

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.52 of 2010

Binda Singh, Son of Late Munsu Singh, resident of Village- Simri Jaitia, P.S.-
Navinagar, P.O.- Navinagar Road, District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajeev Kumar Singh, Advocate
	:	Ms. Rushali, Advocate
	:	Mr. Prabhojot Singh, Advocate
For the Respondent/s	:	Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 20-03-2025

Heard learned counsel appearing on behalf of the
appellant Mr. Rajeev Kumar Singh assisted by Ms. Rushali and
Mr. Prabhojot and Mr. A.M.P Mehta learned APP for the State.

2. The present appeal is directed against the
Judgment of conviction dated 08.12.2009 and order of sentence
dated 10.12.2009 in Sessions Trial No. 219 of 1997/113 of 2009
passed by the learned Additional Sessions Judge, Fast Track
Court No.-V, Aurangabad has convicted the appellants under
Sections 376, 379 and 448 of the Indian Penal Code (hereinafter
referred as 'IPC') and sentenced them to undergo 10 years
rigorous imprisonment and fine of Rs. 5,000/- (five thousand)
for the offence punishable under Section 376 of the IPC,
rigorous imprisonment for 2 years for the offence punishable



under Section 379 of the IPC and rigorous imprisonment for 6 months for the offence punishable under Section 448 of the IPC. The accused/appellant is further sentenced to undergo imprisonment for 6 months in case of non-payment of fine and all the sentences awarded shall run concurrently.

3. The brief facts leading to the filing of the present appeal on the basis of the FIR, the prosecution case in brief is that the informant aged about 45 years became blind prior to her marriage due to chicken pox. On the alleged date and time of occurrence the informant was sleeping on a cot with her nephew Ranjan aged about 7 to 8 years, then the accused asked to open the gate of the door but she did not open the gate. The Shattel train was going towards Dehri at that time. The accused broken the rope of the gate and entered into the house of the informant. The informant recognized the accused from his voice. The accused caught hold the hand of the informant. The informant raised alarm but the accused closed his mouth by his *Gamcha* (towel). The informant started to protest but the accused forcibly caught hold her hands by his one hand and started to commit rape with her after removing *sari* and *petticoat*. The accused committed the rape with her about 5-6 minutes, The accused took away Rs. 200/- of the informant tied



in her Anchal and fled away. The *Gamcha* (towel) of the accused remained there. The informant (victim) raised alarm after departure of the accused. On hearing alarm Ajay Kumar, Sachita Kahar, Mallua who were patrolling there came then the victim told them about the occurrence. But they proceeded from there silently. The accused had threatened the victim at the time of his departure not to tell anything to anyone otherwise to face dire consequences. The victim slept in the night in her house and in the next morning, she went to the colony of Irrigation Department and she massage there the ladies resident of the colony. Thereafter she returned to her house, took bath and prepared the meal and after taking meal, she came to police station with her nephew Ranjan.

4. On basis of the statement of the victim, Nabinagar P.S. Case No 59 of 1995 for the offence punishable under Sections 448, 376 and 380 of the IPC was registered. Investigation was taken up and after completion of investigation, charge-sheet was submitted under Sections 448, 376 and 380 of the IPC against the sole accused/appellant. Thereafter, the learned Chief Judicial Magistrate, Aurangabad took cognizance of offence and transferred the case to the Court of Judicial Magistrate Ist Class, Aurangabad for commitment and



the same was committed on 11.07.1996 to the Court of Sessions.

5. The prosecution examined altogether 6 witnesses to substantiate the charges levelled against the appellants, who are namely PW-1 Sachita Kumar, PW-2 Mallu Sah, PW-3 Ajay Prasad, PW-4 Manpatia Devi (Victim/Informant), PW-5 Ballu Sao and PW-6 Ram Lal Singh (formal witness).

6. PW-1 Sachita Kumar, PW-2 Mallu Sah, PW-3 Ajay Prasad and PW-5 Ballu Sao examined on behalf of the prosecution have not supported the case of the prosecution, so these witnesses have been declared hostile by the prosecution.

