[2020] 2 S.C.R. 798

A SANTOSH PRASAD @ SANTOSH KUMAR

v.

THE STATE OF BIHAR

(Criminal Appeal No. 264 of 2020)

B FEBRUARY 14, 2020

[ASHOK BHUSHAN AND M.R. SHAH, JJ.]

Penal Code, 1860: ss.376(1), 450 – Rape – Prosecution case was that the accused-appellant committed rape on prosecutrix who was his brother's wife – Conviction by courts below, solely based C *on deposition of prosecutrix – Appeal against conviction – Held: It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix – However, the evidence must be reliable and trustworthy – In the instant case, not only there were material contradictions in the deposition of the prosecutrix, but as* D *per the version of the prosecutrix even the manner in which the alleged incident took place was not convincing – Neither any independent witness nor even the medical evidence supported the case of the prosecution – As per medical report, there was neither violence marks on the body of the prosecutrix nor any physical or pathological evidence of rape – It also came on record that there* E *was previous enmity/dispute between both the parties with respect to land – Also, there was a delay in lodging FIR – Therefore, in the facts and circumstances of the case, the solitary version of the prosecutrix cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, the conviction and* F *sentence imposed on the appellant was not sustainable – Accused entitled to benefit of doubt.*

Allowing the appeal, the Court

HELD: 1. The impugned judgments and orders passed by both the courts below show that the appellant was convicted solely G **relying upon the deposition of the prosecutrix (PW5). Neither any independent witness nor even the medical evidence supported the case of the prosecution. From the deposition of PW1, it came on record that there was a land dispute going on between both the parties. Even in the cross-examination even the PW5 –**

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prosecutrix had admitted that she had an enmity with the accused. PW7 – Medical Officer in her deposition specifically opined that she did not find any violence marks on the body of the victim. She also categorically stated that there was no physical or pathological evidence of rape. As per the FSL report, the blood group on the petticoat and the semen on the petticoat were stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. [Paras 5.2, 5.3][806-E-G; 807 A-B]

2. There were material contradictions in the deposition of the prosecutrix. Not only there are material contradictions, but even the manner in which the alleged incident took place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She stated that she identified the accused from the light of the mobile. However, no mobile was recovered. Even nothing was on record that there was a broken compound wall. She further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of a witness who did not support her case. Therefore, when we tested the version of PW5 -prosecutrix, the said witness has failed to pass any of the tests of "sterling witness". There is a variation in her version about giving the complaint. There was a delay in the FIR. The manner in which the occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, the solitary version of the prosecutrix cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt. [Para 6][809-F-H; 810 A-D]

A *Raju and Others v. State of Madhya Pradesh* **(2008) 15 SCC 133 : [2008] 16 SCR 1078;** *Rai Sandeep alias Deepu v. State (NCT of Delhi)* **(2012) 8 SCC 21 : [2012] 6 SCR 1153;** *Mukesh v. State of Chhattisgarh* **(2014) 10 SCC 327 – relied on.**

B *Ravindra v. State of Madhya Pradesh* **(2015) 4 SCC 491 : [2015] 2 SCR 860;** *Ranjit Hazarika v. State of Assam* **(1998) 8 SCC 635;** *State of Punjab v. Gurmeet Singh & Others* **(1996) 2 SCC 384 : [1996] 1 SCR 532;** *B.C. Deva v. State of Karnataka* **(2007) 12 SCC**

C **122 : [2007] 8 SCR 509;** *Krishna Kumar Malik v. State of Haryana* **(2011) 7 SCC 130 : [2011] 8 SCR 774 – referred to.**

Case Law Reference

[2008] 16 SCR 1078	**relied on**	**Para 3.11**
[2012] 6 SCR 1153	**relied on**	**Para 3.11**
(2014) 10 SCC 327	**relied on**	**Para 3.12**
[2015] 2 SCR 860	**referred to**	**Para 3.12**
(1998) 8 SCC 635	**referred to**	**Para 4.1**
[1996] 1 SCR 532	**referred to**	**Para 4.1**
[2007] 8 SCR 509	**referred to**	**Para 4.6**
[2011] 8 SCR 774	**referred to**	**Para 5.4.3**

F CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.264 of 2020.

From the Judgment and Order dated 07.02.2018 of the High Court of Judicature at Patna in Criminal Appeal (SJ) No.209 of 2015.

G Santosh Kumar, V. Sushant Gupta, Mushtaq Ahmad, Madhurendra Sharma, Advs. for the Appellant.

Keshav Mohan, Rishi K. Awasthi, Prashant Kumar, Piyus Vatsa, Santosh Kumar-I, Advs. for the Respondent.

