

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.458 of 2016

Arising Out of PS. Case No.-105 Year-1996 Thana- BHARGAWAN District- Araria

Sushil Choudhary son of Sri Turan Choudhary resident of Village- Charia
P.S.- Bhargama.District- Araria

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant : Mr. Navjot Yesu, Advocate.
Mr. Aditya Abhishek, Advocate.
For the Respondent : Ms. Abha Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 15-03-2018

Heard the learned counsels for the appellant the

State.

2. The appellant/Sushil Chaudhary stands convicted under Section 376 of the Indian Penal Code vide judgment dated 16.05.2016 passed by the learned Additional District and Sessions Judge-3, Araria in Sessions Trial No. 615 of 1997/Trial No. 017 of 2016 and by order dated 18.05.2016 he has been sentenced to undergo R.I. for 10 years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for two months.



3. The appellant is said to have subjected the victim (P.W. 3) to sexual intercourse without her will.

4. The aforesaid P.W. 3 (the name of the victim is being deliberately withheld) lodged the FIR on 06.12.1996 alleging that on the Monday last, at about 9 o' clock in the night, the appellant brought her to his house and gave her dinner. He assured her that she would be taken to her maternal uncle's house at Samastipur. Since the step-mother of P.W. 3 did not treat her well, she wanted to go to her maternal uncle. It has been alleged by P.W. 3 that she was kept in one of the rooms of the house of the appellant. After everybody slept in the night, the appellant forcibly committed rape on her. In the morning of the next day, at about 4 o' clock she was taken on a bicycle to Bhargama Chowk. There, the appellant gave her Rs. 20/- as bus fare for going to Banmankhi. She was asked by the appellant to go to her friend's house and wait for him at the bus-stand at about 10 o' clock in the next morning. Thereafter, she was



assured that she would be taken to Samastipur. At Banmankhi, the appellant made her move from one place to another when both of them were spotted by one Vikas Jha. On being questioned by aforesaid Vikas Jha as to where the appellant was taking P.W. 3, he disclosed to him that she was being taken to Purnea where her father resided. Thereafter the P.W. 3 was taken to the house of her aunt and was left there. The appellant again asked her to meet him the next day. While she was waiting for the appellant on the bus-stand, three villagers viz. Rajendra Mishra, Lallan Chaudhary and Kundan Chaudhary saw her. They took her to the village home. Thereafter she lodged the aforesaid FIR. She has further stated that the appellant, on some pretext or the other, had been subjecting her to sexual intercourse for the last one year.

5. On the basis of the aforesaid fardbeyan/statement of P.W. 3, Bhargama P.S. Case No.



105 of 1996 dated 06.12.1996 was registered for investigation under Section 376 of the Indian Penal Code.

6. The trial court, after examining five witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as aforesaid.

7. Mr. Navjot Yesu, learned advocate appearing for the appellant has assailed the judgment and order of conviction and sentence as being against the weight of overwhelming evidence and without there being any cogent material to return the verdict of guilt. It has been submitted by him that the prosecution story in itself is absolutely doubtful. The witnesses have made discrepant statements at the trial and the narration about the manner in which the occurrence is said to have been committed, does not at all inspire confidence.

8. In order to test the correctness of the prosecution version, it would be only profitable to go through the deposition of P.W. 3 who is the so-called



victim of this case. Though, her deposition is in support of her initial version but at the trial, she has made deliberate attempts to embellish the original version given by her about the occurrence. She has repeated the same story before the trial court but has introduced the element of her having been, in the first instance, threatened on point of weapon. She has admitted in her deposition that her step-mother viz. Veena Jha who has been examined as P.W. 2, did not treat her well and therefore she wanted to go to her maternal uncle's house at Samastipur.

9. What appears rather strange from the deposition of P.W. 3 is that she had ample opportunity of going back to her village home or of informing others regarding the activities/conduct of the appellant. She has herself stated that in the night when she was taken to the house of the appellant, she was made to sleep in one room. The aforesaid witness did not get to know as to who all were staying in that house. This appears to be rather doubtful.



