

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No. 98 of 2004

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Sangam Lal Rai Son of Late Lal Babu Rai R/o Village Rajapatti Dighwara,
P.S. Dighwara, Dist- Saran

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Anukriti Jaipuriyar, *Amicus Curiae*
For the Respondent/s : Mrs. Anita Kumari Singh, APP

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CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY

ORAL JUDGMENT

Date : 05-03-2025

1. The criminal appeal is filed by the appellant/Sangam Lal Rai against the judgment of the First Additional Sessions Judge-cum-Special Judge, Saran at Chapra in Sessions Trial No. 74/2001 arising out of Dighwara P.S. Case No. 90 of 2000 dated 03.02.2004, wherein the appellant was convicted for the offences punishable under Sections 342 and 376 of IPC and was sentenced to undergo



rigorous imprisonment for a period of one year and seven years respectively.

2. The case of the prosecution as culled out from the fardbeyan is that the victim (x) the informant preferred a written application to the Superintendent of Police, Saran at Chapra on 26.07.2000 alleging that on 14.07.2000 at about 09:00 P.M., she along with her *bhabhi*-Sushila had gone to attend nature call, near the railway crossing at Dighwara, while returning to the village the appellant Sangam Lal Rai forcibly abducted her and took her to the *gola*/ (storage facility) of Arvind Kumar and confined her for five days. During this period, the appellant allegedly brought food from a hotel and raped her every night. Thereafter, the appellant took her, to his house where his wife was present, but she did not intervened with the actions of the appellant. It was also alleged that when she raised her voice, the appellant used to administer some medicine to her. Further, the farebeyan disclose that the victim's brother Bhola and her brother-in-law(*bahnoi*)Rajendra came to the



appellant's house in search of her, then the appellant gagged her mouth, assaulted her brother and *Bahnoi* and chased them away. The informant remained confined in the gola of Arvind Kumar for five days and was subsequently kept at the house of the appellant for another five days and during the said period she was repeatedly subjected to rape.

3. On 25.07.2000, Chaukidar and Dafadar of the Police Station visited the appellant's house and upon hearing the victim cries for help, they broke/open the lock of the house and rescued her. Thereafter, she was taken to the Police Station. However, the Station Officer refused to register her case and instead asked her to submit a written application, prompting her return from the Police Station. The contents of the fardbeyan disclose that the victim was raped for 12 days by the appellant and was unlawfully confined at gola as well as at the appellant's house and whenever she resisted, the appellant allegedly threatened her to kill.

4. Basing on the written application/ fardbeyan of the victim, an First Information



Report(FIR) was registered against the appellant vide P.S. Case No. 90 of 2000 of Dighwara Police Station on 17.08.2000. The Investigating Officers investigated the case and later a charge-sheet was submitted on 21.01.2001 (charge-sheet No. 03 of 2001 under Sections 342 and 376 of IPC along with Sections 3(2)(v) and 3(1)(XII) of SC/ST). Cognizance was taken by the Judicial Magistrate First Class, Saran and later it was committed to the Court of Sessions. Further the case was made over to the Special Judge-cum-First Additional Sessions Judge, Saran for trial.

5. During the course of trial, charges were framed on 12.04.2001 against the appellant for the offence punishable under Sections 342 and 376 of IPC along with Section 3(1)(XII) and Section 3(2)(v) of SC/ST Act, read over and explained to the appellant in Hindi for which the appellant pleaded not guilty and claimed to be tried.

