

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No. 505 of 2015

Arising Out of PS. Case No.-156 Year-2012 Thana- KHAGARIA District- Khagaria

Ranjit Sharma Son of Ramchandra Sharma, Resident of Village
-Ranisakarpura, P.S. - Khagaria (Gangour), District - Khagaria.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Code of Criminal Procedure, 1973---Section 374 (2), 389 (1), 53, 53A---
Indian Penal Code---section 376---Evidentiary value of testimony of
prosecutrix in rape cases---Appeal against conviction u/s 376 IPC on
allegation of committing rape of prosecutrix---in a case of rape, the
testimony of a prosecutrix stands on a better footing as compared to that of
an injured witness and conviction can be recorded on the sole testimony of
the prosecutrix, if her evidence inspires confidence and there is absence of
circumstances, which militate against her veracity---evidence of the
prosecutrix in present case is not only credible but also reliable and fully
trustworthy as also there is no reason to doubt about the genuineness of the
same, hence, the conviction of the appellant, relying on the sole testimony of
the prosecutrix, can definitely be sustained---It is a well settled law that the
persecution case need not fail solely due to non-examination of the
Investigation Officer, as long as the eye-witness (prosecutrix in the present
case) credibility stays intact---considering the credibility and trustworthiness
of the evidence of the prosecution, coupled with the medical report / FSL
report, there is no reason to create any doubt---Sexual violence is not only a
barbaric act but a crime against basic human rights as also violative of the
victim's fundamental right, namely the right to life, thus, the Courts are not
only expected to deal with cases of rape with utmost sensitivity but also
sternly and mercilessly---appeal dismissed. (Para 12-16)

(2010) 2 SCC 9, (2010) 8 SCC 191, (2018) 18 SCC 34, (2002) 6 SCC 81,
(1996) 2 SCC 317, (2020) 10 SCC 573

.....**Referred To.**

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The State Of Bihar

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Appearance:

For the Appellant/s : Mr. Neeraj Kumar Alias Sanidh, Adv.
Mr. Ashwani Raj Narayan, Adv.
Mr. Mukund Kumar, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date : 18-01-2025

The present appeal under Section 374 (2) read with Section 389 (1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Cr.P.C.”) has been preferred against the judgment of conviction and sentence dated 12.05.2015 and 18.05.2015 respectively, passed in Sessions Trial No. 216 of 2012 (arising out of Khagaria (Gangour) P.S. Case No. 156 of 2012) by the learned 1st Additional Sessions Judge, Khagaria (hereinafter referred to as “the learned Trial Judge”). By the said judgment, the learned Trial Judge has convicted the sole appellant for commission of offence under Section 376 of the Indian Penal Code and sentenced him to



undergo rigorous imprisonment for life.

2. Short facts of the case are that on 31.03.2012 at 22:00 hours, fardbeyan of one Sumitra Devi, wife of Arjun Goswami (P.W. 2), was recorded by the Station House Officer (SHO), Gangour O.P. (Camp Sadar Hospital, Khagaria), at Sadar Hospital, Khagaria. In the fardbeyan, Smt. Sumitra Devi (hereinafter referred to as “the informant”) has stated that her grand-daughter (hereinafter referred to as “the prosecutrix”) was staying with her since past 3-4 years in her house. On 31.03.2012 at about 6:00 pm in the evening, when the informant and the prosecutrix were at home and the prosecutrix was playing, the informant had gone to the house of her neighbour, namely, Kaushaliya Devi, to borrow some money, while asking the prosecutrix to remain inside the house, however, when she returned back to her house, at about 7:00 pm then she saw that her grand-daughter was wriggling in pain, was crying and saying that the neighbour namely, Ranjit Sharma i.e. the appellant herein, had opened her *pajama* (trouser) and has committed wrong with her, whereafter the informant had lighted a torch and saw that the clothes of the prosecutrix below her waist were wet with blood and blood had fallen on the ground apart from blood oozing out from her private parts which had



also fallen on her foot. The informant had raised an alarm, whereafter neighbours had arrived and then the prosecutrix was taken to the Sadar Hospital, Khagaria, where her treatment is going on. On receiving information, the Officer-in-Charge, Gangour Police station had arrived at the hospital and recorded the fardbeyan of the informant. After the fardbeyan was read over to the informant, she had put her right thumb impression over the same.

