

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.55 of 2015

Arising Out of PS.Case No. -45 Year- 2008 Thana -KASBA District- PURNIA

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MANTOO KUMAR SAH @ MANTOON KUMAR SAH @ MANTOON SAH
SON OF LATE THAKUR PRASAD SAH RESIDENT OF VILLAGE - KASBA,
P.S- KASBA, DISTRICT - PURNEA.

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THE STATE OF BIHAR

..... APPELLANT/S

VERSUS

..... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Amish Kumar, Adv.
Mr. S.K. Choudhary, Adv.
Mr. Prince Kumar Mishra, Adv.
For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 02-08-2017

Sole appellant Mantoo Kumar Sah @ Mantoon Kumar Sah @ Mantoon Sah has been found guilty for an offence punishable under Section 376 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees ten thousand, under Section 366 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees ten thousand in default thereof, to undergo S.I. for one year, additionally under both count with a further direction to run the sentences concurrently vide judgment of conviction dated 03.12.2014, order of sentence dated 05.12.2014 passed by Second Additional Sessions Judge, Purnea in Sessions Trial No.852 of 2010 /502 of 2014.

2. Name withheld, PW.3, the victim filed written report on 08-04-2008 disclosing therein that on 04.03.2008 she had gone to hospital. Therefrom, she had gone to Rani Sati Mandir. When she



came out, Mantoon Kumar Sah came over vehicle and inquired from her where she was going. She replied that she come to hospital and then, is returning back to her house. He directed to sit inside the vehicle whereupon, she said that she will go on foot. During midst thereof, two other persons came who on the pretext of pistol, forced her to sit inside the vehicle which she did out of fear. They have also threatened that in case, she raises an alarm, she will be murdered. Then thereafter, Mantoon Kumar Sah who happens to be her co-villager, married and father of two kids, who used to visit her place for tailoring of cloth of his wife, took her away. When she raised alarm she was given slap who further said that she will be returned back to her house and so, did not shout. He had taken her to Nepal where, he directed not to disclose otherwise she along with her whole family will be eliminated. He had gone to the place of Mama Sasur who had medicine shop. His maternal uncle injected and said that now she will be alright. After injection, she became senseless. After regaining her sense, she found herself by the side of Mantu. Room was closed. It was dark. There was rain. Mantu had already ravished her. On the following morning at about 05:00 AM he left the vehicle which belonged to younger brother Rajesh Kumar @ Attu Kumar directing his maternal uncle to get the vehicle at his place. Thereafter, his maternal uncle took out his own vehicle and directed them to sit inside. Accordingly, she sat. She had read a board having Sonebarsi Gobhinpur, Nepal. It was remote country side. River was flowing.



His maternal uncle also threatened to keep silence, she will be taken to her place. Then thereafter, his maternal uncle took them to Jhapa dominated by Rajbansi. They got down at the place of Aakash, friend of maternal uncle of Mantu. She stayed there. She had divulged her misfortune to the inmates of the house as, Mantu was on visiting term whereupon, they knew that he was married since before. They have disclosed that there will not be any kind of difference having a wife. He will keep another wife also. On 10.03.2008 his maternal uncle forcibly took them away to a temple where marriage was performed, whole episode was snapped by his maternal uncle. On 11.03.2008 his maternal uncle brought them to Damak town where they stayed at a hotel. Maternal uncle of Mantu and all the hotel staffs were talking in Nepali language. Mantu had disclosed that she happens to be his wife. They were allotted a room at 3rd floor where she was confined. In the room Mantu and his Mama used to drink. Then, thereafter, his Mama left the hotel. He returned back on 16.03.2008 and took them to different place where they stayed 2-3 days. It has also been disclosed that Mantu used to administer tablet before sleeping. They moved inside Nepal country. Then his maternal uncle took them to Jogbani, Sasural of his younger brother where his Mami Sangeeta was present. Mantu and his maternal uncle directed her to stay as they are going to Kasba and will return soon thereafter. She insisted to release but was not allowed. Then she telephonically informed her mother whereupon, her mother had divulged that when she has been



ravished then, what you will get after coming to house. She stayed for fifteen days at Jogbani. Maternal uncle of mantu had threatened that in case of divulging his name, her house will be burnt. Mantu came during intervening period and said that he will carry her to her house. Later on, mother-in-law, maternal uncle and Mantu came and said that now you are free to do as per her wish. He is going to his Sasural. Anyhow, she came to her place.

It has also been divulged in the written report that she happens to be widow, student of LLB Part-II and has a daughter aged about five years.

