

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.59 of 2009

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Gauri Shankar Thakur, son of late Pannalal Thakur, resident of village Samsa,
P.S. Mansoorchak, district Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 10-08-2018

By judgment of conviction and order of sentence, dated 6.12.2008 and 12.12.2008 respectively passed by the learned Sessions Judge, Begusarai in Sessions case no. 330 of 2002 in Bhagwanpur P.S. case no. 43 of 2002, sole appellant has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for eight years.

Heard learned counsel for the appellant and the State.

The prosecution case as per the *fardbeyan* of prosecutrix Manju Kumari is that informant used to work as a labour for manufacturing niddle used in embroidery work at the place of appellant for last six months. She alleged that in the month of Aswin, at about 4 pm in the evening, while the prosecutirx was working in manufacture of niddle in the courtyard of the house



of appellant, appellant closed the door of the outer room and thereafter after moving the pajama committed illegal act with her. When the prosecutrix stated her fear, he told that he will solemnize marriage with her. Thereafter, whenever the accused found her alone in the house, he used to do illegal act with her and this continued till last kartik month when menstruation cycle of the prosecutrix stopped then she made request with the appellant to perform marriage but he insisted for terminating the pregnancy and thereafter he will solemnize marriage with her. He took the prosecutrix to Rosera by bus to get her pregnancy terminated by some nurse. When the matter came to the knowledge of the father of the victim and other people of the village a panchayati was convened but the appellant did not turn up in the said panchayati and thereafter the case has been filed.

The trial Court has after trial found the case true for the offence under Section 376 of the IPC against this accused. The trial Court has, however, acquitted the appellant for the offence under Section 313 of the Indian Penal Code.

In the instant case, during trial, ten witnesses have been examined on behalf of the prosecution. No defence witness has been examined.



The defence of the appellant is total denial of the occurrence.

The prosecutrix has been examined as PW-3. She has stated in her examination-in-chief that the appellant committed illegal act with her while she was working in an embroidery factory in the month of Aswin and thereafter he continued to establish physical relationship with her on the pretext to perform marriage with her till the last Fagun and thereafter her menstruation period stopped for six months. Thereafter, she was taken to Rosera by the appellant and her pregnancy was terminated. The victim has stated in her evidence that she was given allurement of marriage but the appellant did not perform marriage. The other witnesses examined on behalf of the prosecution are all hearsay witnesses.

PW-2 has not supported the case. He has been declared hostile. PW-1,4,5 and 6 are all hearsay witness who have stated that they have learnt about the occurrence either from the prosecutrix or in the village when the prosecutrix was found pregnant. P.Ws 7,8 and 9 are doctors who have examined the prosecutrix.

PW-9 has stated in her evidence that there was no mark of violence on the body of victim. The uterus was retroverted,



normal in size. No spermatozoa was found. Her age was assessed to be 17-19 years. No definite opinion was given regarding rape in this case.

PW-10 is the Investigating Officer of this case.

In such circumstances from the evidence of the prosecution witnesses as stated above, the prosecutrix has herself stated in her evidence that illegal act was first committed by the appellant in the month of Ashwin and thereafter the physical relationship continued till last Kartik when menstruation period stopped.

This Court is of the view that offence of rape is said to have been committed when sexual inter course with a woman was done against her will without her consent. Continued physical relationship cannot be said to be an offence of rape. It is not practicable that physical relationship will continue for long time till prosecutrix become pregnant without the consent of prosecutrix.

The prosecutrix is an adult lady aged between 17-19 years. She has stated in her evidence that physical relationship continued for long period on allurement of a marriage and she ultimately became pregnant and later on pregnancy was terminated with her consent by the appellant.



Therefore, this court finds that prosecution has not been able to substantiate the charge for the offence under Section 376 of the Indian Penal Code against the appellant beyond all reasonable doubt.

Accordingly, impugned judgment of conviction dated 6.12.2008 and order of sentence dated 12.12.2008 passed by Sessions Judge, Begusarai in Sessions Case no. 330 of 2002, in Bhagwanpur P.S. case no. 43 of 2002, is hereby set aside. The appellant is acquitted of the charge levelled against him. He is discharged from the liability of his bail bond.

This Cr. Appeal is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
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