

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.969 of 2007

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Ranjeet Sahm, Son of Billash Sah, Resident of Village – Deokulia, P.S. – Phenhara,
District – East Chamapran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Kishor Prasad, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 16-01-2018

By way of present appeal, sole appellant seek to challenge the Judgment of conviction dated 30.08.2007 and order of sentence dated 01.09.2007, passed by Shri Santosh Kumar Shrivastava, learned Additional Sessions Judge, FTC –III, Motihari, in Sessions Trial No. 98/165 of 2003/07, by which the appellant were convicted under Section 366 and 376 of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for 05 years with a fine of Rs. 500/- under Section 366 of the IPC and R. I. for 07 years under Section 376 of the IPC with a fine of Rs. 1,000/-, having default clause.

2. Prosecution case as per the fardbeyan of informant Mohan Mahto recorded by S.I. B.K. Singh, the then Officer – in – Charge Phenhara police station in short is that on 19.05.2002, appellant along with two others, namely, Bilash Sah and Punit Sah, came to the house of informant and asked his daughter to come along with them on the plea that there was a Puja in the village. On the said pretext, they took



the daughter of the informant with themselves and when she did not return till night, wife of informant went on search for her daughter and enquired from Bilas Sah and from the father of the appellant but they did not disclose anything. Thereafter, she informed the informant about the incident, who was working in Kolkata in Indian Railway. On this information, informant came from Kolkata on 20.05.2002 and till the date of *fardbeyan*, he was continuously searching for his daughter and in course of search, when he went to the house of Jayant Sah, brother in law of Bilash Sah at Belaganj, his wife used filthy language and told him to leave his daughter with them. On the basis of the said *fardbeyan*, Phenhara P.S. Case No. 18/02 was registered.

3. Police after investigation submitted charge-sheet against the appellants. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Santosh Kumar Shrivastava, learned Additional Sessions Judge, FTC –III, Motihari, for trial and disposal.

4. To prove its case, prosecution has examined altogether nine witnesses. They are; P.W. 1- Mukul Prasad Shrivastava, P.W. 2 – Mukesh Sah @ Mahendra Sah, P.W. 3- Ravikishan Sah, P.W. 4- Baijnath Sah, who has been declared hostile by the prosecution, P.W. 5- Mohan Mehta (informant), P.W. 6 – Rekha Kumari (Victim), P.W. 7 – Pawan Kumar Sah, a tendered witness, P.W. 8 - Dr. Smt. Vinita Verma and P.W. 9, Dr. Manjula Nath, formal witnesses, who have examined the victim girl. In this case I.O. has not been examined.



5. Apart from that following documents have been brought on record and marked as Ext. 1 – Fardbeyan of informant – Mohan Mehta, Ext. 2 – Medical report, Ext. 3- Statement of victim recorded under Section 164 Cr.P.C.

6. From the examination of appellant under Section 313 as well as from trend of cross – examination, it appears that the defence of the appellant is that the girl had gone out of her own swell will and stayed in Kathmandu and appellant has nothing to do with the same. Further the defence have also come with the love letters, though the same were denied to have been written by the prosecutrix and further defence is that no occurrence as alleged has taken place.

7. Post trial, the learned trial court convicted the appellants under Section 366 and 376 of the IPC and sentenced them in the manner as stated above.

8. Contention of the appellant is that no case under Section 366 and 376 of the IPC is made out against the appellant as evidence available on record clearly shows that she had left her house out of her own sweet will. It has also been submitted that the doctor on examination of the girl has assessed her age as 19 years and evidence of informant (P.W. 5) also shows that the girl was aged about 19 years at the time of occurrence. Further contention is that it is the prosecution story and the evidence of victim also that she was first taken to Bairgania and from Bairgania to Gaur and thereafter to Kathmandu but it is very surprising that she did not make any attempt or raise any *hulla* to get herself freed from the clutches of appellant.



Further, evidence of P.W. 6 shows that she was forcibly raped twice by the appellant and at the time of commission of rape, two persons used to watch outside the room, however, nothing available to show that any other persons was recovered except victim and none except appellant has been made accused in this case. It has further been submitted that the medical report of the victim negates the commission of rape on her. Further contention is that in this case I.O. has not been examined, which has caused serious prejudiced to the defence as had he been examined, he would have been cross-examined on the point of recovery of victim and the accused. Furthermore, there is delay of twenty one days in lodging of F.I.R and no plausible explanation has been offered for the same, coupled with the fact in this case love letters written by the alleged victim girl to the appellant has also been recovered, which also suggests a story of love affair between the victim and accused and the trial court without considering all these facts has convicted the appellant, which is out and out erroneous and is not sustainable in the eye of law.