3. On the basis of aforesaid written report, Kasba P.S. Case No.45/2008 was registered followed with investigation as well as submission of charge sheet, facilitating the trial which ultimately concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that family of victim happens to be indulged in illegal business of narcotics which was protested by the husband of victim who was murdered and for the same, prosecution party were made an accused. As the appellant, being co-villager also resisted, been implicated in this case. However, neither any DW nor any kind of document has been exhibited.



5. In order to substantiate its case prosecution had examined altogether seven PWs out of whom PW.1 Bhanu Devi is the mother of victim, PW.2 Purushottam Kumar, brother of the victim, PW.3 victim herself, PW.4 Shankar Lal Sah, PW.5 Jai Mangal Chaudhary, part Investigating Officer, PW.6 Dr. Sunita Prasad who had examined the victim and PW.7 Bharat Bhushan who conducted the main investigation. Side by side had also exhibited Ext.1-Written report, Ext.1/1- Endorsement over written report, Ext.2-Medical Report, Ext.3-Formal FIR.

6. As stated above, neither DW nor document has been exhibited on behalf of appellant.

7. Learned counsel for the appellant has urged that irrespective of suggestion whatever been given to the members of the prosecution party including the victim, from the conduct of the victim herself, it is evident that she being major was a consenting party and that being so, no offence is made out. Accordingly, the judgment of conviction and sentence recorded by the learned lower court happens to be bad, illegal and is fit to be set aside.

8. Furthermore, it has also been submitted that all the witnesses happens to be own family members that means to say father, mother, brother and victim herself. None of the villagers have been examined. Therefore, there happens to be absence of independent witness. In the aforesaid background, the conduct of the



prosecution is also to be seen more particularly in the background of the fact that though all the witnesses have admitted that they were an accused relating to murder of husband of victim wherein acquitted but, the whole circumstance discloses dubious character of the prosecution which also should have been taken into consideration during course of adjudging the prosecution case.

9. Apart from this, it has also been submitted that non-presence of independent witness is indicative of the fact that no such type of occurrence had ever taken place rather, the family members of the prosecution party who were very much aggrieved on account of protest having been made by the appellant over their illegal spurious wine business, got the appellant involved in the present case and for that, PW.3 victim was made sacrificial goat and that happens to be reason behind that so many flaws are found in the prosecution case which completely nullify the finding so recorded by the learned lower court.

10. To substantiate such plea, it has been submitted that it was incumbent upon the investigating authority to trace out the place of Fua where the victim had stayed after coming from Jogbani though not disclosed in written report who at least had disclosed the miseries of the victim if so, faced and in likewise manner, the conversation having in between parents PW.1 as well as PW.4 with the victim, PW.3, which could have substantiated positive evidence relating to



kidnapping or elopement of the victim. That being so, by such lapses not only the interest of the appellant has been jeopardized rather prosecution also lost its reliability.

11. Furthermore, it has also been submitted that as victim was never kidnapped so there was inconsistency in her evidence with regard to mode of travelling whether by motorcycle or car or jeep from the place of occurrence means Rani Sati Mandir, It is evident that there happens to be presence of people all the time at Rani Sati Mandir and so, taking out pistol and thereafter forcing the victim to sit inside vehicle could not have materialized unless and until she happens to be a consenting party and in likewise manner, going to the place of maternal uncle of appellant without any resistance alarm, protest, staying there without taking any kind of effort, at least to raise alarm attracting the people, the local police as, being citizen of different nation, would not have been left out uncared and in likewise manner, having movement from the place of maternal uncle of the appellant to Jhapa and then thereafter to Damma.

12. It has also been submitted that plea of consent is furthermore visualizes from the narration of the victim herself as, she has stated that just after staying at the place of maternal uncle of the appellant, she was injected as a result of which she became senseless, was raped and then thereafter, was taken to the place of Jhapa where friend of maternal uncle of appellant namely Ashok was residing



where also, she was raped that means to say during her captive she was repeatedly raped. Then what was necessity for solemnization of marriage at a temple. It has purposely been introduced to give an eyewash to her family members, as she on her own eloped with the appellant knowing full well since before that he was married having children. So, if all the chain of circumstances is taken together, it is apparent that victim happens to be a consenting party and further, being major would not attract any kind of prosecution much less Section 376 IPC whereunder, appellant has been convicted. It has also been submitted that when she returned back enjoying the company of the appellant, perhaps she might have been scolded by her family members and to get rid of got this case filed. So, in the facts and circumstances of the case, the judgment impugned did not survive.

