

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3154 of 2019

Arising Out of PS. Case No.-31 Year-2014 Thana- CHENARI District- Rohtas

Vakil Paswan, Son of Shankar Paswan, Resident of Village - Karma, Police Station - Chenari, District - Rohtas at Sasaram

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Shankar Kumar, Advocate
Mr. Sada Nand Roy, Advocate
For the Respondent/s : Mr. Syed Ashfaque Ahmad, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date : 26-03-2021

This appeal is against the judgment of conviction.

The sole appellant-Vakil Paswan faced trial before the learned Additional Sessions Judge-V, Rohtas at Sasaram in connection with Sessions Trial No. 871 of 2014 arising out of Chenari P.S. Case No. 31 of 2014 registered under Sections 376/511 of the Indian Penal Code. The learned Trial Judge found the appellant guilty for offences under Sections 376/511, 354 and 354(B) of the Indian Penal Code by the impugned judgment dated 27.06.2019. The learned Trial Judge awarded rigorous imprisonment for seven years and a fine of rupees five thousand for offence under Sections 376/511 of the Indian Penal Code and in default of payment of fine rigorous imprisonment of one year was ordered. Likewise, three years rigorous imprisonment and a fine of rupees one thousand was



awarded for offence under Section 354 of the Indian Penal Code and in default of payment of fine there is direction of one month rigorous imprisonment. For offence under Section 354(B) of the Indian Penal Code, rigorous imprisonment of five years was awarded besides fine of rupees two thousand and in default of payment of fine, the appellant was directed to undergo further four months rigorous imprisonment. The sentences have been ordered to run concurrently by the impugned order dated 29.06.2010.

2. The prosecution case, as disclosed in the written report of the prosecutrix (P.W.4), is that on 03.03.2014, at about 11:00 p.m., the prosecutrix was sleeping inside her house after closing the doors. The appellant jumped over the boundary wall and entered into the room of the informant along with a gun. The appellant sat on the body of the informant and caught her breast, started to disrobe her but the victim made alarm and the neighbours Laxman Paswan (P.W. 1), Saroj Paswan (P.W. 2) came then only she could save herself. She stated that husband and brother of the husband were out side the village to earn their livelihood. Hence, no male was there in the house. The written report is Ext. 1.

3. After completion of investigation, the police



submitted charge-sheet and, accordingly, the appellant was put on trial. During course of trial, the prosecution examined altogether four witnesses. Besides the aforesaid two witnesses P.W.3 is Ramesh Paswan and P.W. 4, the prosecutrix herself.

4. Learned counsel for the appellant contends that there is lack of reliable evidence on the identity of the appellant to be involved in the occurrence. Hence, the judgment of conviction is not sustainable in law.

According to learned counsel other witnesses are hearsay witnesses not corroborated by the prosecutrix. Hence, their testimony has got no evidentiary value.

5. On the other hand, learned counsel for the State-respondent contents that, in fact, the parties entered into a compromise and due to compromise, the complainant changed her statement in the cross-examination. The learned Trial Judge has taken note of the Supreme Court judgment that in such a serious case, compromise should not be encouraged. Hence, conviction of the appellant for the offences proved does not require any interference.

FINDING:-

6. According to the prosecutrix, the occurrence took place about one and half years ago. It was night at about



11:00 p.m. The prosecutrix was sleeping in her house. The appellant entered into her room and put his hand on her breast and started disrobing her. The appellant threatened to kill her. However, the prosecutrix raised alarm then the villagers came and the appellant fled away. She further stated that there are three rooms in her house. The family members were in other rooms and the children were sleeping along with her. In the cross-examination, she deposed that it was a dark night, hence, she could not identify who had entered into the room. She further deposed that the appellant had also lodged a case against her husband and the parties have entered into a compromise voluntarily in both the cases. Hence, the prosecutrix does not want to proceed with this case.

7. No doubt, a compromise in such cases should not be encouraged nor the compromise should be made basis of acquittal or reduction of sentence. However, the Court cannot shut its eyes to the appreciation of evidence available on the record ignoring the factum of compromise. The prosecutrix does not say that other three witnesses P.W. 1 Laxman Paswan, P.W. 2 Saroj Paswan or P.W. 3 Ramesh Paswan had come to her house on her alarm. Therefore, testimony of P.Ws. 1, 2 and 3 that they heard about the



occurrence from the prosecutrix has no evidentiary value. Likewise, P.Ws. 1 and 2 deposed that they had seen the appellant coming out of the house of the prosecutrix. Only on that evidence, the conviction of the appellant, under Sections 376/511, 354 and 354(B) of the Indian Penal Code, cannot be sustained unless the prosecutrix asserts that the appellant was identified as perpetrator of the crime. The evaluation of the testimony of the prosecutrix or other witnesses could be made only after perusal of her entire testimony and not only a part. The evidence coming in cross-examination cannot be overlooked. If the prosecutrix says that she could not identify in the darkness of night as to who had entered into her house, the accused would be justified to rely on this statement.

8. The learned Trial Judge has noticed the aforesaid evidence of the prosecutrix and recorded that “she deposed that due to darkness, she could not identify the accused but she never denied the incident. The prosecution case is further supported by the fact that the accused had tried to put pressure on the prosecutrix to compromise, only because he was guilty”. The second part of the finding above is error of record. There is no evidence that the prosecutrix entered into a compromise under pressure, rather the evidence



shows that she has voluntarily compromised the case and counter case both.

9. The learned Trial Judge has not assigned any cogent reason for disbelieving the statement of the prosecutrix that due to darkness, she could not identify the accused. P.W. 3 has admitted that he reached at the place of occurrence after ten minutes of the occurrence. The aforesaid statement of P.W. 3 falsifies his claim to have seen the appellant fleeing from the house of the prosecutrix. Thus, apart from the factum of compromise, rather even after ignoring compromise, the prosecution evidence does not inspire confidence regarding connection between the offences alleged and the involvement of the appellant. Hence, the appellant deserves benefit of doubt. According to the prosecutrix other family members were there in another room at the time of the occurrence, but they were not examined as prosecution evidence.

10. Appellant is in custody since 27.06.2019 i.e. the date of conviction and it has been informed by the learned counsel for the appellant that appellant was in custody for six months as under trial prisoner as well.

11. The learned Judge has not considered the aforesaid infirmities in the prosecution case. Hence, the



impugned judgment and sentence is fit to be set aside.

Accordingly, this appeal is allowed.

12. Let the appellant be set free at once.

(Birendra Kumar, J)

Kundan/-

| | |
|-------------------|------------|
| AFR/NAFR | |
| CAV DATE | 23.03.2021 |
| Uploading Date | 26.03.2021 |
| Transmission Date | 26.03.2021 |

