

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.304 of 2021

Arising Out of PS. Case No.-576 Year-2019 Thana- SAHARSA SADAR District- Saharsa

Sukumar Jana, Son of Paresh Jana, Resident of Village Ekpura, Post Office Ekpura, Police Station Mohanpur, District West Medinapur (W.B)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjeev Kumar, Advocate Mr. Ashish Kumar Sinha, Advocate Ms. Preeti, Advocate
For the Informant	:	Mr. Shashank Shekhar Sinha, Advocate Mr. Rishit Deo Kumar Singh, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 06-12-2023

This appeal has been preferred by the appellant under Section 374(2) of the Code of Criminal Procedure, putting to challenge a judgment of conviction dated 27.01.2021 and an order of sentence dated 30.01.2021, passed by learned Additional Sessions Judge-1-cum-Special Judge, Saharsa, in S.T. No. 180 of 2019, arising out of Saharsa P.S. Case No. 576 of 2019, whereby the appellant has been convicted and sentenced as under:-



Appellant	Penal Provision	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Sukumar Jana	376 of the IPC	RI for 20 years	50,000/-	SI for three months
	384 of the IPC	RI for three years	10,000/-	SI for one month

2. The appellant and his wife were charged of the offences punishable under Sections 384, 386 read with 34 of the IPC and Sections 500 and 501 thereof. They were also charged of the offences punishable under Sections 67 and 67A of the Information Technology Act, 2000 ('IT Act' in short) in the aforesaid trial. Additionally, the appellant was charged of the offences punishable under Sections 376, 354C and 354D of the IPC. By the impugned judgment and order, the trial court has recorded acquittal of the appellant's wife/co-accused of all the charges for lack of evidence against her. The trial court has acquitted the appellant of the charge of offences punishable under Sections 67 and 67A of the IT Act, 354C, 500 and 386 of the IPC in absence of any cogent evidence adduced by the prosecution to establish the said charges against him. The trial court has concluded, on appreciation of evidence adduced at the trial, that the prosecution successfully proved beyond all reasonable doubts the charge of commission of offences punishable under Sections 376 and 384 of the IPC against the



appellant and accordingly the appellant has been sentenced to imprisonment and fine, as noted above.

3. The prosecutrix (PW-2) is the informant, whose computer typed written report dated 28.06.2019 addressed to the Officer-in-Charge, Sadar P.S., Saharsa is the basis for registration of the concerned Saharsa Sadar P.S. Case No. 576 of 2019, disclosing commission of the offences punishable under Sections 384, 386, 506 read with Section 34 of the IPC to which Sections 354C, 354D, 376, 420, 500 and 501 of the IPC and Sections 67 and 67A of the IT Act were subsequently added under an order dated 08.08.2019 passed by the court below.

4. From the written report of the prosecutrix (PW-2), it transpires that few months before the registration of the FIR, her husband was posted at Gaya. During the said posting at Gaya, the appellant used to come to the residence of the prosecutrix (PW-2) as a domestic help. The prosecutrix (PW-2) alleged in her written report that the other day when her husband had gone to office and her children to school, the appellant was working in her house. On her asking, the appellant prepared tea and gave it to her. The appellant thereafter went to the kitchen. Soon after having taken tea, the prosecutrix (PW-2) collapsed in the bed and became unconscious. Upon regaining consciousness, she



realized that something wrong had been committed with her. The appellant had disappeared in the meanwhile. The prosecutrix (PW-2), out of fear, did not disclose anything about the occurrence to her husband. The next day the appellant again came to the prosecutrix's residence on the pretext as a domestic help. He thereafter displayed to the prosecutrix (PW-2) the photographs and videos, apparently in relation to what he had committed with her the previous day. Under the threat of making the photographs and videos viral on social media, the appellant told her to abide by his wishes. Out of fear the prosecutrix (PW-2) touched his feet and beseeched him not to make the photographs and videos viral. He, however, did not relent and put off her clothes, committed rape upon her and again prepared numerous photographs and videos. He continued doing such acts subsequently under the threat of making the photographs and videos viral. In the meanwhile, the appellant made the prosecutrix (PW-2) pay to him Rs. 50,000-50,000/- on two occasions. She (the prosecutrix) would request her husband to transfer money in the account of the appellant on the false pretext of illness of the appellant's wife. Further, when the appellant was going to his hometown, the prosecutrix had given to him a sum of Rs. 30,000/-. After the appellant went back to



