

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.624 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Karimullah Khan @ Kallu, son of Md. Soyeb Khan, resident of village and P.O.
Turk Bigha, P.S. Kachhawa (Nasriganj), District Rohtas

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Amrendra Narayan Rai with
Mr. Sanjay Kumar, Advocates

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT

Date: 09-01-2018

The sole appellant stands convicted under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for five years as well as fine of Rs.5000/- to be paid to the complainant by way of compensation under Section 357 of Cr.P.C. with default clause by the judgment dated 21.9.2002 and order dated 25.9.2002 passed by Sri Alok Chandra Prasad, the then 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No. 103/61 of 2001/2001.

2. Prosecution case, in short, is that the complainant Roushan Ara (P.W.2) has lodged a complaint petition before the S.D.J.M., Bikramganj alleging, inter alia, that she was working as a maidservant in the house of the father of the appellant and one day when she went to work there, the appellant provided her some sweetmeats and after



taking the same she felt dizziness and thereafter the appellant committed sexual intercourse with her in the semi-unconscious condition, when she regained her consciousness, she made complaint about the same, on which Panchayati was held and on finding physical relationship with the victim, the appellant assured to marry her and on such plea, continued to have physical relationship with her. Further case is that he refused to marry her and thereafter the present case has been lodged and, hence, causes delay in lodging the complaint case.

3. After enquiry summons were issued, finding the case prima facie true against the appellant and the case was committed to the court of sessions, which ultimately came to the file of learned 7th Additional Sessions Judge, Rohtas at Sasaram for trial.

4. Charge under Section 376 IPC was framed against the appellant.

5. During trial three witnesses have been examined on behalf of prosecution, they are P.W.1 Maimun Nisha, sister of the complainant, P.W.2 Roushan Ara, the complainant herself and P.W.3 Ibrahim Khan, who claims himself to be one of the Panches of the Panchayati.

6. Defence of the appellant is of innocence and complete false implication, however no specific defence has been taken.



7. Learned trial court after conclusion of trial has convicted the appellant under Section 376 IPC and sentenced him as stated above.

8. Contention of learned counsel for the appellant is that he has falsely been implicated as there is no corroborative evidence available on the record and the learned trial court on the basis of the evidence of the prosecutrix without any medical report has convicted the appellant under Section 376 IPC as such, conviction of the appellant is not sustainable in the eye of law on the solitary evidence of prosecutrix. Further submission is that the evidence of P.Ws. shows that a compromise has been reached between the parties as they are living as husband and wife with their son also and the prosecutrix also desires not to pursue the case and settle the matter with the appellant and, in such view of the matter, the order of sentence appears to be excessive.

9. Learned counsel for the State, on the other hand, has supported the impugned judgment, on the ground that there is evidence available on the record and though the prosecutrix is the sole witness to the occurrence but there is nothing in her evidence to doubt her testimony and though P.W.1 is not an eye-witness to the occurrence but she had stated that P.W.2 disclosed to her about commission of rape by the appellant. Further submission is that it is



well settled law that once the evidence of prosecutrix is found to be free from embellishment, the conviction of the appellant can be sustained under Section 376 IPC on the basis of solitary evidence of prosecutrix as her evidence appears to be trustworthy and in the present case, there is inconsistency in the evidence of P.W.2. Hence, there is nothing available on record to interfere with the impugned judgment of conviction and order of sentence.

10. On perusal of the evidence of P.W.1, sister of the complainant, it appears that she does not appear to be an eye-witness to the occurrence in commission of rape and she has stated that that the complainant (P.W.2) has disclosed about the commission of rape and had continuous physical relationship with her by the appellant. However, in paragraph-11 of her cross examination, she has admitted that now there is love between the parties and as there was delay in marriage, the present case has been lodged. She has also stated in paragraph-12 of her cross examination that now appellant is ready to live with the prosecutrix and their son, Rahmatullah as wife, husband and son and prosecutrix desire not to contest the case.