3. After recording of the fardbeyan, a formal FIR bearing Khagaria (Gangour) P.S. Case No. 156 of 2012 was registered for offence under Section 376 of the Indian Penal Code on 01.04.2012 at about 10:30 am against one Ranjit Sharma (Appellant). After investigation and finding the case to be true qua the appellant, the police had submitted charge-sheet on 31.05.2012 against the appellant. Thereafter, on 04.06.2012, the learned Chief Judicial Magistrate, Khagaria, had taken cognizance of offence under Section 376 of the Indian Penal Code and subsequently on 23.06.2012, the case was committed to the Court of Sessions and was numbered as Sessions Trial No. 216 of 2012. On 27.09.2012, charge under Section 376 of the Indian Penal Code was framed against the appellant. During the course of trial, while P.W.1 Saudagar Paswan, P.W.3 Naresh



Goswami, P.W.5 Ramdeo Rajak, P.W.6 Raj Kumar Mahto and P.W.7 Gauri Shankar Goswami had turned hostile, the informant i.e. P.W. 2 Sumitra Devi and the prosecutrix i.e. P.W. 8 were examined and cross-examined. P.W. 4 Dr. Manju Kumari, who had examined the prosecutrix and prepared the medical report / supplementary medical report, has also been examined and cross-examined.

4. Sri Neeraj Kumar, the learned counsel for the appellant, after referring to the entire evidence and the materials on record, has argued that the prosecution has not proved its case beyond all reasonable doubt, hence, the learned Trial Judge has incorrectly passed the judgment of conviction under challenge. It has been argued that all the independent witnesses, i.e. P.W.1, P.W. 3 and P.W. 5 to P.W.7, have turned hostile. As far as P.W. 2 i.e. the informant and grandmother of the prosecutrix is concerned, there are several contradictions, in between her fardbeyan and her testimony. While P.W.2 has stated in the fardbeyan that when she returned back to home on 31.3.2012 in the evening she found her grand-daughter crying with pain and her clothes were soaked with blood whereupon the prosecutrix had narrated the aforesaid occurrence and then the prosecutrix was taken to Khagaria Hospital where the police, upon receiving



information, had arrived and recorded her fardbeyan, however, in her evidence, she has stated that she had gone to the Hospital via Gangour Police Station from where the SHO of the said Police Station had accompanied them to the hospital and though the prosecutrix was unconscious at home however, she had regained consciousness in the hospital at around 3:00 am in the morning. Similarly, the prosecutrix i.e. P.W. 8 has stated in her evidence that she was taken to the hospital via Gangour Police Station from where the police had accompanied them to the hospital. Thus, it is submitted that the evidence of P.W.2 and P.W. 8 does not inspire confidence, rather appears to be untruthful. The learned counsel for the appellant has further submitted that the vaginal swab report of JLMNCH, Bhagalpur, shows that no spermatozoa has been found as also the medical report does not corroborate the factum of rape and in fact suggests that injury has been caused due to pointed hard substance. It is next submitted that FIR has not been exhibited and the Investigating Officer has not been examined, which has caused grave prejudice to the petitioner, inasmuch as the same would have revealed the actual facts and circumstances of the case and as to how the fardbeyan came to be recorded at 10:30 pm on 31.03.2012. Lastly, the learned counsel for the appellant



has referred to Section 53 of the Cr.P.C. to submit that the same has been violated, hence, the appellant has been prejudiced.

5. The learned APP for the State, Sri Dilip Kumar Sinha, opposing the appeal, has argued that in a case like the present one, the sole testimony of the prosecutrix is enough to uphold the conviction of the appellant. By way of referring to the evidence of the prosecutrix (P.W.8), he has argued that the prosecutrix has consistently disclosed the factum of rape, having been committed with her by the appellant and thereafter, she being taken to the hospital via Gangour Police Station from where the police had accompanied them, which also stands corroborated from the medical report as also the FSL report. It is also submitted that non-examination of the informant and the FIR having not been exhibited has not prejudiced the appellant in the facts and circumstances of the present case, especially in view of the fact that neither the place of occurrence is disputed nor the factum of rape committed upon the prosecutrix is in dispute, which stands substantiated by the evidence of PW 2 & PW8 as also the medical reports on record. It is submitted that the appellant has committed a heinous crime with a seven years old child, hence no sympathy should be shown by this Court, thus, the appeal is fit to be dismissed being devoid of any



merit.

6. Besides hearing the learned counsel for the parties, we have minutely perused both the evidence i.e. oral and documentary. Before proceeding further, it is necessary to cursorily discuss the evidence.

