

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 480 of 2014

Against the judgment of conviction dated 06.08.2014 and order of sentence dated 11.08.2014 passed in Sessions Trial No. 65 of 2013 arising out of Raghapur P.S. Case No. 54 of 2012 by the learned Ad hoc Additional District & Sessions Judge-1st, Vaishali, Hajipur

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Bhuletan Das, Son of Sukan Das, Resident at Village – Malikpur, P.S. – Raghapur, District – Vaishali at Hajipur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Chandra Mohan Jha, Advocate
For the Informant : Mr. Dharendra Kumar Sinha, Advocate
Mr. Rahul Rathour, Advocate
Mrs. Soni Kumari, Advocate
Mr. Yash Pal Yadav, Advocate
For the State : Mr. Abhay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 17-03-2016

Heard learned counsel for the appellant, the State and the informant.

2. The appellant has been convicted under Section 376(2)(i) of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for ten years with fine of Rs.25,000/- and in default of payment of fine to undergo six months imprisonment and out of Rs.25,000/-, Rs.15,000/- is directed to be paid to the victim.

3. The prosecution case, as alleged in the written report by one Meena Devi (P.W.3) addressed to the Station House Officer, Raghapur, Police Station on 18.05.2012, is that she and her husband are labourers and in search of livelihood they used to go outside the home. The further case is that the appellant has developed illicit relationship

with her daughter, namely, Surati Kumari (P.W.4) aged about 12 years and got her pregnant of about 3 to 4 months and after getting aforesaid knowledge the informant protested, upon which the appellant threatened to kill them. The further case is that the informant has full faith that in her absence the appellant enticed the victim Surati Kumari a minor girl and established sexual relationship and got her pregnant of about 3 to 4 months. The further case is that the appellant used to sell wine in his village and is accused in several cases.

4. On the said written report, an endorsement was made for registering Raghapur P.S. Case No. 54 of 2012, dated 18.05.2012 under Section 376(2)(f) of the Indian Penal Code and thereafter the First Information Report was lodged and the Investigating Officer, Raghapur started investigation. During investigation, the Investigating Officer recorded the statement of the informant (the mother of the victim-P.W.3), her husband, as also the statement of the victim (P.W.4) and thereafter proceeded to the place of occurrence along with them. The place of occurrence is the hut of the appellant and he gave the description of the place of occurrence in paragraph 2 of his deposition. Thereafter he got the victim examined medically at Sadar Hospital, Hajipur and procured the medical report and after completion of investigation submitted charge-sheet under Section 376(2)(f) of the Indian Penal Code. After submission of the charge-sheet, cognizance was taken and the case was committed to the Court of Sessions. After

commitment, charge was framed and trial proceeded.

5. During trial, six witnesses were examined on behalf of the prosecution. P.Ws.1 & 2 Lala Rai and Arvind Kumar have stated that they do not know anything about the occurrence and the police have not recorded their statements.

6. P.W.3 Meena Devi is the informant of this case who happens to be the mother of the victim and has supported the prosecution case.

7. P.W.4 Surati Kumari is the victim herself and has supported the prosecution case regarding rape. She has stated that the appellant used to lift her in his lap by enticing her and raped her giving threat to kill.

8. P.W.5 Dr. Sarita Shankar examined the victim and stated that on radiological examination as per the report of X-ray the age of the victim is between 15 to 16½ years. The dental age has been stated to be 13 to 15 years. She has further stated that on the basis of radiological report, dental report and physical ground, age of the victim is between 15 to 16 years. The victim was pregnant of 24 to 26 weeks and the report has been prepared by her, which has been marked as Ext.1.

9. P.W.6 Vijay Mahto is the Investigating Officer of this case.

10. The trial Court, taking into consideration the oral evidence of the victim, the age of the victim as below 16 years as per the

radiological report, dental report and physical ground, rejected the plea of enmity, convicted the appellant for the offence under Section 376(2)(i) of the Indian Penal Code and sentenced him as mentioned above.

11. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the learned trial Court on the ground that there is delay in lodging the First Information Report and no satisfactory explanation has been given for delay. It has further been contended that there is enmity between the informant and appellant and earlier the informant had filed a case against the appellant and also against one Shiv Pujan Das of rape and the appellant has also filed a case against the informant, the mother of the victim, under Sections 3 and 4 of the Immoral Traffic Act. It has further been contended that though the victim is alleged to have been enticed away, hence, false implication of the appellant due to previous enmity is established, but no offence under Section 375 of the Indian Penal Code is made out.

12. Learned counsel for the appellant further relied upon the decisions in the cases of **Fagu Lal Singh vs. The State of Bihar** reported in **PLJR 2014(4) 618**, **Shambhu Nath Singh vs. The State of Bihar**, reported in **PLJR 2013(4) 841**, **Ramdas & Ors. vs. State of Maharashtra**, reported in **PLJR 2007(1) 40 (SC)** and **Sikandar Singh @ Mangal Singh & Ors. vs. State of Bihar**, reported in **PLJR**

2007(Suppl.) 1106 and contended that the evidence of the witnesses are not of much significance and the judgment of conviction and order of sentence are fit to be set aside and the appellant be acquitted.

13. Learned counsel for the informant and the State, however, contended that the victim is a rustic girl of tender age i.e. 16 years and she has supported the prosecution case and there is nothing in her evidence to disbelieve her testimony. They have contended that mere delay in lodging the First Information Report does not ipso facto create a doubt and hence, the prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts.

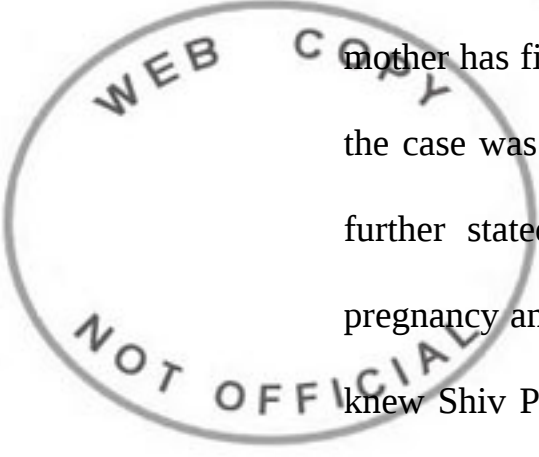
14. Having regard to the respective submissions of the parties, I proceed to consider the evidence of the witnesses. However, the prosecution case, as alleged in the written report by the informant Meena Devi on 18.05.2012, is that her daughter aged 12 years has been raped by the appellant causing pregnancy of about 3 to 4 months. The further case is that the appellant continued to have sexual relationship with the victim by enticing her and when a protest was made by the informant, upon which the appellant threatened to kill them. The case proceeded on the written report of the informant Meena Devi (P.W.3) with the signature of her husband and the victim. The written report was filed on 18.05.2012 and the First Information Report was lodged on the same day. P.W.3 is the informant. She has stated in her evidence that the appellant enticed her daughter and committed rape as a result

of which she became pregnant and when she made a protest then the appellant threatened to kill. However, the informant has stated in her examination-in-chief that when she learnt about the occurrence she took her daughter to the police station and her daughter disclosed that the appellant has committed rape upon her, as a result of which she became pregnant. However, she has stated that the victim got married after one year of the termination of pregnancy.

