

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1297 of 2017**

Arising Out of PS. Case No.-149 Year-2006 Thana- BANMANKHI District- Purnia

Name of the Appellant- 'S' (Name changed)

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant	:	Mr. Viveka Nand Singh, Advocate.
For the State	:	Mr. Bipin Kumar, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT**

Date : 27-07-2022

Father is fortress, refuge and the trustee of his daughter. The prosecution case which is held to be true by the learned trial court is to the effect that act of the appellant/accused herein is a betrayal of the faith in the humanity inasmuch as the appellant, who happens to be father of the prosecutrix/ P.W.1 and who was under moral duty to protect her had himself committed rape on her. In view of the provisions of Section 74 of the Juvenile Justice (Care and Protection of Children) Act, 2015 as well as in view of object of Section 228A of the Indian Penal Code, I deem it appropriate to describe the appellant by word 'S'. The Registry shall upload this Judgment and Order on the website by ensuring that the cause title is reflected in the similar manner.



2. The appellant is convicted of the offence punishable under Section 376 of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for 10 years vide Judgment and Order dated 21.03.2017 and 22.03.2017 passed in Sessions Case No.557 of 2009 by the learned Additional Sessions Judge-V, Purnea. This Judgment and Order of conviction and resultant sentence is impugned in the instant appeal by the appellant/father. For the sake of convenience, the appellant shall be referred to as “an accused”.

3. Facts in brief projected from the police report leading to the prosecution of the accused can be summarized thus:

(a). The victim of the crime in question is P.W.1 who is being referred by me as ‘Ms. N’. She used to stay with her parents at village-Chandpur Bhangha falling within the jurisdiction of Police Station-Banmankhi/Jankinagar in Purnea District of the State of Bihar. It is case of the prosecution that at about 12.00 noon of 01.07.2006, when the prosecutrix/P.W.1 Ms. N, who at the relevant time was a female child aged about 13 years was at her house, her father, i.e., the accused ‘S’ enticed her and took her to their field which was located at the distance of about 2 kilometers from the house. There the



prosecutrix/P.W.1 Ms. N was taken inside the bamboo hut by the accused. He then committed forcible sexual intercourse with her. Because of this act of the accused, the prosecutrix/P.W.1 suffered lot of pain and she started bleeding from the vagina. She, therefore, started shouting. Hearing her shouts, the daughter-in-law of Radhe Yadav so also his granddaughter named, Anjana Kumari came on the spot. These two ladies also started shouting and, therefore, villagers gathered on the spot. Hence, the accused ran away from the spot through the fields of Banana. The prosecutrix/P.W.1 Ms. N was then taken to their house by the daughter-in-law of Radhey Yadav and Anjana Kumari, who happens to be granddaughter of Radhey Yadav. Grandfather of the prosecutrix/P.W.1 Ms. N then came at that place. With her grandfather, the prosecutrix/P.W.1 Ms. N then went to her own house. At that time, her mother was not present in the house. Her mother/P.W.3 to whom I shall refer as Mrs. J returned to the house thereafter. The prosecutrix/ P.W.1 narrated the incident to her mother.

(b). It is case of the prosecution that the accused was having good relation with the jurisdictional Police Station of Jankinagar. Hence, P.W.3 Mrs. J took the prosecutrix/P.W.1 to K. Hat Police Station (Khajanchi Hat Police Station) on the next



day, i.e., on 02.07.2006. On that day, the Sub Inspector B. Bhushan of the said K. Hat Police Station recorded the F.I.R. lodged by the prosecutrix/P.W.1 Ms. N. It was then sent to the Police Outpost of Jankinagar falling under jurisdiction of Police Station Banmankhi. That is how, Crime No.149 of 2006 for the offence punishable under Section 376 of the Indian Penal Code came to be registered against the accused on 03.07.2006. Wheels of investigation were then set in motion.

(c). The prosecutrix/P.W.1 Ms. N was then sent to the Sadar Hospital, Purnea, on 03.07.2006 itself whereat P.W.7 Dr. Sushila Das conducted her medical examination including the ossification test. Statements of the witnesses came to be recorded and on completion of routine investigation, the accused came to be chargesheeted.

(d). The learned trial court had framed and explained the charge to the accused. He pleaded not guilty and claimed trial.