his hometown in West Bengal, the appellant and his wife (the co-accused) both started blackmailing her asking the prosecutrix (PW-2) to pay a sum of Rs. 1,00,000/- failing which they would put the photos and videos on social media. The husband of the prosecutrix, in the meanwhile, had been transferred to Saharsa from Gaya. Under the threat of losing her prestige, she got transferred by her husband in two accounts of the appellant sums of Rs. 50,000/- each in State Bank of India (Account No. 20321003893) and Punjab National Bank (Account No. 26020000100650596) again on the false pretext of treatment of the appellant's wife. Seven days before the date of lodging of the FIR, the appellant's wife sent through her WhatsApp her Account Number (0693010440370) maintained in United Bank of India, asking her (the informant) to deposit Rs. 3 lakhs in the said account by 26.06.2019 else she would make the photographs and videos viral. Out of fear, the prosecutrix (PW-2) was about to commit suicide on 20.06.2019 which was noticed by her husband, who saved her and thereafter the prosecutrix (PW-2) narrated to her husband the entire story. Enclosing the copies of the bank statements and the printout of WhatsApp messages, the written report was presented to the Officer-in-Charge of the police station on 28.06.2019.



5. During the course of investigation, the statement of the prosecutrix (PW-2) was recorded under Section 164 of the CrPC on 26.07.2019 by the learned Judicial Magistrate 1st Class, Saharsa (PW-5). In her statement recorded under Section 164 of the CrPC, the prosecutrix (PW-2) reiterated that she had become unconscious after taking tea given by the appellant and upon regaining consciousness she found herself nude and had felt that something wrong was committed with her. The appellant had disappeared. Out of fear, the prosecutrix did not disclose the incident to her husband. Two-three days thereafter, the appellant returned and started working in her house as a domestic help. When her husband (PW-1) had left the house for office and the children had gone to school, appellant showed the photographs and videos which he had captured while committing wrong with her and threatened that he would make them viral and show them to her husband also. When prosecutrix requested her not to do so, the appellant asked her to keep giving him money as and when he needed it. The appellant continued blackmailing the prosecutrix (PW-2) under the threat of making the photographs and videos viral. She also stated that she got transferred sums of Rs. 1,50,000/-, 50,000/-, 50,000/- and one lakh by her husband (PW-1) in the account of the appellant and his wife (co-accused).



Thereafter, the appellant's wife threatened her of making the photos and videos viral on social media if she did not deposit a sum of rupees four lakhs in her account. Only thereafter, the prosecutrix disclosed the entire incident to her husband. She further disclosed in her statement under Section 164 of the CrPC that in May 2019, the husband of the prosecutrix was transferred to Saharsa. The demand for transfer of money by the appellant and his wife persisted. A sum of Rs. 1 lakh was transferred from Saharsa also in the account of the appellant. When further demand of Rs. 4 lakh was made, the prosecutrix (PW-2) was left with no other option but to disclose the entire occurrence to her husband (PW-1).

6. The police upon completion of investigation submitted chargesheet against the appellant and his wife (co-accused) for commission of the offences punishable under Sections 354C, 354D, 384, 386, 376, 420, 500 and 501 read with Section 34 of the IPC and Sections 67 and 67A of the IT Act on 22.08.2019. Thereafter cognizance was taken by the learned Chief Judicial Magistrate on 02.09.2019 of the aforesaid offences against this appellant and his wife who are named in the FIR. Subsequently charges were framed by the trial court against the appellant and his wife, as has been mentioned hereinabove.