13. The learned Additional Public Prosecutor while refuting the submission made on behalf of learned counsel for the appellant has submitted that one has to consider the horrifying situation which the victim had faced. Having been kidnapped on the pretext of firearm, taken to another nation, moving hither and thither and during intermediary period, she was raped times without number and lastly brought to Jogbani. Furthermore, it has also been submitted that victim had detailed the event which she faced and manner whereunder occurrence was committed. That being so, the judgment of conviction and sentence recorded by the learned lower court did



not require interference.

14. The learned counsel for the appellant rightly submitted that none of the independent witness has been examined in this case. Coming to status of the family members, it is apparent that PW.1, PW.2 and PW.4 are not an eyewitness to occurrence. It is also evident that PW.5, the part Investigating Officer had submitted charge sheet under Section 494 of the IPC against the appellant though was not accepted by the learned lower court. Evidence of PW.6, Dr. Sunita Prasad has got no relevance in the facts and circumstances of the case, as, victim happens to be major, married, mother of five years old daughter and was examined on 10.04.2008 having a long interval and that being so, the doctor had rightly opined with regard to absence of sign of rape. From the evidence of PW.7, Investigating Officer it is evident that he had visited the alleged P.O. that means to say Rani Sati Mandir without access to Sadar Hospital to trace out genuineness with regard to presence of victim at the Sadar Hospital by way of inspecting OPD Register, visiting the place of Fua of the victim where she stayed after coming from Jogbani, however, had cared to Jogbani in order to search out the place where victim was kept and during course thereof, examined the occupants thereof, namely Sangeeta, Mahadev, Santosh, Sunita, Sunil although they have not been examined during trial. He had disclosed examination of independent witnesses such as Mohan Lal Mandal, Sanjay Kumar Mishra, Dinesh Mistri, Purushottam Kumar out of whom only



Purushottam brother of PW.2 has been examined. He had exhibited the relevant documents. As he was transferred, handed over charge. In para-8, para-9, there happens to be contradiction and the relevancy thereof will be considered during course of appreciation of evidence of the victim. In para-15 he had further stated that Mahadev, Santosh were resident of Nepal but, their statements were recorded at the place of Sangeeta, at Jogbani, Araria. Because of the fact that charge sheet was submitted under non-cog Section on account thereof, lacks disclosure of names of the witnesses and so the witnesses were examined as per availability.

15. PW.3 is the victim. Admittedly, both (victims and accused/appellants) are co-villagers and known to each other, During her examination-in-chief she had stated that the occurrence is of dated 04.03.2008 at about 11:00 AM. At that very time she had come to Rani Sati Mandir after taking medicine from government hospital. As soon as she came out from the temple, Mantoo Kumar Sah came over vehicle, parked in front of her. Then had disclosed that Mantoo Kumar Sah was over motorcycle. His two friends were also on motorcycle. Mantoo Kumar Sah inquired from her where she was going whereupon she disclosed that she was going to her house. Mantoo Kumar Sah said that he will carry her. She said that she will go on foot over this, friends of Mantoo Kumar Sah took out pistol and threatened. Further directed to sit over vehicle of Mantoo Kumar Sah otherwise she will be murdered. She said that let she be murdered



whereupon they said that her daughter will also be murdered. Then thereafter, they forced her to sit over the vehicle of Mantoo Kumar Sah. Mantoo Kumar Sah took her to Nepal. His two friends were over motorcycle. During midst of way Mantoo Kumar Sah had threatened that in case of raising of an alarm, she will be murdered. Her daughter will also be murdered. She became very much afraid. Out of fear, she could not raise alarm. Mantoo Kumar Sah took her to the place of Bijen Kumar Choudhary at village-Sonbarsi Gonbinpur, Biren Chaudhary was running a medicine shop at his house. Mantoo Kumar Sah had said to Biren Kumar Choudhary that Mama she is not feeling well so, be injected. Accordingly, Biren Kumar Choudhary injected as a result of which she became senseless. After regaining sense, she saw, herself in a room. Room was darked. Her both hands and legs were tied. It was raining. Mantoo was sleeping by her side. She also perceived that she was raped. Then thereafter, on the following morning, maternal uncle of Mantoo directed her to sit in the middle over his motorcycle while Mantoo sat at last and then, Biren driven the motorcycle to Jhapa where they stayed at the house of Aakash, friend of Biren. All were talking in Nepali language. There was family in the house of Aakash whom she disclosed regarding her owe. She also disclosed that Mantoo was married having children even then, forcibly lifted her over which, the wife of Aakash had disclosed that it will not matter, he will also marry with you. He will keep two wives. Then thereafter, she vigorously wept. She stayed at