(e). In order to bring home the guilt to the accused, the prosecution has examined as many as 9 witnesses. The prosecutrix Ms. N is examined as P.W.1. Ashish Kumar-brother of the prosecutrix is examined as P.W.2. Her mother Mrs. J is examined as P.W.3. Co-villagers Rameshwar Das and Brahmdeo



Yadav were examined as P.W.4 and P.W.5 respectively. They turned hostile to the prosecution. Indira Devi, a co-villager, is examined as P.W.6. Medical Officer of the Sadar Hospital, Purnea, Dr. Sushila Das is examined as P.W.7. Investigating Officer Vindhyachal Prasad of the jurisdictional Police Station is examined as P.W.8. Md. Janif Uddin, another Investigating Officer, who was the Police Station Officer of Jankinagar Police Station is examined as P.W.9.

(f). The defence of the accused as gathered from the line of cross-examination of the prosecution witnesses as well as from his statement recorded under Section 313 of the Code of Criminal Procedure was that of total denial and false implication at the instance of mother of the prosecutrix.

(g). After hearing the parties, by the impugned Judgment and Order, the learned trial court was pleased to convict the appellant/accused and to sentence him as indicated in the opening paragraph of this Judgment.

4. I heard the learned counsel appearing for the appellant at sufficient length of time. By taking me through the records and proceedings, he argued that evidence of the prosecution witnesses is inconsistent and lacunic. It is further argued that the prosecutrix was tutored by her mother to depose



a lie against the accused, who happens to be her own father. Her mother was having serious disputes with her in-laws and the accused. To buttress these submissions, my attention was drawn to the cross-examination of the victim of the crime in question so also that of her mother P.W.3 Mrs. J. It is further argued that the medical evidence on record is not supporting the case of the prosecution and, therefore, the appellant/accused deserves to be granted the benefit of doubt.

5. As against this, the learned A.P.P. opposed the appeal by contending that this is a case of commission of rape on a minor female child by her own father and, therefore, evidence of the prosecution is required to be appreciated in broader probabilities by ignoring the minor discrepancies in such evidence. He contended that the prosecutrix as well as her mother supported the case of the prosecution.

6. I have considered the submissions so advanced and I have also perused the records and proceedings including the oral as well as documentary evidence adduced by the prosecution.

7. The impression given at the first blush is reflecting heinousness of the crime as accusations against the accused are to the effect that instead of protecting his own minor female



child, he himself became rapist of his daughter by betraying the trust reposed on him by his daughter. By now, it is well settled that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout the life of such victims. It is also well settled that the victim of offence of rape is not an accomplice, but she is the victim of lust of another person. Her evidence, therefore, stands on higher pedestal than the evidence of an injured witness. Therefore, if totality of circumstances emerging on record discloses that the victim of such offence does not have any motive to falsely implicate the accused, then, it is absolutely not necessary to search for any corroboration to the evidence of the victim of such offence and the court is generally bound to accept version of such victim. However, the court must keep in mind a note of caution which is reflected in the Judgment of the Supreme Court in the matter of **Radhu Vs. State of Madhya Pradesh**, reported in **2007 Criminal Law Journal 4704**, wherein in paragraph-5, the Supreme Court has held thus:

“5. It is now well settled that a finding of guilt in a case of rape, can be based on the



uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrist, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. **The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent**



has persuaded a gullible or obedient daughter to make a false charge of rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case. (emphasis supplied)

Thus, note of caution which is sounded in this Judgment, is to the effect that false charges of rape are not uncommon and there are few instances wherein parents have persuaded the daughter to make a false charge of rape for some or the other reason or ulterior motive.

8. The victim of the crime in question, at the time of commission of alleged offence on her was merely 13 years of age. Age of the victim of the crime in question is not in dispute as the same is not challenged by the defence during the course of cross-examination of the victim of the crime in question. Even unimpeachable evidence of P.W.7 Dr. Sushila Das shows that the prosecutrix was aged about 13 to 14 years at the time of the incident. Thus, the prosecutrix was minor female child at the date of commission of offence alleged against her. This Court is required to appreciate evidence of the prosecutrix/P.W.1 Ms. N, who at the relevant time was 13 years of age and her



mother was having hostile relations with her father. Therefore, more care is required to be taken before accepting evidence of this victim of the crime in question. Child witnesses, on account of fear, inducement or allied reasons can be made to depose about the things which such witnesses have not perceived or seen. Child witnesses are susceptible to tutoring and often lives in a world of make belief. Therefore, evidence of child witnesses requires closer circumspection with careful scrutiny. It has to be accepted only when such evidence inspires confidence and is free from embellishment or improvement.