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The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 7.2.2018 passed by the High Court of Judicature at Patna in Criminal Appeal No. 209 of 2015, by which the High Court has dismissed the said appeal preferred by the original accused and has confirmed the judgment and order of conviction passed by the learned Sessions Court convicting the accused for the offences punishable under Sections 376(1) and 450 of the IPC, the original accused has preferred the present appeal.

2. That the appellant herein – original accused was tried by the learned Sessions Court for the offences punishable under Sections 376(1) and 450 of the IPC. A written complaint was filed by the prosecutrix – PW5 on 16.09.2011 before the local police station against the accused alleging, inter alia, that in the preceding night at about 11:00 p.m. she awaken after hearing some sound and whereupon in the light of the mobile phone she found the accused – brother of her husband whereupon she made query. Instead of giving any reply, he committed the rape upon her. According to the prosecution and as per the prosecutrix, thereafter the accused ran away and after getting an opportunity she raised alarm and the neighbours came there including one Suman Devi, her cousin Gotini as well as Shanti Devi, her cousin mother-in-law. She disclosed the event/incident to them. According to the prosecutrix, she informed her mother-in-law and father-in-law who were at Gaya. At the time of incident, her husband was away from the village. Thereafter on their arrival she came to the police station along with them and submitted written report. FIR was registered against the accused being P.S. Case No. 325/2011. Investigation was carried out by the officer in-charge of Makhdumpur Police Station. He recorded the statement of the concerned witnesses. The clothes/apparels of the prosecutrix were seized and were sent to FSL. He also collected the medical report from Dr.Renu Singh, PW7, who examined the victim. Thereafter on conclusion of the investigation, the Investigating Officer filed the chargesheet against the accused for the offences punishable under Sections 376(1) and 450 of the IPC. As the case was triable by the Court of Sessions, the learned Magistrate committed the case to the Sessions Court which was transferred to the Court of learned Additional Sessions Judge, Ist, Jehanabad, which was numbered as Sessions Trial No. 456 of 2011/90/

2012. The accused pleaded not guilty and therefore he came to be tried by the learned Sessions Court for the aforesaid offences.

2.1 To prove the charge, the prosecution examined in all eight witnesses including the prosecutrix (PW5) and Dr. Renu Singh – Medical Officer (PW7). Out of the eight witnesses, PW2, PW3 and PW4 did not support the case of the prosecution and therefore were declared hostile. The prosecution also brought on record the FIR, Injury Report and FSL Report. After closure of the evidence of the prosecution, further statement of the accused under Section 313, Cr.P.C. was recorded. The case of the accused was of total denial. Thereafter, on appreciation of evidence on record, the learned trial Court held the accused guilty for the offences under Sections 376(1) and 450 of the IPC. The learned trial Court sentenced the accused to undergo 10 years R.I. for the offence under Section 376 of the IPC and 7 years R.I. for the offence under Section 450 of the IPC.

2.2 Feeling aggrieved and dissatisfied with the judgment and order of conviction and sentence passed by the learned trial Court, the accused preferred an appeal before the High Court. By the impugned judgment and order, the High Court has dismissed the said appeal. Hence, the accused has preferred the present appeal.

3. Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused has vehemently submitted that in the facts and circumstances of the case both the courts below have materially erred in convicting the accused for the offences under Sections 376 and 450 of the IPC.

3.1 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that the courts below have not properly appreciated the fact that as such the medical report does not support the case of the prosecutrix/prosecution. It is submitted that the evidence of the prosecutrix is not supported by the medical evidence since no stains of semen or blood were found on the clothes of the prosecutrix. It is submitted therefore that it creates serious doubt about the credibility of the prosecutrix.

3.2 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that there was a delay in lodging/reporting the case to the police.

3.3 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that both the courts below have not properly appreciated the fact that there was a family enmity between the accused and the family of the prosecutrix with respect to the land dispute. It is submitted that no independent witnesses have been examined by the prosecution. It is submitted that as there was a dispute between the accused and the family members of the prosecutrix, non-examination of the material independent witnesses, the case of the prosecution suffers from serious doubts.

3.4 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that as per the doctor and the medical report/injury report, no injury was found on the person of the victim and private parts especially. It is submitted that therefore in the absence of any injury the story put forth by the prosecutrix/prosecution is not believable.

3.5 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that except the deposition/ evidence of the prosecutrix which has not been corroborated by the medical evidence, there is no other independent and cogent evidence to connect the accused with the guilt.

3.6 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that even the doctor has categorically said that there is no physical or pathological evidence of rape.

3.7 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that even in the FSL report/ serological report of the blood and semen allegedly found on the petticoat of the prosecutrix was inconclusive. It is submitted that therefore the serological report of blood and semen, allegedly found on the petticoat of the prosecutrix, does not help the prosecution.

