

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.145 of 2015**

Arising Out of PS.Case No. -396 Year- 2013 Thana -KUSHESHWARSTHAN District-
DARBHANGA

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Baiju Yadav, S/o Ram Bilash Yadav, resident of Village - Jhajhra, P.S. - Kusheswar
Asthan, District - Darbhanga.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Satish Chandra-Advocate

For the Respondent/s : Smt. Abha Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 18-07-2017

Sole appellant Baiju Yadav has been found guilty for an offence punishable under Sections 365, 366A and 376 of the I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as to pay fine appertaining to Rs.2,000/- in default thereof, to undergo simple imprisonment for one month additionally relating to Sections 365 and 366A of the I.P.C. respectively, to undergo rigorous imprisonment for seven years as well as to pay fine appertaining to Rs.5,000/- in default thereof, to undergo simple imprisonment for three months relating to an offence punishable under Section 376 of the I.P.C. vide judgment of conviction dated 22.01.2015 and order of sentence dated 23.01.2015 passed by the Additional Sessions Judge-1st, Benipur, Darbhanga in Sessions Trial No.136 of 2014.

2. PW-3 Rajesh Kumar Yadav, who happens to be father



of victim (name withheld, PW-4), on 02.12.2013 disclosing therein that on the same day at 9.30 a.m., his daughter had proceeded to school (Nand Kishore Uchch Vidhyalaya, Satighat) over bicycle. She happens to be aged about 16 years and a student of Class-X. When up till 4.00 p.m. she did not return whereupon they gone in search and during course thereof, he came to know that Baiju Yadav enticed her away. During the aforesaid activity, Kamlesh Yadav and Shiv Shankar Yadav actively associated themselves. It has also been disclosed that Mobile No.8002937447 belongs to his daughter while Mobile No.7352858400 belongs to Baiju Yadav which happens to be switched off.

3. On the basis of aforesaid written report, Kusheshwar Asthan P.S. Case No.396 of 2013 was registered followed with an investigation as well as submission of chargesheet after completing the same, paving way for the trial before Court of Sessions as offence being exclusively triable by the Court of Sessions which ultimately concluded in a manner, the 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 of the occurrence. It has also been pleaded that alleged victim happens to be a major and she, on her own accompanied the appellant, got married and began to lead conjugal life happily. However, on account of pressure having exhorted upon



her at the end of her parents, she during course of trial became adverse to the appellant. To substantiate the same, apart from examination of DW-1 Ashok Lal, printed marriage certificate granted by a temple management has been made an Exhibit-A.

5. In order to substantiate its case, prosecution had examined altogether nine PWs, out of whom, PW-1 Bachcha Yadav, PW-2 Dewanti Devi, PW-3 Rajesh Kumar Yadav, PW-4 Nitu Kumari, PW-5 Nunu Jha, PW-6 Dr. Vijay Pratap Singh, PW-7 Birendra Rout, PW-8 Bharat Ram and PW-9 Ashok Kumar Chaudhary. Side by side, had also exhibited the documents as Exhibit-1 signature of informant over F.I.R., Exhibit-2 signature of victim over statement under Section 164 Cr.P.C., Exhibit-2/1 statement under Section 164 Cr.P.C. of the victim, Exhibit-3 matriculation certificate of Nitu Kumari issued by B.S.E.B., Exhibit-4 signature of A.S.I. over formal F.I.R., Exhibit-5 writing and signature of Dr. V.P. Singh, D.M.C.H., Darbhanga over medical examination, Exhibit-6 signature of I.O. over case diary written upto paragraph-1 to 67, Exhibit-6/1 writing and signature of A.S.I. Birendra Rout over F.I.R. under Para-68 to 76. Defence had also examined one DW namely Ashok Lal Deo and had also exhibited two documents viz. Exhibit-A signature of appellant Baiju Yadav over original marriage card and Exhibit-A/1 signature of Nitu Kumari over said marriage card.

6. Learned counsel for the appellant while assailing the



conviction and sentence has submitted that the learned lower Court while identifying the victim (PW-4) to be minor, wrongly and illegally based upon Exhibit-3 the matriculation certificate which, on account of presence of medical evidence after examination of the victim by PW-6 Dr. Vijay Pratap Singh whereunder victim has been identified to be a major, should have been given the preference and accepted in the background of victim being a consenting party, which is apparent from her deposition. So, submitted that instead of convicting the appellant, the learned lower Court should have acquitted.