7. Five witnesses came to be examined at the trial by the prosecution to establish the charges against the appellant and the co-accused. PW-1 is the husband of the prosecutrix whereas PW-2 is the prosecutrix herself. PW-3, at the relevant point of time was posted as Incharge Technical Cell in Confidential Section of the office of Superintended of Police, Saharsa on the date of registration of the FIR. He had taken out the printout of WhatsApp messages which contained threatening and blackmailing messages which he had handed over to the Investigating Officer. PW-4 is the IO whereas PW-5 is the Magistrate, who had recorded the statement of the prosecutrix under Section 164 of the CrPC and proved the statement so recorded, which came to be marked as Exhibit-7. The prosecution, in addition to the oral evidence of the witnesses, brought on record following documentary evidences in support of the charge :-

Sl. No.	Description	Exhibit Number
1.	Written report of the prosecutrix	Exhibit-1
2.	Statement recorded under Section 164 of the CrPC of the prosecutrix	Exhibit-2
3.	Endorsement of the Officer-in-Charge of the Police Station on the written report	Exhibit-3
4.	Search/Seizure list of mobile phones from the possession of the appellant	Exhibit-4
5.	Search/Seizure list regarding seizure of mobile phones from the possession of the co-accused, i.e., the appellant's wife	Exhibit-4/1



6.	Charge-sheet	Exhibit-5
7	Case diary	Exhibit-6
8	Signature of PW-5 on the statement recorded under Section 164 of the CrPC	Exhibit-7

8. Further, following material exhibits were produced at the trial:-

Sl. No.	Description	Exhibit Number
i	Mobile Galaxy A50	Exhibit- I
ii.	Micromax Mobile	Exhibit-II
iii.	Galaxy J4	Exhibit-III

9. After closure of the evidence of the prosecution's witnesses the trial court examined the appellant and the co-accused under Section 313 of the CrPC so as to give them an opportunity to explain the incriminating circumstances which emerged against them based on the evidence of the prosecution's witnesses. We consider it beneficial to reproduce the circumstances brought to the notice of the appellant which, according to the trial court, were incriminating in nature against the appellant:-

"प्रश्न - क्या आपने साक्षियों का बयान सुना ?

उत्तर- हाँ ।

प्रश्न - साक्षियों का साक्ष्य है कि आप सुचिका के यहाँ गरेलु काम किया करते थे ?

उत्तर - गलत है ।

प्रश्न - आपके विरुद्ध साक्षियों का साक्ष्य है कि आपने सुचिका पीड़िता को चाय में नशीली पदार्थ मिलाकर उसे बेहोश कर नाजायज़ संबंध बनाया और मोबाइल में से गलत वीडियो एवं फोटो खींच लिया ?

उत्तर - गलत है ।

प्रश्न - साक्षियों का यह भी साक्ष्य है कि सूचिका को मोबाइल से खींचे गए फोटो और वीडियो दिखाकर और फेसबुक एवं व्हाट्सअप पर वायरल कर देने की धमकी देकर बराबर शारीरिक शोषण करते रहे



?

उत्तर - गलत है।

प्रश्न - साक्षियों का यह भी साक्ष्य आया है कि आपने अपनी पत्नी(सहअभियुक्ति) से मिलकर सूचिका को मोबाइल में लिए गए फोटो एवं वीडियो को दिखाकर फेसबुक एवं व्हाट्सअप पर वायरल कर देने की धमकी देकर ब्लैकमेलिंग कर बराबर रुपये लेता रहा ?

उत्तर- गलत है।

प्रश्न - सफाई में क्या कहना है ?

उत्तर - मैं निर्दोष हूँ। सफाई में साक्ष्य दूंगा।"

10. The defence got examined four witnesses at the trial to make out a case that the appellant was working on temporary basis at Gaya under Power Grid Corporation and for making his employment permanent, the husband of the prosecutrix had demanded some money from him which the appellant had paid after borrowing loans from his friends and relatives. Since, despite the assurance, the appellant's employment could not be made permanent, on persistent demand, the prosecutrix/her husband had returned part of the said amount through bank transactions.

11. As has been noticed hereinabove, the trial court, after having appreciated the evidence adduced at the trial has convicted the appellant of the charge punishable under Sections 376 and 384 of the IPC and has acquitted him of rest of the charges.

