

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.364 of 2015

Arising out of PS. Case No.87 Year- 2012 Thana -Balrampur District- Katihar

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Md. Majharul @ Md. Majharul Haque, Son of Late Md. Sadek Ali,
Resident of village-Baijpura, Police Station-Balrampur, District-
Katihar.

.... **Appellant/s**

Versus

The State of Bihar

.... **Respondent/s**

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Appearance:

For the Appellant/s : Mr. Awadhesh Kumar Mishra, Adv.
Mr. Ajay Kumar, Adv.
Mrs. Sandhya Sharma, Adv.
For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 15-05-2018

Appellant, Md. Majharul @ Md. Majharul Haque has been found guilty for an offence punishable under Section 376 of the IPC and sentenced to undergo R.I. for eight years as well as to pay fine appertaining to rupees five thousand and in default thereof, to undergo R.I. for six months by the Additional Sessions Judge, Illrd, Katihar in Sessions Trial No.647/2018.

2. PW.4, victim (name withheld) filed Complaint Petition No.1698 of 2012 on 16.06.2012 which was sent to the concerned Police Station for registration and investigation whereupon, Balrampur P.S. Case No.87/2012 was registered followed with an investigation as well as submission of charge sheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

3. Shorn of unnecessary details, the case of the prosecution in nutshell is that on 25.07.2011 at about 11:00 AM



while victim was sleeping at her house in absence of her family members who have gone to do menial work, accused Md. Majharul @ Md. Majharul Haque came, gagged her mouth and committed rape. After rape, she began to cry whereupon accused has directed not to raise hue and cry as, he will marry. It had further been alleged that under the garb of aforesaid promise, accused continued in indulgence of sexual activity as and when got opportunity as a result of which, she became pregnant. Aforesaid event was disclosed to the accused by her who declined to marry. Then she intimated her family members whereupon panchayati was convened and in panchayati, father of the accused had assured that as, during course of pregnancy marriage would not be performed, on account thereof, after begetting of the issue, marriage will be solemnized. After begetting a son, they have again approached but, the accused persons began to avoid and then, got married at some other place. Then thereafter, they approached police who had directed to come through the court whereupon, complaint petition has been filed.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that victim happens to be lady of bad repute, having connection with different persons as a result of which she became pregnant and as the parties are on land dispute therefore, this case has been instituted by the complainant/victim at the instance of her parents. Furthermore, three DWs have also been examined.

5. In order to substantiate its case, prosecution had



examined altogether five PWs out of whom PW.1-Md. Ajijul, PW.2-Bibi Ramful, PW.3-Arsad Ali, PW.4-victim herself, PW.5-Sanjay Kumar Pandey (Investigating Officer), as well as had also exhibited, endorsement over complaint petition as Ext.1, formal FIR as Ext.2. As stated above, defence had also examined three DWs, DW.1-Md. Ali, DW.-Samsuddin and DW.3-Khadijatul Kunwar, wife of the accused. However, no documentary evidence has been adduced.

6. While assailing the judgment of conviction and sentence, it has been submitted by the learned counsel for the appellant that same would not survive in the following circumstances.

From the conduct of the prosecutrix, it is evident that she was a major on the date of occurrence and her continued indulgence with the appellant is suggestive of the fact that she was a consenting party and was fully competent to give her consent being legally recognizable. Furthermore, the facts whatever been divulged subsequently, even in worst case would attract application of Section 417 of the IPC as over breach of promise, and for that, appellant has sufficiently been punished. Apart from the fact that there happens to be inordinate unexplained delay in launching prosecution. Furthermore, the prosecution case has not been corroborated by independent witness. Doctor has not been examined. Nor any effort has been taken at the end of prosecution to get DNA Test held of the boy to connect the appellant with his paternity.

That being so, it has been submitted that no offence



under Section 376 IPC is made out. In worst case it, happens to be a case of 417 of the IPC and for that he remained under custody for long as such the sentence be modified as already undergone.