7. Furthermore, it has also been submitted that all the remaining material witnesses namely PW-1 Bachch Yadav, who happens to be uncle of victim, PW-2 Dewanti Devi, mother of the victim, PW-3 Rajesh Kumar Yadav, father of the victim were not at all an eye witness to occurrence and so, their evidences are fit to be rejected. Furthermore, the evidence of PW-7, Birendra Rout and PW-8 Bharat Yadav, who happen to be the part I.O. have also got no relevancy in the background of the fact that victim being major was a consenting party. PW-9 Ashok Kumar Chaudhary, the Judicial Magistrate happens to be a formal witness in nature as he had simply recorded statement of the victim under Section 164 of the Cr.P.C., which he made an exhibit.

8. It has also been submitted at the end of the learned



counsel for the appellant that victim was very much inclined in favour of the appellant, stood firm over joining hands with appellant and that is apparent from own conduct of the victim, who after recovery had not opted to join hands with her parents, but in due course of time, she succumbed and became puppet at the hands of her parents as a result of which, she became hostile to the appellant, deposed against the appellant. Therefore, the conduct of the victim is to be seen in its entirety which suggest that she happens to be a consenting party and that being so, appellant be acquitted.

9. On the other hand, learned Additional Public Prosecutor opposed the submission and submitted that from the judgment impugned, it is apparent that learned lower Court had considered all the eventualities relating to the occurrence and lastly, tracing out the victim to be minor recorded adverse to the interest of the appellant which, in the facts and circumstances of the case did not attract interference.

10. Before coming to merit of the case, the status of the victim whenever the prosecution relates with an offence of rape, is to be considered. It is needless to say that considering the Indian social fabric whereunder virginity of a girl/ prestige of a girl/ woman happens to be of paramount consideration and any kind of illegal encroachment thereupon in a form of rape, is found not only a physical scar rather a irreparable harm which a victim is bound to



suffer physically, mentally, socially, emotionally till her last breath and so, she does not dare to file a case unless and until is being victimized. That happens to be reason behind that the evidence of the victim lies on upper pedestal than the normal witness and in case inspires confidence, would justify the conviction without any corroboration. Apart from this, as per definition prescribed under Section 375 of the Cr.P.C., the minor even being a consenting party, is not legally recognizable for the aforesaid activity and that being so, one has to take risk if he wants to procure consent of a minor for any subsequent activity including that of sexual offence.

11. The deficiency persisting during course of ascertaining the age of the victim by way of medical examination happens to be repeated consideration before the Hon'ble Apex Court whereupon it has consistently been observed in *Jarnail Singh v. State of Haryana reported in 2013 (4) CRI.L.J. 3976* and in *State of Madhya Pradesh v. Anoop Singh reported in (2015) 7 SCC 773* that the age of the victim is to be ascertained in similar way like a delinquent as per Rule-12 of the Juvenile Justice Act and Paragraph-29 of the judgment impugned, it is evident that the learned lower Court had perceived the aforesaid view in its right perception. The learned lower Court had also perceived the surrounding circumstances, including the evidence of the victim (PW-4) which gives a fragrance of being a consenting party, but that consent



evaporates in the background of Exhibit-3, the matriculation certificate which the learned lower Court also took notice whereunder the date of birth of victim has been shown as 15.03.1988, less than 16 years on the date of occurrence whereupon, the conclusion having arrived at by the learned lower Court is found legally sound.

12. Learned counsel for the appellant has submitted that appellant happens to be a Bachelor, yet to begin his life, is under custody for three and half years should be given special consideration, which is found duly forbidden in the background of the fact that the minimum punishment prescribed under Section 376(1) of the I.P.C. is seven years which the learned lower Court had inflicted against the appellant.

13. That being so, the judgment of conviction and sentence recorded by the learned lower Court did not attract interference. Consequent thereupon, appeal lacks merit and is accordingly, dismissed. Appellant is under custody, hence will remain till saturation of the period of the sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
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