6. During the course of trial, prosecution witnesses P.Ws. 1 to 10 were examined and the



following Exhibits got marked. The details of which are as follows:-

Sl. No.	Prosecution Witness Name	Prosecution Witness Details
P.W. 1	Rajendra Paswan	Brother-in-law of the victim
P.W. 2	Bhola Manjhi	Brother of the victim
P.W. 3	Brinda Kahar	Co-villager
P.W. 4	Yogendra	Father of the victim
P.W. 5	'X'	victim
P.W. 6	Md. Shafique Khan	Dafadar
P.W. 7	Rahamuddin Ansari@ Rahamuddin Mian	Co-villager
P.W. 8	Jawahar Paswan	Co-villager
P.W. 9	Garib Ram	Investigating Officer
P.W.10	Shiveshwar Pd. Shukla	Investigating Officer

SL.No	List of Exhibits	Details of Exhibits
1.	Exhibit 1	Endorsement by SHO on written application
2.	Exhibit 2	Formal FIR
3.	Exhibit 1/1	Endorsement by SP on the written application
4.	Exhibit 3	Written application
5.	Exhibit 4	Signature of Yogendra Paswan

7. The accused was examined under Section 313 of the Cr.P.C. regarding the incriminating material found against him, from the evidence of the



prosecution. The accused denied the evidence of the prosecution and lead his defence by examining defence witnesses (D.Ws. 1 to 3) the details of which are as follows:-

S.L. No.	Defence Witness Name	Defence Witness Details
D.W. 1	Ajeet Rai	Co-brother
D.W. 2	Ishwari Prasad	Co-villager
D.W. 3	Surendra Sah	Co-villager

8. After considering the entire evidence on record, the trial Court convicted the appellant for the offences punishable under Sections 342, Section 376 of IPC and sentenced him to rigorous imprisonment for a period of one year and rigorous imprisonment for a period of seven years respectively. However, the trial Court acquitted the appellant for the charges framed under the provisions of SC/ST Act, observing that there was lack of substantive evidence to establish caste based atrocities, despite the victim belonging to Scheduled Caste. Aggrieved by the said judgment dated 03.02.2004 in S.T. No. 74 of 2001 on the file of First Additional Sessions Judge, Saran the appellant has preferred this appeal.



9. Heard the Learned *Amicus Curiae*, Ms. Anukriti Jaipuriyar and the Learned Additional Public Prosecutor Mrs. Anita Kumari Singh.

10. It is specific contention of the Learned *Amicus Curiae* that the trial Court convicted the appellant based on sole testimony of P.W. 5, though there are significant contradictions in her evidence. She also contended that the testimony of P.W. 5 is not trustworthy, unreliable and insufficient to convict the appellant as it lacked corroborative evidence. She also contended that P.W. 5 made substantial improvements in her testimony compared to the initial fardbeyan. Additionally, no complaint was made by either the victim's husband or her father despite her alleged disappearance for a period of ten days which raises doubts about the veracity of the prosecution's case.

11. It is specifically contended by the Learned *Amicus Curiae* that there was enmity between the parties i.e. the appellant and the family members of the victim, as evident from the testimony of the victim herself. She argued that the



trial Court failed to appreciate the evidence, leading to a miscarriage of justice and, therefore, prayed to acquit the appellant as the prosecution has miserably failed to prove the guilt of the appellant for the offences punishable under Section 342 and Section 376 of IPC beyond reasonable doubt.

12. On the other hand, the Learned Additional Public Prosecutor Mrs. Anita Kumari Singh contended that there was no error or irregularity in the judgment of the trial Court, as the victim herself testified that she was subjected to continuous rape for ten days by the appellant. The trial Court invoked presumption under Section 114(A) of the Indian Evidence Act which presumes the absence of consent in certain prosecution for rape, i.e. if the prosecutrix testifies that she was raped without her consent, the Court must presume that she did not consent and as such the judgment needs no interference, therefore, prayed to confirm the judgment of the trial Court.

13. The point for determination in this case is that:-



(I). Whether the prosecution is able to prove the guilt of the appellant for the offence punishable under Section 342 and 376 of IPC beyond reasonable doubt?

(II). Whether the trial Court has rightly convicted the appellant for the aforesaid offences?

14. In order to determine the aforesaid points, it is necessary to re-appreciate the evidence of the witnesses and the documentary evidence which is on record.