3.8 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that even there are material contradictions in the deposition of the prosecutrix. It is submitted that the prosecutrix has deposed during trial that she had given an oral statement before the police whereas the FIR has been lodgedon the written report and the scribe has neither been examined nor produced before the Investigating Officer.

A 3.9 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that even there is a material contradiction with respect to lodging of the FIR/the written report. It is submitted that as per the prosecutrix she had gone to the police station at 10 O'clock and the police had enquired at 10 O'clock. However, the FIR is registered at 4:00 p.m. It is submitted that therefore it appears that earliest version has been suppressed and therefore the FIR is hit by Section 162 Cr.P.C.

3.10 It is further submitted by Shri Santosh Kumar, learned Advocate appearing on behalf of the original accused that even the story put forth by the prosecutrix in her evidence that she had seen the accused jumping the fallen boundary wall and when she shouted the accused pushed towel in her mouth and she identified him in mobile light is not believable at all. It is submitted that even according to the prosecutrix she was sleeping in her room having door closed. Thus, she will not be able to see any person doing any act outside room. It is submitted that neither the number of the mobile nor even the mobile is produced before the investigating officer.

3.11 It is further submitted that therefore when the conviction is based on the sole testimony of the prosecutrix and the medical evidence does not support the case of the prosecution/prosecutrix and the deposition of the prosecutrix is full of material contradictions and that there was already a dispute between the accused and the family members of the prosecutrix and no independent witnesses have been examined, it is not safe to convict the accused solely on such testimony of the prosecutrix. In support of the above submission, learned counsel has heavily relied upon the decisions of this Court in the cases of *Raju and others v. State of Madhya Pradesh (2008) 15 SCC 133 as well as Rai Sandeep alias Deepu v. State (NCT of Delhi) (2012) 8 SCC 21*.

3.12 Making the above submissions and further relying upon the decisions of this Court in the cases of *Mukesh v. State of Chhattisgarh (2014) 10 SCC 327* as well as *Ravindra v. State of Madhya Pradesh (2015) 4 SCC 491*, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order passed by the High Court as well as the learned Sessions Court and acquit the accused for the offences for which he was tried and convicted by the learned Sessions Court, confirmed by the High Court.

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4. The present appeal is vehemently opposed by Shri Keshav Mohan, learned Advocate appearing on behalf of the State of Bihar.

4.1 It is vehemently submitted by the learned Advocate appearing on behalf of the respondent – State that in the present case the prosecutrix has fully supported the case of the prosecution. It is submitted that as observed by this Court in the cases of *Ranjit Hazarika v. State of Assam (1998) 8 SCC 635 as well as State of Punjab v. Gurmeet Singh & others (1996) 2 SCC 384,* the courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman will 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.

4.2 Relying upon the decision of this Court in the case of *Raju & others (supra)*, it is submitted that as observed and held by this Court that ordinarily the evidence of a prosecutrix should not be suspected and should be believed and if the evidence is reliable, no corroboration is necessary.

4.3 It is further submitted by the learned Advocate appearing on behalf of the respondent – State that even otherwise in the present case the petticoat of the prosecutrix was sent to FSL and the petticoat was having the blood as well as semen stains. It is submitted that therefore the FSL report discloses that the victim/prosecutrix was subjected to rape and it also discloses the involvement of the accused.

4.4 Relying upon the decision of this Court in the case of *Rajendra PralhadraoWasnik v. State of Maharashtra*, it is vehemently submitted by the learned counsel appearing on behalf of the State that as held by this Court that merely because the FSL report is inconclusive, it is not necessary that the irresistible conclusion is only one that the accused is not guilty.

4.5 It is further submitted by the learned Advocate appearing on behalf of the respondent – State that mere absence of spermatozoa cannot discredit the testimony of the prosecutrix, as she was examined by the lady doctor almost after 36 hours from the date of occurrence.

4.6 It is further submitted by the learned Advocate appearing on behalf of the respondent – State that even the lady doctor, PW7 has also opined that possibility of rape cannot be ruled out. It is submitted that as held by this Court in the case of *B.C. Deva v. State of Karnataka*

(2007) 12 SCC 122 that in spite of the fact that no injuries were found on the person of the prosecutrix, yet the prosecutrix can be relied upon.

4.7 It is further submitted by the learned Advocate appearing on behalf of the respondent – State that prosecutrix is an adult lady of full understanding. It is submitted that therefore merely because during the medical examination doctor did not find any external or internal injury on the body of the prosecutrix, her statement cannot be discarded. It is submitted therefore that in the facts and circumstances of the case, no error has been committed by both the courts below in convicting the accused for the offences under Sections 376 and 450 of the IPC.

