jha); P.W. 8 Badri Narayan Yadav and P.W. 10 Prakash Chandra Mehta, who are the F.I.R. witness and P.W. 9 Shashi Shekhar Chauhan, Investigating Officer.

9. P.W.2, Bulanti Devi and her husband Jagdish Masik (P.W.1) have supported the occurrence and



commission of rape in their examinations-in-chief but they have falsified the prosecution case in their cross-examination by saying that no occurrence took place and the case was got instituted by a group of villagers due to groupisim in the village.

10. P.W. 1 is the husband of the victim and hearsay witnesses, in para-1 of his examination-in-chief has stated that in the mid-night of the occurrence he was sleeping in the house with his wife, Bulanti Devi, the appellant entered in his house and took him along with his wife outside from his house on the gun point, he left the witness (P.W.1) in the way and took his wife in isolation. Due to hulla, the appellant left them and fled away. In para-2 of his examination-in-chief P.W.1 has stated that after sometime his wife, Bulanti Devi (P.W.2) informed him that the appellant committed rape on her and fled away. He could not see the occurrence as his wife was isolated from him. In para-3, he has stated that his wife had submitted a written information of the occurrence to the Police over which P.W. 1 and his wife Pulanti Devi have made their thumb impressions. During the cross examination, P.W. 1



has also given a turnabout to his previous statement in his examination-in-chief. In para-5 he has stated that he was informed by his wife that there was only scuffle with her. His wife got opportunity and escaped.

11. P.Ws. 3 to 6 and 8 have turned hostile.

12. P.W. 7 is the doctor, who examined the victim Bulanti Devi has not corroborated the prosecution case and the victim was examined by her. She (P.W.-7) found no external mark of violence or injury like bruise, abrasion, laceration and pigmentation in and around vagina or velva of the victim lady, this witness opined that in absence of external mark of injury and since the patient is married and living with her husband, the alleged rape is not possible to prove, so the prosecution case also not corroborated by Medical evidence.

13. P.W. 10, Prakash Chandra Mehta, is the F.I.R. witness, his signature is on the written information of victim lady, which has been marked as Ext.-4 and the other prosecution witnesses deposed on the basis of hearsay so that their depositions have no relevancy.

14. In this case, the evidence of the victim is for



consideration to arrive the conclusion of this appeal whether the accused/appellant committed offence or not. P.W. 2 (victim) in her examination-in-chief supported the prosecution case that on the point of pistol the appellant/accused taken away to her in the west from her house and committed rape but in cross-examination this witness not supported the prosecution case and she has entered into compromise with the accused. During the cross-examination, the victim lady has stated inconsistent to the prosecution case. In paragraph 4 of her cross-examination she stated that written information (Ext.-4) written by Prakash Chandra Mehta (P.W.-10), Badri Narain Yadav (P.W. 8) and her L.T.I. was obtained on the same. The written information was not read over to her. In para-5 she has stated that four hours after the occurrence, her husband reached her house and P.Ws. 8 and 10 planned to institute a case and only then the case was instituted. She further stated that there was only scuffle with her and she was saved only because the crowd assembled there. Had there been no crowd, the offence might have been committed against her. In para-6 she has stated that the



appellant had not been maintaining good relation with P.Ws. 8 and 10. Lastly in para-7 she has stated that there had not been any occurrence and prosecution witnesses, Prakash Chandra Mehta (P.W.10) and Badri Narain Yadav got the case instituted. In this way the victim lady (P.W. 2) has stated three contradictory statements, firstly that the rape was committed on her by the accused, secondly that there was only scuffle with her and thirdly that no occurrence took place.

15. It would not be out of place here that in this case only victim is an eye-witness in respect of commission of rape as alleged by the appellant but victim not supported the prosecution case in her cross-examination before trial Court.

16. After scrutinizing the entire evidence adduced on behalf of the prosecution, it is apparent that the prosecutrix (P.W. 2) herself stated in her cross-examination that only scuffle took place with the appellant and her husband returned after four hours of delay then the P.Ws. 8 and 10 instituted the false case. On the basis of evidence, victim herself falsified the prosecution case and deposed



contradictory statement in examination-in-chief and cross-examination. Although, P.W. 10 claims to be eye-witness but his evidence is full of vital contradictions. His evidence has no credence when the victim has deposed contradictory statement during her evidence.

17. Learned counsel appearing on behalf of the appellant has submitted that victim lady has not supported the prosecution case in her cross-examination only stated that scuffle took place with the appellant and not deposed in respect of commission of rape. Due to enmity, P.Ws. 8 and 10 with appellant falsely lodged this case and Medical evidence not supported the prosecution case. Therefore, the impugned judgment of conviction and order of sentence not sustainable and fit to be set aside.

18. 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 fit to be dismissed.

19. I have gone through the entire prosecution evidence, documents, exhibits and defense evidence and also considering the submission of learned counsel for the appellant, learned APP for the State, I am of this view 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)

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