7. The learned Additional Public Prosecutor while refuting the submission having been made on behalf of the appellant has submitted that for subsequent event, whatever is visualizing, appellant has not been prosecuted. The charge has been framed against him for the offence of rape which he had committed on 25.07.2011 and that being so, the subsequent conduct of the victim is not at all found relevant for the present purpose as, the personal law of both the parties guided their activities. Furthermore, it has also been submitted that subsequent event, even accepted to be consensual would not affect upon the prosecution case, as the point for adjudication is whether victim was raped on 25.07.2011 or not. The prosecution succeeded in proving the same. So, the judgment of conviction and sentence recorded by the learned lower court did not attract interference. Consequent thereupon, appeal is fit to be dismissed.

8. After hearing the parties as well as going through the record, it is evident that prosecution had flashed two distinct event. The first one, regarding commission of rape on 25.07.2011, and then, under the garb of promise which the prosecution thought of believable and became consensual party.

9. However, from the format of the charge, it is evident that the, subsequent event though divulged but not been taken into consideration as the charge speaks with regard to commission of rape on 25.07.2011. Under the garb of aforesaid scenario, now



the things which are relevant to be considered for proper adjudication is (a) whether delay has been properly explained (b) whether the story of prosecutrix that she was ravished on 25.07.2011 and (c) the surrounding circumstances including that of conduct of the respective party.

10. Before adjudicating upon those relevant points, three incidents are visualizing from the record. The first one there happens to be sale deed executed by the father of the appellant in name of the prosecutrix. Though, none of the parties had adduced the aforesaid documents but from the evidence of the prosecutrix PW.4, para-10 she had admitted that she had purchased one *Bigha* land from the father of Md. Majharul. Then had disclosed that she had purchased the land eight years ago from the date of the occurrence but still she has not been able to take possession over the aforesaid land. PW.2, the mother of the victim had disclosed at para-6 of the cross-examination that they have purchased land from father of the accused Md. Majharul. Sale deed has been executed in name of his daughter (victim). Two years before institution of this case, land has been purchased but, till today have not been able to take possession over the land, while PW.3 the father of the victim, In para-10, had stated that about eight years ago he had purchased one Bigha of land from father, uncle of the accused in name of his daughter, victim but, till today they have not allowed them to take possession thereof. In the aforesaid background, there happens to be specific suggestion at the end of the appellant that this false case has been registered on account of prevailing land dispute. But all those things had been belied by the



Investigating Officer, PW.5.

11. The second aspect is that appellant had not accepted their consensual indulgence rather suggested to the victim that she happens to be a lecherous minded lady of easy virtue having her indulgence with so many villagers as a result of which she might have been impregnated by others.

12. The third one, when the victim PW.4 came to depose, she was carrying a baby in her lap which she claimed to be begotten out of sexual indulgence of the appellant. Furthermore, while suggesting the victim, appellant had not claimed that to ascertain parentage of the boy, DNA test be conducted, nor at the present stage such offer has been advanced. Furthermore having a child begotten by the victim has not been denied.

13. DW.1, DW.2 and DW.3 out of whom DW.3 is the wife of the appellant, have been examined on that very score including that of disclosing the character of the appellant to be good. At the present juncture two sections of the evidence act are relevant to be taken into consideration and those are section 53A as well as 54. For better appreciation, same is quoted below:-

“53A. Evidence of character or previous sexual experience not relevant in certain cases. —In a prosecution for an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376B, section 376C, section 376D or section 376E of the Indian Penal Code (45 of 1860) or for attempt to commit any such offence, where the question of consent is in issue, evidence of the character of the victim or of such person’s previous sexual experience with any person shall not be relevant on the issue of such consent or the quality of consent.

54. Previous bad character not



relevant, except in reply.—In criminal proceedings, the fact that the accused person has a bad character, is irrelevant, unless evidence has been given that he has a good character, in which case it becomes relevant.”

14. Apart from this, Section 114A also speaks about presumption which the court has to infer in case consent is controverted by the victim/prosecutrix. For better appreciation, the same is quoted below:-

“114A. Presumption as to absence of consent in certain prosecutions for rape.—In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of section 376 of the Indian Penal Code, (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.”

15. From the evidence available on the record, it is evident that prosecution had not alleged against the appellant to be that of bad character. In the aforesaid background, the evidence of good character by way of examining DW.1, DW.2 and DW.3 are not at all relevant under the guise of Section 54 of the Evidence Act. In likewise manner, though the charge did not permit the subsequent event even then, for clarity, the bad character of a women is not at all relevant for consideration in light of amendment having introduced under the Evidence Act, as provided under Section 53A of the Act that too happens to be vague one castigating her character.