7. The informant Sumitra Devi (P.W.2), who is the grandmother of the prosecutrix, has stated in her evidence that about 11 months back, on a day which was Saturday, at about 6:00 pm in the evening, she and her grand-daughter aged about 7 years were in their house, whereafter she had gone to her neighbour's house to borrow a sum of Rs. 100/-, leaving behind her grand-daughter at the house, where she started talking with her neighbour and then she returned back to her house at about 7:00 pm in the evening and saw that her grand-daughter was crying with pain and blood was oozing out from her private parts as also her clothes were soaked with blood and blood had fallen on the ground. On being asked, the prosecutrix told her that the appellant had committed rape with her, after opening her *pajama*. P.W. 2 has further stated that when she was coming back from her neighbour's house, she had seen the appellant fleeing away after jumping the wall. Thereafter, the prosecutrix was taken to the hospital at Khagaria for treatment where the



Police Officer had come and recorded her fardbeyan, which was read over to her, whereafter she had put her mark over the same after finding the same to be correct and there her nephew was also present. P.W. 2 had also recognized the appellant. In her cross-examination, P.W. 2 has stated that her husband's name is Arjun, who used to run iron business at Naugachhia and her brother-in-law's name is Sahdev and she used to stay at Naugachhia along with her husband. P.W. 2 has denied the fact that she was in love with her brother-in-law and that she had come to Chhoti Rani Sakarpura with him. P.W.2 has stated that she had filed a case against Arjun, which is going on at Bhagalpur. P.W. 2 has further stated that she was not having any child and though she had given birth to one child but he died within six months, whereafter no child was born. P.W.2 has further stated that she had bought 5 dhur land vide a sale deed at Chhoti Rani Sakarpura from one Jagdambi Mahto for Rs. 7,000-8,000/- and a total sum of Rs. 10,000/- was spent. P.W.2 has denied borrowing a sum of Rs. 30,000/- from the father of the appellant, namely, Ramchandra for purchasing 5 dhur land as has also denied any dispute having ever taken place with him on account of P.W. 2 having not returned back the money to Ramchandra. In cross-examination, P.W. 2 has stated that when



she returned home on the fateful evening, the prosecutrix was unconscious and she regained consciousness at the hospital at about 3 am in the morning, after injection was inoculated and medicine was administered. P.W. 2 has further stated in her cross-examination that she had gone to the hospital with her grand-daughter in Bolero vehicle via Gangour Police Station and the Police Officer had also accompanied them to the hospital. P.W. 2 has stated that they had reached Gangour Police Station at about 9:00 pm in the night and Chandrachur Mahto, Pappu Yadav and Giwachh Goswami had accompanied them in the Bolero vehicle. P.W. 2 has also stated in her cross-examination that she owns a goat and wood pieces are kept in the house for the purposes of being used as firewood. P.W.2 has denied that the prosecutrix had gone to graze the goat and in the process, had fallen on the firewood, leading to her sustaining injuries.

8. P.W.8, i.e. the prosecutrix has stated in her Examination-in-chief that the occurrence is two years old when at about 6-7 pm in the evening while she was alone in the house, her grandmother had gone to the house of Kumhar Nana for borrowing money while telling her that she had put the mobile on charge and if her mobile rings she should pick up the phone



and should keep sitting on the chair. Thereafter, the appellant had arrived there, opened her *Pajama* and had inserted his thick object in her hole through which urination is done, leading to blood oozing out from there and pain had also started. She has also stated that the appellant had inserted his penis in her urination hole, whereupon she had raised an alarm but he had pressed her mouth and then he had fled away. Thereafter, the grandmother of the prosecutrix had arrived there and taken her to Sadar Hospital, Khagaria, where her treatment was done and there the police had arrived and recorded her statement. P.W. 8 had also recognized the appellant. In her cross-examination, the prosecutrix has stated that the appellant had entered the house after five minutes of her grand-mother leaving the house and he had committed wrong with her while sitting on the chair as also on the ground and at that time she was wearing *pant* and *pajama* and above the waist she was wearing suit. She has also stated that the appellant had before committing wrong with her opened her *pajama* and *pant* and removed the same from her body. P.W. 8 has further stated in her cross-examination that when her grand-mother arrived then she covered herself with a bedsheet and sat on the bed, whereafter her grand-mother took her to Khagaria hospital via Gangour and the police had also



accompanied her to Khagaria. P.W. 8 has denied the suggestion to the effect that she had fallen on a *khuta* (peg) used for tying the goat and the same had led to the injuries sustained by her and the appellant had not committed any wrong with her.

