

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.504 of 2015

Arising Out of PS.Case No. -223 Year- 2007 Thana -GARDANIBAGH District- PATNA

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Md. Aslam Son of Md. Habib, Resident of Village -Janipur,P.S. -
Janipur, District -Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Mr. Shivendra Prasad, Adv.
Mr. Binod Kumar, Adv.

For the State : Mr. Prakash Kumar, Adv.
Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 01-05-2018

Appellant, Md. Aslam has been convicted for an offence punishable under Section 366/34 of the IPC and sentenced to undergo R.I. for three years vide judgment of conviction and order of sentence dated 25.05.2015 passed by Additional Sessions Judge, XIVth, Patna in Sessions Trial No.1669/2007.

2. Victim PW.3 (name withheld) filed written report on 10.05.2007 alleging inter alia that on 07.05.2007 while she was going to Chitkohra market, Binesh Kuamr @ Bineshwar Ravidas who happens to be tenant in the same house where she resides and his friend Aslam who happens to be a tempo driver, were present at Sheopur road where they have parked tempo. Binesh inquired where she was going whereupon she disclosed that to Chitkohra market. Then he said that come over tempo. They will carry her to Chitkohra market. As both of them were known to her since before on account thereof, she sat. Thereafter, some sort of sedative was put over her nose which she inhale and became



unconscious. After regaining sense, she found at the place of maternal grandmother of Binesh Kumar. He repeatedly pressed her to marry and on her refusal, she was forced to inhale sedative. Then thereafter, he threatened that her family will be eliminated. He also misbehaved with her. In the morning of 08-05-2007, after regaining her sense and finding all the family members asleep, she escaped therefrom. When she came, was seen by her brother who carry her to house. Furthermore, it has also been divulged that out of family prestige the matter could not be reported at an earliest.

3. After registration of Gardanibagh P.S. Case No.223/2007 investigation commenced and during course thereof, as the appellant only was apprehended, on account thereof, charge sheet was submitted against him alone keeping the investigation pending against Binesh and that happens to be the basis for trial, meeting with ultimate result, subject matter of instant appeal.

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 submitted that appellant has nothing to do with the affair of the informant as well as co-accused Binesh Kumar as they both were lovebirds, the victim escaped from her house voluntarily being major one was very much inclined but, due to family pressure their wish did not fructify. However, appellant has been victimized merely on suspicion as, he was also one of the tenant in the same house and had declined to support the prosecution. However, neither ocular nor documentary evidence has been adduced.

5. In order to substantiate its case, prosecution had



examined altogether four PWs who are PW.1-Pushpa Devi sister of the informant, PW.2-Ram Pravesh Prasad father of the victim, PW.3-victim herself and PW.4-Munna Kumar. Side by side had also exhibited Ext.1-Signature of informant over written report and Ext.2-Signature of informant over statement under Section 164 Cr.P.C.

6. The learned counsel for the appellant has submitted that PW.1 and 2 are not an eyewitness to occurrence and so whatever they deposed happens to be on the basis of disclosure having been made by the alleged victim PW.3. PW.4 had not supported the case of the prosecution. So, it happens to be the victim whose evidence is to be considered in order to adjudge the finding recorded by the learned lower court.

7. Furthermore, it has been submitted that Investigating Officer has not been examined. Magistrate, who recorded statement under Section 164 Cr.P.C. has not been examined. Independent witnesses have not been examined. Delay in institution of the case has not been properly explained. Due to non-examination of the Investigating Officer, the assertion of the informant could not be testified more particularly regarding shifting of informant to the place of maternal grandmother of Binesh in unconscious state and in likewise manner, the material development visible in the evidence of PW.3. However, fairly submitted that on next date after adjournment when the victim PW.3 was present in court for cross, none came to cross-examine and that being so she was discharged. Therefore, whatever been deposed at her end during course of examination-in-chief remained untested. In the aforesaid



background some leniency has been solicited more particularly in the background of disclosure having at her end in a statement recorded under Section 164 Cr.P.C. that Binesh was in love with her but she was not inclined to marry as he was of different caste.

8. The learned Additional Public Prosecutor opposed the same and submitted that leniency had already been shown at the end of the learned lower court while inflicting sentence of three years.

9. From the material available on the record, it is evident that PW.1 and PW.2 had not claimed to be an eye witness to occurrence rather they deposed on the basis of an information having at the end of victim, PW.3. It is true that during course of her examination-in-chief victim had given a contradictory statement from PW.2, her father who had admitted Aslam to be tenant in the same flat where he was residing while victim had stated that he was on visiting term. She had further stated that she is not knowing where Aslam was residing. In para-6 there happens to be some effort in drawing attention towards her statement recorded under Section 164 Cr.P.C as during evidence, victim PW.3 had developed the story by stating that he also misbehaved with her along with Binesh. Furthermore, it is apparent that on subsequent date, due to non-appearance of the learned counsel, victim was discharged. During her examination-in-chief victim had substantiated her earlier statement recorded under Section 164 Cr.P.C. and so, the same has been seen to perceive the earlier version therefrom it is manifest that Binesh was in love with her and wanted to marry but she was not inclined as he was of



different caste. Furthermore, there was no allegation attributed against the appellant specifically even in the written report whatever been alleged during course of evidence. So, weighing the overall situation connivance of appellant could not be ruled out during course of commission of the occurrence which is found duly established by the victim PW.3. Whereupon the finding recorded by the learned lower court to the extent of identifying him guilty for an offence punishable under Section 366/34 of the IPC is found appropriate. However, so far quantum of sentence is concerned, in the facts and circumstances of the case requires indulgence and further, perceiving that appellant remained under custody from 12.05.2007 to 11.09.2008 that means to say more than a year, the sentence so inflicted by the learned lower court is directed to be reduced to sentence already undergone. In terms thereof, appeal is partly allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	04.05.2018
Transmission Date	04.05.2018