15. It is pertinent to mention that the trial Court relied on the testimony of P.W. 5 and solely based on her evidence, the appellant was convicted, therefore, it is not necessary to give much importance to the evidence of the other witnesses and their evidence will be discussed as and when necessary to the extent required. It is also important to note that there is no medical evidence on record to corroborate the oral testimony of P.W. 5 in any manner, to establish that the victim was sexually assaulted by the appellant for a continuous period of 12 days against her will and consent.



16. It is just necessary to re-appreciate the contents of the written application of the victim i.e. Exhibit-3. As per the contents of the written application/fardbeyan, the victim initially stated that she was confined in the gola of Arvind Kumar for a period of five days and later was confined in the house of the appellant for another five days, where the appellant has forcibly committed rape against her. The place of occurrence, as the per the victim was the gola of Arvind Kumar and the house of the appellant. However, the written application further disclose that she was rescued from the house of the appellant by the Chaukidar and Dafadar on 25.07.2000. As per the fardbeyan, she was abducted on 14.07.2000 at about 09:00 P.M. from the railway crossing nearby Dighwara Railway Station which indicates that she was rescued on the 11th day. However, the contents of the fardbeyan further disclose that she was raped by the appellant for twelve days, which contradicts the version of the victim.



17. The contents of the fardbeyan also disclose that her brother Bhola/P.W. 2 and her brother-in-law (Bahnoi)/Rajendra P.W. 1 went to the house of the appellant but the appellant assaulted and chased them away. However, no specific date is mentioned in the fardbeyan as to when P.Ws. 1 and 2 visited the house of the appellant.

18. The evidence of P.W. 5 disclose that on the date of the incident, she had gone to Dighwara Railway crossing for defecation while returning home, the appellant forcibly took her to gola of Arvind Kumar Sah and confined her there for five days. Later, the appellant took her to his house, where she remained for four days. The testimony of P.W. 5 again contradicts with the written application. In the written application she initially stated that she was confined for ten days but as per the dates she mentioned she was confined for eleven days. Further in the written application she claimed that she was raped for twelve days whereas in her testimony, she stated, it was nine days.



19. For the first time in her testimony P.W. 5 states that P.W. 3 and P.W. 1 came to the house of the appellant on fourth day and she heard their voices while confronting the appellant about her confinement and the appellant had assaulted P.W. 3 and P.W. 1.

20. This statement also contradicts with that of the fardbeyan. As per the fardbeyan, P.W. 1 and P.W. 2 went to the house of the appellant, whereas, the testimony of P.W. 5 disclose that P.W. 3 and P.W. 1 went to the house of the appellant. This discrepancy is very much significant. Her evidence further disclose that on the next date i.e. 5th day of her confinement at the house of appellant, the Chaukidar and Dafadar came to the house of the appellant and broke/opened the lock of the house and took her to the Police Station. However, this statement contradicts with the evidence of P.W. 6.

21. The initial version of the victim as per the written application (Exhibit-3) is that she was continuously raped for twelve days. However, she specifically contended in her chief-examination that



she was raped by the appellant for two nights. She also testified that she went to the office of the Superintendent of Police and preferred a written application.

22. In cross-examination, P.W. 5 testified that she was married to one Rupa Paswan, but at that time of incident she was residing at her father's house while her husband was at Delhi. She specifically admitted that medical examination was not conducted on her. Further, she admitted that P.W. 1 is her brother-in-law, P.W. 2 is her biological brother, and P.W. 3 is related to her as a neighbour.

23. She also admitted that the appellant had lodged a case against P.W. 1 and consequently the police interrogated P.W. 1, her brother/P.W. 2 which caused distress to her family. Her evidence further disclose that her family members discussed the matter at home and decided to lodge a complaint for which her father suggested that a rape case has to be filed against the appellant. Her testimony further disclose that there were many shops located between her house and the railway crossing, and to



that of the gola of Arvind Kumar and the railway road of Dighwara is a busy area.

