

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.319 of 2004

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Narmadeshwar Tiwary @ Buchkun Tiwary, S/o Late Jagdish Narayan Tiwary,
R/o Shambhuchak, P.S. Kalyanpur, District East Champaran.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Kr. Maharaj, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-12-2025

Mr. Amit Kumar Maharaj, learned counsel present in court at the time of hearing agreed to assist this Court as *amicus* and, therefore, this Court appointed Mr. Amit Kumar Maharaj, as an *Amicus Curiae* to assist in disposal of present appeal.

2. The present appeal has been preferred by the appellant-convict under Section-374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the impugned judgment of conviction dated 20.04.2004 and order of sentence dated 24.04.2004 passed by court of learned Addl. Sessions Judge, (Fast-Track) Court No. 5, East Champaran, Motihari in Sessions Trial No. 128 of 1989/59 of 2003, whereby the concerned Trial Court has



convicted appellant under Section 376 of the IPC, and sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 3,000/-.

3. The brief facts as per FIR, the victim being a widow lady had been working for the last three years in the house of appellant to sustain herself. About eleven months before the occurrence, accused allegedly grabbed her and committed rape upon her. According to her statement, appellant continued to sexually assault her repeatedly, taking advantage of her vulnerable situation and her financial compulsion to continue working in his house. Out of fear for her social reputation, she initially kept the assaults secret. When she became pregnant, she confronted the accused, who assured her that he would take responsibility for her throughout life. After her child was born and two months had passed, she finally disclosed the entire incident to her grandfather and thereafter *panchayat* meeting was convened where the accused-appellant was asked to pay ₹3000 on monthly basis and three maunda of paddy as settlement. However, he failed to comply, leading to the matter being



reported and forming the basis of the prosecution case.

4. On the basis of aforesaid information, Kalyanpur P.S. Case No. 79 of 1986 was lodged for the offence punishable under Section 376 and 497 of IPC.

5. After completion of investigation the charge-sheet was submitted before the learned Jurisdictional Magistrate, who upon the perusal of material collected during investigation took cognizance of the offence and committed the case before the court of sessions for its trial and disposal.

6. Learned trial court accordingly framed charges on 22.12.1986 against appellant-accused, who upon explanation pleaded as “not guilty” and claimed trial.

7. To substantiate its case, before learned Trial Court the prosecution has examined altogether 4 witnesses. One of the witness examined in defense. They are:-

Sr. No(s).	Prosecution Witnesses
P.W. 1	Sudhan Manjhi
P.W. 2	Janak Manjhi
P.W. 3	Hakim Manjhi
P.W. 4	Hirmatiya(informant)
Defence Witness	
D.W. 1	Laxman Tiwari



8. The statement of the appellant-accused was recorded under Section 313 of the Code after stating incriminating evidences/circumstances as surfaced during the trial, which he denied and shows complete innocence.

9. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted appellant-convict for the offences under Section 376 of IPC and sentenced him in the manner as stated above.

10. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant-convict has preferred the present appeal.

11. Hence, the present appeal.

12. It is submitted by Mr. Amit Kumar Maharaj, learned *Amicus Curiae* that admittedly the informant/ victim is a widow lady and was working with appellant as a domestic help. It is submitted that she is only witness of crime in questions. It is pointed out that there is no medical report or any DNA report which may suggest that the child which said to be born out of physical relationship, which deposed as rape



is available on record and in want of same, it cannot be said that the claim of informant is valid. It is submitted that from the testimony of informant/ PW-4, it appears that some *Panchayati* was held out of which maintenance amount of Rs. 3000/- was fixed to be paid by appellant. It is pointed out that in background of the admitted position being domestic help of the appellant, out of certain financial disputes which was given color of maintenance, the appellant was alleged to commit rape upon PW-4 which not appears convincing in want of any corroborating material. It is pointed out that testimony of victim not appears **"sterling in nature"** and therefore, judgment of conviction as recorded by learned trial court appears questionable.

13. Beside aforesaid, it is pointed out that rest of prosecution witnesses PW-1, PW-2 and PW-3 are relatives of PW-4 and therefore, their testimonies being "interested witnesses" cannot be relied wholly as they are interested with outcome of trial as conviction of appellant.

14. In support of his submission learned *Amicus Curaie* relied upon the legal reports of Hon'ble Supreme Court



as available through ***Nand Lal Vs. State of Chhatisgarh (2023) 10 SCC 470*** and ***Rai Sandeep v. State (NCT of Delhi)*** reported as ***(2012) 8 SCC 21.***

15. Mrs. Anita Kumari Singh, learned APP appearing on behalf of State while opposing the appeal submitted that as per settled principle of law, on the basis of sole testimony of victim the convictions can be recorded, and, therefore, on this ground the conviction recorded by learned trial court cannot be viewed with doubt, until, there is no compelling reasons to disbelieve the testimony of the victim i.e., PW-4.

16. In support of her submission learned APP relied upon the legal reports of Hon'ble Supreme Court as available through ***Sham Singh vs. State of Haryana*** reported as ***(2018) 18 SCC 34.***

17. It is also submitted by learned APP that non-examination of I.O. is not fatal in this case because victim herself supported the case and also the pregnancy as caused by this appellant while she was working as domestic help. In support of her submission she relied upon the legal report of



Hon'ble Supreme Court as available through ***Baldev Singh vs. State of Haryana*** reported as ***(2015) 17 SCC 554***.

18. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.

19. Upon perusal of record it appears that PW-1, PW-2 and PW-3 supported the occurrence and deposed before the court that the victim who was working as a domestic help with appellant becomes pregnant out of physical relationship with appellant and the child is of appellant. They also supported *Panchayati* and maintenance amount of Rs. 3,000/-. From perusal of record, it also appears that these three witnesses are related with PW-4 who is the victim of this case.

20. The most important witness of this case is PW-4 namely, Hirmatiya, who is victim of this case. It appears from her deposition that it is a case of continuous rape which continued for several days and nights. There is no specific date *qua* occurrence. It also appears from her testimony that



though she claimed that she was raped as physical relationship was established forcibly but nothing transpires from her deposition that having all opportunities to left the house, she remained there as a domestic help. Nothing appears out of her testimony that she was confined there or was not allowed to go home, particularly in such situation, it cannot be said that alleged continuous physical relationship was against the will of the victim. It also appears from the perusal of record that there is no medical report *qua* pregnancy and also any DNA test ascertaining the paternity of appellant with born child from victim/ PW-4.

21. I.O. of this case also not appears examined.

22. Disputes regarding maintenance also appears supported out of testimony of PW-4.

23. In view of such, it cannot be said that the testimony of victim/ PW-4 is “sterling in nature” to believe the occurrence as rape.

24. In view of aforesaid, certain corroborating evidence must be required to prove the charge. But upon perusal of record nothing appears in support of testimony of



PW-4 admittedly PW-1, PW-2 and PW-3 are hearsay witnesses who deposed only upon the information supplied by PW-4 herself and they are not the eye witness of the occurrence and as such their testimony is of no corroborating value.

25. It would be apposite to refer **para Nos. 32 and 33** of the legal report of Hon'ble Supreme Court in the matter of ***Nand Lal (supra)***, which reads as under:-

“32. Undisputedly, the present case rests on the evidence of interested witnesses. No doubt that two of them are injured witnesses. This Court, in Vadivelu Thevar v. State of Madras [1957 SCC OnLine SC 13], has observed thus:

“11. ... Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely:

(1) Wholly reliable.

(2) Wholly unreliable.

(3) Neither wholly reliable nor wholly unreliable.

12. In the first category of proof, the court should have no difficulty in coming to its conclusion either way — it may convict or may acquit on the testimony of a single witness, if it is found to be above reproach or suspicion of interestedness, incompetence or subornation. In the second category, the court equally has no difficulty in coming to its conclusion. It is in the third category of cases, that the court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial.”

33. It could thus be seen that in the category of “wholly reliable” witness, there is no difficulty for the prosecution to press for conviction on the basis of the testimony of such a witness. In case of “wholly unreliable” witness, again, there is no difficulty,



inasmuch as no conviction could be made on the basis of oral testimony provided by a “wholly unreliable” witness. The real difficulty comes in case of the third category of evidence which is partly reliable and partly unreliable. In such cases, the court is required to be circumspect and separate the chaff from the grain, and seek further corroboration from reliable testimony, direct or circumstantial.”

26. In this connection it would be apposite to reproduce the paragraph No. 22 of ***Rai Sandeep case (supra)***, which reads as under:-

“22 [Ed.: Para 22 corrected vide Official Corrigendum No. F.3/Ed.B.J./48/2012 dated 18-8-2012.]. *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.

27. In this connection it would be apposite to reproduce the paragraph Nos. 6 and 7 of ***Sham Singh case*** (***supra***), which reads as under:-

“6. We are conscious that the courts shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See State of Punjab v. Gurmit Singh [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] (SCC p. 403, para 21).]

7. It is also by now well settled that the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting



woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. (See Ranjit Hazarika v. State of Assam [Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635 : 1998 SCC (Cri) 1725].)”

28. In this connection it would be apposite to reproduce the paragraph No. 16 of ***Baldev Singh case*** (***supra***), which reads as under:-

"16. *The contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh, SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. The material on record would show that Chander Singh, SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice*



has been caused to the accused is a question of fact to be determined in each case. Since Ram Singh, PW 1 was a part of the police party and PW 1 has signed in all recovery memos, non-examination of Chander Singh, SI could not have caused any prejudice to the accused in this case nor does it affect the credibility of the prosecution version.

29. Considering the aforesaid factual and legal discussions, the PW-4/ victim/ informant, cannot be said “sterling witness”, and therefore, the conviction as recorded by learned trial court is hereby set aside/ quashed.

30. Accordingly, the appeal stands allowed.

31. The impugned judgment of conviction dated 20.04.2004 and order of sentence dated 24.04.2004 passed by court of learned Addl. Sessions Judge, (Fast-Track) Court No. 5 East Champaran, Motihari in Sessions Trial No. 128 of 1989/59 of 2003 is accordingly set aside.

32. The appellant, above-named, is acquitted of the charges levelled against him. Since the appellant is on bail, he is discharged from the liabilities of his bail bond. Sureties stands discharged.

33. Fine if any paid, be returned to appellant hence forth.



34. Office is directed to send back the lower court records along with a copy of the judgment to the court below, henceforth.

35. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- (Rupees Five Thousand only) to Mr. Amit Kumar Maharaj, *Amicus Curiae* as consolidated fee for rendering her valuable professional service for the disposal of present appeal.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	AFR
CAV DATE	NA
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