

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.701 of 2015

Arising Out of PS.Case No. -127 Year- 2011 Thana -RUPAULI District- PURNIA

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Hira Mahaldar, Son of Jyotish Mahaldar, Resident of Village Kamp, P.S. Rupauli
(Mohanpur), District- Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Mr. Bhola Prasad, Advocate.

For the Respondent : Mr. S.A. Ahmad, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 30-11-2017

Heard Mr. Bhola Prasad, learned counsel for the
appellant and learned APP for the State.

2. Hira Mahaldar, the appellant has been convicted
under Section 376 of the Indian Penal Code vide judgment dated
31.08.2015 passed in Sessions Trial No. 444 of 2012/Trial No. 83 of
2015 by the learned 2nd Additional Sessions Judge, Purnea. By order
dated 04.09.2015, the appellant has been sentenced to undergo
rigorous imprisonment for ten years, to pay a fine of Rs. 50,000/- and
in default of payment of fine, to further suffer simple imprisonment
for three years. The trial court has also directed that out of the fine
amount Rs. 50,000/-, Rs. 25,000/- has to be given to the prosecutrix
for her rehabilitation.

3. A complaint was lodged by the prosecutrix



alleging that while she had gone to the maize field of one Darogi Sharma, the appellant, with evil intention, came from behind and dashed her on the ground. Without her consent, she was subjected to sexual intercourse. The prosecutrix has also alleged that when she started crying, she was told by the appellant that the incident should not be reported to anybody and that he shall marry her later. Because of such assurance of the appellant, the prosecutrix did not tell about the occurrence to anybody at home. Later, it has been alleged that taking advantage of the aforesaid situation, the appellant kept on subjecting the prosecutrix to sexual intercourse and she ultimately became pregnant. She was also pressurized for abortion but when she refused, she was abused and assaulted. When the mother of the prosecutrix protested, she too was threatened of dire consequences. The aforesaid complaint of the prosecutrix was sent under Section 156(3) of the Cr.P.C. for institution of regular case whereafter Mohanpur P.S. Case No. 127 of 2011 was registered against the appellant for the offences under Sections 376 and 504 of the Indian Penal Code.

4. The police after investigation submitted charge sheet whereupon cognizance was taken and the case was committed to the court of Sessions for trial.

5. The trial court, after examining eight witnesses on



behalf of the prosecution and none on behalf of the defence has convicted and sentenced the appellant as aforesaid.

6. During the course of the trial, P.Ws. 1, 2, 4 and 5, who are independent persons have not supported the prosecution version. However, P.W. 6, the prosecutrix has completely supported the prosecution case and has clearly stated that she was subjected to sexual intercourse, firstly, in the maize field of Darogi Sharma without her consent but on the assurance of the appellant that he would marry her, with her consent. Because of successive acts of rape upon her, she had become pregnant. The prosecutrix has also stated that when she became pregnant for about three months, she was pressurized by the appellant to get herself aborted. When she refused, she was subjected to all kinds of pressure and she, her mother and other family members were threatened and abused.

7. The mother of the prosecutrix has been examined as P.W. 3 who has supported the prosecution version. She did not know about the occurrence in the beginning but when she saw that there were some bodily changes in the prosecutrix, she asked for an explanation. Only then, she could realize that her daughter (prosecutrix) is pregnant. The factum of rape and the prosecutrix being pregnant has further been testified by the deposition of P.W. 7, Dr. Poonam Prabha who had examined the prosecutrix. The P.W. 7



was of the view that there was no sign of rape at the time of examination of the victim but the possibility of her having been raped could not have been ruled out.

8. The age of the prosecutrix has been assessed to be between 14-15 years.

9. The trial court, on taking into account that the appellant did not agree for the DNA test of the child who was delivered by the prosecutrix, came to the conclusion that the appellant was guilty of the offence and hence convicted and sentenced him as aforesaid.

10. Mr. Bhola Prasad, learned Advocate, in defence of the appellant has submitted that none of the independent witnesses have supported the prosecution version and the case stands supported by only the prosecutrix and her mother, who have definite axe to grind against the appellant.

11. He has further submitted that the appellant had worked as a driver to one Manoj Gupta who had some kind of an affair with the prosecutrix. Since the appellant had left the job at Manoj Gupta's place, he has falsely been implicated at the instance of aforesaid Manoj Gupta by the prosecutrix for some monetary favour. However, the aforesaid facts are not borne out by the records of the case. The wife of the appellant had also lodged the case against the



prosecutrix and her mother vide Rupauli P.S. Case No. 214 of 2014 dated 07.10.2014 for the offences under Sections 302, 317 and 201 of the Indian Penal Code alleging that both of them had killed the newly born baby. In the aforesaid case, charge sheet has been submitted against the prosecutrix and her mother P.W. 3 and cognizance also has been taken.

12. This Court is of the view that the aforesaid facts do not, in any way, mitigate the seriousness of the case against the appellant.

13. No fault could be found with the judgment of the trial court in convicting the appellant under Section 376 of the Indian Penal Code. The conviction of the appellant under Section 376 of the Indian Penal Code is therefore sustained and upheld.

14. However keeping into account the nature of the accusation the circumstances under which the case was lodged, the age of the appellant and the prosecutrix and other factors, it appears to this Court that the sentence imposed upon the appellant is on the harsher side. As such this Court deems it appropriate to modify the sentence imposed upon the appellant to a period of seven years.

15. The sentence therefore, stands modified to the extent indicated above. The appellant shall however, be required to pay a fine of Rs. 50,000/- out of which Rs. 25,000/- shall be paid to



prosecutrix for her rehabilitation. In default of payment of fine, the appellant shall further undergo simple imprisonment for one year.

16. The appeal is dismissed but the order of sentence is modified to the extent indicated above. The period which the appellant has undergone in custody shall be set off against the substantive sentence.

17. A copy of the judgment be communicated to the Superintendent of the concerned jail for information/record and compliance.

(Ashutosh Kumar, J)

KKSINHA/-

AFR/NAFR	NAFR
CAV DATE	NA
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