7. PW-4 Victim/informant in her examination-in-chief stated that she become blind due to chicken pox prior to her marriage and the alleged occurrence took place about 5-6 years back at 11 PM. It was the night of *teej* festival. She was sleeping after taking her meal and at that time shuttle train also passes from south to north. She further stated that Binda Singh, who is resident of Simri Jaysia entered in her house after breaking rope of *Tatti*. She recognizes him from his voice that he is Binda Singh. She further stated that he forcibly caught hold of her and when she raised alarm then he tied her mouth by his *Gamcha* (towel). Further, accused/appellant caught both



hands from his one hand and thrown her then he removed her *sari* and *petticoat* and raped her for 10-15 minutes. The accused took Rs. 200 from her *anchal* at the time of his departure and left his *Gamcha* (towel) there only. On accused departure she raised alarm and upon hearing the same Ajay Kahar, Sachita Kumar and Manu Baniya came there and she told them the whole occurrence. Accused/appellant at the time of his departure told her that no one including the police can do anything against him. In the next morning, she went to the Irrigation department colony where she did massage of ladies members and returned to her house and took bath and thereafter went to the police station with her nephew namely Ranjan aged about 7-8 years old. After hearing her statement given to the police she put her thumb impression on the statement and police officer sent her to medical examination with chowkidar and a constable. The police took her restatement. She handed over the stained *sari* and *petticoat* to the police officer and police officer prepared the seizure list and she identifies the accused by his voice.

7.i. In her cross-examination she stated that she begs at the station and Simri Jaisiya is about 1km away from her house but she has never gone there neither she knows all the



villagers there. She further stated that she can identify the language of Jaisiya Simri. She had not told the ladies member of the colony about the occurrence and she went to police station at 2 PM where her statement was recorded by the S.I. She further stated in para 10 that Binda Singh used to come so she recognizes him from his voice but she has no relation with the accused/appellant and no one told her that he is Binda Singh. Person used to told 'Kya Binda Singh Kya Binda Singh' so she started to know him and identify him. She further stated in para 14 that she often used to meet those persons who met after the occurrence. She further stated that police and S.P. came after 6 days of the occurrence. Further, she denied the suggestion of defence that no such type of occurrence took place and she has falsely implicated the accused persons on the instigation of other persons.

8. PW-6 Ram Lal Singh is a formal witness who proved FIR, Seizure-cum-production list, medical examination report and supplementary medical examination report which has been marked as Ext. 1, 2, 3 and 3/1 respectively. PW-6 has also proved the whole case diary which is marked as Ext.4.

9. Learned counsel for the appellant submits that appellant has falsely been implicated in this case on instigation



of the terrorist and the impugned judgment of conviction and order of sentence are not sustainable in the eye of law or on facts. Learned trial Court has not applied its judicial mind and erroneously passed the judgment of conviction and order of sentence. From perusal of the evidences adduced on behalf of the prosecution, it is crystal clear that the prosecution case has not been supported by anyone other than the informant/victim herself and it is relevant to note here that all other witnesses has turned hostile. He further submitted that PW-4 i.e., victim is blind lady who identified individuals from their voice and thus her testimony in absence of any corroborating evidence/witnesses cannot be the sole basis of conviction.

9.i. Learned counsel further submitted that even on perusal of the medical report and supplementary report of the victim does not support the allegation of rape. It is opined that there was no mark of any injury on private part of the victim. Furthermore, there was no presence of spermatozoa on clothes of victim. He further submitted that accused/appellant is agriculturist and important witnesses like Investigating Officer and Doctor for proving the offence have not been examined which shows serious irregularities and lacunae in the conduct of the investigation and the prosecution case. It is further submitted



by learned counsel that the Investigating Officer of this case as well as the *chowkidar* and medical officer who prepared the medical report of the victim has not been examined and only the interested witnesses who are either family members or neighbor of the victim has given their deposition and there are no any independent witnesses and, thus, the case is not proved beyond all reasonable doubts, and the conviction passed by the learned trial Court be set aside.

10. However, learned APP for the State defends the impugned judgment of conviction and the order of sentence submitting that there is no illegality or infirmity in the impugned judgment and order of sentence, because prosecution has proved its case against the appellant beyond all reasonable doubts. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellant and the present appeal should not be entertained.

11. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution and defence before the Trial Court and have thoroughly perused the materials on record as well as given thoughtful consideration to the submissions advanced by both the parties.

12. Having deeply studied and scrutinized the



facts and the material available on record of the present case, it is evident to note here that there are material inconsistencies in the deposition of the witnesses. The prosecution case has not been supported by anyone other than the informant/victim herself and it is relevant to note that all other witnesses has turned hostile.