12. Mr. Sanjeev Kumar, learned counsel appearing on behalf of the appellant has submitted that there are material contradictions in the narration of the prosecution's case in the



written report, which is the basis for registration of FIR, her statement recorded under Section 164 of the CrPC and her evidence adduced at the trial. He has argued that the prosecutrix has been found to be untruthful in her deposition on oath at the trial on the point as to who had typed the written report. He contends that it is evident from her deposition that the prosecutrix was incapable of typing on computer, inasmuch as, she was not knowing as to which buttons on the keyboard were to be pressed for typing her own name in Hindi, though she deposed at the trial that the written report was typed by her on a computer. He accordingly contends that the prosecutrix is not a sterling witness and conviction based on the sole evidence of the prosecutrix uncorroborated by any other evidence, for offence punishable under Section 376 of the IPC, is not at all sustainable. He has further argued that it is the prosecution's case that the prosecutrix was blackmailed and exploited under the threat of making the photos and videos viral. The said photos or videos were never produced by the prosecution at any stage. He further submits that the place of the alleged occurrence of rape was located at Gaya, according to the prosecutrix where she was residing with her family in a multistorey building in which many families resided. It is evident that the said place of occurrence



was not even visited by the Investigating Officer, much less the same having been proved at the trial. On the point of conviction of the appellant for the offence punishable under Section 384 of the IPC he has submitted that the learned trial court has referred to two transactions each of Rs. 50,000/- deposited in the account of the appellant. He contends that the said amounts were deposited in the account of the appellant as part re-payment of the amount which the husband of the prosecutrix had taken an assurance that the appellant's employment would be made permanent. He further submits that it is highly improbable that someone will obtain extortion money through bank transactions. He further argues that in order to convict the appellant for the offence punishable under Section 384 of the IPC the trial court has relied on the screenshots of the WhatsApp messages which form part of the FIR. He submits that the trial court ought not to have taken in evidence the said messages/screenshots in the absence of non-compliance of the requirement of Section 65B of the Indian Evidence Act. An argument has also been made that the bank statements were obtained on 29.06.2019 which have been made part of the FIR registered on 28.06.2019. He contends that the bank's statements obtained on a date subsequent to lodging of the FIR could not form part of the FIR



and, therefore, the entire case of the prosecution becomes unreliable.

13. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor appearing on behalf of the State has defended the finding recorded by the trial court. He has submitted that there is no reason why the prosecutrix would make false accusation against the appellant of such nature at the risk of her social reputation, prestige and dignity. He contends that the minor inconsistencies in the statement of the prosecutrix may not be a reason for this Court to interfere with the finding of conviction since she has been substantially consistent in her evidence and the fact that the prosecutrix was being constantly blackmailed and successfully exploited under the threat of making inappropriate photographs and videos viral, corroborated by the bank transaction, do not render the finding of conviction recorded by the trial court untenable. He has submitted that the trial court upon due appreciation of evidence on record has rightly convicted the appellant of the offences under Sections 376 and 384 of the IPC.

14. Mr. Shashank Shekhar Sinha, learned counsel representing the informant has submitted that there is no material discrepancy in the evidence of the prosecutrix which is



trustworthy and is of sterling quality. He contends that the texts of WhatsApp messenger indicating threatening and blackmailing of the prosecutrix by the accused go to prove that the prosecutrix was put in the fear of harm to deliver money which falls within the definition of extortion under Section 383 of the IPC. He has argued that the trial court ought to have framed charge for the offence punishable under Section 506 of the IPC also, there being sufficient material for the same and, therefore, a *de novo* trial or adducement of additional evidence is required. He further submits that the three seized mobile phones of the accused persons were exhibited as Exhibit-1, Exhibit-2 and Exhibit-3 and seizure-list of the mobile phones by way of Exhibit-4 and Exhibit-4/1 respectively. The analysis of Call Detail Record (CDR) and analysis of Customer Acquisition Form (CAF) including the printout of the text of WhatsApp messages were handed over to the IO by PW-3 but the same were not duly appreciated by the trial court. He has argued that the primary evidence (mobile phones) from which electronic messages i.e. WhatsApp messages originated in the original form and the same were preserved and available for inspection of learned trial court, there was no requirement to prove the WhatsApp text in accordance with the provisions of Section 65B