15. From the evidence of P.W.3 the defence has submitted that this witness is not an eye-witness to the occurrence and she learnt about the occurrence from her daughter. However, the suggestion given by the defence is that the character of the daughter of the informant was suspicious and the appellant did not commit rape upon the victim and hence, the case is of false implication. However, P.W.3 has admitted that prior to the institution of this case she filed a case under Section 107 against Bhuletan Das (the appellant), Karak Das, Asha Devi and Swaraswati Devi and, hence, there is prior enmity with the informant. She has further admitted that prior to the institution of the present case a case was instituted against one Shiv Pujan Das alleging rape of her daughter bearing P.S. Case No. 29 of 2006. She has further stated that she also filed a case prior to the present occurrence against the appellant bearing Raghapur P.S. Case No. 40 of 2005 for the offence under Sections 447, 341, 323, 504 and 354 of the Indian Penal Code. She has also admitted that a case has been filed by the appellant against

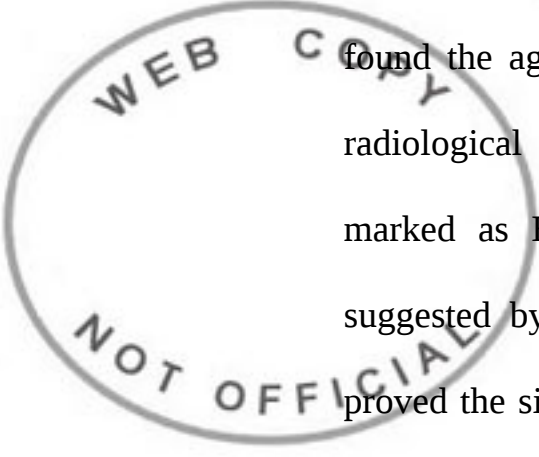
her bearing Raghapur P.S. Case No. 53 of 2005 for the offence under Sections 3 and 4 of the Immoral Traffic Act as well as under Sections 147, 148, 341, 323, 379, 380 and 452 of the Indian Penal Code and hence, she admitted the enmity with the appellant.

16. P.W.4 is the victim herself. She has stated in her evidence that she knows the appellant that he was engaged in the business of sale and purchase of the she-goat. She has further stated in her evidence that the appellant used to take her in his lap by enticing her and at that time her mother and father were not present. She has further stated that the appellant used to take in the hut and used to untie her clothes and used to rape her by giving threat not to disclose about the occurrence. She has further stated that when she became pregnant then her mother learnt about it and thereafter she was examined by the Doctor and has identified the appellant. However, emphasis have been drawn in her evidence in cross-examination where she has stated that appellant neither gave money for maintaining a physical relationship nor the appellant gave any assurance of marriage whenever the appellant committed rape. She has further stated that she could not say the date and time of sexual assault. As per evidence, for the first time when she was raped by the appellant she was only 14 years and the appellant threatened to kill her by dagger if she would disclose this fact to her mother and father. She has further stated that the appellant made the physical relation for about 4 times at the interval of some days. She has



further stated that the appellant raped her continuously for a period of six months at the interval of some days. She has further stated that her mother has filed a case against the appellant. She has further stated that the case was filed when the appellant has stopped raping her. She has further stated in her evidence that she herself has terminated her pregnancy and she never went to any Doctor though has stated that she knew Shiv Pujan Das and earlier he committed rape on her for which she has also lodged a case. She has further stated that the appellant did not use to go to her house but he has taken from her Dalan in absence of her father and mother. She has further stated that he did not use to come to her house even in their absence. She has further stated that the appellant has wife and children and did not disclose about the occurrence to the Surpanch and others. She has further stated that she has denied the suggestion that the appellant did not commit any rape on her. She has also denied the suggestion that she did not become pregnant during rape by the appellant. She has further denied the suggestion that her mother has lodged a false case on the false pretext of her being pregnant or she has lodged false case against the appellant. She has further stated that after the termination of pregnancy she did not go to any Doctor or was she examined.