9. We have also gone through the seizure list dated 01.04.2012, wherein the details of the article seized from the house of the prosecutrix have been mentioned and the same includes one black color undergarment (panty/half pant) on which bloodstains and sperm type stains have been found, one yellow and white color two piece suit which was also bloodstained and one orange color *pajama* on which bloodstains were present. We have also seen the report of the Forensic Science Laboratory, Government of Bihar, Patna, dt. 24.8.2012, relevant portion whereof is reproduced herein below:-

“DESCRIPTION OF ARTICLE (S) CONTAINED IN PARCELS (S)”

1. The packet marked 'A' contained one old torn and dirty black colour janghia said to be pant which bore reddish brown stains at places. It also bore greyish white stains which were stiff to feel and which produce characteristic bluish white fluorescence in ultra violet light.
2. The packet marked 'B' contained one yellow white colour upper part of two piece which bore reddish brown stains at places. It also bore greyish white stains which were neither stiff to feel nor did they produce any



characteristic bluish white fluorescence ultra violet light.

3. The packet marked 'C' contained one old, torn and dirty orange colour pajama which bore reddish brown stains over large areas. It also bore greyish white stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

RESULT OF EXAMINATION

1. Blood has been detected in the exhibits as follows :-

(i) Exhibit marked - A - At places.

(ii) Exhibit marked - B- At places.

(iii) Exhibit marked - C-over large areas.

2. Semen has been detected in the exhibit marked 'A'.

3. Semen could not be detected in any of the exhibit marked 'B' and 'C'.

4. Serological report on origin and group of blood and semen would follow.”

10. The medical report dated 01.04.2012, prepared by P.W. 4 Dr. Manju Kumari has been marked as Exh.-1, relevant portion whereof is reproduced herein below:-

“Height- 3 feet Teeth- 24

Weight-17 kg. MI- Old Scur mark on left knee joint.

Breast not developed

Axillary hair not present. No pubic hair present.

A lacerated wound 2 cm x 1 /4 cm x 1/ 4 cm long vertical



in the midline (at 6 o'clock) position over perineum and extended through Pos. commissure and farcheseu fresh blood over the labia laceration.

Bruise 1/2 cm x 1/ 2 cm over left and right wall of vagina.”

In the supplementary medical report dated 21.5.2021, marked as Exh. 1/1 prepared by P.W.4, it has been opined that on the basis of genital injury, evidence of rape is present. P.W.4 i.e. Dr. Manju Kumari has stated in her examination-in-chief that on 01.04.2012, she was posted at Sadar Hopital Khagaria as Medical Officer and had examined the prosecutrix and found the injuries, as has been recorded by her in the medical report dated 01.04.2012 which has been proved by her inasmuch as she has stated that the same was prepared by her as also bears her signature. P.W.4 has also proved the supplementary medical report of the prosecutrix dated 21.05.2012, wherein it has been opined that considering the genital injury, evidence of rape is present. In her cross-examination, P.W.4 has stated that injury found on the body of victim may be possible by pointed hard substance but she has denied that she had not found any evidence of rape on the victim and that her report and opinion is untrue.

11. As regards the arguments advanced by the learned



counsel for the appellant, we have perused the evidence of P.W.2 and P.W.8 from which we find that minor inconsistencies on trivial matters might be there on account of the said witnesses belonging to rustic background and being practically illiterate, hence, to examine their evidence with microscopic approach would be contrary to the aim and object of justice oriented judicial system. Upon perusal of the fardbeyan of P.W. 2 and the evidence of P.W. 2 and P.W. 8, we find that the factum of rape having been committed by the appellant with the prosecutrix is narrated therein consistently apart from there being no discrepancy/contradiction. We also find from the medical report dated 01.04.2012 that injury / lacerated wound has been found over the left and right wall of vagina and in the midline portion over the perineum, which extends up to posterior commissure, which definitely corroborates the factum of rape having been committed upon the prosecutrix and the same also stands substantiated from the supplementary medical report dated 21.5.2012, wherein it has been opined that evidence of rape is present, considering the nature of genital injury, which further stands corroborated from the report of the Forensic Science Laboratory, Bihar, Patna, dated 24.8.2012, according to which blood has been detected on the clothes of the prosecutrix



while semen has been detected on her undergarment (*panty*). It is not necessary that semen / sperm should be found within the vagina.

