

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.690 of 2010

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Rajesh Sah, S/o Balak Sah R/O Vill- Sugaha Bhawanipur, P.S.- Kangali,
Distt- West - Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ram Adya Singh, Advocate.
For the Respondent/s : Mr.Abhay Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
C.A.V. JUDGMENT

Date : 09-07-2026

Heard Mr. Ram Adya Singh, learned counsel
appearing on behalf of the appellant and Mr. Abhay Kumar,
learned APP for the State.

2. The present appeal has been filed under Section
374 (2) and 389(1) of Code of Criminal Procedure, challenging
the judgment of conviction and order of sentence dated
25.05.2010 passed by the learned Additional District and
Sessions Judge-III, Bettiah, West Champaran in Sessions Trial
No. 67 of 2008 (arising out of Kangli P.S. Case No. 15 of 2007)
whereby and whereunder the appellant has been convicted for
the offence punishable under Section 376 of the Indian Penal
Code and has been sentenced to undergo Rigorous
Imprisonment for the period of seven years along with a fine of
Rs.10,000/- and in default of payment of fine to further undergo



S.I. for six months.

3. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellant has preferred the present Appeal before this Court, assailing the impugned judgment primarily on the ground that the learned trial court failed to appreciate the evidence available on record in its proper perspective and has wrongly recorded the conviction of the appellant despite the existence of serious contradictions and deficiencies in the prosecution case.

4. The prosecution case, in brief, is that the informant, Hiramati Devi, filed a complaint petition before the Court of the learned Chief Judicial Magistrate, Bettiah (West Champaran), alleging that on the night of 09.06.2007 at about 11:00 P.M., the accused, Rajesh Sah, entered her house and committed rape upon her. The complaint petition was forwarded to the police under Section 156(3) of the Code of Criminal Procedure for institution and investigation of the case, pursuant to which Kangli P.S. Case No. 15 of 2007 was registered under Section 376 of the Indian Penal Code against the accused. Upon completion of investigation, the police submitted charge-sheet under Section 376 of the Indian Penal Code, whereafter the case was committed to the Court of Session and registered as



Sessions Trial No. 67 of 2008 (State v. Rajesh Sah) before the Court of the learned Additional District and Sessions Judge-III, Bettiah, West Champaran. Charge under Section 376 of the Indian Penal Code was framed against the accused, to which he pleaded not guilty and claimed to be tried. Upon conclusion of the trial, the learned trial court, by judgment and order of sentence dated 25.05.2010, convicted the appellant under Section 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for seven years.

ARGUMENT ON BEHALF OF THE APPELLANT

5. Learned Counsel appearing on behalf of the appellant submitted that the appellant is innocent and has been falsely implicated due to the admitted land dispute and village politics between the parties. It was further submitted that the learned trial court failed to appreciate that out of seven prosecution witnesses, five were declared hostile and even the victim (P.W.1) did not support the prosecution case, as she categorically admitted in her cross-examination that she could not identify the appellant at the time of the alleged occurrence because of darkness. It was further submitted that the victim's husband (P.W.2) also admitted in his cross-examination that the appellant had not committed the alleged offence and expressed



his unwillingness to pursue the case. Learned counsel further submitted that the admitted dispute regarding the *Nala* probabilises the defence plea of false implication. It was also submitted that the victim was never medically examined and no injury report was brought on record, thereby rendering the prosecution case wholly uncorroborated. On these grounds, it was urged that the impugned judgment of conviction and order of sentence suffer from serious legal and factual infirmities and are liable to be set aside.

ARGUMENT ON BEHALF OF THE STATE

6. Learned APP appearing for the State while opposing the appeal submitted that the learned District court, after considering all the evidences on record and exhibits has rightly convicted the appellants as the offences alleged against the appellant appears to be serious in nature and also constitutes cognizable offence.

ANALYSIS AND CONCLUSION

7. Heard the parties.

8. I have perused the lower court records and proceedings and also taken note of the arguments canvassed by learned counsel appearing on behalf of the parties.