24. It is also relevant to mention that as per the fardbeyan, the sister-in-law/(Bhabhi) of P.W. 5 i.e. Sushila Devi accompanied P.W. 5, when she went for defecation. But the chief-examination of P.W. 5 is very much silent, as to the presence of Sushila. The prosecution has not examined Sushila who is the eye-witness to the incident for the best reasons known to them.

25. In the cross-examination, P.W. 5 categorically stated that she went for defecation without carrying water and while returning, the appellant caught hold of her and carried her on his shoulder and that the appellant gagged her mouth with one hand and kept the other hand on her back while carrying her on his shoulder.

26. It is the contention of Learned *Amicus Curiae* that it is highly improbable for a man to gag a woman's mouth with one hand while/simultaneously carrying her on his shoulder and supporting her back with the other hand. Further the distance stated by



P.W. 5 from the place of crossing to the place of go-down was approximately one mile. Further in cross-examination, P.W. 5 also stated that Sushila followed them up to the gola of Arvind Sah and in the presence of both Arvind and Sushila, the appellant committed rape on her and at that particular point of time, both Sushila and Arvind remained silent. Though she was in the gola of Arvind Sah, her brother, father, *bahnoi* did not come to rescue her.

27. P.W. 5 further stated that Arvind Sah generally used to open the door of the gola during the day, after which the appellant would lock it and commit rape upon her during the night times. She stated that she was raped for three nights, which again contradicts the contents of the fardbeyan as well as her chief-examination. Her evidence further disclose that she was shifted from the godown to the house of the appellant on a scooter, borrowed by the appellant from Arvind Sah and she sat on the rear seat of the scooter. She testified that she informed the Sub-Inspector of Police that she was kept in the godown for three days and while being transported



from the godown to the house of the appellant through the market, she tried to escape from the scooter, she fell and sustained an injury to her leg and that she also resisted and raised an alarm while being moved from the gola to the house of the appellant. Despite her hue and cry no one from the Police Station or the house of Arvind Sah or the surrounding area people came to rescue her. She further attempted to jump from the scooter, when the scooter passed in front of her house but, the appellant forced her to sit on it. Her evidence further disclose that the appellant gagged her and made her sit on the scooter, shutting her mouth with one hand and riding the scooter with the other hand.

28. The Learned *Amicus Curiae* contended that it is also highly improbable for a person to shut the mouth of a pillion rider, while simultaneously driving the scooter, in light of physical impossibility of such act, the evidence of P.W. 5 cannot be trusted. Further P.W. 5 in her cross-examination testified that the *Chaukidar* and Dafadar of the Police Station came to the house of the appellant and that the lock



was opened by the appellant himself at the direction of the Chaukidar.

29. There are two important issues which are to be discussed in the appeal that are:-

(I). Whether the evidence of P.W. 5 is trustworthy so as to convict the appellant?

(II). Whether basing on her testimony as discussed Supra there exists many material discrepancies and contradictions from the evidence of P.W. 5, when compared with that of her chief-examination and the fardbeyan.

30. The fardbeyan does not disclose the fact that the appellant gagged the mouth of the P.W. 5 either during her shifting from the railway crossing to the gola of Arvind Sah or while shifting her from the gola to the house of the appellant. Admittedly, FIR cannot be an encyclopedia of all the facts, but at least 161 statement of the victim should contain these aspects. For the first time, P.W. 5 testified, these facts before the Court, after a gap of one year from the date of the incident. On the one hand, she claimed that she was accompanied by her sister-in-



law/Sushila, however, the presence of Sushila was not mentioned in her chief-examination.

31. During cross-examination, P.W. 5 testified that in the presence of Arvind Sah and Sushila the appellant committed rape on her. If at all, Sushila witnessed the appellant forcibly taking the victim from the railway crossing to the gola of Arvind Sah or had seen the alleged rape being committed in her presence as to why the prosecution has failed to examine her as witness?.