of the Indian Evidence Act. He has relied on the Supreme Court's decision in case of *Anvar P.V. vs. P.K. Basheer & Ors.* reported in *(2014) 10 SCC 473*. He has argued that non-production of certificate under Section 65B of the Evidence Act at an earlier stage is not fatal and it is a curable defect. He contends that the persons facing trial do not deny their connection with the mobile numbers used in the said mobile phones. He has emphatically argued that the analysis report prepared by PW-3 is a public document in terms of Section 35 of the Evidence Act and, therefore, the court should presume genuineness of the said document under Section 80 of the Evidence Act. He has also argued that the trial court has rightly noted absence of any denial as regards transfer of a sum of Rs. 50,000/- by PW-1 in the account of the appellant. As no question or suggestion was put to PW-1, it amounts to admission that the said amount was received in the account and some other amount was received by him in cash.

15. Written notes of arguments have been submitted on behalf of the appellant and the informant, which are there on record.

16. We have carefully perused the impugned judgment and order of the trial court as well as the lower court's records.



We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. We have also perused the written notes of arguments submitted on behalf of the appellant and the prosecutrix.

17. In the present case, the appellant has been convicted of the offences punishable under Sections 376 and 384 of the IPC and has been acquitted of other charges which were framed against him. In our considered view, the foremost question which requires consideration in the present appeal is as to whether the prosecutrix can be said to be trustworthy and reliable and she can be said to be sterling witness of a very high quality and caliber, whose version, for the said reason, cannot be said to be unassailable; in peculiar facts and circumstances of the present case, for sustaining the appellant's conviction under Section 376 of the IPC.

18. It is her own disclosure in the FIR that the occurrence had taken place at Gaya when her husband was posted at Gaya. She disclosed in her written report that she had become unconscious after taking tea given by the appellant. On regaining consciousness she realised that some wrong was committed with her, apparently during the state of her unconsciousness. On the next day, the appellant showed to the



prosecutrix her inappropriate photographs and videos. Under the threat of making them viral on social media, according to the prosecutrix, the appellant raped her again, prepared photographs and videos and continued doing so repeatedly during subsequent days. In the meanwhile, he would extort money from the prosecutrix. It is also her disclosure that she had given a sum of Rs. 30,000/- to the appellant when he was going to his native place. The FIR is totally silent on the date or month when the first occurrence had taken place. From what has been alleged in the FIR, it appears that there was nothing to the fore till the husband of the prosecutrix was transferred from Gaya to Saharsa and the appellant had gone to his native place in West Bengal. What is culled out from the FIR is that after the appellant reached his native place, he and his wife both started blackmailing the prosecutrix under the threat of making the photographs and videos viral, whereafter certain amount was transferred in the account of the appellant from Saharsa.

19. It has been rightly pointed out by the learned counsel for the appellant that the story of the prosecutrix as narrated in the FIR is materially different from what she alleged in her statement recorded under Section 164 of the CrPC. Whereas in the FIR the prosecutrix alleged that after the first



occurrence of rape committed by the appellant when she was unconscious, the prosecutrix was raped multiple times and thereafter the prosecutrix was compelled to have sexual intercourse with the appellant under the threat of making the photographs and videos viral; there is no such allegation in the statement recorded under Section 164 of the CrPC. There is no allegation in the statement made under Section 164 of the CrPC that after the first alleged act of the appellant the prosecutrix was subsequently compelled to agree for sexual intercourse under the threat of making the photographs and video viral. In her deposition at the trial, the prosecutrix reiterated what he had disclosed in the FIR of commission of rape multiple times by the appellant after the first occurrence under the threat of making the photographs and video viral. She alleged that the appellant had videographed subsequent events of sexual intercourse which the appellant had committed. She also deposed that she had paid the appellant two times sums of Rs. 50,000/- and subsequently Rs. 30,000/-. Thereafter he had gone to his native place, in the meanwhile, the husband of the prosecutrix was transferred to Saharsa and from Saharsa sums of Rs. 50,000/- were deposited in two accounts of the appellant maintained in State Bank of India and Punjab National Bank. The appellant would further



make demand of payment of Rs. 3 lakhs whereafter she had decided to commit suicide. When her husband had noticed the prosecutrix weeping, he enquired from her, whereafter she explained to her husband the entire fact. She further deposed that after knowing these facts the husband of the prosecutrix also attempted to convince the appellant and his wife that what they were doing was not correct. They, however, did not give any heed to the advice of her husband (PW-1) and told him that by 26.06.2019 he must pay a sum of Rs. 3 lakhs, whereafter they met the Superintendent of Police, explained to him all the circumstances and got the FIR registered.