that place for ten days and during midst thereof, she was raped by Mantoo Kumar Sah on the pretext of firearm. On 10.03.2008 Mantoo Kumar Sah, Biren Kumar Choudhary, Aakash and 2-3 unknown persons took her to Shiv Mandir where Mantu forcibly put vermilion over her. The whole episode was snapped by the maternal uncle of Mantoo Kumar Sah and disclosed that it will be used as a evidence. 2-3 days thereafter Mantoo and Biren brought her to Damak where she was kept for 5-6 days in a Hotel where Mantoo Kumar Sah disclosed her identity as his wife. Then thereafter, she was kept at different places for a short stay of 1-2 days. Lastly, Mantoo Kumar Sah took her to Jogbani on 16.03.2008 at the place of Sangeeta Devi where she was introduced as his wife. She stayed for 10-15 days and during midst thereof, she was regularly raped. One day, when Mantoo Kumar Sah was not present, she rushed to a STD Booth and from there, she dialed to her mother, disclosed her condition over which, her mother said that she will not be able to show her face in the society on account of her absence of such long period in case she comes. Then thereafter step mother-in-law of Mantoo Kumar Sah came at Jogbani and talked with Biren and Mantoo Kumar Sah and took them away along with her. Mantoo Kumar Sah had said that do what you want. He will not carry her to Kasba. She began to weep whereupon Sangeeta Devi gave Rs.100/- and boarded her in a bus proceeding towards Purnea. Then she gone to the place of his Fua at mohalla Gulabbagh, Purnea. She informed her parents, consoled, the



atmosphere whereupon, her parents came, took her away and then approached the police, filed a written report. She was also medically examined.

16. Peculiarity of cross-examination is that even argued at the end of appellant that victim apart from being major happens to be a consenting party, victim left her place in company of appellant on her own volition. But during cross-examination completely denied the occurrence and on account thereof, consent remained for argument sake. Paragraphs 3 to 12 relates with hospital as well as Rani Sati Mandir, in casual manner. In para-13 she had stated that when Mantu and his two friends had directed to sit over motorcycle, she had not raised alarm as, they have shown pistol. In para-14 she had stated that since Mantoo Kumar Sah parked motorcycle in front of her, his two friends also followed him soon thereafter. Pistol was shown by the friends of Mantoo Kumar Sah. In para-16 she had stated that before the aforesaid occurrence neither she had gone to the place of Biren nor at Nepal. In para-17 she had stated that no sooner than injected by the Biren she became unconscious. During midst thereof, Mantoo Kumar Sah had raped her. Then thereafter, Mantoo Kumar Sah used to administer tablet before commission of the rape. After consuming tablet, she does not become senseless. In para-18 she had stated that as she was staying at the house of friend of Mantoo Kumar Sah so she had not raised alarm whenever she was raped. In para-19 she had further stated that at the time of putting



vermilion she had resisted. It was 11:00 PM. She raised cry but none cared. In para-20 she had stated that when Mantoo Kumar Sah disclosed her status to be his wife in a Hotel at Damak, she had protested but she is unable to say whether they understood or not as, they all were talking in Nepali. In para-21, 22, 23, 24, 25 and 26 there happens to be contradiction. In para-27 she had stated that she came to the place of her Bua on 01.04.2008. Then there happens to be cross-examination relating to murder of her husband wherein they were accused and further, as the appellant used to protest their illegal activity, on account thereof, they falsely implicated.

17. Though the evidence of PW.7 has been discussed in forgoing paragraph, however, is taken afresh in light of evidence of the victim. In para-8,9 he had stated with regard to further statement, that she had not stated regarding threatening as well as weeping, but at para-10 had confirmed that victim had stated regarding commission of rape by the appellant at Jhapa. However, she had not spoken that rape was committed at the point of pistol. At the other end, it is also evident that he was not at all cross-examined over going to Jogbani, recording of statement of persons, so named nor suggested that victim never stayed at Jogbani, nor was taken to Jogbani.

18. In rape case, delay in lodging of a case has got no important role to play considering the Indian social fabric though no



delay is found as soon after arrival, written report was filed.

However, same has also been considered in **State of Himachal Pradesh v. Sanjay Kumar @ Sunny** reported in **2017 Cr.L.J. 1443**.

“24) When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in *Tulshidas Kanolkar v. State of Goa (2003) 8 SCC 590*:

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.”

25) In *Karnel Singh v. State of Madhya Pradesh*², this Court observed that:

“7...The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the



complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her.

Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false..."