32. The evidence of the eye-witness is crucial and an important aspect to be proved by the prosecution. The only eye-witness in this case is Sushila. Furthermore, the father of the victim i.e. P.W. 4 remained silent for a period of ten days, despite her daughter being missing from the house. The prosecution has miserably failed to explain as to how the police got information about the presence of the victim/P.W. 5, at the house of the appellant.

33. P.W. 6/Dafadar in his evidence clearly testified that the wife of the appellant opened the lock, where the victim was confined. His testimony



further disclose that as Sub-Inspector (SI) did not register the case, the victim left the Police Station and went to her father's house where she narrated the incident to her father, mother and brother alleging that the appellant raped her for two nights.

34. The *Chaukidar* who accompanied P.W. 6- the Dafadar was also not examined before the Court. Furthermore, the evidence of P.W. 6 is silent as to how the father of the victim came to know about the presence of the victim, at the house of the appellant. The evidence of P.W. 6 disclose that on the directions of the constable/ Laxminath he along with the *Chaukidar* went to the house of the appellant, where the wife of the appellant opened the door, and they brought the victim along with them to the police station.

35. P.W. 9 is the Investigating Officer, who investigated the case. His evidence disclose that he inspected the place of occurrence i.e. Dighwara Railway Crossing, from where the victim was lifted by the appellant, i.e. the Railway Crossing, further the Gola of Arvind Sah and the house of the appellant.



36. As per his evidence, the house of the appellant consist of only single room which contradicts the evidence of P.W. 6. The evidence of P.W. 6 disclose that he went into the house of the appellant and found one room locked which was opened by the wife of the appellant. If at all, the house of the appellant is a single room, the question of Dafadar entering into the house of the appellant and opening room creates doubts as to the place of alleged occurrence.

37. Further the evidence of P.W. 9 disclose that he did not collect any incriminating evidence from all three place of occurrences. Thus apart from the oral testimony of P.W. 5, there exist no other corroborative evidence on record to sustain the conviction of the appellant. None of the witnesses stated about the wrongful confinement of the victim either at the house of the appellant or at the Gola of Arvind Sah. The evidence of P.Ws. 1 to 3 also cannot be relied upon, as it does not corroborate with the evidence of P.W. 5 in any aspect, except stating that they visited the house of the appellant and where



they were assaulted and were driven out from the house of the appellant, if at all, such incident took place what made P.W. 1 to 3 not to report, it to the Police this is also not explained by the prosecution in any manner.

38. Medical evidence plays very crucial role to prove the offence under Section 376 IPC. In the present case, the victim was not subjected to medical examination, for the reasons best known to the prosecution. While it is well settled that the sole testimony of the prosecutrix/victim is sufficient to convict an accused, if it is trustworthy, inspires confidence of the Court by convincing about the truthfulness of the prosecutrix. There exists no circumstances to believe the veracity of P.W. 5, so as to convict the appellant the sole testimony of the prosecutrix. In the present case, also there are many material discrepancies and contradictions in the evidence of the prosecutrix and, therefore, it cannot be the sole basis for conviction.

39. In order to support the case of the appellant, the Learned *Amicus Curiae* relied on the



citations of the Hon'ble Apex Court in the case of **Chotkau Vs. State of Uttar Pradesh** reported in **AIR 2022 SC 4688**, wherein their Lordships have held at Paras 65 and 66 which reads as follows:-

65. *A delay in transmission of the FIR to the court, may not, per se, be fatal, without anything more. But in the case on hand, the delay was not small. The FIR said to have been registered on 08.03.2012 was received by the Court of the Chief Judicial Magistrate on 13.03.2012. It is true that no question was put in cross-examination to the Investigation Officer about this delay.*

66. *But we have found that the evidence of P.Ws. 1 to 3 is untrustworthy, particularly on the question of the origin and genesis of the First Information Report. Therefore the inordinate delay in the FIR reaching the jurisdictional court assumes significance. We agree that the word "forthwith" in Section 157(1) of the Code is to be understood in the context of*



the given facts and circumstances of each case and a straitjacket formula cannot be applied in all cases.