9. On the other hand, learned counsel for the respondent – State supported the finding of guilt recorded by learned trial court and submitted that there is consistent and cogent evidence of P.W. 6 to show that it is the appellant, who took her on the plea to participate in a Puja and abducted her and took her to Bairgania and then Gaur and, thereafter to Kathmandoo and committed rape with her and as two other persons were used to be around her always as she could not raise any *hulla*. It has also been submitted that so far delay is concerned,



that in rape cases the delay in filing the FIR by the prosecutrix or by the parents in all circumstance is not of significance as held by Hon'ble Supreme Court in several decisions and so far contention of learned counsel for appellant that in medical examination factum of rape was not established, it is an admitted fact that the girl was examined after a considerable period of time and if the rape was not established in the Medical examination, there is nothing uncommon in it and, therefore, there is no infirmity in the judgment of trial court and conviction of appellant is just and proper.

10. Heard the rival parties.

11. On close scrutiny of evidence it appears that so far P.W. 1 and P.W. 2 are concerned, they are seizure list witness on the seizure of love letters and P.W. 3 and P.W. 4 have been declared hostile in this case and so far P.W. 7 is concerned, he has been tendered but in his cross-examination, he has also not supported the prosecution case rather he has stated that the house of appellant – Ranjeet Sah and victim – Rekha Kumari was in front of each others house and there was dispute with respect to the drainage of water. His evidence also disclosed that Rekha had gone to Kathmandu on her own will and when she was coming after getting married, police apprehended her. thereafter, police went to the house of appellant – Ranjeet Sah and recovered some letters. Considering the evidence of this witness, it appears that he has not supported the case of prosecution rather he has stated that victim was recovered while she was coming after solemnizing marriage and this witness has not stated that appellant -



Ranjeet Sah was also arrested by the police along with the victim.

12. P.W. 5 is the informant of this case and he has supported the prosecution story with regard to kidnapping of the victim girl – Rekha Kumari (P.W. 6) and her recovery but his evidence itself shows that he was not in the house on the alleged date of occurrence rather he was at Kolkata and he was informed by his wife, thereafter, he came and started searching Rekha Kumari (P.W. 6) but he could not find her. His evidence also shows that the victim Rekha Kumari (P.W. 6) was recovered on 14.06.2002 in Nepal and was handed over to police on 17.06.2002. Aforesaid evidence of this witness clearly shows that he is not the eye-witness of the occurrence or of her recovery. Further in cross-examination, this witness was shown the recovered letters, to which he admitted that the same was written in handwriting of victim – Rekha Kumari (P.W. 6). He further denied a suggestion put to him that there was love affair between appellant Ranjeet – Sah and victim – Rekha Kumari (P.W. 6). This witness has also admitted in his cross-examination that appellant Ranjeet Sah used to come to his house.

13. P.W. 6 Rekha Kumari is the alleged victim girl in this case. Her evidence disclose that on 19.05.2002, when she was in front of her house, appellant Ranjeet Sah, and two others, namely, Punit Sah and Bilas Sah came to her house and asked her mother to take the victim – Rekha Kumari with themselves in the Puja of Govindji, thereafter she accompanied them but in midway, she was forced to sit in a jeep and was taken to Bairgania and then to Gaur and thereafter to Kathmandu. Her evidence further disclose that she was confined in Kathmandu



from 19.05.2002 to 14.06.2002 and was subjected to rape by the accused. This witness in her cross-examination admitted that appellant used to come to her house. It was also admitted by her that she had voluntarily compromised the case and put her signature over the same. She denied a suggestion that there was love affair between her and accused – Ranjeet Sah. She has identified the letters written by her but claimed that those letters were forcibly got written by the accused in Nepal. She has also stated in her evidence that she was subjected to rape twice in Kathmandoo and at the time of commission of rape, two persons used to watch outside the room.

14. Learned counsel for the appellant has drawn my attention towards the statement of girl recorded under Section 164 Cr.P.C., in which, she has stated that while she was moving on the road, accused Ranjeet Sah and his brother came and forcibly took her into jeep and brought to Nepal, whereas, her evidence as well as the prosecution story shows that while she was at home, they came and asked to her to accompany them in the Puja. Learned counsel for the appellant submitted that her evidence suffers from serious infirmities as she herself has stated that she was first taken to Bairgania and then to Gaur and thereafter to Kathmandoo by bus and at some place by foot and as such she had enough time to raise *hulla* and make protest, however, she neither made any attempt to get herself freed nor made any *hulla*, which casts a serious doubt on the entire prosecution story.