26) Likewise, in *State of Punjab v. Gurmit Singh & Ors.*³, it was observed:

"8...The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged..."

19. Now coming to the status of the victim of rape, reliability of her evidence, same has also been dealt with in the *State of Himachal Pradesh v. Sanjay Kumar @ Sunny Case* (Referred above):

"31) After thorough analysis of all relevant and attendant factors, we are of the opinion that none of the grounds, on which the High Court has cleared the respondent, has any merit. By now it is well settled that the testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of a statement, the courts should find no difficulty to act on the testimony of the victim of a sexual assault alone to convict the accused. No doubt, her testimony has to inspire confidence. Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury. The deposition of the prosecutrix has, thus, to be taken as a whole. Needless to reiterate that the victim of rape is not an accomplice and her evidence can be acted upon without corroboration. She stands at a higher pedestal than an injured witness does. If the



court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version. To insist on corroboration, except in the rarest of rare cases, is to equate one who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars, as in the case of an accomplice to a crime. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance {See *Bhupinder Sharma v. State of Himachal Pradesh*(2003) 8 SCC 551}. Notwithstanding this legal position, in the instant case, we even find enough corroborative material as well, which is discussed hereinabove.”

20. Whenever, court is confronted with rape case, usually two kind of plea are being taken. The first one consent and the second one over her character. So far consent is concerned, once victim deny the same, the court has to presume the same unless rebutted at the end of accused in terms of Section 114A of the Evidence Act. That means to say, accused is under onus to properly discharge its obligation whenever confronted with denial at the end of victim. In the present case, as stated above, neither during cross-examination nor under statement recorded under Section 313 Cr.P.C, such plea was taken nor examined any DW to substantiate the same. So far other category is concerned from the definition of rape, it has properly been explained. In an event of consent there would be submission, but mere submission would not suggest consent. That happens to be reason behind presence of proviso whereunder court has been



precluded to infer, otherwise, even it finds that during commission of rape no protest at the end of victim will always denote consent, and in that event, irrespective of allegation of rape, the accused will have his escape.

21. After considering the evidence in its totality, it is apparent that non-examination of independent witnesses has got an excuse as a charge sheet was submitted under non-cog (section 494 IPC) without having description of witnesses and so, in spite of having obligation on the part of the public prosecutor as laid down under Section 226 of the Cr.P.C., the order sheet speaks that same has not been properly discharged and that being so, in spite of having so many independent witnesses examined by PW.7 as disclosed by him including the persons belonging to Jogbani where victim was kept none were examined. On that very score, version of the victim could not be doubted.

22. As per evidence act, evidence means examination-in-chief, cross-examination and re-examination, if any. Examination-in-chief means examination of a witness by the party in its support, followed with cross-examination which has to be carried out by the adversary. It is an event to test the veracity of the testimony of a witness. In case a witness is not cross-examined on a particular point, then in that event, the adversary would not be in a possession to challenge the same nor, that part could go against the witness as, by



way of non cross-examination, the witness has been deprived of an opportunity to explain the same. The same has been properly discussed in **Gian Chand & others v. State of Haryana** reported in **2013(4) PLJR 7 (SC)**:

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in **Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204** observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.”



(Emphasis supplied)

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

23. When the evidence of victim has been gone through, it is evident that appellant had cross-examined the victim with certain reservations that means to say, victim was not at all cross-examined how she was taken away from the Rani Sati Mandir to Barsa, she was not at all cross-examined with regard to activity having at the end of appellant within the territory of Nepal and further, with regard to his activity at Jogbani. That means to say being along with appellant for such duration was out of own volition never been exposed controverting the allegation of keeping under fear and duress, at the end of appellant by cross-examining the victim in that context, and on account thereof, it could not be perceived the victim to be consenting party.

24. Mere putting vermilion would not form valid marriage under Hindu Marriage Act. So, no one could expect that by such activity appellant had married with the victim or was a consenting party as again, appellant failed to cross-examined, nor could be a valid marriage on account of married since before. The third aspect even brushing aside, the appellant had pretended himself to be her



husband on the basis of aforesaid eventuality which was not legally entertainable and on that very pretext, indulgence under sexual activity, although not pleaded happens to be on the score of misrepresentation and for that, again appellant would be liable. That being so, instant appeal sans merit and is accordingly dismissed.

25. Appellant is on bail, hence his bail bond is cancelled. He is directed to surrender before the learned lower court to serve out remaining part of sentence otherwise learned lower court will take proper legal recourse for his appearance to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	18.08.2017
Transmission Date	18.08.2017