16. In ***Deepak Gulati vs State Of Haryana*** reported in



AIR 2013 SC 2071, it has been held:-

“15. Section 114-A of the Indian Evidence Act, 1872 (hereinafter referred to as the ‘Act 1872’) provides, that if the prosecutrix deposes that she did not give her consent, then the Court shall presume that she did not in fact, give such consent. The facts of the instant case do not warrant that the provisions of Section 114-A of the Act 1872 be pressed into service. Hence, the sole question involved herein is whether her consent had been obtained on the false promise of marriage. Thus, the provisions of Sections 417, 375 and 376 IPC have to be taken into consideration, alongwith the provisions of Section 90 of the Act 1872. Section 90 of the Act 1872 provides, that any consent given under a misconception of fact, would not be considered as valid consent, so far as the provisions of Section 375 IPC are concerned, and thus, such a physical relationship would tantamount to committing rape.

16. This Court considered the issue involved herein at length in the case of Uday v. State of Karnataka, AIR 2003 SC 1639; Deelip Singh @ Dilip Kumar v. State of Bihar, AIR 2005 SC 203; Yedla Srinivasa Rao v. State of A.P., (2006) 11 SCC 615; and Pradeep Kumar Verma v. State of Bihar & Anr., AIR 2007 SC 3059, and came to the conclusion that in the event that the accused’s promise is not false and has not been made with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act(s) would not amount to rape. Thus, the same would only hold that where the prosecutrix, under a misconception of fact to the extent that the accused is likely to marry her, submits to the lust of the accused, such a fraudulent act cannot be said to be consensual, so far as the offence of the accused is concerned.

17. Rape is the most morally and physically reprehensible crime in a society, as it is an assault on the body, mind and privacy of the victim. While a murderer destroys the physical frame of the victim, a rapist degrades and defiles the soul of a helpless female. Rape reduces a woman to an animal, as it shakes the very core of her life. By no means can a rape victim be called an accomplice. Rape leaves a permanent scar on the life of the victim, and therefore a rape



victim is placed on a higher pedestal than an injured witness. Rape is a crime against the entire society and violates the human rights of the victim. Being the most hated crime, rape tantamounts to a serious blow to the supreme honour of a woman, and offends both, her esteem and dignity. It causes psychological and physical harm to the victim, leaving upon her indelible marks.

18. Consent may be express or implied, coerced or misguided, obtained willingly or through deceit. Consent is an act of reason, accompanied by deliberation, the mind weighing, as in a balance, the good and evil on each side. There is a clear distinction between rape and consensual sex and in a case like this, the court must very carefully examine whether the accused had actually wanted to marry the victim, or had mala fide motives, and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is a distinction between the mere breach of a promise, and not fulfilling a false promise. Thus, the court must examine whether there was made, at an early stage a false promise of marriage by the accused; and whether the consent involved was given after wholly, understanding the nature and consequences of sexual indulgence. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused, and not solely on account of mis-representation made to her by the accused, or where an accused on account of circumstances which he could not have foreseen, or which were beyond his control, was unable to marry her, despite having every intention to do so. Such cases must be treated differently. An accused can be convicted for rape only if the court reaches a conclusion that the intention of the accused was mala fide, and that he had clandestine motives.

19. In Deelip Singh (supra), it has been observed as under:

“20. The factors set out in the first part of Section 90 are from the point of view of the victim. The second part of Section 90 enacts the corresponding provision from the point of view of the accused. It envisages that the accused too has knowledge or has reason to believe that the consent was given by the victim in consequence of fear of



injury or misconception of fact. Thus, the second part lays emphasis on the knowledge or reasonable belief of the person who obtains the tainted consent. The requirements of both the parts should be cumulatively satisfied. In other words, the court has to see whether the person giving the consent had given it under fear of injury or misconception of fact and the court should also be satisfied that the person doing the act i.e. the alleged offender, is conscious of the fact or should have reason to think that but for the fear or misconception, the consent would not have been given. This is the scheme of Section 90 which is couched in negative terminology.”