17. P.W.5 is the Doctor who examined the victim on 18.05.2012 and found her of complexion fair, weight 40 Kg. teeth 28 (14/14) and she has given old wound mark on left chick as mark of



identification and old wound mark on dorsum of left hand. She further found that the victim was carrying pregnancy of 24 to 26 weeks. She found the age of the victim to be 14 to 16½ years according to the radiological examination. She has proved the report which has been marked as Ext.1. She has proved pathological examination report suggested by her which has been marked as Ext.1/1. She has also proved the signature of the Doctor Anjani Kumar who gave his report on her request which has been marked as Ext.1/2 and according to the dental report the age of the victim is assessed as 13 to 15 years. She has also found that on the basis of radiological report, dental report and physical ground, the age of the victim is between 15 to 16½ years and she found her pregnant of 24 to 26 weeks. In her cross-examination she has stated that the victim had come 6½ months before and hence, as per the evidence of the Doctor the victim was carrying pregnancy of 24 to 26 weeks on the date of her examination on 18.05.2012.

18. P.W.6 is the Investigating Officer of the case who recorded the statement of the informant along with other witnesses and proceeded towards the place of occurrence and given the description of the place of occurrence in paragraph 2 of his examination-in-chief. The Investigating Officer in his cross-examination has stated that against the informant Meen Devi (P.W.3) Raghapur P.S. Case No. 53 of 2005 has been lodged under Sections 3 and 4 of the Immoral Traffic Act as well as other Sections of the Indian Penal Code and she also lodged a case

against her villager bearing Raghopur P.S. Case No. 29 of 2006 for the offence under Section 376 of the Indian Penal Code and the appellant is also an accused of assault (Marpit) bearing Raghopur P.S. Case No. 40 of 2005.

19. Hence, taking into consideration the entire evidence, it is apparent that P.Ws.1 and 2 have not supported the prosecution case as they turned hostile and hence, the case hinges on the evidence of P.W. 3 the informant, P.W.4 the victim, P.W.5 the Doctor and P.W.6 the Investigating Officer. It is apparent that the informant is not an eye-witness to the occurrence and her evidence is only to the effect that her daughter disclosed about the rape upon her by the appellant and further the victim was pregnant. However, the victim in her evidence has supported the prosecution case that she has been raped by the appellant though she could not be able to disclose the date and time of rape. However, the victim supported the factum of rape, but the fact of rape was disclosed when the pregnancy was of 24 to 26 weeks or whether it was itself apparent from physical feature. Though this witness has denied the suggestion about any enticement or giving money for physical relationship nor he assured for marriage or money. The Doctor P.W.5 who examined the victim on 18.05.2012 found a pregnancy of 24 to 26 weeks and her age has been assessed as 15 to 16 years. However, no reason for delay in reporting the matter till pregnancy of 24 to 26 weeks has been mentioned.

20. Learned counsel for the appellant has contended that the offence under Section 375 of the Indian Penal Code is not made out.

However, going through the provisions of Section 375 of the Indian Penal Code rape has been defined which is quoted hereinbelow.

“375. Rape.----- A man is said to commit “rape” who, except in the case hereafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

First. ----- Against her will.

Secondly. ---- Without her consent.

Thirdly. ---- With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or of hurt.

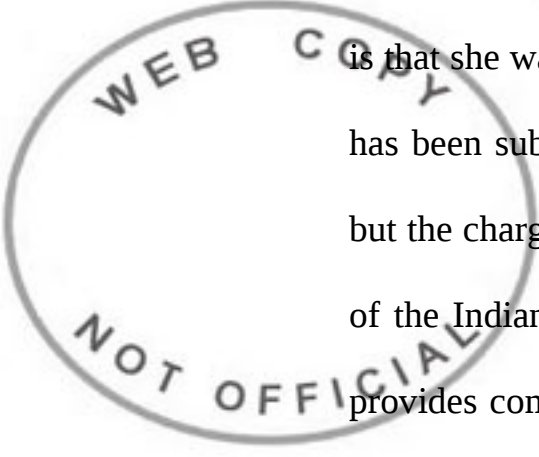
Fourthly. ---- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly. ---- With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly. ---- With or without her consent, when she is under sixteen years of age.”

