

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1012 of 2017**

Arising Out of PS. Case No.-42 Year-2014 Thana- MAHILA P.S District- West Champaran

Amal Yadav @ Amala Yadav S/O Gorakh Yadav R/O of Vill- Chandrapur
Bakawa, P.S. Chautarawa, Distt- West Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. P. N. Mishra, Advocate

For the Respondent/s : Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 06-01-2023

The instant Criminal Appeal has been filed against the judgment of conviction dated 18th January 2017 and order of sentence dated 20th January 2017 passed by Shri Durgesh Mani Tripathi, learned Additional Sessions Judge, Bagaha, West Champaran, in Sessions Case No. 294/15 (Computer Registration No. 1816/16), arising out of Bagaha Mahila P.S. Case No. 42 of 2014, whereby and whereunder the appellant has been convicted for the offence punishable under Section 376(1) of the Indian Penal Code (in short I.P.C) and he has been sentenced to undergo rigorous imprisonment for 10 years and fine of Rs. 10,000/- and in default of payment of fine, further sentenced to undergo simple imprisonment for one year.



2. The substance of the prosecution's case appearing from the Fardbeyan of informant on which basis the FIR of the instant matter was lodged, is as follows:-

As per the prosecution's story, on the alleged date and time of occurrence the informant went to attend call of nature in the *Sugarcane* field of one namely, Hira Lal and then the accused/appellant over-powered her and committed rape on her by tying towel on her mouth and when the informant started weeping then the accused assaulted her with a bat of *Hasiya* and also tore her clothes (*Nighty*) and after the alleged occurrence informant returned to her house and narrated the alleged occurrence to her family members.

3. After the completion of investigation, the police submitted charge-sheet under Sections 323, 376 and 504 of I.P.C. and the learned C.J.M took cognizance of the alleged offences mentioned in the charge-sheet against the appellant.

4. After the cognizance, the appellant's case was committed to the Court of Sessions and charges were framed against him for the offences punishable under Sections 323, 376 and 504 of I.P.C. The appellant pleaded not guilty and claimed to be tried showing his innocence and denied the charges and allegations made against him.



5. During the trial, the prosecution examined altogether

10 witnesses along with the victim which are as follows:-

PW-1:- XXXX, (Mother of the Victim)

PW-2:- Hari Chaudhary (Independent witness)

PW-3:- XXXX, (Informant/ victim)

PW-4:- Shubh Narain Yadav, (Investigating Officer)

PW-5:- XXXX, (Brother of the victim)

PW-6:- Dr. Akansha (Medical Officer)

PW-7:- Sumitra Devi (Independent Witness)

PW-8:- Rubi Devi (Independent Witness)

PW-9:- XXXX (Father of the victim)

PW-10:- Dhura Chaudhary (Independent witness)

6. Apart from the oral evidence the prosecution

submitted certain documents as documentary evidence and got

them marked as Exhibits in the following order:-

Exhibit-1:- Formal F.I.R.

Exhibit-2:- Written Report.

Exhibit-3:- Seizure of clothes of victim.

Exhibit-4:- Seizure of clothes of accused.

Exhibit-5:- Injury report of accused.

Exhibit-6:- Forwarding of I.O. for chemical examination.

Exhibit-7:- Injury Report of victim.



7. After the completion of the prosecution's evidence, the statement of the accused was recorded by the Trial Court and the circumstances appearing against him from the prosecution's evidences were explained to him but the appellant denied the said circumstances and claimed himself to be innocent.

8. In the defence, the appellant produced two defence witnesses DW-1 Mahesh Yadav and DW-2 Adhar Yadav. After conclusion of the trial the learned Trial Court convicted and sentenced the appellant in the manner mentioned-above.

9. The Learned counsel Mr. P. N. Mishra, appearing for the appellant has argued that the evidence of prosecutrix (PW-3) given before the Trial Court is full of contradictions and discrepancies on material points which create a serious doubt on the reliability of the prosecution's story and the allegation of rape made by the prosecutrix was not supported by the father and mother of the victim (PW-9 and 1 respectively) and other private witnesses other than the informant are hearsay witnesses and their evidences are not corroborative to the allegation made by the prosecutrix in her *Fardbayan*. It has been further argued that the Doctor concerned who medically examined the victim did not find any sign of rape on the person of the victim and neither any spermatozoa nor any injury on the private part of the victim was



found and these facts clearly rule out any possibility of rape with the victim and the Trial Court failed to appreciate the informant's evidence in the light of the evidence given by the parents of the victim and accordingly, the informant's evidence is not trustworthy even then the learned Trial Court placed reliance upon her evidence while convicting the appellant and it is relevant to submit here that the Doctor examined the prosecutrix just within one day of the alleged occurrence and the evidence given by the Doctor is not corroborative to the allegation of rape. Further argument is that the place of occurrence described in the FIR has not been proved and established by the prosecution during the trial and the learned Trial Court did not consider the fact that all the private witnesses are either interested or hearsay witnesses or chance witnesses in respect of the alleged occurrence of rape. It has been further argued that the major punishment of imprisonment awarded by the Trial Court upon the appellant is 10 years of rigorous imprisonment and the appellant has been languishing in custody since 21.09.2014 and accordingly, he has completed most part of the period of sentence of imprisonment and he belongs to a poor family and has rural background.