11. P.W.2, who is complainant of the case, has supported the prosecution case about commission of rape after administering sweetmeat to her, due to which she became unconscious. She has further stated that appellant on the pretext of marriage, has developed



physical relationship with her and due to which she became pregnant and gave birth to a child. She has not been cross examined on the point of rape. No doubt her evidence shows that now she does not want that accused appellant be convicted and further stated that as there was no date of marriage fixed, as such, in that confusion she lodged the present complaint case but now she is wife of the appellant and she is the only wife of appellant Karimullah. P.W.3 being one of the panches in Panchayati held in connection with commission of rape has supported the prosecution case and he has been cross examined but there is nothing in his cross examination to doubt his claim that he was one of the panches.

12. As discussed above, though prosecutrix is the sole witness to the occurrence on the point of commission of rape but in such a situation there cannot be any other eye-witness. In the present case prosecutrix has not been cross examined on the point of rape and P.W.1, who is sister of the prosecutrix, has stated that P.W.2 has disclosed the occurrence of rape to P.W.1. It is also well settled that for conviction under Section 376 IPC, it is not necessary that evidence of prosecutrix be corroborated by medical evidence specially when the evidence of prosecutrix is free from embellishment and evidence appears to be trustworthy. No doubt, it appears that later on they agreed to live together and she has also stated in court in her evidence.



Considering the discussions made above, the conviction of the appellant under Section 376 IPC does not suffer from any infirmity.

13. So far sentence is concerned, the learned trial court has failed to consider this aspect of the matter that prosecutrix in her evidence has stated that there is confusion in the fixing of date of marriage the present case has been lodged and she is ready to live together and now she is living as wife of the appellant and she is the only wife and appellant is ready to keep her and her son also and other witnesses have also supported the compromise being made between the parties.

14. The case is of the year 1998 and the occurrence is prior to Criminal Amendment Act, 2013 came into force and earlier there is proviso to Section 376 IPC, which clearly provides that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years. In the present case also there is some special reason as good sense has been prevailed between both the parties as they are living together as husband and wife along with their child.

15. Hon'ble Apex Court in a case of Sukhwinder Singh vs. State of Punjab : (2000) 9 SCC 204 after considering this aspect of the matter has held in paragraphs 4 & 5 of the said judgment as follows :

“4. That the prosecutrix has since got married and she did not want the matter to be carried any



further so as to lead a happy and healthy married life with her husband and had filed the compromise petition to that effect was an adequate and special reason to invoke the proviso (supra). While maintaining the conviction, the High Court ought to have for the reasons aforesaid, reduced the sentence to the period already undergone by the appellant. Such a course was in the interest of the prosecutrix herself.

5. In the peculiar facts and circumstances of this case, as noticed above, in our opinion, this matter should be now given a quietus particularly, when the alleged offence is stated to have taken place almost a decade ago.”

Learned counsel for the appellant has also cited a unreported judgment of Delhi High Court in the case of Rahul vs. State NCT of Delhi, decided on 21.1.2015 in CrI. Appeal No. 46 of 2013 in support of his contention.

16. Considering the facts and circumstances of the case as especially when appellant, prosecutrix and her son desire to live together, the present case also appears to be a fit case for consideration under the preview of proviso to Section 376 IPC prior to Criminal Amendment Act, 2013, otherwise life of not only appellant, rather the prosecutrix and her son shall be ruined. Learned trial court ought to have considered this aspect of the matter.

17. Learned counsel for the appellant has also submitted that prior to conviction appellant was in jail for one year 10 months and after conviction he has remained in custody for two months. So



altogether he remained in custody for two years and, as such, considering the aforesaid aspect of the matter, the sentence passed against the appellant is reduced to the period already undergone by him. However, sentence of fine of Rs.5000/- is enhanced to Rs.10,000/- which shall be payable to the prosecutrix and in default the appellant has to remain in custody for a further period of three months.

18. With the above modification in the order of sentence, this appeal is dismissed.

(Vinod Kumar Sinha, J)

spa/-

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