

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.50 of 2009

Sanoj Yadav son of Shivjee Yadav, resident of village Jagdishpur, P.S.
Maharajganj, Dist. Siwan

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Swarup Prasad, Amicus Curiae

For the Respondent/s : Mr. Bal Mukund Prasad Sinha APP

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date : 26-07-2018

None appeared on behalf of the appellant. Mr. Ram Swarup Prasad has been appointed as Amicus Curiae. Heard_ learned Amicus Curiae and learned counsel for the State.

Sole appellant stood convicted under Sections 366 and 376 of the Indian Penal Code and was sentenced to undergo R.I. for ten years for the offence under Section 376 of the Indian Penal Code with a fine of Rs. 10,000/- and, in default of payment of fine, the convict will have to undergo R.I. for two years. He was further sentenced to undergo R.I. for seven years for the offence under



Section 366 of the Indian Penal Code with a fine of Rs. 2,000/- and in default of payment of fine, the convict will have to undergo further R.I. for one year by the judgment of conviction dated 02.12.2008 and order of sentence dated 03.12.2008 passed by learned Additional District and Sessions Judge, Fast Track Court –III, Siwan in G.R. case no. 833 of 2006, Sessions Trial no. 122 of 2007, arising out of Maharajganj (Basantpur P.S.) case no. 34 of 2006. All the sentences were directed to run concurrently.

The prosecution story, in brief, is that niece of the informant came to the house of the informant on 17.3. 2006. The appellant Sanoj Yadav came to the house of the informant on 19. 3.2006 at 4-5:00 PM and told his niece, namely Ranita (victim girl) that her mother is not well. He has come to take her. The niece of the informant went with appellant. The informant after six days went to the house of her sister and came to know that accused had not brought the victim girl. It is further alleged by the informant that appellant Sanoj along with his mother induced the victim girl either for illicit relation or for marriage. The informant went in search of his niece but she could not be found.

The police, on the basis of aforesaid written report, drew FIR and registered Basantpur P.S. case no. 34 of 2006 for the offence under Sections 363, 366, 366A and 120B of the Indian Penal Code. The police, after investigation, submitted charge sheet against this appellant for the offence under Sections 366 and 376 of the IPC. The



trial against the sole appellant proceeded for the offence under Sections 366 and 376 of the IPC.

The prosecution has examined total nine witnesses during trial. No defence witness has been examined.

The victim girl Ranita Kumari has been examined as PW-3. She has stated, in her examination-in-chief, that appellant Sanoj came to the house of her mama. She knew her from before. He told that her mother is ill. Thereafter she went with him. He took her first to Gopalganj. Thereafter he took her to some unknown place where he kept her for four months. He also established physical relation with her against her wish. He brought her after four months to Pandey Mor(chowk) Maghar Gaon by Maruti car and left her. She was brought to the police station by the police. Thereafter she was brought before the Magistrate where she gave her statement under Section 164 Cr. P.C., which has been proved by Sageer Alam (PW6) and marked as Ext. 1. The victim girl has stated her age to be 16 years. The Court has assessed her age to be 17 years. In her statement recorded under Section 164 C.P.C., she has stated that she lived with this appellant for four months. During that period, the appellant established physical relationship with her against her wishes. Thereafter, he left her near Pandey Mor by Maruti Car.

In this case, doctor Ranjeeta Srivastava has been examined as PW-9. The doctor has stated in her evidence that as per X-ray finding the age of the victim girl was assessed between 18-19 years.



She was having pregnancy of 17 weeks at the time of her medical examination. The Medical Report has been marked as Ext. 2. The doctor has mentioned in her evidence that she did not find any mark of violence or external injury on any part of the body. Her hymen was found torn. The vaginal swab was sent to microscopic examination and no spermatozoa was found. She has further stated that after ultra sonography the victim girl was found having pregnancy of about 17 weeks.

The victim girl has been cross examined, at length, on behalf of the defence. From the trend of cross –examination it is manifest that no force was applied by the appellant with the victim girl at any time while she remained with him for four months . She has stated, in detail, at paragraph nos. 18 to 21 of her cross-examination, about the physical relationship that has been established by the appellant. But from the cross-examination of the witness available in aforesaid paragraphs, it does not appear that even any force was applied by this appellant with the victim girl. It is also manifest from her evidence that she remained with the appellant for about four months. She has further stated in her evidence during cross-examination, that she is married. She is living with her husband. She has further stated in her cross examination at para 4 that prior to her marriage she had no physical relationship with anybody. In such circumstances, from her such evidence as made in para 4 of her cross-examination, the statement given by her in the First



Information Report as well as the statement recorded under Section 164 Cr. P.C. and also her evidence during examination-in-chief gets contradicted. Moreover, from her statement recorded under Section 164 Cr.P.C. and also her evidence, in court, during examination-in-chief it does not appear that even any force was applied by the appellant when she remained with him for four months. The victim girl has stated in her evidence in her examination-in-chief that she was knowing the appellant from before. She had gone with him after hearing that her mother was ill. She went first to Gopalganj. Thereafter she was taken by the appellant to some unknown place and she remained with him for four months. The doctor (PW9), during her medical examination, has found no any external injury or mark of any violence on any part of her body. The Court below has convicted the appellant solely on the ground that she was having pregnancy of about 17 weeks in the Medical Examination. Therefore, the story of committing rape by the appellant with the victim cannot be ruled out.

This Court, after looking into the evidence of the victim girl (PW3) as well as the evidence of doctor (PW9) and the statement of victim girl recorded under Section 164 Cr. P.C., find that the victim girl remained with the appellant for four months. In her cross examination, she has given the vivid description of the physical relationship established by the appellant with her. But, she has nowhere stated that any force was applied by appellant with her



during that period. She has further stated in her examination-in-chief that she had gone with the appellant voluntarily after hearing that her mother was ill. He took her first to Gopalganj. There is no any evidence or any complaint by the victim girl that instead of taking her from the house of her mama to the house where her mother was ill the appellant has taken her to Gopalganj. Rather, from the evidence of the victim girl it appears that she went with the appellant first to Gopalganj and from there to some unknown place and lived with the appellant for four months. The doctor has found no mark of violence or external injury on any part of body of the victim girl. The victim girl was further found carrying pregnancy for about 17 weeks.

Therefore, this Court, on the basis of sole testimony of this victim girl finds that no force was applied by the appellant against the victim girl while taking her with him and establishing physical relationship with her.

Accordingly, the prosecution has failed to substantiate the charge for the offence under of Sections 366 and 376 of the I.P.C. against the appellant beyond all reasonable doubt. The appellant is, therefore, entitled to get benefit of doubt.

The judgment of conviction dated 02.12.2008 and order of sentence dated 03.12.2008 passed by learned Additional District and Sessions Judge, Fast Track Court –III, Siwan in G.R. case no. 833 of 2006, Sessions Trial no. 122 of 2007, arising out of Maharajganj



(Basantpur P.S.) case no. 34 of 2006 is hereby set aside. The sole appellant is acquitted of the charge levelled against him. He is discharged from the liability of his bail bond.

This Cr. Appeal is allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/AFR	AFR
CAV DATE	N/A
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