

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1245 of 2011

Arising Out of PS. Case No.-139 Year-2001 Thana- AMJOR District- Rohtas

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1. Ram Brichh Patwa S/O Late Bilash Patwa Resident Of Village- Sulsuli, Police Station- Basantpur, District- Sarguja, State - Chhatisgarh.
 2. Kaushlay Devi W/O Sri Ram Briksh Patwa Resident Of Village- Sulsuli, Police Station- Basantpur, District- Sarguja, State - Chhatisgarh.
 3. Guru Bachan Patwa S/O Ram Briksh Patwa Resident Of Village- Sulsuli, Police Station- Basantpur, District- Sarguja, State - Chhatisgarh.
 4. Kusumi Devi W/O Guru Bachan Patwa Resident Of Village- Sulsuli, Police Station- Basantpur, District- Sarguja, State - Chhatisgarh.
 5. Alamchand Chaudhary S/O Ram Prit Chaudhary Resident Of Village- Maharaganj, Police Station- Tilauthu, District- Rohtas At Sasaram

... .. Appellant/s

Versus

1. The State Of Bihar
2. Sheopujan Choudhary S/O Late Deonandan Chaudhary Resident Of Village- Karma, Police Station- Rohtas, District- Rohtas.

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Umesh Kumar, Advocate
For the Respondent/s : Mr. Abhay Kumar, App

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
CAV JUDGMENT

Date : 20-04-2026

Heard Mr. Umesh Kumar, learned counsel appearing on behalf of the appellants and Mr. Abhay Kumar, learned APP for the State.

2. The present appeal has been preferred against the judgment of conviction and order of sentence dated 12.07.2011 passed in S. Tr. No. 556 of 2004 (arising out of Rohtas (Amjhora) P.S. Case No. 139 of 2001 / G.R. No. 1822 of 2001) by the learned Additional Sessions Judge, Fast Track Court-I,



Rohtas at Sasaram, whereby and whereunder all the appellants have been convicted under Sections 406 and 323 of the Indian Penal Code and appellant no. 3, namely Guru Bachan Patwa, has further been convicted under Section 354 of the Indian Penal Code and released on probation.

3. Being aggrieved by and dissatisfied with the aforesaid judgment of conviction and order of sentence, the appellants have preferred the present appeal before this Court. The appellants have assailed 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 appellants despite the existence of serious contradictions and deficiencies in the prosecution case.

FACTS OF THE CASE

4. The prosecution case, in brief, is that the informant filed a complaint alleging that his daughter Anita Devi, who was married to Rishi Kumar Patwa on 05.04.1998, was subjected to cruelty and harassment by her in-laws for demand of dowry. She was physically and mentally tortured, her ornaments were retained by the accused persons and she was assaulted on several occasions. Appellant no. 3 outraged her



modesty and that she was assaulted even during pregnancy resulting in loss of unborn child.

5. On the basis of the complaint petition, the case was sent under Section 156(3) Cr.P.C. and Rohtas (Amjhora) P.S. Case No. 139 of 2001 was registered under Sections 498A, 323, 406, 354, 315 IPC and Sections 3/4 of the Dowry Prohibition Act. After investigation, charge-sheet was submitted and the case was committed to the Court of Sessions for trial.

ARGUMENTS ON BEHALF OF THE APPELLANTS

6. Learned counsel appearing on behalf of the appellants submitted that the impugned judgment of conviction is wholly unsustainable in the eyes of law as the prosecution has failed to prove the case beyond reasonable doubt. It is contended that most of the prosecution witnesses are hearsay and interested witnesses and no independent witness has supported the prosecution case.

7. There are material contradictions and inconsistencies in the evidence of the prosecution witnesses which go to the root of the matter. The Investigating Officer has not been examined, causing serious prejudice to the defence.

8. Learned counsel further submitted that the



medical evidence does not support the prosecution case, particularly with regard to pregnancy and nature of injuries. There was admitted land dispute between the parties, which provides motive for false implication.

