

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.32 of 2004

Arising Out of PS.Case No. -null Year- null Thana -null District- PURNIA

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Md. Wasique son of Sk. Maqsood village- Malharia ,P.S- Baisi, Dist- Purnea

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranbir Singh

For the Respondent/s : Mr. Sujeet Kumar Singh
Mr. Md.Bahauddin

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 09-03-2018

1. This Criminal Appeal has been preferred against the judgment of conviction and sentence order dated 22.12.2003 passed by the learned Session Judge, Purnea in session trial no. 863 of 1994 by which and whereunder he convicted the sole appellant for the offence punishable under section 376 of the Indian Penal Code and accordingly, sentenced him to undergo rigorous imprisonment for 7 years.

2. PW-6, namely, Mohseen Khatoon gave a written report to Superintendent of police, Purnea on 24.03.2004 stating therein that she used to do domestic work in the house of the appellant but the appellant established physical relation



with her on the promise of marriage and started sexually exploiting her. As a result whereof she became pregnant and when the appellant learnt about her pregnancy, he asked her to get the pregnancy abort but she did not agree and she pressurized him for marriage but the appellant refused to marry with her and made attempt to commit murder of PW-6. She approached the local panchayat and the local people conveyed the panchayati in which, the appellant refused to marry with her. PW-6 further stated that she went to local police but the concerned officer- in-charge did not register her case and, thereafter, she gave written report before the Superintendent of Police, Purnea. On the basis of aforesaid written report Baisi P.S. Case No. 36 of 1994 for the offence punishable under section 376 was registered on 25.03.1994 and the formal F.I.R against the appellant was drawn up. The Investigating Officer (PW-11) investigated the case and after completion of the investigation, submitted charge sheet for the offence punishable under section 376 of the Indian Penal Code against the appellant. The cognizance of the offence



was taken and the case was committed to the court of session in usual course. The appellant stood charged for the offence punishable under section 376 of the Indian Penal Code. The appellant denied the charge and claimed to be tried.

3. In course of trial, the prosecution examined altogether 11 witnesses and also got exhibited some documents including medical report of PW-6. The statement of the appellant was recorded under section 313 of the Cr.P.C in which, he denied the charge and claimed his false implication on account of enmity. No evidence was adduced by the appellant in support of his defence but from perusal of the statement recorded under section 313 of the Cr.P.C as well as trends of cross-examination of prosecution witnesses, I find that the defence of the appellant was totally denial of the prosecution story.

4. The learned trial court after scrutinizing the evidences available on the record convicted and sentenced the appellant in the manner as I have already stated.

5. Learned amicus curiae appearing for the sole



appellant challenged the impugned judgment of conviction and sentence order arguing that PW-6 was a consenting party and she was major at the time of alleged occurrence and, therefore, even if, the prosecution story assumed to be true, then also, the appellant could not have been convicted for the offence punishable under section 376 of the Indian Penal Code.

6. On the other hand, learned Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that all the material prosecution witnesses including PW-6 supported the occurrence and the doctor (PW-10), proved this fact that PW-6 was carrying pregnancy and, therefore, the prosecution successfully proved the charge leveled against the appellant.

7. Having heard the rival contentions of both the parties, I went through the record. I find almost all the material prosecution witnesses stated that PW-6 used to do domestic work in the house of the appellant and in that course, the appellant developed physical relation with PW-6,



who subsequently, became pregnant but the appellant refused to perform his marriage with PW-6. Furthermore, the prosecution witnesses stated that the sole appellant had made extra judicial confession of his guilt in panchayati.

8. PW-6 has supported the contents of written report which has been proved as exhibit-1. However, the testimony of PW-10, doctor, is important. The aforesaid PW-10 stated that PW-6 was medically examined by her and she found that she was carrying pregnancy of 16 to 20 weeks. Admittedly, PW-6 was medically examined, she was aged about 20 years. PW-6 has, nowhere, disclosed as to when, she was sexually assaulted by the appellant but she claimed that prior to lodging of the case, she was sexually assaulted sometime prior to 24.03.1994 and the trial court has also framed charge of similar nature. Therefore, it is obvious that in the year 1994, PW-6 was a major woman. Furthermore, PW-6 has, herself, admitted that the appellant established physical relation with her on the promise of marriage but subsequently, when she became pregnant, the appellant



refused to marry with her. Therefore, it is obvious from the aforesaid statement of PW-6 that she had given her consent with for physical relation though the aforesaid consent was given on account of promise of marriage and, therefore, in my view, learned amicus curiae rightly submitted that the learned trial court committed error in convicting and sentencing the appellant for the offence punishable under section 376 of the Indian Penal Code and at best, the appellant could have been convicted for the offence punishable under section 417 of the Indian Penal Code.

9. On the basis of aforesaid discussion, the conviction of the appellant for the offence punishable under section 376 of the Indian Penal Code is converted into section 417 of the Indian Penal Code.

10. It would appear from perusal of Section 417 of the Indian Penal Code that maximum punishment under section 417 of the Indian Penal Code is up to one year or with fine or with both. Admittedly, the appellant remained in jail custody for more than two years during pendency of the



criminal appeal.

11. Therefore, in view of the aforesaid discussion, this criminal appeal stands dismissed with modification in judgment of conviction and sentence order and accordingly, the appellant is sentenced to period already undergone by him in course of trial and during pendency of this appeal. The appellant is on bail. He is discharged from the liabilities of the bail bonds.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.03.2018
Transmission Date	