20. This Court, while deciding Pradeep Kumar Verma (Supra), placed reliance upon the judgment of the Madras High Court delivered in N. Jaladu, Re ILR (1913) 36 Mad 453, wherein it has been observed:

“We are of opinion that the expression “under a misconception of fact” is broad enough to include all cases where the consent is obtained by misrepresentation; the misrepresentation should be regarded as leading to a misconception of the facts with reference to which the consent is given. In Section 3 of the Evidence Act Illustration (d) states that a person has a certain intention is treated as a fact. So, here the fact about which the second and third prosecution witnesses were made to entertain a misconception was the fact that the second accused intended to get the girl married..... “thus ... if the consent of the person from whose possession the girl is taken is obtained by fraud, the taking is deemed to be against the will of such a person”. ... Although in cases of contracts a consent obtained by coercion or fraud is only voidable by the party affected by it, the effect of Section 90 IPC is that such consent cannot, under the criminal law, be availed of to justify what would otherwise be an offence.”

21. Hence, it is evident that there must be adequate evidence to show that at the relevant time, i.e. at initial stage itself, the accused had no intention whatsoever, of keeping his promise to marry the victim.



There may, of course, be circumstances, when a person having the best of intentions is unable to marry the victim owing to various unavoidable circumstances. The “failure to keep a promise made with respect to a future uncertain date, due to reasons that are not very clear from the evidence available, does not always amount to misconception of fact. In order to come within the meaning of the term misconception of fact, the fact must have an immediate relevance.” Section 90 IPC cannot be called into aid in such a situation, to pardon the act of a girl in entirety, and fasten criminal liability on the other, unless the court is assured of the fact that from the very beginning, the accused had never really intended to marry her”

17. Be that as it may, the evidence is to be seen confining to the date of occurrence i.e. 25.07.2011 as, for the offence having committed on that day, the appellant has been prosecuted. As disclosed hereinabove there happens to be subsequent event flashing their continued relationship for years together but, the charge has not been framed on that very score and so, the subsequent conduct of the prosecutrix will really guide the issue, is a another circumstance to be taken into consideration.

18. Coming to the status of the witnesses, it is evident that PW.1 is the brother, PW.2 is the mother, PW.3 is the father and PW.4 is the prosecutrix herself while PW.5 is the Investigating Officer. PW.1 at para-1 had shown his status as hearsay witness with regard to commission of a rape over the person of prosecutrix on 25.07.2011 and for that he had deposed that on the alleged date and time of occurrence, while the victim was sleeping at her Verandah, accused came and committed rape on her. Then thereafter, there happens to be disclosure relating to subsequent event. During cross-examination, it is evident that he was not at all



cross-examined on that very score rather, his cross-examination relates with the other subsequent event having been disclosed under para-2 and 3. At para-7 of the cross-examination, it is evident that he had admitted presence of a case having instituted by the father of the accused after institution of this case but, the aforesaid case has not been made an exhibit so the nature of litigation is not known. He had denied the suggestion at para-9 that no such type of occurrence had ever taken place rather on account of land dispute as well as his sister is not being married up till now, on account thereof, they want to forcibly marry his sister with the accused and for that, this case has been instituted.

19. PW.2 had not stated the aforesaid event rather she had deposed that one morning she had seen the prosecutrix whereupon she perceived her to be pregnant. On query, she disclosed that she was raped by the accused. Then thereafter, she had deposed with regard to subsequent event. On court question, she had disclosed the age of the victim at the time of cross-examination to be 20 years. She had further disclosed that at an earliest she had not disclosed regarding the occurrence. When she was carrying pregnancy of three months then thereafter on query she disclosed that accused had committed rape. During cross-examination at para-5 she had stated that they were pressing upon Md. Majharul to marry but, after committing sin with her daughter he refused and then married with another girl. Then she had denied the suggestion at para-8 that her daughter happens to be characterless lady and had fallen under illicit relationship with others and then got Md. Majharul implicated in this false case.