20. It is also worthwhile mentioning that in the FIR the prosecutrix alleged that the wife of the appellant (co-accused) was demanding a sum of Rs. 3 lakhs to be deposited in her account by 26.06.2019, in her statement under Section 164 of the CrPC she described the said amount to be four lakhs. In her evidence at the trial, the prosecutrix deposed that a sum of Rs. 3 lakhs was being demanded by the co-accused to be deposited in her account by 26.06.2019.

21. In her cross-examination, the prosecutrix categorically deposed that she herself had typed the written report and when she was typing the written report neither her



husband nor anyone else was there. On further cross-examination, she deposed that she was not in a position to say as to which button of the keyboard was to be pressed for typing her own name in computer. Further, she denied the suggestion that she had not stated before the police and in her statement under Section 164 of the CrPC that the appellant had committed rape upon her several times. She was not able to disclose her own mobile phone number. She admitted that though the appellant was threatened to make objectionable photographs viral on social media, he did not ever do so. It is pertinent to mention that even at the trial the prosecutrix did not disclose the date or month when the occurrence had taken place at Gaya.

22. From the original trial court's records we notice that the photostat copies of the screenshots of WhatsApp chats between the prosecutrix and the co-accused Parma was made part of the FIR by way of enclosures. The contents of the WhatsApp chats have, however, not been duly proved at the trial. Further, the photostat copies of the three bank account statements were made part of the FIR which was registered on 28.06.2019. The said bank account statements were enclosed with the FIR to make out a case that from the account of the prosecutrix amounts were transferred in the account of the



appellant.

23. Learned counsel appearing on behalf of the appellant, in our opinion, is correct in his submission that the said bank statements were issued on 29.06.2019. The detailed account statement issued by ICICI bank in the name of the prosecutrix is apparently dated 29.06.2019 and the transaction period is from 09.05.2019 to 29.06.2019. Similarly, statement of SBI account of the husband of the prosecutrix (PW-1) was issued on 29.06.2019. The third statement of account issued by the State Bank of India in relation to the account of the prosecutrix is also dated 29.06.2019. The act of annexing bank statement of bank accounts dated 29.06.2019 with the FIR said to have been registered on 28.06.2019 itself, in the Court's opinion, is apparent an act of interpolation and fabrication. By no means statement of bank accounts issued on 29.06.2019 could form part of the FIR registered on 28.06.2019 without acts, interpolation and fabrication. In the aforesaid background, if the contents of the FIR, statement of the prosecutrix recorded under Section 164 of the CrPC and her deposition at the trial are considered together, in our opinion, PW-2, the prosecutrix does not appear to be a sterling witness. It is settled law that the solitary evidence of victim of rape without any corroboration can



be the basis for conviction but it is subject to the condition that the victim should be a sterling witness.

24. In case of *Rai Sandeep v. State (NCT of Delhi)* reported in *(2012) 8 SCC 21*, the Supreme Court elucidated that a sterling witness should be of high quality and caliber and the Court considering the version of such witness should be in a position to accept 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 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, the Supreme Court observed.

25. The Supreme Court further held in case of *Rai Sandeep* (supra) that such witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved as well as the sequence of it. The said version should constantly 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. The Supreme Court emphasized “..... only if the version of such a witness qualifies the above tests 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”. The Supreme Court concluded in case of **Rai Sandeep** (supra) as under:-

“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.”

26. The said decision in case of **Rai Sandeep** (Supra) has been followed in case of **Santosh Prasad v. State of Bihar**, reported in **(2020) 3 SCC 443**.