There is no evidence to suggest that the house of the appellant is such a big house that anybody residing in the house would not be able to ascertain about the other occupants of the house. P.W. 3 was subjected to rape on that night. Thereafter she was, in the next morning, taken on a bicycle to Bhargama Chowk. At that time, she allegedly was given Rs. 20/- as bus fare for going to Banmankhi. The appellant did not accompany her to Banmankhi but had promised that he would meet her at Banmankhi. This again gave an opening to P.W. 3 to have run away to either her maternal uncle or her aunt or to her own house which was not very far off. She obliged/ followed what appellant had to tell her. She went to Banmankhi where she met the appellant again. There also, P.W. 3 kept on moving from one place to other when Vikas Jha, one of the co-villagers spotted them. This was the second opportunity when P.W. 3 could have told aforesaid Vikas Jha about her being subjected to rape and being taken to unknown destination as against what was



promised to her that she would be taken to the house of her maternal uncle at Samastipur. Thereafter, P.W. 3 claims to have been taken to her own aunt's house where she was made to stay in the night. This was the third time when the aforesaid P.W. had the occasion to stop the appellant from again subjecting her to any sexual misdemeanor. She has not stated anything either in the FIR or before the trial court as to whether she had met her aunt that night or not. She has also not stated that she had met any relative of her aunt in her aunt's house. Thereafter, while she along with the appellant was at the bus-stop, she was seen by three of the villagers who brought her home.

10. Learned counsel for the appellant has submitted that this narration does not inspire confidence for two reasons. The victim had ample opportunity to run away from the clutches of the appellant and if it was not possible to her to have run away, she would have at least



communicated about her being sexually exploited to so many persons whom she met on way.

11. In her FIR, she has not disclosed about her age and she has also not spoken about the same in her deposition before the trial court. P.W. 1 and 2 who are the parents of P.W. 3 are only hearsay witnesses to the occurrence.

12. Gandhi Jha (P.W. 1) who is the father of the victim has stated that he stays at Purnea. He was informed by his villagers about the occurrence. In the absence of the three villagers whose names have been taken by P.W. 3 in the FIR as also in her deposition before the court, having been examined, this Court does not have any material to know as to the source of information to P.W. 1 regarding the occurrence. The aforesaid three witnesses/co-villagers who brought P.W. 3 back home have also not been examined by the prosecution and neither there has been any effort, even belatedly, for offering any explanation for such non-



examination. Similarly, Vikas Jha also has not been examined at the trial. Veena Jha, the step-mother of the victim is also a hearsay witness to the occurrence. Since her behavior towards P.W. 3 has not been good, her narration about the manner of the occurrence also is not fit to be accepted.

13. Dr. Renuka Singh, the medical officer posted at Sadar Hospital, Purnea who has been examined as P.W. 5 has assessed the age of the victim at below 14 years. However she has also deposed that possibility of rape over the victim cannot be completely ruled out. She has proved the report which was prepared by one Dr. Punam Rana who also was a member of the medical board which has been constituted for the purposes of examining the victim and of assessing her age. The aforesaid prosecution witness has stated that the victim appeared to be addicted to the sexual intercourse and the age of the healing of the torn hymen also could not be assessed. In this view of the matter, it is difficult to accept the



allegation against the appellant of having subjected the victim/P.W. 3 to rape.

14. This Court is conscious of the fact that the age of the victim has been assessed to be 14 years. However since the entire story put forward by P.W. 3 is rendered doubtful, this Court is not going into the question about the correctness of the assessment of the age of the victim as well.

15. In the absence of any reliable evidence with respect to rape having been committed on the victim, this Court has serious doubts about the version of P.W. 3. No doubt, the law in this regard is very clear that unless proved to the contrary, the statement of the victim has to be accepted to be true; but in the present case, there are so many chinks and wedges in the story propounded by the victim that the same cannot be accepted even if some concessions are given to her age. Finding the evidence offered on behalf of the prosecution to be absolutely unbelievable, this Court has no option but to



set aside the judgment and order of conviction and sentence.

16. The judgment of conviction dated 16.05.2016 and order of sentence dated 18.05.2016 passed in Sessions Trial No. 615 of 1997/Trial No. 017 of 2016 is set aside.

17. The appeal is allowed.

18. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

19. A Copy of the judgment be communicated to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.03.2018
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