20. PW.3 is the father who had deposed that on the alleged date and time of occurrence while his daughter was sleeping at his verandah accused came and after gagging her mouth raped. His daughter began to weep as well as also disclosed that she will narrate the incident to her parents whereupon accused volunteered to marry and then, there happens to be disclosure with regard to subsequent event, continuance of physical indulgence, pregnancy, giving birth to a male child, denial at the end of accused to marry and then institution of the case. During cross-examination, he had admitted that the accused happens to be his nephew. He had also disclosed at para-6 on court question that before pregnancy he was not knowing with regard to illicit relationship amongst her daughter with the accused. In para-13, he had shown ignorance with regard to filing of a petition before the women commission by his wife. In para-14, he had stated that he along with his daughter was willing to marry with accused. Accused was also willing to marry. They talked about eight months ago. In para-16, he had denied the suggestion that on account of land dispute, he got this case filed by projecting his daughter. He had further denied the suggestion that accused had not committed any wrong with the prosecutrix.

21. PW.4 is the victim. She had deposed that she had filed a case before the court. Then had stated that on the alleged date and time of occurrence she was alone at her house. While she was sleeping at her Verandah, accused came Gagged her mouth and then, committed rape. When she was about to raise alarm, he forbade and instructed not to raise alarm as he will marry with her and under the garb of aforesaid event, he continued with physical



relationship and then narrated the event with regard to pregnancy, efforts taken for marriage, denial and then, institution of this case after, accused had married some other place. During cross-examination at para-6, she had admitted that accused happens to be her cousin brother. At para-7, she had disclosed with regard to first confrontation whereunder she had stated that accused came from northern side. After five minutes of his arrival, he committed the offence. Accused caught hold her forcibly and then committed rape. Where after, offered to marry. She was also forbade to raise alarm. As she had no watch therefore, she happens to be unable to disclose how much time took place. She had further stated that accused had said one day prior to the occurrence that he will marry with her. In para-8 she had stated that accused had committed rape on her after gagging her mouth. Because of the fact that accused had volunteered to marry on account thereof, she had said anything to anyone. Then at para-9, there happens to be cross-examination with regard to subsequent event. In para-10, she had stated at the time of occurrence she was aged about 17-18 years. Then had denied the suggestion that it is false to say that she had deposed falsely. Then had denied that the child who is in her lap is not from the accused.

22. PW.5 is the Investigating Officer, who during course of examination-in-chief had stated that after registration of the case (exhibited all the relevant documents) he took up investigation. He had gone to the P.O. which happens to be the house of the informant lying at village-Baijpura. Then had described the P.O. He had not found any kind of incriminating material from the P.O. He had recorded further statement of the



informant, statement of other witnesses. Then had stated that a deed has been executed in favour of the victim in her name. Then there happens to be disclosure under para-5 that during course of investigation, came across that there was panchayati wherein accused had confessed his guilt and then thereafter, as per resolution accused gaved 16.5 decimal land to the victim. Then had arrested the accused. After completing investigation, submitted charge sheet. During course of cross-examination he had stated that he had not mentioned the age of the victim. Then at para-10 had stated that victim had not disclosed to him that rape was committed in day or night but she had stated that rape which was committed on the alleged date was at a day time and thereafter, on the pretext of marriage accused continued in availing her company. He had not done DNA test. Then had denied the suggestion that his investigation happens to be defective one.

23. DW.1 is Nurul Haque who had stated that victim had instituted false case showing that she was raped on 25.07.2011 at 11:00 AM by the accused. He had also denied with regard to conduction of panchayati. Then had stated that father of victim wanted to marry the victim with the accused and for that, in the background of land dispute, got this case instituted. It has further been disclosed that accused has been married at village-Sikorana and is leading good, harmonious, family life. During cross-examination he had stated that he happens to be cousin brother of informant as well as accused. At para-3, he had stated that he had not tried to talk with the victim with regard to the allegation whatever been attributed by her. Then had denied the suggestion



that being in collusion with the accused, deposed falsely.

24. DW.2 had stated that accused is a good boy. He is a perfect gentleman. The victim had falsely implicated the accused with regard to commission of rape on 25.07.2011. The case has been instituted in the background of land dispute. No panchayati had ever taken place. Then had stated that accused has been married and is leading congenial marital life. During cross-examination, he had admitted that victim is unmarried. She has begotten a child. She had not disclosed that she begotten the child on account of rape having been committed by the accused. Then had denied the suggestion that being in collusion with the accused has given false evidence.