4.8 Making the above submissions and relying upon the aforesaid decisions of this Court, it is prayed to dismiss the present appeal.

5. We have heard the learned counsel for the respective parties at length.

5.1 We have considered in detail the impugned judgments and orders passed by the High Court as well as that of the learned trial Court convicting the accused. We have also considered in detail the evidence on record, both oral as well as documentary.

5.2 From the impugned judgments and orders passed by both the courts below, it appears that the appellant has been convicted solely relying upon the deposition of the prosecutrix (PW5). Neither any independent witness nor even the medical evidence supports the case of the prosecution. From the deposition of PW1, it has come on record that there was a land dispute going on between both the parties. Even in the cross-examination even the PW5 – prosecutrix had admitted that she had an enmity with Santosh (accused). The prosecutrix was called for medical examination by Dr.Renu Singh – Medical Officer and PW7 – Dr.Renu Singh submitted injury report. In the injury report, no sperm as well as RBC and WBC were found. Dr. Renu Singh, PW7 – Medical Officer in her deposition has specifically opined and stated that she did not find any violence marks on the body of the victim.She has also categorically stated that there is no physical or pathological evidence of rape. It is true that thereafter she has stated that possibility of rape cannot be ruled out (so stated in the examination-in-chief). However, in the cross-examination, she has stated that there was no physical or pathological evidence of rape.

5.3 As per the FSL report, the blood group on the petticoat and the semen on the petticoat are stated to be inconclusive. Therefore, the only evidence available on record would be the deposition of the prosecutrix. It cannot be disputed that there can be a conviction solely based on the evidence of the prosecutrix. However, the evidence must be reliable and trustworthy. Therefore, now let us examine the evidence of the prosecutrix and consider whether in the facts and circumstances of the case is it safe to convict the accused solely based on the deposition of the prosecutrix, more particularly when neither the medical report/ evidence supports nor other witnesses support and it has come on record that there was an enmity between both the parties.

5.4 Before considering the evidence of the prosecutrix, the decisions of this Court in the cases of *Raju (supra) and Rai Sandeep @ Deepu,* relied upon by he learned Advocate appearing on behalf of the appellant-accused, are required to be referred to and considered.

5.4.1 In the case of *Raju (supra)*, it is observed and held by this Court in paragraphs 11 and 12 as under:

> **"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.
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> **12.** Reference has been made in *Gurmit Singh case* [(1996) 2 SCC 384 : 1996 SCC (Cri) 316] 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

A 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."

5.4.2 In the case of *Rai Sandeep alias Deepu (supra)*, this Court had an occasion to consider who can be said to be a "sterling witness". In paragraph 22, it is observed and held as under:

"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 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. 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."

5.4.3 In the case of *Krishna Kumar Malik v. State of Haryana (2011) 7 SCC 130*, it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5 With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?

6. Having gone through and considered the deposition of the prosecutrix, we find that there are material contradictions. Not only there are material contradictions, but even the manner in which the alleged incident has taken place as per the version of the prosecutrix is not believable. In the examination-in-chief, the prosecutrix has stated that after jumping the fallen compound wall accused came inside and thereafter the accused committed rape. She has stated that she identified the accused from the light of the mobile. However, no mobile is recovered. Even nothing is on record that there was a broken compound wall. She has further stated that in the morning at 10 O'clock she went to the police station and gave oral complaint. However, according to the

A investigating officer a written complaint was given. It is also required to be noted that even the FIR is registered at 4:00 p.m. In her deposition, the prosecutrix has referred to the name of Shanti Devi, PW1 and others. However, Shanti Devi has not supported the case of the prosecution. Therefore, when we tested the version of PW5 -prosecutrix, it is unfortunate that the said witness has failed to pass any of the tests of B "sterling witness". There is a variation in her version about giving the complaint. There is a delay in the FIR. The medical report does not support the case of the prosecution. FSL report also does not support the case of the prosecution. As admitted, there was an enmity/dispute between both the parties with respect to land. The manner in which the C occurrence is stated to have occurred is not believable. Therefore, in the facts and circumstances of the case, we find that the solitary version of the prosecutrix – PW5 cannot be taken as a gospel truth at face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellant and accused is to be given the benefit of doubt.

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6. In view of the above and for the reasons stated above, the appeal is allowed. The impugned judgment and order of conviction and sentence passed by the learned trial Court and confirmed by the High Court are hereby quashed and set aside. The appellant is acquitted from all the charges levelled against him and he be set at liberty forthwith, if E not required in any other case.

Devika Gujral Appeal allowed.