21. Section 375 of the Indian Penal Code provides that a man is said to commit “rape” if he penetrates penis into the vagina and the first proviso provides against her will and the provision sixthly provides with or without her consent, when she is under 16 years of age.

22. However, it is alleged in the First Information Report that

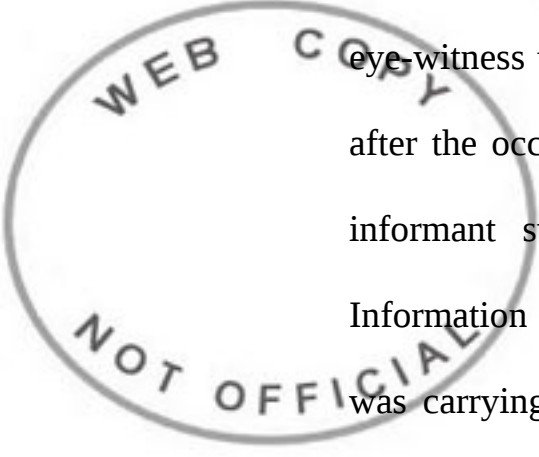


the victim is 12 years of age and her medical examination suggests that the age of the victim is found to be 15 to 16 years and allegation made is that she was carrying pregnancy of 24 to 26 weeks. The charge-sheet has been submitted under Section 376(2)(f) of the Indian Penal Code, but the charge has been framed against the appellant under Section 376 of the Indian Penal Code. Section 376(2)(f) of the Indian Penal Code provides commitment of rape on a woman when she is under 12 years of age hence, when a rape is committed upon the victim she is under 16 years of age then the consent becomes irrelevant and no plea of consent as a defence is permissible. The victim in her evidence stated that the appellant used to take her by lifting in his lap by enticing her and used to commit rape. However, there is no evidence of there being consent or plea of consent has been taken as defence.

23. Learned counsel for the appellant has relied upon a decision in the case of **Vinod Kumar vs. State of Kerala** reported in **2014(3) PLJR 303 (SC)** in which the ratio was decided regarding consensual sexual relationship.

24. However, the age of the victim was assessed between 15 to 16 years and hence, the consent becomes irrelevant and, as such, the decision in the case of **Viond Kumar** (supra) has got no relevance.

25. However, in the facts and circumstances of the case, the only witness to the occurrence in this case is the victim (P.W.4) herself and question arises whether the conviction can be maintained on the



sole testimony of the victim. The informant though came to support the prosecution case in her evidence, but it is apparent that she is not an eye-witness to the occurrence as she learnt about the occurrence much after the occurrence when the victim became pregnant. However, the informant submitted written report on the basis of which First Information Report was lodged in which she has stated that the victim was carrying pregnancy of 3 to 4 months. The medical examination report shows that the victim was carrying pregnancy of 24 to 26 weeks and there is lot of difference in physical feature of pregnancy of 3-4 months or a pregnancy of 24 to 26 weeks particularly to a person of 12 to 16 years old and the informant who is the mother of the victim must have been aware of the pregnancy even before what she repeated about the occurrence. However, the estimation of the informant about the pregnancy of 3 to 4 months is only an opinion of a rustic lady and the estimation of her pregnancy as a rustic lady has no much consequence as her statement is that she learnt about the pregnancy only after it was disclosed by the victim and hence, the case hinges on the sole testimony of P.W.4. However, it is well settled that the conviction in case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the Court is convinced about the truthfulness of the version of prosecutrix and there exists no circumstance which casts a shadow of doubt over her veracity and if the evidence of the prosecutrix is of such quality, that may be sufficient