15. P.W. 8 Dr. Smt. Vinita Verma, who examined the victim on 17.06.2002 and opined that there was no injury on her private parts



and no sign of recent sexual intercourse was established. In the opinion of this witness, age of victim – Rekha Kumari was 18 years.

16. It appears that in this case, I.O. has not been examined and certainly that caused serious prejudice to the defence as had he been examined, he might have been cross-examined on the point as to how and where the alleged victim was recovered and who are those persons, who were arrested along with the victim as the victim in her evidence has stated that besides appellant, two accused persons were also used to present at the place of her confinement, when she was subjected to rape but in this case except appellant, none else has been made accused.

17. Considering the entire discussion made above, it appears that the case is based only on the solitary evidence of prosecutrix/victim, however, it is a well settled principle of law that conviction under Section 376 can be based on the sole testimony of the prosecutrix but at the same time that has to be corroborated by other mitigating circumstances. A submission has been made by learned counsel for the appellant that there is delay of 21 days in lodging of F.I.R.

18. So far evidence of witnesses particularly the evidence of P.W. (6) victim is concerned, there appears to be material inconsistencies as she herself had stated in her evidence that she was taken by the appellant at different places by bus and even by foot but surprisingly, she did not make any effort to get herself released from the clutches of appellant coupled with the fact that there is clear contradiction between her Statement recorded under Section 164 Cr.P.C. and her



evidence as discussed above. Further in this case I.O. has not been examined and it has remained to be proved that in what circumstances the victim was recovered and who are those persons, who used to watch outside the room at the time of commission of rape on the prosecutrix. It is also a fact that no witness of the place, where the victim was recovered, has been examined and the evidence of informant (P.W. 5) and evidence of victim (P.W. 6) shows that recovered letters were in the handwriting of the victim (P.W. 6), though she stated that those letters got forcibly written by her by the accused in Nepal but it is evident that letters were recovered from the house of appellant – Ranjeet Sah. Further evidence of doctor shows that she was major at the time of occurrence and informant (P.W. 5) has also stated that the girl was 19 years. It appears that the Trial Court has not considered these infirmities in right perspective and appears to have swayed away considering the nature of allegation. Hon'ble Supreme Court has considered almost similar factual matrix in the case of **Md. Ali @ Guddu vs. State of U.P.** reported in **2015(7) SCC 272** and held in para 27 to 30 as under:-

27. Be it clearly stated here delay in lodging FIR in cases under Section 376 IPC would depend upon facts of each case and this Court has given immense allowance to such delay, regard being had to the trauma suffered by the prosecutrix and various other factors, but a significant one, in the present case, it has to be appreciated from a different perspective. The prosecutrix was missing from home. In such a situation, it was a normal expectation that either the mother or the brother would have lodged a missing report at the police station. The same was not done. This action of PW-2 really throws a great challenge to common sense. No explanation has been offered for such delay. The learned trial Judge has adverted to this facet on an unacceptable backdrop by referring to the principle that prosecutrix suffered from trauma and the constraint of the social stigma. The prosecutrix at that time was nowhere on the



scene. It is the mother who was required to inform the police about missing of her grown up daughter. In the absence of any explanation, it gives rise to a sense of doubt.

28. That apart, the factum that the appellant informed the mother of the victim that he had left the prosecutrix at the door of her house also does not command acceptance. The recovery of the prosecutrix by the brother and her friends also creates a cloud of suspicion. We are not inclined to believe the prosecution version as has been projected that one Arif had informed the brother of the prosecutrix that his sister was at his place but for reasons best known to the prosecution, Arif has not been examined. That apart, the persons who were accompanying the brother have also not been examined by the prosecution. Thus, the manner of recovery of the prosecutrix from the house of Arif remains a mystery.

29. Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be inappropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had travelled from place to place and she was ravished number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon.

30. True it is, the grammar of law permits the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a Court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely do not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the



accused-appellants for the alleged offences and the High Court has fallen into error, without re-appreciating the material on record, by giving the stamp of approval to the same.”

19. In view of the discussions made above, finding arrived at by the Trial Court does not seem to be sustainable as it suffers from infirmities.
20. Resultantly, this appeal is allowed. Judgment of conviction dated 30.08.2007 and order of sentence dated 01.09.2007, passed by Shri Santosh Kumar Shrivastava, learned Additional Sessions Judge, FTC –III, Motihari, in Sessions Trial No. 98/165 of 2003/07, is set aside.
21. As appellant is on bail, he is discharged from liability of bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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