9. The learned trial court, on the basis of materials as collected during the course of investigation, passed the



judgment of conviction and order of sentence dated 25.05.2010
for the offences under Section 376 of the Indian Penal Code.

10. During the trial, the prosecution has examined
altogether seven witnesses, namely:

P. W.1: Hiromati Devi (Informant or Victim)
P.W. 2: Banka Patel (Husband of the informant)
P. W. 3 Rambabu Patel (Villager of Victim)
P. W. 4: Khedan Patel (Villager of Victim)
P.W.5: Chhatu Patel (Villager of Victim)
P. W.6: Shochan Yadav (Villager of Victim)
P.W.7: Ashok Patel (Villager of Victim)

11. The prosecution has also relied upon following
documents exhibited during the course of trial:-

(i) **Exhibit-A** – Panchayat deed/compromise deed
showing settlement of the dispute between the parties relating to
the *Nala* (drain).

12. On the basis of materials surfaced during the trial,
the appellant/accused was examined under Section 313 of the
Cr.PC by putting incriminating circumstances/evidences
surfaced against him, which he denied and shows his complete
innocence.

13. The provisions of Section 375 and 376 of the IPC is
reproduced hereinafter as follows : -

“376. Punishment for rape.—

*(1)Whoever, except in the cases provided for
in sub-section (2), commits rape, shall be
punished with rigorous imprisonment of*



either description for a term which [shall not be less than ten years, but which may extend to imprisonment for life, and shall also be liable to fine]

(Subs. by Act 22 of 2018, s. 4, for “shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine” (w.e.f. 21-4-2018)

(2)Whoever,—

(a)being a police officer, commits rape—

(i)within the limits of the police station to which such police officer is appointed; or

(ii)in the premises of any station house; or

(iii)on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or

(b)being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or

(c)being a member of the armed forces deployed in an area by the Central or a State Government commits rape in such area; or

(d)being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a women's or children's institution, commits rape on any inmate of such jail, remand home, place or institution; or

(e)being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or

(f)being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or

g)commits rape during communal or sectarian violence; or

(h)commits rape on a woman knowing her to be pregnant; or

(i)commits rape on a woman when she is under sixteen years of age; or

(j)commits rape, on a woman incapable of



giving consent; or

(k)being in a position of control or dominance over a woman, commits rape on such woman; or

(l)commits rape on a woman suffering from mental or physical disability; or

(m)while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or

(n)commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine.

Explanation.— For the purposes of this subsection, —

(a)"armed forces" means the naval, military and air forces and includes any member of the Armed Forces constituted under any law for the time being in force, including the paramilitary forces and any auxiliary forces that are under the control of the Central Government or the State Government;

(b)"hospital" means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation;

(c)"police officer" shall have the same meaning as assigned to the expression "police" under the Police Act, 1861 (5 of 1861);

(d)"women's or children's institution" means an institution, whether called an orphanage or a home for neglected women or children or a widow's home or an institution called by any other name, which is established and maintained for the reception and care of women or children.

(3)Whoever, commits rape on a woman under sixteen years of age shall be punished with rigorous imprisonment for a term which shall



not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine:

Provided that such fine shall be just and reasonable to meet the medical expenses and rehabilitation of the victim:

Provided further that any fine imposed under this sub-section shall be paid to the victim.”

14. It would be apposite to discuss the oral/documentary evidences as available on record to re-appreciate the evidences for just and proper disposal of the present appeal

15. From the perusal of records, the statements of the prosecution witnesses are as under:

i. **P.W.1 (Victim):** In her examination-in-chief, the victim fully supported the prosecution case and reiterated the allegations made in the complaint. She deposed that the appellant committed rape upon her and was apprehended at the place of occurrence by the villagers and his uncle, Tilakdhari. She further stated that the appellant admitted his guilt before the Panchayat and agreed to abide by its decision. **However, in her further cross-examination, recorded subsequently, she stated that the occurrence took place on a dark night and that, owing to darkness, she could not identify the appellant.** She further stated that in the morning, on suspicion raised by the



villagers, she named the appellant. She also admitted that there was a pre-existing land/drain dispute between the parties, which had subsequently been settled through the Panchayat, and that she did not wish to continue the dispute.