25. DW.3 is the wife of the accused/appellant. She had deposed that she has been married with the accused on 11.5.2012. After marriage she has begotten a child who is aged about one and half year. She is residing with her husband after marriage and are leading happy conjugal life. Then had stated that victim had instituted this case putting false and frivolous allegation against her husband. In the background of the fact that father of the victim wanted to marry the victim with her husband. She had further stated that victim happens to be of bad character having illicit relation with many persons of the village whereupon, there is no possibility of her marriage. During cross-examination she had stated that she became known with regard to intuition of the case after three months of her marriage on going through the document which was handed over to her by her Bhaisur. At para-5, she had stated that victim has a child. She is not knowing whether she had



begotten at the instance of her husband. Then had denied the suggestion that she has deposed falsely to save her husband.

26. Seen the statement of the accused/appellant recorded under Section 313 of the Cr.P.C. whereunder he had simply denied the allegation whatsoever been confronted to him. From the questionnaire, it is evident that apart from the allegation of rape having committed by him on 25.07.2011, the other incriminating materials have also been confronted to him.

27. From the evidence more particularly that of PW.4, victim there happens to be no cross-examination on the point of rape having so alleged at the end of the victim on 25.07.2011 though, at para-7 of cross-examination she had shown determination of the accused to have indulgence with her and for that offered to marry after commission of rape. In para-8, she had further stated that after having been gagged her mouth, she was raped. Nothing has been suggested at the end of the appellant that being major, they both consummated voluntarily, out of free will, without any coercion or threat which, the victim being major was competent enough to assent. In likewise manner, there was genuine promise of marriage which anyhow, could not materialize. Had there been such kind of activity, then in that circumstance, the indulgence and refusal would have been under the banner of consent whereupon Section 417 of the IPC on account of breach of promise would have attracted. Apart from this, it is also evident from the lower court record that charge has not been framed against the accused/ appellant for the activities which continued even after 25.07.2011 the day on which there was refusal at the



end of the accused to marry rather it was for the rape having been committed on 25.07.2011. Therefore, one has to see whether on the alleged date of occurrence she was a consenting party and the same is found duly controverted.

28. So far delay is concerned, it is not to be considered as a severe lacuna moreover relating to rape case. In State Of Himachal Pradesh Vs. Sanjay Kumar Alias Sunny reported in 2017 Cr.L.J. 1443, it has been held ;-

“24. When the matter is examined in the aforesaid perspective, which in the opinion of this Court is the right perspective, reluctance on the part of the prosecutrix in not narrating the incident to anybody for a period of three years and not sharing the same event with her mother, is clearly understandable. We would like to extract the following passage from the judgment of this Court in Tulshidas Kanolkar v. State of Goa (2003) 8 SCC 590:

“5. We shall first deal with the question of delay. The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding the prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the court is to only see whether it is satisfactory or not. In case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of the prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen her. That being so, the mere delay in lodging of the first information report does not in any way render the prosecution version brittle.”

25. In Karnel Singh v. State of Madhya Pradesh (1995) 5 SCC 518, this Court observed that:



“7...The submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false...”

26. Likewise, in *State of Punjab v. Gurmit Singh & Ors.* (1996) 2 SCC 384, it was observed:

“8...The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged...”

29. It is settled principle of law that prosecution has to substantiate its case. When it has succeeded, then in that circumstance onus shift upon accused, which is expected to be properly discharged. From the evidence, as reported hereinabove, it is crystal clear that prosecution has been able to substantiate its case. However, as is evident, defence could not be able to discharge its onus. Now coming to theme of land dispute, though there happens to be inconsistency amongst the PWs over the date of execution of sale deed in favour of the victim in equal way defence also tried to escape, at least attracting Section 91 of the Cr.P.C. in getting the sale deed an exhibit moreover in the background of the fact that the I.O. had deposed under para-5 on that score, which was not at all controverted at the end of appellant. This happens to be relevant one, as he was one of the party of the document and as he was one of the party of the document so an adverse inference



has to be drawn against him.

30. Giving analytical thought to the facts and circumstances of the case, it is found and held that prosecution has succeeded in proving its case. That being so, this appeal sans merit and is accordingly dismissed.

31. Appellant is on bail hence his bail bond is cancelled with a direction to surrender before the learned lower court within fortnight to serve out remaining part of sentence, failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	28.05.2018
Transmission Date	28.05.2018