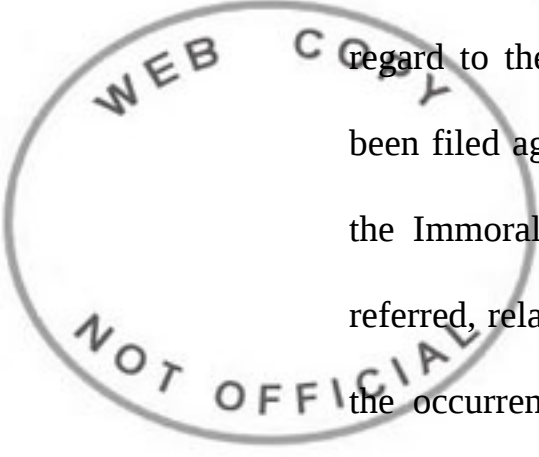
to sustain an order of conviction solely on the basis of her testimony.

26. However, coming to the facts and circumstances of the case at length and reliance has been placed in the case of **Ramdas & Ors. vs. State of Maharashtra** reported in **PLJR 2007(1) 40 (SC)** where also the principle has been taken note of and considered.

27. However, so far as the evidence of the victim (P.W.4) is concerned, she has specifically stated that the appellant used to take her by lifting in his lap and raped her by untying her clothes and he raped for a longer period continuously at the interval of some days for a period of six months causing her pregnancy. However, during the period she became pregnant and has pregnancy of 24 to 26 weeks but has not mentioned what prevented her to report the matter to her mother and father and, as such, the question arises whether this appellant was the person continuously raping her and if it is so then why his name was not reported earlier.

28. A great emphasis has been laid that the doctor has found the pregnancy of 24 to 26 weeks and the said pregnancy was terminated after a period of five to six months which is dangerous to life.

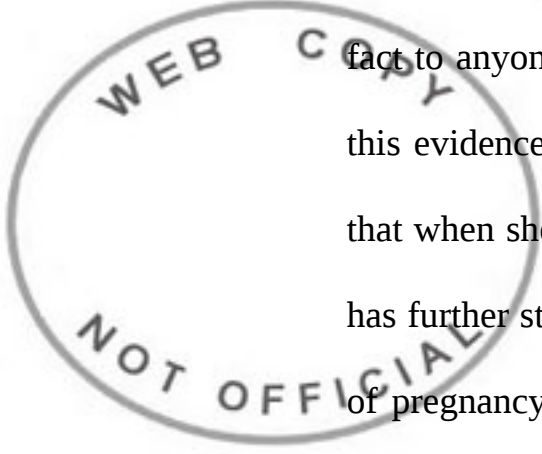
29. However, the next question raised is a matter of importance under the facts and circumstances of the case. There was enmity between the parties and there was case and counter case between them. It has been proved that the informant has lodged a case

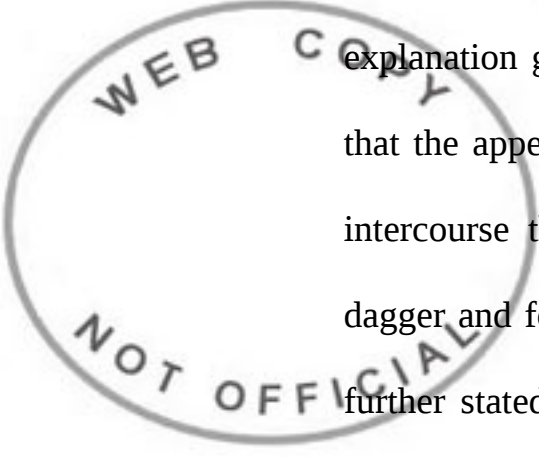


or initiated a proceeding under Section 107 of the Cr.P.C. and also a case of rape was filed against one Shiv Pujan Das in the year 2006 with regard to the same occurrence. It is further admitted that a case has been filed against the informant for offence under Sections 3 and 4 of the Immoral Traffic Act. However, all the cases, which have been referred, relate to lodging of case against each other five years back as the occurrence of enmity shown in the year 2005-06, whereas, the present occurrence is of the year 2012 and the question for consideration is whether the appellant has falsely been implicated in this case due to the previous enmity and further the question is whether a conviction recorded on the sole testimony of the victim under the facts and circumstances of this case. Under the facts and circumstances of the case, when there is no corroboration regarding the implication of the appellant as the name of the appellant was disclosed after few months, whether the conviction can be recorded on the sole testimony of the victim.