10. On the contrary, learned APP, Mr. Mukeshwar Dayal, appearing for the State has argued that during the trial the



prosecution established its case by adducing sufficient evidences and the most important evidence is victim's own deposition in which the said victim has fully supported the case of the prosecution and there was no reason for the victim to lodge a false case against the appellant and in this regard no enmity appears from the evidence of the prosecution witnesses in between the appellant and the victim's family. Further argument is that the prosecution established the place of occurrence before the learned Trial Court from the evidence of the Investigating Officer and the injury found on the body of the accused/appellant discussed in the impugned Judgment is a material corroboration to the allegation made in the FIR and from the evidences adduced by the prosecution during the trial the guilt of the appellant was satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the learned Trial Court.

11. After hearing the arguments advanced by learned counsels appearing for the parties and perusing materials available on record the following issues arise for consideration in this appeal:-

(i) Whether the evidence of the prosecutrix given before the Trial Court is sufficient to substantiate the allegation of rape



made in the FIR without getting corroboration from the medical evidence?

(ii) Whether the prosecution succeeded in proving the place of occurrence beyond all reasonable doubt?

(iii) Whether in the absence of the evidence of independent witness it was proper for the Trial Court to convict the appellant for the alleged offence of rape mainly considering the evidence of the prosecutrix?

12. I have heard both the sides and perused the evidences adduced by both the parties during the trial of the appellant and also has taken into account the statement of the accused.

13. In the offence of rape the most important witness that is to be considered is the victim herself, as generally such type of offence is committed when the victim is found alone and in the instant matter the Trial Court mainly placed reliance upon the evidence of the prosecutrix who was examined as PW-3. The witness deposed in the examination in chief that at the time of alleged occurrence she went to attend call of nature in the paddy field of one namely, Hira Lal but some persons were present in that field so she went in a sugarcane field where the accused/appellant over-powered her and closed her mouth by using a towel and sexually assaulted her and during that course she



resisted and caused injury at the face of accused and then the accused assaulted her by means of *Hasiya*. The victim remained firm in the cross-examination in respect of the said allegations and except the minor contradictions which happened due to lapse of time there is nothing which creates a doubt in the victim's evidence and moreover the said contradictions are not of such a nature to render the victim's evidence unreliable. During the investigation the investigating officer inspected the place of occurrence and found some part of sugarcane crop in a crushed condition and also found some broken pieces of bangles. The investigating officer examined as PW-4, supported the said facts in his deposition and the description of place of occurrence stated by him is corroborative to the allegation made by the prosecutrix. Though, in this case the medical evidence appearing from the statement of the doctor who medically examined the prosecutrix does not go in favour of the prosecution but here it is relevant to mention that the prosecutrix was not examined instantly after the alleged occurrence came in the knowledge of the police officer concerned. Here it is relevant to mention that as per the evidence of the prosecutrix some resistance was made by her when the accused was forcefully establishing sexual relation with her and during that resistance she scratched his face and during the course



of investigation the police got the accused examined medically whose report has been filed as Exhibit -5 and as per that examination report some marks of injury being in the nature of *Abrasion* was found on the lower lip of the accused and during the course of trial the accused did not explain the reason behind sustaining the said injury and the accused was medically examined just two days after the alleged occurrence and the said circumstance is also sufficient to corroborate the allegation made by the prosecutrix. Though in the instant case, the evidence of other private witnesses who were examined as PWs-7, 8 and 10 does not go in favour of the prosecution but some of these witnesses did not flatly deny the allegations made by the prosecution and they stated that they heard about the sexual assault having been committed by the accused/appellant with the prosecutrix. From perusal of depositions of the prosecution witnesses, I do not find any type of enmity between the family of the prosecutrix and the appellant though while recording the statement under Section 313 of Criminal Procedure Code (in short 'Cr.P.C') the accused/appellant took the plea that the prosecution witnesses deposed against him due to enmity. But the accused did not succeed in eliciting any fact from the prosecution witnesses in their cross-examination to substantiate the said defence and even



most of the prosecution witnesses were not cross-examined on the point of said defence.

14. In the case of ***State (N.C.T of Delhi) v. Pankaj Chaudhary reported in 2019 (11) S.C.C 575***, it was observed and held by the Hon'ble Apex Court that conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence and that there is no rule of law or practice that the evidence of the prosecutrix cannot be relied upon without corroboration. In the instant matter, the prosecutrix fully supported the case of prosecution and the marks of injury found on the lip of the accused is corroborative to the allegation of the prosecutrix and the description of the place of occurrence revealed by the investigating officer in his evidence is also corroborative and in presence of these materials, I find no reason to doubt the credibility or trustworthiness of the prosecutrix and in the case of ***Ganesan v. State (2020) 10 S.C.C 573***, it was observed and held by the Hon'ble Apex Court 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.

15. In the light of the above discussed facts, I am of the considered view that the conclusion made by the learned Trial Court in respect of the guilt of the appellant/accused is proper and



the conviction of the appellant is also proper and there is no need to interfere with the conclusion and findings of the learned Trial Court. Accordingly, I find no infirmity and illegality in the judgment and order impugned and so far as the punishment of imprisonment awarded by the learned Trial Court upon the appellant is concerned, the same has been awarded at the lower end of the minimum punishment prescribed under Section 376(1) of the I.P.C. so it will not be lawful to interfere in the said punishment. Accordingly, I find no merit in this appeal, therefore, it stands dismissed.

(Shailendra Singh, J.)

maynaz/-

AFR/NAFR	AFR
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