But where ocular evidence is found to be unreliable and thus unacceptable, a long delay has to be taken note of by the Court. The mandate of Section 157(1) of the Code being clear, the prosecution is expected to place on record the basic foundational facts, such as, the Officer who took the first information report to the jurisdictional court, the authority which directed such a course of action and the mode by which it was complied. Explaining the delay is a different aspect than placing the material in compliance of the Code.

40. In the present case, there was no significant delay of the FIR, reaching the Court. The date of incident, as per the victim in the written application was 14.07.2000, she testified that she was confined for ten days i.e. five days at the gola of Arvind Sah and five days at the house of the



appellant and later she was brought to the Police Station by P.W. 6 and the *Chaukidar*.

41. As per the contents of the fardbeyan, she reached the Police Station on 25.07.2000 and the Sub-Inspector (SI) did not register the case and as such, she made a written application to the Superintendent of Police on 26.07.2000. However, the FIR was registered on 17.08.2000 i.e. after 21 days of her written application. Neither P.W. 9 nor P.W. 10, the Investigating Officers explained the delay in registering the FIR. Admittedly, there was no cross-examination of the Investigating Officers on in this aspect.

42. There may be a delay in lodging the complaint by the victim in the case of Section 376 of IPC, but P.W. 5 categorically stated that the police did not register the complaint, after which she went her house narrated the entire incident to her parents and siblings and later on the next date they approached the Superintendent of Police, Saran and preferred a written application. There is a delay of twenty days



in registering the FIR as stated Supra, which is crucial to the case of the prosecution

43. Their Lordships in the judgment of **Chotkau Vs. State of Uttar Pradesh (supra)** have also held at para Nos. 72, 73 and 74, which reads as follows:-

72. *Section 53(1) of the Code enables a police officer not below the rank of Sub-Inspector to request a registered medical practitioner, to make such an examination of the person arrested, as is reasonably necessary to ascertain the facts which may afford such evidence, whenever a person is arrested on a charge of committing an offence of such a nature that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence. Section 53(1) reads as follows:*

“53. Examination of accused by medical practitioner at the request of police officer. (1) When a person is arrested on a charge of committing an offence of such a



nature and alleged to have been committed under such circumstances that there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of an offence, it shall be lawful for a registered medical practitioner, acting at the request of a police officer not below the rank of sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the person arrested as is reasonably necessary in order to ascertain the facts which may afford such evidence, and to use such force as is reasonably necessary for that purpose."

73. By Act 25 of 2005, a new Explanation was substituted under Section 53, in the place of the original Explanation. The Explanation so substituted under Section 53, by Act 25 of 2005 reads as follows

"Explanation. In this section and in sections 53A and 54

(a) "examination" shall include the examination of blood, blood stains, semen, swabs in case



of sexual offences, sputum and sweat, hair samples and finger nail clippings by the use of modern and scientific techniques including DNA profiling and such other tests which the registered medical practitioner thinks necessary in a particular case;

(b)"registered medical practitioner" means a medical practitioner who possess any medical qualification as defined in clause (h) of section 2 of the Indian Medical Council Act, 1956 (102 of 1956) and whose name has been entered in a State Medical Register."

74. *Simultaneously with the substitution of a new Explanation under Section 53, Act 25 of 2005 also inserted new provision in Section 53A. Section 53A reads as follows:*

"53A. Examination of person accused of rape by medical practitioner.

(1) When a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will



afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometers from the place where the offence has been committed by any other registered medical practitioner, acting at the request of a police officer not below the rank of a sub-inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

(2) The registered medical practitioner conducting such examination shall, without delay, examine such person and prepare a report of his examination giving the following particulars, namely:

"(i) The name and address of the accused and of the person by whom he was brought.