12. It is a well-settled law that in a case of rape, the testimony of a prosecutrix stands on a better footing as compared to that of an injured witness and it is really not necessary to insist for corroboration, if the evidence of the prosecutrix inspires confidence and appears to be credible. It is equally a well-settled law that conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances, which militate against her veracity. Reference, in this connection be had to the judgment, rendered by the Hon'ble Apex Court in the case of ***Wahid Khan vs. State of Madhya Pradesh***, reported in (2010) 2 SCC 9 as also to the judgment, rendered in the case of ***Vijay @ Chinee vs. State of Madhya Pradesh***, reported in (2010) 8 SCC 191. It would be gainful to refer to yet another judgment, rendered by the Hon'ble Apex Court in the case of ***Sham Singh vs. State of Haryana***, reported in (2018) 18 SCC 34, paragraphs no. 6 and 7 whereof are reproduced herein below:-

“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]).”

13. We find that the evidence of the prosecutrix is not only credible but also reliable and fully trustworthy as also there is no reason to doubt about the genuineness of the same, hence, the conviction of the appellant, relying on the sole testimony of the prosecutrix, can definitely be sustained. In the case of **Ganesan vs. State**, reported in (2020) 10 SCC 573, the Hon’ble Apex Court has observed and held that there can be a conviction on the sole testimony of the victim / prosecutrix when the deposition of the prosecutrix is found to be trustworthy, unblemished and credible.

14. As regards the farbeyan / FIR being not exhibited and



proved, this Court would refer to the observations of the Hon'ble Supreme Court of India in the case of ***Krishna Mochi & Others vs. State of Bihar***, reported in (2002) 6 SCC 81, wherein it has been held that even if the first information report is not proved, it would not be a ground for acquittal but the case would depend upon the evidence led by the prosecution. In the present case, the occurrence, as narrated in the fardbeyan / FIR, has also been narrated in the evidence of P.W.2 and P.W. 8, hence, merely because the fardbeyan / FIR has not been exhibited in the present case, the same has neither caused any prejudice to the appellant nor it makes any material difference. As far as non-examination of investigating officer is concerned, we find that the Appellant has failed to demonstrate the prejudice caused to him, hence the same cannot in any manner effect the prosecution case. It is a well settled law that the persecution case need not fail solely due to non-examination of the Investigation Officer, as long as the eye-witness (prosecutrix in the present case) credibility stays intact. Reference in this connection be had to a judgment rendered by the Hon'ble Apex Court in the case of ***Behari Prasad & Ors. vs. The State of Bihar***, reported in (1996) 2 SCC 317. As regards the contention of the learned counsel for the appellant to the effect that Section



53 of the Cr.P.C. has been violated, we find that in the present case Section 53A of the Cr.P.C. would be applicable and not Section 53 of the Cr.P.C.. Moreover, the appellant was arrested after four days of commission of the offence, hence, the Investigating Officer might not have thought it proper to get the appellant examined by a Medical Practitioner in view of the fact that no recovery of the clothes of the appellant bearing bloodstains / semen was made. In fact, if the appellant was sanguine about his innocence, he could have moved an application before the learned Trial Court for examination of his semen / getting DNA test of his blood sample, hair, skin, tissue etc. conducted, for the purposes of matching the same with the semen / spermatozoa found on the undergarment of the prosecutrix, however he remained reticent.

15. Considering the facts and circumstances of the present case and the evidence, which has been brought on record to prove the allegations levelled against the appellant beyond pale of any reasonable doubt as well as considering the credibility and trustworthiness of the evidence of the prosecution, which has not been discredited during the course of cross-examination, coupled with the medical report / FSL report, there is no reason to create any doubt. We have examined the materials available



on record and do not find any apparent error in the impugned judgment of conviction and sentence, hence, the same does not require any interference.

16. Before parting, we may hasten to add that rape is the most heinous crime, not only against the victim but also the society at large which leaves the victims with deep emotional scar apart from being an unlawful intrusion on the right of privacy and sanctity of a female. Sexual violence is not only a barbaric act but a crime against basic human rights as also violative of the victim’s fundamental right, namely the right to life, as enshrined under Article 21 of the Constitution of India, thus, the Courts are not only expected to deal with cases of rape with utmost sensitivity but also sternly and mercilessly.

17. Accordingly, the present appeal i.e. Criminal Appeal (DB) No. 505 of 2015 stands dismissed.

(Mohit Kumar Shah, J)

(Shailendra Singh, J)

Ajay/-

AFR/NAFR	AFR
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