9. Keeping in mind these principles of appreciation of evidence of the child witness, let us examine evidence of the prosecutrix in this case. While in the dock, the prosecutrix/P.W.1 has stated that on 01.07.2006, when she was cutting the grass in her field, her father, i.e., the accused came and took her to the Bamboo Hut in the field. There he committed rape on her. The prosecutrix further stated that because of forcible sexual intercourse by her father, blood started oozing from her vagina and she started shouting. The victim of the offence further deposed that upon hearing her shouts, wife of Nepali, wife of Radhe and wife of Samiti came on the spot and took her to her house. As per her version, when these women appeared on the



scene of occurrence, her father ran away from the spot. The prosecutrix/P.W.1 Ms. N further deposed that when she was taken back to her house, her mother was not present in the house. She, therefore, disclosed the incident to Indira Devi (P.W.6). Upon return of her mother, she disclosed the incident to her mother.

10. So far as the lodgement of the F.I.R. is concerned, version of the prosecutrix/P.W.1 Ms. N is interesting. She stated that her statement was recorded by police but it was not read over to her. While in the dock, she only identified her signature on her F.I.R. and her signature was then marked as Ext.1. Strangely enough the F.I.R. lodged by the victim of the crime in question was not read over to her by the Prosecutor in order to prove contents thereof before the trial court. The victim of the crime in question further stated that she was thereafter medically examined on 03.07.2006.

11. Now, let us turn to the cross-examination of the prosecutrix/P.W.1 Ms. N in order to ascertain her credibility. At the outset, it needs to be put on record that the prosecutrix had demolished the entire case of prosecution during the course of her cross -examination. She has stated in her cross-examination that when she returned to her house, blood was still oozing from



her vagina and she was suffering from lot of pain. This Court will have to examine this aspect while considering the medical evidence adduced by the prosecution. Be that as it may, the prosecutrix stated during the course of her cross-examination that there was long standing dispute between her mother P.W.3 Mrs. J and her grandfather as well as grandmother, which is still continuing. Thereafter, the prosecutrix gave fatal blow to the case of prosecution by stating that her mother had prosecuted her grandfather as well as grandmother so also her father, i.e., the accused for the offence punishable under Section 498A of the Indian Penal Code. She was candid in accepting the fact that her grand parents as well as her father, i.e., the accused were imprisoned after registration of that offence at the instance of her mother. She clearly stated that when they all were released, her mother P.W.3 Mrs. J became angry with a reason as to how they were released from the prison. In a very clear tone, the prosecutrix further accepted the fact that thereafter her mother P.W.3 Mrs. J started deliberating as to how she can sent back her in-laws and her husband in the jail. The prosecutrix further added that then by enticing her, her mother P.W.3 Mrs. J took her to Purnea. She was then taken to the K. Hat Police Sation where the Police Officer took her signature on a paper. This



material elicited from cross-examination of the prosecutrix makes it clear as to why the learned Prosecutor had not dared to read over the contents of the F.I.R. allegedly lodged by the prosecutrix at the K. Hat Police Station to prove the same, despite the fact that in chief examination, the prosecutrix had made it clear that her F.I.R. was not read over to her. The learned Prosecutor obviously was not willing to take that risk due to fear that the prosecutrix may disown the prosecution case. The prosecutrix is further explaining in her cross-examination as to who is her mother in life by stating that her mother is acquainted with criminals and politicians of the village. The further part of cross-examination of this victim of crime is entirely demolishing the substratum of the prosecution case. The prosecutrix has candidly accepted the fact that the object of registration of this case by her mother is to keep her father in jail and that her mother intends to keep the land belonging to her grandfather in her own possession and, therefore, she is continuously filing the cases against her family members. The prosecutrix/ P.W.1 has not minced the words while accepting the fact that she has deposed before the court as per say of her mother and she had come to the court accompanied by her mother. Thus, the death knell is stuck to the



prosecution case by this candid version of the prosecutrix reflected from her cross-examination, which was for testing the veracity of her version. The material reflected from cross-examination of the prosecutrix thus unerringly points out that this poor and helpless daughter was made to depose a lie against her father, i.e., accused in order to seek material benefit for her mother from her family members. I have no doubt in my mind that the minor prosecutrix is a tutored witness who was made to sign on the F.I.R. without reading the contents thereof to her by taking her to the Police Station of the choice of her mother, i.e., P.W.3 Mrs. J and the prosecution is launched with a sole object to see that the husband of the P.W.3 Mrs. J is lodged behind the bars.

12. At this juncture, it is apposite to quote the relevant observations of the Supreme Court in the matter of **Raju Vs. State of M.P.**, reported in **(2008) 15 SCC 133**, paragraphs-11 and 12 of this Judgment read thus:

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly



where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the



evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

The court can not be oblivious to the fact that false allegation of rape can cause tremendous distress, humiliation and damage to the accused in such case particularly when his own daughter is used for this purpose.