9. The learned trial court failed to appreciate the evidence in its proper perspective and has wrongly convicted the appellants.

ARGUMENTS ON BEHALF OF THE STATE

10. *Per contra*, learned APP appearing on behalf of the State opposed the appeal and submitted that the learned trial court has rightly appreciated the evidence and recorded conviction, which does not call for interference.

ANALYSIS AND CONCLUSION

11. Heard the parties.

12. 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.

13. The learned trial court, on the basis of materials as collected during the course of investigation, passed the judgment of conviction dated 12.07.2011 and order of sentence for the offences under Sections 406, 323 and 354 of the Indian



Penal Code.

14. During the trial, the prosecution has examined altogether 9 witnesses, namely:

- (i) (P.W.-1) – Sheo Kumar
- (ii) (P.W.-2) – Raj Kumar
- (iii) (P.W.-3) – Abdul Rajak
- (iv) (P.W.-4) – Alamgir Ansari
- (v) (P.W.-5) – Rishi Kumar
- (vi) (P.W.-6) – Sheo Pujan Chaudhary
- (vii) (P.W.-7) – Sushila Devi
- (viii) (P.W.-8) – Anita Devi
- (ix) (P.W.-9) – Dr. Rajesh Kumar Gupta

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

- (i) Signature of informant on complaint petition (Exhibit-1)
- (ii) Injury report (Exhibit-X)

16. Upon a meticulous examination of the record, the evidence of the prosecution witnesses (PWs) can be summarised as under:

- (i) P.W.1 – (Sheo Kumar) has supported the



occurrence but is not an eye-witness. He deposed that the victim Anita was brought from her in-laws' house by her father and she narrated the occurrence to him. However, the victim (P.W.8) has not stated that she disclosed the incident to P.W.1, rendering his testimony hearsay and inadmissible under Section 60 of the Evidence Act.

(ii) P.W.2 – Raj Kumar has supported the prosecution case and stated that he once visited the victim's matrimonial home where a demand of ₹70,000/- was made. However, he is not an eye-witness to the assault. His statement regarding the occurrence is based on what the victim allegedly told him, but since P.W.8 has not corroborated this disclosure, his testimony is hearsay and inadmissible. He further admitted delay in disclosure and non-reporting to authorities.

(iii) P.W.3 – Abdul Rajak has supported the prosecution version but admitted that he never visited the matrimonial house of the victim. His knowledge is derived from what he heard after the victim returned to her parental home. Hence, he is a pure hearsay witness with no direct knowledge of the occurrence.

(iv) P.W.4 – (Alamgir Ansari) also supported the prosecution case but clearly admitted in cross-examination that



he has no personal knowledge of the occurrence. His evidence is therefore hearsay in nature and carries no evidentiary value.

(v) P.W.5 – Rishi Kumar (Husband of the Victim) has supported the prosecution case and stated that after a few months of peaceful marital life, his step-mother, step-brothers, and others began torturing his wife for dowry of ₹70,000/-. He further stated that he went to Surat for work and later came to know about the assault and abortion. However, in cross-examination: He admitted he was not present at the time of occurrence. He acknowledged family property disputes and partition litigation. He admitted that there is no evidence of dowry demand. Thus, his testimony is partly hearsay and also affected by admitted family disputes, reducing its reliability.

(vi) P.W.6 – Informant (Father of the Victim) has supported the prosecution case stating that he gave dowry at the time of marriage. His daughter was later tortured for ₹70,000/-. Upon receiving information, he went to her matrimonial home and brought her back in injured condition. However, in cross-examination he admitted no medical treatment was taken during transit despite continuous bleeding. He admitted availability of hospitals en route but did not utilize them. He had no direct knowledge of assault; facts were told by his daughter. He



admitted no prior complaint or letter from the victim regarding harassment. Thus, his evidence is largely based on what the victim told him, making it derivative in nature.