13. Further, the contents of the FIR and Medical Report have also not been proved as the evidence of the IO as well as the doctor have not been examined during the course of trial and non-examination of Investigating Officer and doctor concerned is fatal to the case of the prosecution. The Supreme Court in ***Habeeb Mohammad vs The State of Hyderabad 1954 AIR 51, 1954 SCR 475*** pointed out that-

“It was the duty of the prosecution to examine all material witnesses who could give an account of the narrative of the events on which the prosecution is essentially based and that the question depended on the circumstances of each case. In our opinion, the appellant was considerably prejudiced by the omission on the part of the prosecution to examine Biabani and the other officers in the circumstances of this case and his conviction merely based on the testimony of the police jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial,



particularly when no satisfactory explanation has been given or even attempted for this omission. A police Jamedar, in the absence of Biabani and other witnesses admittedly present on the scene, cannot be said to have been arrived at after a fair trial, particularly when no satisfactory explanation has been given or even attempted for this omission.”

14. The Hon'ble Apex Court in the case of ***Munna Lal Vs. State of Uttar Pradesh*** , reported in **2023 SCC OnLine SC 80**, whose relevant paragraph Nos.- 28 and 39 of the said judgment are reproduced here-in-below:

“28. Before embarking on the exercise of deciding the fate of these appellants, it would be apt to take note of certain principles relevant for a decision on these two appeals. Needless to observe, such principles have evolved over the years and crystallized into ‘settled principles of law.’ These are:

(a).....

(b).....

(c). A defective investigation is not always fatal to the prosecution where ocular testimony is found credible and cogent. While in such a case the court has to be circumspect in evaluating the evidence, a faulty investigation cannot in all cases be a determinative factor to throw out a credible prosecution version.

(d). Non-examination of the Investigating Officer must result in prejudice to the accused; if no prejudice is caused, mere non-examination would not render the prosecution case fatal.



(e).....

“39. Secondly, though PW-4 is said to have reached the place of occurrence at 1.30 p.m. on 5th September, 1985 and recovered a bullet in the blood oozing out from the injury at the hip of the dead body, no effort worthy of consideration appears to have been made to seize the weapons by which the murderous attack was launched. It is true that mere failure/neglect to effect seizure of the weapon(s) cannot be the sole reason for discarding the prosecution case but the same assumes importance on the face of the oral testimony of the so-called eye- witnesses, i.e., PW-2 and PW-3, not being found by this Court to be wholly reliable. The missing links could have been provided by the Investigating Officer who, again, did not enter the witness box. Whether or not non-examination of a witness has caused prejudice to the defence is essentially a question of fact and an inference is required to be drawn having regard to the facts and circumstances obtaining in each case. The reason why the Investigating Officer could not depose as a witness, as told by PW-4, is that he had been sent for training. It was not shown that the Investigating Officer under no circumstances could have left the course for recording of his deposition in the trial court. It is worthy of being noted that neither the trial court nor the High Court considered the issue of non-examination of the Investigating Officer. In the facts of the present case, particularly conspicuous gaps in the prosecution case and the evidence of PW-2 and PW-3 not being wholly reliable, this Court holds the present case as one



where examination of the Investigating Officer was vital since he could have adduced the expected evidence. His non-examination creates a material lacuna in the effort of the prosecution to nail the appellants, thereby creating reasonable doubt in the prosecution case.”

emphasis applied

15. Further prosecution has failed to prove the injury sustained by the victim as neither any medical report has been exhibited nor any medical practitioner has been examined during the course of the trial. Investigating Officer has also not been examined during the course of trial as it was fatal since he could have adduced the expected evidence and his non-examination creates a material lacuna in the effort of the prosecution to nail the appellant, thereby creating reasonable doubt in the prosecution case and the learned trial Court failed to scrutinize the evidence brought on record regarding deficiencies, drawbacks and infirmities crept during course of trial and passed the impugned judgment in complete ignorance of criminal jurisprudence. Moreover, there are discrepancies regarding the sequence of events and the presence of individuals at the place of occurrence. Further, there is no eyewitnesses to the said occurrence and all the PW's were declared hostile and have not seen the occurrence. Considering this fact, prosecution has failed to establish this case beyond all reasonable doubt,



therefore, in such circumstances, it may not be proper to convict the appellant/accused on the materials available on record. Hence, the judgment of conviction and order of sentence in this present matter is fit to be set aside.

16. Hence, the Judgment of conviction dated 08.12.2009 and order of sentence dated 10.12.2009 in Sessions Trial No. 219 of 1997/113 of 2009 arising out of Nabinagar P.S. Case No. 59 of 1995, passed by learned Additional Sessions Judge, Fast Track Court No-V, Aurangabad is set aside and the accused/appellant is acquitted from the charges leveled against him. As the appellant is on bail, he is discharged from liability of his bail bond.

17. Accordingly, this appeal stands allowed.

(Ramesh Chand Malviya, J)

Anand Kr.

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