

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 188 OF 2015

RAM ISHWAR RAI .. APPELLANT(S)

VERSUS

STATE OF BIHAR .. RESPONDENT(S)

O R D E R

1. This appeal is directed against the final judgment and order dated 10.02.2014 passed by the High Court of Patna in Criminal Appeal No. 204 of 2011, whereby the criminal appeal filed by the appellant was dismissed.

2. The appellant is one of the three accused, who was convicted under Section 376 (2) (g) of the Indian Penal Code, as it stood prior to 03.02.2013. He had been sentenced with a rigorous imprisonment of 10 years and fine of Rs. 20,000/- (Rupees Twenty thousand) by the learned Additional Sessions Judge, Fast Track Court, Hajipur, vide

judgment dated 14.12.2010. The Court did not consider the existence of any adequate or special reasons for imposing a sentence of imprisonment for the term less than 10 years.

3. We find that the circumstances of the case require special consideration. Firstly, the evidence of the prosecutrix is not wholly consistent with her statements under Section 164, Cr.P.C. She says at one place that she was alone at home. In her evidence in Court she says that her sister was with her. Secondly, though the prosecutrix claimed that there were injuries on her lips and near her private parts, neither there is any evidence on record to that effect nor there is medical certificate to show external injuries. Strangely, the doctor was not examined.

4. In this case, the prosecution for reasons best known to them, did not even examine the investigating officer. In a similar circumstances in the case of Rajesh

Patel vs. State of Jharkhand, 2013) 2 SCC 791, in paragraph 18, this Court observed as follows :

"18. Further, neither the doctor nor the IO has been examined before the trial Court to prove the prosecution case. The appellant was right in bringing to the notice of the trial Court as well as the High Court that the non-examination of the aforesaid two important witnesses in the case has prejudiced the case of the appellant for the reason that if the doctor would have been examined he could have elicited evidence about any injury sustained by the prosecutrix on her private part or any other part of her body and also the nature of hymen layer, etc. so as to corroborate the story of the prosecution that the prosecutrix suffered unbearable pain while the appellant committed rape on her. The non-examination of the doctor who had examined her after 12 days of the occurrence has not prejudiced the case of the defence for the reason that the prosecutrix was examined after 12 days of the offence alleged to have been committed by the appellant because by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no

injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading an idle life inside the four walls of her home. The said reasoning assigned by the High Court is totally erroneous in law."

5. It is however, not possible in this case to acquit the appellant of the offence, in view of the statement made by the prosecutrix that she was in fact raped by the three accused near her house when she had gone out to attend the call of the nature. It is not possible to discredit her testimony about the incident which took place when she was 13 years old. It is also not possible to accept the arguments on behalf of the appellant that because there was some enmity between her family and members of the appellant's family, she would level an imaginary charge against the accused of having raped her.

6. The law is well settled that the sole uncorroborated testimony of prosecutrix can

be accepted if it is beyond reproach, see: State of Punjab vs. Gurmit Singh¹ and Rajinder @ Raju vs. State of Himachal Pradesh².

7. As matter stands, the accused Nos. 2 and 3, namely, Raj Kishore Rai and Tulsi Kumar have already served their respective sentences. The appellant has served the sentence of eight years till date.

8. In the circumstances of the case, we consider it appropriate to reduce the sentence imposed upon the appellant from 10 years to a period of 8 years already undergone. order accordingly.

9. The appellant is directed to be released forthwith, if not required in connection with any other case.

1 (1996) 2 SCC 384

2 (2009) 16 SCC 69

10. Accordingly, the appeal is disposed
of.

.....J.
[S.A. BOBDE]

.....J.
[L.NAGESWARA RAO]

NEW DELHI,
NOVEMBER 09, 2017.

ITEM NO.101

COURT NO.7

SECTION II-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Criminal Appeal No(s). 188/2015

RAM ISHWAR RAI

Appellant(s)

VERSUS

THE STATE OF BIHAR

Respondent(s)

Date : 09-11-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.A. BOBDE

HON'BLE MR. JUSTICE L. NAGESWARA RAO

For Appellant(s)

Mr. Ravi Chandra Prakash, Adv.

Mr. Purushottam Sharma Tripathi, AOR

Mr. Mukesh Kumar Singh, Adv.

Mr. Amit, Adv.

Ms. Shughana Singh, Adv.

Mr. L. Nidhiram Sharma, Adv.

Mr. Rajiv Kumar, Adv.

For Respondent(s)

Mr. Manish Kumar, Adv.

Mr. E. C. Vidya Sagar, AOR

UPON hearing the counsel the Court made the following
O R D E R

The appellant is directed to be released forthwith, if not required in connection with any other case.

The appeal is disposed of in terms of the signed order.

[Charanjeet Kaur]
A.R.-cum-P.S.

[Indu Kumari Pokhriyal]
Branch Officer

[Signed order is placed on the file]