ii. **P.W.2 (Banka Patel):** The husband of the victim deposed that he was informed by his wife about the alleged occurrence after he returned home and supported the prosecution version in his examination-in-chief. He also stated that a Panchayat was convened but no settlement could be reached, whereafter the complaint case was instituted. In his cross-examination, however, he admitted that he was not present at the time of the occurrence, that there existed a dispute between the parties regarding a drain (*Nala*), that the dispute had since been resolved, and that he did not wish to pursue the case further.

iii. **P.W.3 (Rambabu Patel), P.W.4 (Khedan Patel), P.W.5 (Etah Patel), P.W.6 (Shodhan Yadav) and P.W.7 (Ashok Patel):** These witnesses did not support the prosecution case and were declared hostile. They denied having made any statement before the complainant or having knowledge of the alleged occurrence.

16. On careful perusal of the materials available on



record, it appears that the prosecution case mainly rests upon the testimony of the prosecutrix. It is well settled principle of law that conviction can be based upon the sole testimony of the prosecutrix provided that such testimony is trustworthy, reliable and inspires confidence.

17. In the present case Medical Officer was not examined by the prosecution, nor was the victim medically examined, and consequently, no medical evidence has been brought on record to corroborate the allegation of rape. Thus, the prosecution case substantially rests upon the testimonies of P.W.-1, the victim, and P.W.-2, her husband, while P.Ws.-3 to 7, who were examined as independent villagers, did not support the prosecution case and were declared hostile. In her examination-in-chief, P.W.-1 fully supported the prosecution case and deposed regarding the commission of rape by the appellant. However, in her subsequent cross-examination, she admitted that the occurrence had taken place on a dark night and that she could not identify the appellant due to darkness, further stating that she named the appellant on suspicion after the villagers gathered in the morning. She also admitted the existence of a prior dispute between the parties regarding the *Nala* (drain), which had subsequently been settled through a



Panchayat. P.W.-2, the husband of the victim, supported the prosecution case in his examination-in-chief on the basis of what was narrated to him by the victim, but in his cross-examination admitted that he was not present at the time of the occurrence, that there had been a dispute between the parties regarding the *Nala*, which had since been resolved, and that he did not wish to pursue the case any further. Thus, except for the initial version of the victim, which was materially diluted during her cross-examination and receives only hearsay support from her husband, there is neither any independent eyewitness nor any medical evidence to lend corroboration to the prosecution case.

18. In such circumstances, can the testimony of the victim PW-1 be said to be reliable and trustworthy. The Apex Court in case of *Krishan Kumar Malik v. State of Haryana*, reported in *(2011) 7 SCC 130*, held that although the victim's solitary evidence in matters related to sexual offences is generally deemed sufficient to hold an accused guilty, the conviction cannot be sustained if the prosecutrix's testimony is found unreliable and insufficient due to identified flaws and lacunae. It was held thus:

"31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient



provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellants guilty of the said offences.

32. Indeed there are several significant variations in material facts in her Section 164 statement, Section 161 statement (CrPC), FIR and deposition in court. Thus, it was necessary to get her evidence corroborated independently, which they could have done either by examination of Ritu, her sister or Bimla Devi, who were present in the house at the time of her alleged abduction. The record shows that Bimla Devi though cited as a witness was not examined and later given up by the public prosecutor on the ground that she has been won over by the appellants."

19. In the case of ***Rai Sandeep v. State (NCT of Delhi)***, reported in, ***(2012) 8 SCC 21***, the Apex Court found totally conflicting versions of the prosecutrix, from what was stated in the FIR and what was deposed before Court, resulting in material inconsistencies. Reversing the conviction and holding that the prosecutrix cannot be held to be a 'sterling witness', the Court opined 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 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."

(emphasis supplied)

20. The Apex Court further in case of **Ganesan v. State**, reported in, **(2020) 10 SCC 573**, held that the sole testimony of the victim, if found reliable and trustworthy, requires no corroboration and may be sufficient to invite conviction of the accused.