30. However, there are only two material witnesses in the case who are P.W.4 (the victim) and P.W.3 (the mother of the victim, the informant). The informant in her evidence has specifically stated that when she learnt about the pregnancy then she took her daughter to the Police Station and hence, it is apparent that as per her evidence she had no knowledge about the pregnancy. However, it is strange that the victim, the daughter of the informant, has a pregnancy of 24 to 26

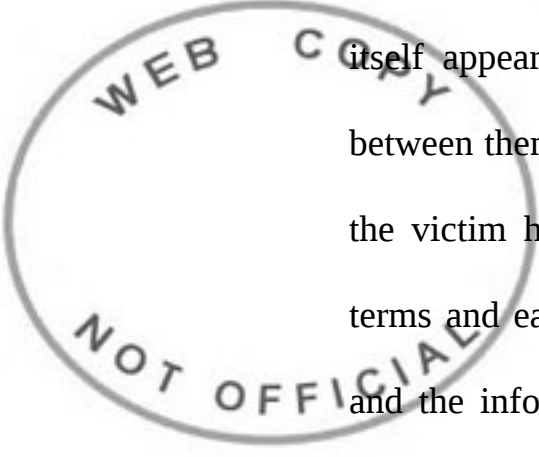
weeks at the age of 15 to 16 years. Her evidence again in paragraph 11 is that when her daughter became pregnant then she did not disclose the fact to anyone because the appellant threatened them to kill. However, this evidence is quite contrary to her evidence in examination-in-chief that when she learnt then she took the victim to the Police Station. She has further stated that she did not disclose about the fact of termination of pregnancy. She has further stated in her evidence that her husband has not gone to the Police Station and her husband knew subsequently that her daughter has become pregnant. She has further stated that she disclosed her husband about the pregnancy. She has further stated that regarding the termination of pregnancy of her daughter was not even disclosed to her husband. However, this evidence of the witness also stands falsified in view of the fact that in the written report itself there is specific averment about the pregnancy of the victim and the husband of the informant has put Left Thumb Impression on the said written report and hence, the verdict of this witness stands falsified that the husband was not aware regarding the pregnancy. However, the only witness remains is P.W.4 the victim herself. However, the age of the victim has been stated to be about 15 to 16 years and now question for consideration is whether on the sole testimony of the victim, conviction can be recorded. However, it is apparent that the matter was reported to the police on 18.05.2012 on which the First Information Report was lodged and on the same day the victim was examined and it was found



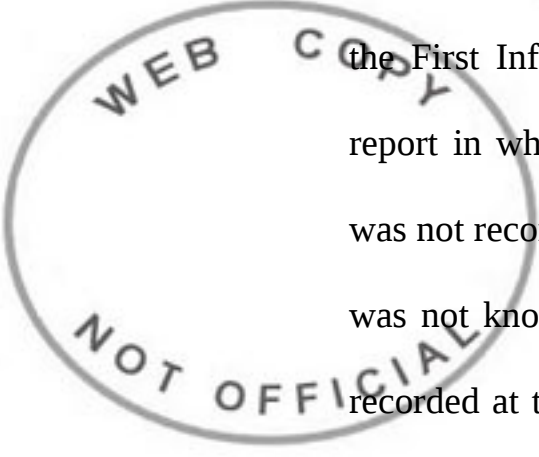


that she had a pregnancy of 24 to 26 weeks and though it is alleged that the victim disclosed about the occurrence belatedly and the only explanation given for delay in lodging the First Information Report is that the appellant had threatened her at the outset at the time of first intercourse that if she would disclose then she would be killed by dagger and for this reason she did not disclose to her mother. She has further stated that this act may be four times at the interval of some days and it continued for six months and she did not disclose this fact to her father. She has further stated that she knew the fact that her mother filed a case against the appellant. She has also stated that she knows Shiv Pujan Das as he also committed rape on her.