13. It is trait that if version of the victim of sexual offence is truthful and trustworthy then it can be accepted in even if the medical evidence is not supporting the case of prosecution. Valuable reference can be had to this proposition in the matters of **Ranjit Hazarika Vs. State of Assam (1998) 8 SCC 635** and **B.C. Deva Vs. State of Karnataka (2007) 12 SCC 122**. What should be the quality of the evidence of the prosecutrix for placing explicit reliance there upon is explained by the Supreme Court in the matter of **Rai Sandeep Vs. State (NCT of Delhi)**, reported in **(2012) 8 SCC 21**. The law is laid



down scciently in paragraph-22 of the said Judgment which reads thus:

“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 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 person 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.”

Thus for placing explicit reliance on version of prosecutrix, such version should remain intact to the core spectrum of the crime and there should be no room for any doubt as to the factum of occurrence. However in a case in hand, version of the prosecutrix makes it clear that she had been tutored by her mother as to what she should depose before the court and, therefore, the prosecutrix does not seem to be a witness of truth in the case in hand. There is variation in the case sought to be made out from the F.I.R. of the prosecutrix and her substantive evidence before the court.

14. Let us, therefore, find out whether the version of the prosecutrix is gaining any corroboration from any other evidence available on the record. Medical evidence in such cases is normally important though in absence of medical evidence also, conviction can be secured in such offences. Let us, therefore, turn to the medical evidence coming on record from the mouth of P.W.7 Dr. Sushila Das. The crime in question allegedly took at about 12.00 in the afternoon of 01.07.2006. The F.I.R. was lodged on 02.07.2006 whereas the prosecutrix was examined by P.W.7 Dr. Sushila Das on 03.07.2006. At the cost of repetition, it is stated that evidence of the minor



prosecutrix is to the effect that because of the forcible sexual intercourse committed on her by her father, she started bleeding from vagina and that bleeding was continued even when she was reached to her House. Her mother P.W.3 Mrs. J has also stated that when she returned to the house in the evening, she saw her daughter (P.W.1) was still bleeding from the vagina, which was injured. On this backdrop, it is in evidence of P.W.7 Dr. Sushila Das that when she examined the prosecutrix, she noted that the prosecutrix was having an old hymen tear. However, there was no injury on the body of the prosecutrix. Internal examination of the prosecutrix did not reflect any injury. With these clinical findings, the Medical Officer while in dock has deposed that there were no signs of sexual intercourse with the prosecutrix but the possibility thereof can not be excluded. In cross-examination she candidly accepted that this statement is only on the basis of a presumption and not on the basis of the clinical examination of the prosecutrix. I may note that minor bruises, abrasions or scratches on the victim may disappear within few days of the occurrence but in the case in hand, the prosecutrix has candidly deposed about profused bleeding from her private part which continued for a very long time. In the morning hours of the third day, the prosecutrix was



examined by P.W.7 Dr. Sushila Das. In normal course, keeping in mind the age of the prosecutrix which was 13 years at the time of alleged commission of forcible sexual intercourse on her by an adult man who happens to be her own father, signs of damage to the private parts of the prosecutrix ought to have been there. However, except an old hymenal old tear, the Medical Officer could not notice any injury on the private part of the victim. This certainly creates reasonable doubt in the prosecution case and the medical evidence in no way corroborates the version of the victim of the crime in question.

15. The next material witness is P.W.3 Mrs. J, the mother of the prosecutrix. Her evidence is also interesting. As per her version, on the day of the incident she had been to the district place Purnia to attend the case filed by her under the Dowry Prohibition Act, 1961 obviously against her in-laws and her husband. She stated that when she returned to the house at 6.00 P.M, her daughter disclosed the incident to her. This witness specifically claimed that she noticed injury to the private part of her daughter and has also seen the blood oozing there from. The medical evidence which I have noted in the foregoing paras falsifies this claim of P.W.3 Mrs. J. This witness further stated that on the next day she took her daughter to the



police station where her daughter had lodged the F.I.R. She claims to be the witness to that F.I.R. This witness in chief examination itself proclaimed that prior to this incident she had prosecuted her in-laws and her husband i.e. the accused for offence of cruelty. In cross-examination she gave lame excuse for taking her daughter to K. Hat Police Station for filing the F.I.R. by stating that the accused was having good relations at the jurisdictional Jankinagar Outpost. One fails to understand as to how the accused can have good relations with the entire Police Outpost. Certainly, the F.I.R. was lodged not in a normal way but by enticing her daughter by this witness, as stated by her daughter itself. P.W.3 Mrs. J in cross-examination has accepted the fact that she had launched five prosecutions against the accused as well as his family members and that she had also prosecuted the husband of sister of her husband i.e. the accused. Though she denied that she want to grab the estate of her father-in-law, she accepted the fact that she had filed several civil cases in respect of the land of the family and is prosecuting those cases. Thus, evidence of this mother of the prosecutrix makes it clear as to how the prosecution for the instant offence is lodged and the reason thereof. This mother of the prosecutrix is having grudge against her husband and her in-laws and as



