

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.460 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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Manish Kumar Ravidas son of Harilal Ravidas Resident of Mohall/village
Dumrawan, P.S. Deepnagar, District Nalanda.

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Arun Kumar Tripathi, Amicus Curiae

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-03-2018

Heard the parties.

2. No one appears on behalf of the appellant on repeated calls, in such a situation, Mr. Arun Kumar Tripathi, Advocate is appointed as the Amicus Curiae to assist this Court.

3. The sole appellant has been convicted under Sections 366 and 376 of the Indian Penal Code and sentenced to undergo R.I. for seven years, vide judgment date 24.7.2003 and order dated 25.7.2003 by Sri Akram Rizvi, 7th Addl. Sessions Judge, Nalanda in Sessions Trial No;452/107 of 2002.

4. The prosecution case as per fardbeyan of of Nitu Devi (P.W.3) in short is that she had gone to attend call of the nature, the appellant on the point of dagger has committed wrong act with her and threatened not to tell this to anybody and he was having sexual



intercourse regular with her and two days prior on 5.2.2002 when she had gone to attend call of nature, the appellant on the point of dagger brought her to the Railway Station from there he has taken to Patna and from there she was taken to Mughalsarai Station and then the persons present there enquired from her and the appellant was arrested and both have been sent to Buxar Police Station and on that basis Deepnagar P.S.Case No.30 of 2002 was registered.

5. During trial four witnesses have been examined, they are P.W.2 Siya Sharan Paswan, father of the victim declared hostile, P.W.2 Surender Paswan declared hostile, P.W.3 Nitu Devi victim and the informant and P.W.4 Ganauri Paswan who has been declared hostile.

6. From the evidence, it appears that all the witnesses have been declared hostile except P.W.3 (informant) herself.

7. On perusal of the evidence of P.W.3, it appears that she has stated in her evidence in court that appellant Manish Kumar on the point of pistol has taken to her to Biharsharif Station and thereafter he left her to Buxar Police Station and where she lodged the case. She has also stated that she was subjected to rape. In the cross examination also this witness has stated that she was subjected to rape earlier also but again in her cross examination, after granting adjournment, she has stated that appellant Manish Kumar has not



committed any wrong act, which is done between the wife and husband.

8. From the above evidence, it appears that later on she has not supported the prosecution case of rape and the I.O. and Doctor have also not been examined. In spite of that the learned trial court has convicted the appellant under Section 376 of the IPC though the Doctor has not been examined and no injury report has been brought on record. Learned trial court was of the view that in view of the specific evidence of the victim, non-examination of the Doctor and non-production of the injury report, evidence of the victim can not be thrown aside.

9. The learned trial court has also admitted that there are laches on the part of the prosecution as they have been not brought on record various papers but he has considered that there was negligence on the part of the A.P.P. and for that prosecution evidence cannot be disbelieved.

10. Contention of the learned counsel for the appellant is that this is a case of no evidence as the girl has herself denied commission of rape in the cross examination and other witnesses including the father of the informant has been declared hostile and I.O. and the Doctor have not been examined, as such the impugned judgment is bad in law.



11. However, the learned counsel for the State has defended the judgment on the ground that the girl in her earlier statement has supported commission of rape even in cross examination she has supported commission of rape by the appellant, however, it appears that after adjournment, she has been denied the same, however, it appears that she had been gained over by prosecution and as such learned trial court, considering the same, has convicted the appellant under Section 376 of the IPC, which appears to be just and proper.

12. Having heard both sides. As I have discussed above, it appears that there is no evidence available on the record in support of prosecution case and the evidence of P.W.3 who is victim in this case and she has submitted in her chief that she was subjected to rape but in her cross examination, she has stated that she was subjected to rape but later on after adjournment, she has been cross examined and she has stated that Manish Kumar has not made contact with her and he has not done any wrong act which usually is being done between husband and wife.

The learned trial court has disbelieved the same, however, the learned trial court has failed to consider that not only that her evidence is self-contradictory but there are inconsistencies in her evidence and it is contradictory to the fardbeyan as in the fardbeyan



she has stated that she had gone to attend the natural call and she was subjected to rape and she was regularly raped. Thereafter when she was brought to Deepnagar Police Station and from there she was taken to Mughalsarai there also she was subjected to rape. All the stories are not found in her evidence though they are omissions but that creates doubt about the credibility of this witness.

Learned trial court has not considered the aforesaid discrepancies and inconsistencies in her evidence and the learned trial court ought not to have convicted the appellants on the basis of such solitary evidence of P.W.3 which does not inspire confidence and even the Doctor has not been examined.

14. Accordingly, this appeal is allowed, the impugned judgment and order are set aside and as the appellant is on bail, he is discharged from liability of his bail bond.

15. The office is directed to hand over the first page and the last page of the judgment to Sri Arun Kumar Tripathi, Amicus Curiae.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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