(ii) The age of the accused.



(iii) Marks of injury, if any, on the person of the accused,

(iv) The description of material taken from the person of the accused for DNA profiling, and

(v) other material particulars in reasonable detail.

(3) The report shall state precisely the reasons for each conclusion arrived at.

(4) The exact time of commencement and completion of the examination shall also be noted in the report.

(5) The registered medical practitioner shall, without delay, forward the report of the investigating officer, who shall forward it to the Magistrate referred to in Section 173 as part of the documents referred to in Clause (a) of sub-section (5) of that section."

44. As per the above ruling of the Hon'ble Apex Court, it is necessary for the prosecution to refer both the victim and the accused to a medical practitioner, as soon as they are brought to the police station or taken into custody. In the present



case, neither the victim nor the appellant was subjected to medical examination to substantiate the allegation against the appellant for the offence punishable under Section 376 of IPC.

45. On perusal of the evidence of P.W. 9, it is evident that he recorded the statements of several prosecution witnesses however they were not examined before the Court to corroborate the evidence of P.W. 5 in any manner.

46. The Learned *Amicus Curiae* also relied on the judgment of **Rai Sandeep alias Deepu Vs. State of NCT of Delhi** reported in **2012 8 SCC 21**, wherein their Lordships have held that, before relying on the sole testimony of the prosecutrix, the Court must satisfy that the prosecutrix is a 'sterling witness.' For the convenience of the Court Para No. 22 of the judgment is reproduced as under:-

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 correlation 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.

47. The above citations are squarely applicable to the facts and circumstances of the present case. When the evidence of the prosecutrix is not trustworthy, it is for the prosecution to examine the other witnesses, so as to corroborate the evidence of the prosecutrix. In the present case, Sushila Devi i.e. (*Bhabi*)-sister-in-law of the victim who was alleged to have accompanied the victim at the time of defecation and later, followed the victim and the appellant to the gola of Arvind Sah and in whose presence the alleged rape was committed, was also not examined. Further, Arvind Sah in whose premise the incident occurred and an alleged incident took place was also not examined. Further, the prosecution has failed to examine the *Chaukidar*-Bali Manjhi who alleged to have accompanied P.W. 6/Dafadar to rescue the victim from the house of the appellant. The wife of the appellant was also not examined to prove that she was confined in the house for a period of five days.



48. At this juncture, the Learned *Amicus Curiae* relied on the citations of the Hon'ble Apex Court in **Takhaji Hiraji Vs. Thakore Kubersing Chamansing and Others** reported in **(2001) 6 SCC 145** wherein their Lordships have held at Para 19 which reads as follows:-

19. *So is the case with the criticism levelled by the High Court on the prosecution case finding fault therewith for non-examination of independent witnesses. It is true that if a material witness, who would unfold the genesis of the incident or an essential part of the prosecution case, not convincingly brought to fore otherwise, or where there is a gap or infirmity in the prosecution case which could have been supplied or made good by examining a witness who though available is not examined, the prosecution case can be termed as suffering from a deficiency and withholding of such a material witness would oblige the court to draw an adverse inference against the prosecution by holding that if the witness would have been*



examined it would not have supported the prosecution case. On the other hand if already overwhelming evidence is available and examination of other witnesses would only be a repetition or duplication of the evidence already adduced, non-examination of such other witnesses may not be material. In such a case the court ought to scrutinise the worth of the evidence adduced. The court of facts must ask itself whether in the facts and circumstances of the case, it was necessary to examine such other witness, and if so, whether such witness was available to be examined and yet was being withheld from the court. If the answer be positive then only a question of drawing an adverse inference may arise. If the witnesses already examined are reliable and the testimony coming from their mouth is unimpeachable the court can safely act upon it, uninfluenced by the factum of non-examination of other witnesses. In the present case we find that there are at least 5



