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**Chandra Yadav @ Chandra Matho Vs The State of Bihar**

**Criminal Appeal No. 260 of 1992**

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**Court:** Patna High Court

**Date of Decision:** May 9, 2007

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) & Section 161#Penal Code, 1860 (IPC) & Section 341, 376, 448

**Citation:** (2007) PLJR 142

**Hon'ble Judges:** Abhijit Sinha, J

**Bench:** Single Bench

**Advocate:** Daya Nand Singh and Sucheta Yadav, for the Appellant; Jharkhandi Upadhaya, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Abhijit Sinha, J.

The sole appellant aggrieved and dissatisfied with the judgment of conviction dated 1st September 1992 and order of

sentence dated 3rd September 1992 passed by Sri D.N. Chakravarty the then 7th Additional Sessions Judge, Bhagalpur in Sessions Trial No.

311 of 1985 (arising out of Katoria P.S. Case No. 74 of 1985) has preferred this appeal. The appellant on being found guilty for commission of

offence punishable u/s 376 I.P.C. has been sentenced to undergo Rigorous Imprisonment for 7 years and a fine of Rs. 1000/-in default whereof to

suffer further R.I. for 6 months. The prosecution case is based on the fardbeyan of one Tago Devi wife of Jageshwar Mahto recorded at the Police

Station at about 12.15 P.M. on 24.5.1985 and was in respect of an incident which took place earlier that morning. It is stated that at the relevant

time when she was feeding straw to the bullock, as her husband was away from home for the past four months, suddenly co-villager Chandra

Mahto carrying a lota came over and caught hold of her hand and gagging her mouth with his hand forcibly took her to the osara where she and

her son had slept in the night. It is alleged that even as her son slept the accused threw the informant on to the cot gagged her mouth with cloth and

raped her. It is said that as soon as he got an opportunity she woke up her sleeping son Shambhu Mahto but the accused having discharged his

semen in her vagina began to flee. It has been stated said that the prosecutrix and her son caught hold of the accused and raised alarm but the

accused freed himself by throwing the prosecutrix and her son on the ground and fled. It is further stated that attracted by the alarm raised by the

prosecutrix Basudeo Pandey, Raghunandan Pandey, Ishwar Mahto, Shankar Yadav, Raman Yadav, Kendu Mahto and others arrived and saw

the accused fleeing from the place of occurrence. On the basis of the fardbeyan Katoria P.S. case No. 74 of 1985 was registered under Sections

448, 341 and 376 I.P.C. and after due investigation a charge sheet under the same provisions was submitted against the sole appellant.

2. At the trial a charge only u/s 376 I.P.C. was framed against the accused who pleaded not guilty and claimed to be tried. The further defence

plea was that he has been falsely implicated in this case due to land dispute existing between the husband of the informant and the accused. The

defence examined two witnesses and adduced several documents as exhibits to prove its innocence and negate the prosecution case.

3. At the trial the prosecution examined as many as 5 witnesses in support of its case and also sought to adduce several documents as Exhibits.

4. The learned trial Court on consideration of the materials available on record and the submissions advanced by the respective parties recorded a

verdict of guilt against the sole appellant and sentenced him in terms as stated above.

5. The learned counsel for the appellant in support of the appeal sought to point out that except for the prosecutrix none else had supported the

prosecution case and that the son of the prosecutrix who had, with his mother, allegedly apprehended the accused had not been examined by the

police u/s 161 Cr. P.C. but figured as P.W. 4 in Court and as such the entire occurrence becomes doubtful. The son Shambhu Yadav figured as

P.W. 4 and he has in clear terms narrated the fact of Chandra Mahto climbing on top of his mother who had been thrown on to the cot by

Chandra. He also talks of raising hulla and of Chandar throwing him onto the ground and of the arrival of the witnesses on being attracted by the

alarm raised. In course of his cross examination he has categorically stated that he had given his statement before the police 4-5 days after the

occurrence. Therefore, the assertions of the learned counsel for the appellant that he had not been examined by the police u/s 161 Cr. P.C. does

not stand to reason.

6. The prosecutrix figuring as P.W. 3 in course of her testimony in Court has supported her fardbeyan story in toto. She has categorically stated

that she was ravished by Chandra after being thrown onto the cot and her mouth as also the mouth of her son being gagged. In course of her cross

examination she could not say if there was any litigation between her husband and the accused since the past 20 years.

7. It is by now well settled by a catena of decisions of the Apex Court that the statement of the prosecutrix in Court was sufficient to invite

conviction notwithstanding there being discrepancies in the evidence of the witnesses. I am supported in my view by the decision of State of

Himachal Pradesh Vs. Asha Ram, , Vishnu @ Undrya Vs. State of Maharashtra, and Om Prakash Vs. State of U.P., .

8. As observed by the Apex Court in the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would

depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardising her future. In doing so she not only would be

sacrificing her future, but also would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family

circle. The Court have further held that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require

corroboration from any other evidence including the evidence of a doctor. The Supreme Court in the case of Om Prakash (supra) has observed

that in a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the

prosecutrix and suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. It is also a

well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but

a guidance of prudence under the given circumstances. Minor contradiction or insignificant discrepancies in the statement of the prosecutrix should

not be a ground for throwing out and otherwise reliable prosecution case.

9. It was also sought to be submitted by the learned counsel for the appellant that the LO. and the doctor not having been examined a definite

prejudice had been caused to the defence case. I am also unable to accept these submissions.

10. Both these submissions raised by the learned counsel for the appellant become a non-issue in view of the judgments of the Hon"ble Apex

Court. Even otherwise it will appear from the impugned judgment that the witnesses who arrived at the scene. The statement of the I.O. not being

examined is also falsified from the fact that he has been examined as P.W. 5 and he states of having recorded the fardbeyan of the prosecutrix and

the statement of Basudeo Pandey, Ishwar Mahto, Shankar Yadav, Kendu Mahto etc. He also states of having seen injured Shambhu Mahto go

for the treatment to the hospital and as which is marked as Ext. 2/1 and of sent a prosecutrix Tago Devitor medical examination which has been

marked as Ext. 2.

11. P.W. 1 Shankar Yadav in course of his statement in Court stated that being attracted by the cries of alarm he has gone to the house of the

prosecutrix and had seen the accused ravishing the informant, in his cross examination he had stated that he had given a similar statement to the

I.O. P.W. 2 Ketu Yadav @ Ketu Mahto had also gone to the house of the informant and had seen the accused fleeing therefrom. He has denied

the defence suggestion that he has deposed falsely as he happened to be a cowherd of the informant.

12. From the above it is clear that irrespective of the ratio of the decisions of the Apex Court referred to above, the impugned judgment stands on

its own merit notwithstanding the minor discrepancies in the testimony of P.W. 1.

13. Due regard being had to the facts and circumstances of the case I find no merit in the appeal which is accordingly dismissed.

14. However, considering the fact that the occurrence took place way back on 25th May 1985 that is almost 22 years back I feel inclined to

reduce the sentence imposed.

15. Due regard being had to the facts and circumstances of the case and the attending circumstances I am of the opinion that the ends of justice will

be fully met if the sentence awarded to the appellant is reduced to the period already undergone. In the result the appeal is dismissed with

modification in sentence. The appellant who is on bail is discharged from the liabilities of his bail bonds.