27. What is noticeable in the present case is that according to the prosecutrix, the first occurrence of rape had taken place at Gaya when she had become unconscious. The appellant had taken her semi-nude photographs and videos while committing the offence of rape. Subsequently, under the threat of



making the photos and videos viral, he committed rape on the prosecutrix at Gaya multiple times and extorted money from her several times under the same threat of making the videos and photos viral. After the prosecutrix left Gaya for Saharsa on transfer of her husband and the appellant left for his native place in West Bengal, appellant and his wife joined together for extortion of money from the prosecutrix under the threat of the photographs and videos being made viral.

28. In the First Information Report, the prosecutrix alleged that she was going to commit suicide which was noticed by her husband, who rescued her. In her evidence at the trial, there is no deposition of the prosecutrix to the effect that she had made any attempt to commit suicide. She rather deposed at the trial that her husband had seen her weeping and upon inquiry she had disclosed the entire fact to him.

29. In our opinion, the prosecutrix, in the above mentioned circumstance, cannot be said to be a sterling witness whose solitary evidence could be the basis for convicting the appellant for commission of rape in the peculiar facts and circumstances of the present case emerging from the First Information Report, the statement of the prosecutrix under Section 164 of the CrPC and her deposition at the trial.



30. There is another glaring aspect in the present case. According to the prosecutrix, the rape upon her was committed by the appellant at Gaya. The IO (PW-4) in his cross-examination at the trial has clearly stated that he had not visited the place of occurrence at Gaya. Thus, neither the date(s) of the occurrence, months of occurrence nor the place of occurrence of rape said to have been committed by the appellant can be said to have been proved at the trial.

31. On careful scrutiny of the evidence adduced at the trial, we are of the considered view that the trial court has rightly acquitted the appellant of the charge of offences punishable under Sections 67 and 67A of the IT Act.

32. The husband of the prosecutrix (PW-1) is a hearsay witness on the point of sexual exploitation by the appellant on the threat of making objectionable photographs and videos viral. From his (PW-1) deposition it appears that he was holding a managerial position in Power Grid Corporation at Gaya and was posted as Chief Manager, Power Grid at Saharsa when the FIR was lodged.

33. Taking into account a holistic view of the entire facts and circumstances, we are of the considered opinion that it would be unsafe for this Court to uphold the finding of the



appellant's conviction recorded by the trial court for commission of the offence punishable under Section 376 of the IPC based on uncorroborated evidence of the prosecutrix who does not appear to be a sterling witness, taking into account the patent inconsistencies in the prosecution's case.

34. As regards the appellant's conviction for the offences punishable under Section 384 of the IPC, we are of the view that the same is also unsustainable. Section 383 of the IPC defines 'extortion' as under:-

"383. Whoever intentionally puts any person in fear of any injury to that person, or to any other, and thereby dishonestly induces the person so put in fear to deliver to any person any property, or valuable security or anything signed or sealed which may be converted into a valuable security, commits "extortion".

35. Though there is evidence that certain amount was deposited in the account of the appellant by the prosecutrix, the prosecution, in the Court's opinion, cannot be said to have established beyond all reasonable doubts that the prosecutrix was put by the appellant in fear of any injury to her and thereby dishonestly induced her to deliver the said amount in the account. The entire case of the prosecution becomes doubtful right from the very beginning, i.e., the registration of the FIR, as has been noted above. The evidence only to the effect that some amount was deposited in the account of the appellant by or at the



instance of the prosecutrix, in the Court’s opinion, cannot be the basis for upholding the appellant’s conviction for the offence punishable under Section 384 of the IPC.

36. Accordingly, the impugned judgment of conviction and order of sentence dated 27.01.2021/ 30.01.2021, passed by learned Additional Sessions Judge-1-cum-Special Judge, Saharsa, in S.T. No. 180 of 2019, arising out of Saharsa P.S. Case No. 576 of 2019 are set aside. The appellant stands acquitted of the charge of offence punishable under Sections 376 and 384 of the Indian Penal Code by giving him benefit of doubt.

37. This appeal is allowed accordingly.

38. The appellant is in jail custody. Let him be released forthwith, if he is not required in any other case.

(Chakradhari Sharan Singh, J)

I agree.
Nawneet Kumar Pandey, J

Rajesh/Suraj

(Nawneet Kumar Pandey, J)

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