(vii) P.W.7 – Mother of the Victim has corroborated the version of P.W.6 and supported allegations of dowry demand, assault, and abortion. However, she was not present at the place of occurrence. She admitted that her husband alone brought the victim. She lacks direct knowledge of the incident. Hence, her testimony is also hearsay and corroborative only in nature.

(viii) P.W.8 – Victim (Anita Devi) is the star witness and has fully supported the prosecution case. She deposed that she was subjected to cruelty and dowry demand of Rs. 70,000/-. She was assaulted by in-laws during pregnancy. Her father-in-law pressed her abdomen leading to bleeding and abortion. She was taken by her father for treatment after the incident. However, in cross-examination she admitted delay and inconsistency in seeking medical treatment. She did not take treatment at available hospitals at Garhwa or Sasaram immediately. She gave inconsistent statements regarding residence of her husband. No independent corroboration of her narration to other witnesses.



(ix) P.W.9 – Dr. Rajesh Kumar Gupta (Medical Officer) he examined the victim and found:

- I. Bleeding from vagina,
- II. Pain and swelling in abdomen,
- III. Bruises in pelvic region.

He opined that injuries could cause abortion due to assault. However, he is a private practitioner and not a gynecologist. Injury report produced is photocopy (marked 'X') and not legally admissible. He admitted that findings were based partly on patient's own statement. No police intimation was made despite it being a medico-legal case. He did not find clear signs of prior pregnancy. Thus, medical evidence is weak and not fully reliable.

17. On the basis of materials surfaced during the trial, the appellants were examined under Section 313 of the Cr.P.C. by putting incriminating circumstances/evidences surfaced against them, which they denied and claimed innocence.

18. In the present case, the Investigating Officer has not been examined by the prosecution. The records disclose that the Investigating Officer was not examined during the course of trial. Undoubtedly, the Investigating Officer is a



material witness, being essential to explain the manner in which the investigation was conducted and the steps taken during the investigation. His examination also affords the defence an opportunity to test the fairness of the investigation through cross-examination. However, it is well settled that the mere non-examination of the Investigating 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 the case of ***Ram Gulam Chaudhary v. State of Bihar***, reported in ***(2001) 8 SCC 311*** in para no. 18, which is reproduced hereinafter:

“26. In the case of Ram Dev v. State of U.P. [1995 Supp (1) SCC 547 : 1995 SCC (Cri) 402 (2)] this Court has held that it is always desirable for the prosecution to examine the investigating officer. However, non-examination of the investigating officer does not in any way create any dent in the prosecution case much less affect the credibility of the otherwise trustworthy testimony of the eyewitnesses.

27. In the case of Behari Prasad v. State of Bihar [(1996) 2 SCC 317 : 1996 SCC (Cri) 271] this Court has held that for non-examination of the investigating officer the



prosecution case need not fail. This Court has held that it would not be correct to contend that if the investigating officer is not examined the entire case would fall to the ground as the accused were deprived of the opportunity to effectively cross-examine the witnesses and bring out contradictions. It was held that the case of prejudice likely to be suffered must depend upon the facts of each case and no universal straitjacket formula should be laid down that non-examination of investigating officer per se vitiates the criminal trial.

28. In the case of Ambika Prasad v. State (Delhi Admn.) [(2000) 2 SCC 646 : 2000 SCC (Cri) 522] it was held that the criminal trial is meant for doing justice not just to the accused but also to the victim and the society so that law and order is maintained. It was held that a Judge does not preside over the criminal trial merely to see that no innocent man is punished. It was held that a Judge presides over criminal trial also to see that a guilty man does not escape. It was held that both are public duties which the Judge has to perform. It was held that it was unfortunate that the investigating officer had not stepped into the witness box without any justifiable ground. It was held that this conduct of the investigating officer and other hostile witnesses could not be a ground for discarding evidence of PWs 5 and 7 whose presence on the spot was established beyond any reasonable doubt. It was held that non-examination of the investigating officer could not be a ground for disbelieving eyewitnesses.