31. Having regard to the facts and circumstances of the case, it is evident that the victim was earlier a victim of rape and at the second time the appellant is also alleged to have committed rape, but the victim did not disclose the fact to the mother and father which does not stand to reason. The victim though has stated that the informant used to go outside for doing work of labour to some other place. However, still it is not the case of the prosecution that she remained separate for a longer period rather as per the evidence, the meeting of the victim with her mother and living with the mother have not been denied and it is also improbable to hold that the mother was unaware when the victim aged about 14 to 16 years has a pregnancy of 24 to 26 weeks. However, in her cross-examination in paragraph 11 informant stated that her



daughter became pregnant and this fact she did not disclose because the accused person had threatened her to kill. However, this explanation itself appears to be not acceptable as there was previous litigation between them. There was no case of fear because earlier the mother of the victim had filed a case against him and they were on litigating terms and earlier also the case has been lodged against the informant and the informant has also lodged case against others including this appellant and hence, there is no reason of fear for not lodging the case when she got knowledge about the rape as the victim was also aware of the enmity and hence, under these facts and circumstances of the case, the explanation that the case was not lodged due to fear on the part of the appellant is not at all acceptable and in this background it is not proper to record conviction on the sole testimony of the victim. However, specifically the circumstance is that though the father is a witness on the written report and, thus, he must have the knowledge of the occurrence, but he has not come to depose in the case and further the evidence of P.W.3, the informant is that her husband had no knowledge about the pregnancy and her husband has not gone to the Police Station and the informant disclosed about the pregnancy and about the termination of the pregnancy to her husband. However, the fact is that there is Left Thumb Impression of the husband on the written report. The informant though given explanation in paragraph 12 of her cross-examination that the husband was not aware of any fact



and the statement of her husband was not recorded. However, it is strange that the victim was pregnant of 24 to 26 weeks at the time when the First Information Report was lodged on the basis of the written report in which father of the victim was a witness, but his statement was not recorded by the police and P.W.3 has specifically stated that he was not knowing anything and the statement of the husband was not recorded at the police station, whereas the Investigating Officer in his evidence stated that he recorded the further statement of the informant, the victim as well as husband of the informant and hence, the statement of the informant itself stands falsified in view of the evidence of the Investigating Officer that he has recorded the statement of the husband, but the husband has not turned up during the trial and hence, under the facts and circumstances of the case when there is prior litigation between the parties and there is delay in lodging the First Information Report, the statement of the informant that she was not aware of the pregnancy earlier and further that she did not report the matter because of fear is not acceptable. Hence, under the facts and circumstances of the case, it is not proper to record conviction on the sole testimony of the victim without being corroborated by any other witness. The explanation given that the matter was not reported due to fear is also not acceptable as the parties were on litigating terms and the cases were filed one against another since 5-6 years prior to the occurrence and hence, under the circumstances, the appellant is entitled to get benefit

of doubt hence, I give the appellant benefit of doubt.

32. Hence, I find and hold that the prosecution has not been able to prove the charges levelled against the appellant beyond all reasonable doubts and the judgment of conviction dated 06.08.2014 and order of sentence dated 11.08.2014 passed in Sessions Trial No. 65 of 2013 arising out of Raghapur P.S. Case No. 54 of 2012 by Ad hoc Additional District & Sessions Judge-1st, Vaishali, Hajipur are hereby set aside and the appeal is allowed. Since the appellant, namely, Bhuletan Das is in jail, he is ordered to be released forthwith if not required to be detained in any other case.

(Gopal Prasad, J)

Kundan Sharma

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