stated by her daughter, she enticed her daughter and obtained the signature of her daughter on the paper which was subsequently used as the F.I.R. This fact is clear from evidence of the prosecutrix itself as well as from the fact that the prosecutrix was taken not to the jurisdictional Police Station but to some other Police Station of the choice of this aggrieved mother. P.W.3 Mrs. J has stated in her evidence that blood stained clothes of her daughter were seized by police by effecting the seizure memo. However, except this bare statement of P.W.3 Mrs. J, there is no supporting evidence on this aspect led by the prosecution. If the prosecutrix was bleeding after this incident and as her clothes were stained with blood, it was incumbent on the part of the prudent Investigator to seize those clothes for subjecting them to the forensic examination. For the reasons best known to the prosecution such evidence is also not forthcoming and this aspect assumes importance because of discrepant and lacunic evidence of the prosecution. Thus it is not possible to accept the version of P.W.3 Mrs. J for corroborating the discrepant evidence of her daughter- the prosecutrix.

16. The third witness who is claiming to be an eye witness to the post event happenings is P.W.6 Indira Devi, wife



of Gajendra Prasad Yadav. She claimed in her evidence that she was present at her field supervising the agricultural operations which were being conducted by her laborers. She stated that she heard shouts and had seen the accused running away. P.W.6 Indira Devi claimed that then she found the daughter of the accused in the hut and her clothes were stained with blood. As per her version, she took the prosecutrix to the house of Upendra Yadav, who was member of the Panchayat Samiti. She claimed that the prosecutrix disclosed her that the accused committed rape on her. To test the veracity of this witness, she was subjected to cross-examination. She candidly accepted the fact that she had not disclosed the police that she had taken the prosecutrix to the house of the member of the Panchayat Samiti. She accepted the fact that father of the accused had prosecuted her husband vide Crime No. 24 of 2010 registered at the Police Station Jankinagar with an accusation that he was assaulted. When I compare evidence of this P.W.6 Indira Devi with that of the prosecutrix then it becomes obvious that P.W.6 Indira Devi is not a reliable witness. The prosecutrix in her evidence nowhere claimed that P.W.6 Indira Devi came on the spot of the incident and then took her to the house of Upendra Yadav. On the contrary as per version of the prosecutrix, wives of Nepali,



Radhe and Samiti came on the spot of the incident and reached her to her house. P.W.6 Indira Devi has an axe to grind against the accused as her husband is prosecuted by father of the accused. Hence, it is difficult to place reliance on the version of P.W.6 Indira Devi particularly when the same is not even in tune with that of the prosecutrix.

17. P.W.2 Ashish Kumar, who happens to be the brother of the prosecutrix, has stated that his sister informed his mother that the accused committed rape on her. This witness also attended the court along with his mother. The sister of this witness has not spoken about disclosure if any made by her in presence of this P.W.2 Ashish Kumar to her mother. Hence, evidence of P.W.-2 Ashish Kumar is of no assistance to the prosecution to prove the charge.

18. Rest of the witnesses such as P.W.4 Rameshwar Das and P.W.5 Brahmdeo Yadav have not supported the prosecution case. The Investigating Officer has only clarified the line of investigation conducted by him and that investigation is certainly lacunous as blood stained clothes of the victim were not seized and were not subjected to forensic examination.

19. To sum up, the evidence adduced by the prosecution in the case in hand is not at all trustworthy, reliable



and that of sterling quality. Totality of the circumstances appearing on record of the case disclose that the mother of the prosecutrix was having a strong motive to falsely implicate her husband in the crime in question by using her daughter as a tool and that is how her daughter had deposed what was tutored to her by her mother. Therefore, it is not possible to endorse the finding of guilt of the accused recorded by the learned trial court.

20. In the result, the appeal deserves to be allowed and is allowed by this Judgment. The impugned Judgment and Order of conviction and resultant sentence imposed on the appellant/accused is quashed and set aside. The appellant/accused is acquitted of the offence punishable under Section 376 of the Indian Penal Code. He be set at liberty if not required in any other case.

(A. M. Badar, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.07.2022.
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