21. What emerges from the aforesaid decisions is that where witnesses are found to be neither completely



trustworthy nor entirely unreliable, the Court must make a careful effort to ascertain the true origin of the incident. A victim may be treated as a “sterling witness” and her testimony can be relied upon without additional corroboration, provided its quality and credibility are of an exceptionally high standard. The statement of the prosecutrix should remain consistent throughout, from the initial version to the oral evidence, barring minor discrepancies, and should not give rise to any doubt regarding the prosecution’s case. Although, in cases of sexual offences, the testimony of the victim is generally sufficient, a version that is unreliable or inadequate, suffering from evident shortcomings and gaps, may render it difficult to sustain a conviction.

22. The record reveals that the Medical Officer was not examined during the course of trial. Undoubtedly, the Medical Officer is required to prove the medical evidence relating to the nature and cause of injuries. Its examination also affords the defence an opportunity to test the fairness of the investigation and the medical findings through cross-examination. However, it is well settled that the mere non-examination of the Medical Officer does not *ipso facto* vitiate the prosecution case. The effect of such omission has to be



assessed in the facts and circumstances of each case, particularly with regard to whether any prejudice has been caused to the accused; and where the ocular and other substantive evidence is otherwise found to be cogent, reliable and trustworthy, the prosecution case cannot be rejected on that ground alone. In this regard, reference can be drawn from the judgment passed by the Apex Court in para no. 18 in the case of ***Rajesh Patel v. State of Jharkhand***, reported in **(2013) 3 SCC 791**, which is reproduced hereinafter:

“18. Further, neither the doctor nor the IO has been examined before the trial court to prove the prosecution case. The appellant was right in bringing to the notice of the trial court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law.”

23. In the case of ***Sadashiv Ramrao Hadbe v.***



State of Maharashtra, reported in (2006) 10 SCC 92, the Hon'ble Supreme Court held that when the version of the prosecutrix is not of sterling quality and is inconsistent with the medical evidence, and when the surrounding circumstances render the prosecution story doubtful, the accused is entitled to the benefit of doubt. The Court further held that conviction cannot be sustained where the prosecution has failed to prove its case beyond reasonable doubt.

24. Applying the aforesaid legal principles to the facts of the present case, this Court finds that the prosecution has failed to establish the charge beyond reasonable doubt. The testimony of the prosecutrix is not consistent throughout the trial. While the victim in her examination-in-chief has supported the prosecution case, in her subsequent cross-examination she categorically stated that, owing to the darkness, she could not identify the appellant and had named him only on suspicion. She further admitted the existence of a prior dispute between the parties, which had subsequently been settled through a Panchayat. Her testimony also does not receive any independent corroboration, as P.Ws. 3 to 7 were declared hostile and P.W.2, the husband of the prosecutrix, is admittedly not an eyewitness and, in his cross-examination, stated that he did not wish to



pursue the case after the dispute had been resolved. Moreover, the prosecutrix was not medically examined and no medical evidence has been brought on record to support the allegation of rape. In these circumstances, the material inconsistencies in the prosecution evidence, coupled with the absence of medical and independent corroborative evidence, create a reasonable doubt regarding the prosecution case. Consequently, the appellant is entitled to the benefit of doubt, and the conviction and sentence recorded by the learned Trial Court cannot be sustained.

25. In view of aforesaid discussions of factual and legal aspects, it appears that the prosecution has miserably failed to establish the charges levelled against the appellant/accused during the trial.

26. Accordingly, the present appeal is allowed.

27. The impugned judgment of conviction and order of sentence dated 25.05.2010 passed by the learned Additional District and Sessions Judge-III, Bettiah, West Champaran in Sessions Trial No. 67 of 2008 (arising out of Kangli P.S. Case No. 15 of 2007), is hereby set aside. Consequently, the above-named appellant/accused is acquitted from all the charges levelled against him. Since the appellant is on bail, he is discharged from the liability of his bail bond. The



fine deposited by the appellant, if any, shall be refunded to him.

28. Office is directed to send back the lower court records along with a copy of the judgment to the learned District Court forthwith.

(Purnendu Singh, J)

mantreshwar/-

AFR/NAFR	
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