witnesses whose presence at the place of the incident and whose having seen the incident cannot be doubted at all. It is not even suggested by the defence that they were not present at the place of the incident and did not participate therein. The injuries sustained by these witnesses are not just minor and certainly not self-inflicted. None of the witnesses had a previous enmity with any of the accused persons and there is apparently no reason why they would tell a lie. The genesis of the incident is brought out by these witnesses. In fact, the presence of the prosecution party and the accused persons in the chowk of the village is not disputed. How the vanity of the Thakores was hurt leading to a heated verbal exchange is also not in dispute. Then followed the assault. If the place of the incident was the chowk then it was a sudden and not premeditated fight between the two parties. If the accused persons had reached their houses and the members of the prosecution party had followed them



and opened the assault near the house of the accused persons then it could probably be held to be a case of self-defence of the accused persons in which case non-explanation of the injuries sustained by the accused persons would have assumed significance. The learned Sessions Judge has on appreciation of oral and circumstantial evidence inferred that the place of the incident was the chowk and not a place near the houses of the accused persons. Nothing more could have been revealed by other village people or the party of tightrope dance performers. The evidence available on record shows and that appears to be very natural, that as soon as the melee ensued all the village people and tightrope dance performers took to their heels. They could not have seen the entire incident. The learned Sessions Judge has minutely scrutinized the statements of all the eyewitnesses and found them consistent and reliable. The High Court made no effort at scrutinizing and analyzing the ocular testimony



so as to doubt, if at all, the correctness of the several findings arrived at by the Sessions Court. With the assistance of the learned counsel for the parties we have gone through the evidence adduced and on our independent appreciation we find the eyewitnesses consistent and reliable in their narration of the incident. In our opinion non-examination of other witnesses does not cast any infirmity in the prosecution case.

49. The Learned Amicus Curiae also relied on the judgment of **Shankar Chaudhary Vs. the State of Bihar reported in 2023 Live Law (Pat) 126** wherein their Lordships have held that:- “Court Can Draw Adverse Inference Against Prosecution For Non-Examination Of Material Witness.”

50. As discussed(Supra), the material witnesses were not examined to corroborate the evidence of P.W. 5. It is further contended by the Learned Amicus Curiae that a false case was lodged against the appellant, as the appellant has lodged a complaint against the brother and brother-in-law of



the victim. The evidence of P.W. 5 categorically disclose that there had been a family discussion and it was decided to lodge a complaint against the appellant for the offence punishable under Section 376 of IPC. If that is the case, there exist every possibility for the victim to foist a false case against the appellant.

51. On the other hand, the evidence of D.Ws. 1, 2 and 3 clearly disclose that the appellant had filed a case against Yogendra Paswan/P.W. 4 and in order to counter it, the present case was lodged against the appellant. The evidence of D.W. 2 also disclose that Paswan community had held a meeting, in which a decision was taken to file a false case against the appellant, the evidence of D.W. 3 is also in the same line as that of D.W. 2.

52. On re-appreciating the entire oral and documentary evidence, It is evident that there is no concrete material before the Court to prove that the victim was confined for ten days either at the gola of Arvind Sah or at the house of the appellant or that the appellant has committed the offence of rape



against the victim/P.W. 5 continuously for a period of twelve days. Therefore, the judgment and conviction passed by the trial Court is liable to be set aside.

53. In result, the appeal is allowed setting aside the judgment and order dated 03.02.2004 passed by the Learned 1st Additional Sessions Judge-cum-Special Judge, Saran at Chapra under SC/ST Act 1996 in S.T. No. 74/2004 arising out of Dighwara P.S. Case No. 90 of 2000 and the appellant is acquitted for the offence punishable under Sections 342 and 376 of IPC.

54. The record reveals that the appellant was enlarged on bail by this Court vide order dated 23.11.2005. Hence, the bail bonds of the appellant shall stand cancelled.

(G. Anupama Chakravarthy, J)

Manish/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09.05.2025
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