29. In the case of Bahadur Naik v. State of Bihar [(2000) 9 SCC 153 : 2000 SCC (Cri) 1186] it was held that non-examination of an investigating officer was of no consequence when it could not be shown as to what prejudice had been caused to the appellant by such non-examination..”

19. On careful consideration of the prosecution case and the evidence of the prosecution witnesses, it appears that although the victim (P.W.8) has supported the allegations of



cruelty, dowry demand of Rs. 70,000/-, and assault leading to miscarriage, her testimony remains the sole substantive basis of the case and is not sufficiently corroborated by reliable independent evidence, the remaining witnesses, namely P.W.1, P.W.2, P.W.3, P.W.4, P.W.6, and P.W.7, are admittedly not eye-witnesses and their statements are largely hearsay in nature, being based on what they claim to have been told by the victim, which is further weakened by the fact that the victim herself has not consistently affirmed such disclosures, thereby rendering their evidence of limited probative value even P.W.5 (husband), though partly supporting the prosecution, has no direct knowledge of the occurrence and his testimony is affected by admitted family disputes and absence of concrete proof of dowry demand. The medical evidence of P.W.9 also does not conclusively support the prosecution case as the injury report is not duly proved, the doctor is not a specialist, findings are partly based on the victim's own narration, and there is no clear medical confirmation of pregnancy or miscarriage. The conduct of the informant in not seeking immediate medical treatment despite alleged continuous bleeding, coupled with absence of any prior complaint or contemporaneous report, creates serious doubt regarding the veracity of the prosecution story. No



independent witness has supported the case and the entire prosecution rests upon interested and hearsay witnesses, and in such circumstances, this Court finds that the prosecution has failed to establish the charges beyond reasonable doubt, entitling the appellants to the benefit of doubt.

20. In criminal jurisprudence, the prosecution is required to prove its case beyond reasonable doubt. In the present case, the evidence on record suffers from material inconsistencies, lack of independent corroboration and procedural lapses which may have prejudiced the appellant, However, it is a well settled law that mere non-joining of an independent witness, where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot create reasonable doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellant. Reference in this regard can be drawn from the judgment rendered by the Apex Court in the case of ***Gian Chand vs State of Haryana***, reported in ***(2014) 4 SCC (Cri) 226***, in paragraphs No.34 and 35 which are reproduced hereinafter:

“34. In Appabhai v. State of Gujarat [1988 Supp SCC 241 : 1988 SCC (Cri) 559 : AIR 1988 SC 696] this Court dealt with the issue of non-examining the independent witnesses and held as



under : (SCC pp. 245-46, para 11)

“11. ... the prosecution case cannot be thrown out or doubted on that ground alone. Experience reminds us that civilised people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, towns or cities. One cannot ignore this handicap with which the investigating agency has to discharge its duties.”

35. The principle of law laid down hereinabove is fully applicable to the facts of the present case. Therefore, mere non-joining of an independent witness where the evidence of the prosecution witnesses may be found to be cogent, convincing, creditworthy and reliable, cannot cast doubt on the version forwarded by the prosecution if there seems to be no reason on record to falsely implicate the appellants”

21. In view of the aforesaid discussions, I am of the opinion that the prosecution has been able to establish the charges against the appellants beyond reasonable doubt and the learned trial court has not erred in recording conviction, which is in accordance with law.

22. Accordingly, the present appeal is dismissed. The impugned judgment of conviction and order of sentence dated 12.07.2011 passed by the learned Additional Sessions Judge, Fast Track Court-I, Rohtas at Sasaram in S. Tr. No. 556 of 2004 is sustained.



23. The period of detention already undergone by the appellant during investigation and trial shall be set off against the substantive sentence of imprisonment imposed upon him, in accordance with law.

24. The appellant is directed to be taken into custody forthwith.

(Purnendu Singh, J)

Ashishsingh/-

AFR/NAFR	NAFR
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