

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1138 of 2016

Arising Out of PS.Case No. -123 Year- 2004 Thana -BAHADURGANJ District-
KISANGANJ

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Md. Iliyas @ Iliyas, Son of Imamuddin @ Imajuddin, resident of
Village-Beni, Post Office and Police Station-Bahadurganj, District-
Kishanganj.

.... Appellant

Versus

The State of Bihar

.... Opposite Party/Respondent

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Appearance :

For the Appellant : Mr. Najmul Hoda, Adv.

For the State : Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 11-07-2018

The appellant/Md. Iliyas @ Iliyas has been
convicted under Section 376 of the Indian Penal Code (*in short*
the I.P.C.) and has been sentenced to undergo rigorous
imprisonment for ten (10) years without remission, to pay a
fine of Rs. 20,000/- and in default of payment of fine to
further suffer rigorous imprisonment for one (1) year. He has
additionally been convicted under Section 323 of I.P.C. and
has been sentenced to undergo rigorous imprisonment for one
(1) year. The aforesaid judgment of conviction and order of



sentence are dated 16.09.2016 and 20.09.2016 respectively, passed by the learned Additional District & Sessions Judge-I, Kishanganj in Sessions Trial No. 601 of 2006, arising out of Bahadurganj P.S. Case No. 123 of 2004.

2. The conviction of the appellant is based solely on the testimony of the prosecutrix (P.W. 6), who has stated that after the rape, she married the appellant and had been living as his wife. The other witnesses have been declared hostile.

3. While addressing this Court in appeal, learned Advocate for the appellant has drew the attention of this Court to certain documents demonstrating the juvenility of the appellant at the time of the occurrence. A transfer certificate issued by a *Madarsa* declares the age of the appellant as 01.01.1996. The *AADHAR* card of the appellant also describes his age as 01.01.1996. If this is the correct age of the appellant, he was merely eight (8) years old at the time of the occurrence.

4. This does not at all appear to be a correct disclosure of the age of the appellant.

5. Section 7-A of the Juvenile Justice (Care and Protection of Children) Act, 2000 (*in short **the Act***), which is applicable to the facts of the present case, reads as hereunder:-

7-A. Procedure to be followed when



claim of juvenility is raised before any Court.-(1) Whenever a claim of juvenility is raised before any Court or a Court is of the opinion that an accused person was a juvenile on the date of commission of the offence, the Court shall make an inquiry, take such evidence as may be necessary (but not an affidavit) so as to determine the age of such person, and shall record a finding whether the person is a juvenile or a child or not, stating his age as nearly as may be:

Provided that a claim of juvenility may be raised before any Court and it shall be recognised at any stage, even after final disposal of the case, and such claim shall be determined in terms of the provisions contained in this Act and the rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of this Act.

(2) If the Court finds a person to be a juvenile on the date of commission of the offence under sub-section (1), it shall forward the juvenile to the Board for passing appropriate order, and the sentence, if any, passed by a Court shall be deemed to have no effect.

6. The provisions of aforesaid section under the Act provides that if a Court is of the opinion that the accused was a juvenile on the date of the commission of the offence, he shall make an inquiry and take such evidence, as may be necessary, so as to determine the age of such person and shall record a finding to that effect. The aforesaid plea of juvenility could be raised before any Court and would be



recognised at any stage, even after the final disposal of the case, and such claim would be determined in terms of the provisions contained in the Act and the Rules made thereunder, even if the juvenile has ceased to be so on or before the date of commencement of the Act.

7. *Prima facie*, the disclosure of the appellant does not appear to be correct. The nature of accusation and the age of the victim girl completely belie the assertion of the appellant. The victim has stated her age to be less than 18 years on the date when she was first subjected to rape. After about three years of the occurrence, she had deposed before the Trial Court and at that time, she has stated her age to be 22 years. Whatever be the calculation, the victim was not less than 18 years of age at the time of the occurrence. This Court says so because, admittedly, the victim was, at that time, married to somebody else. In such a situation, the assertion of the appellant that he was only 8 years of age does not appear to be correct; more so, when the appellant and the victim married and stayed together as man and wife.

8. As such, aforesaid statement of the appellant is not tenable and since this Court is of the opinion that it is *prima facie* a wrong disclosure of age, no inquiry is required to be conducted with respect to the age of the appellant.

9. The assertion of the appellant, therefore,



about his juvenility is totally rejected.

10. Now to the merits of the case:

The appellant and seven others have been tried for the offences under Sections 147, 323, 452, 380 and 376 of the I.P.C. The allegation levelled in the F.I.R. is that all the accused persons, after having made an unlawful assembly, committed trespass of the house of the informant/Munni (P.W. 6) and voluntarily caused hurt to her and committed theft of personal belongings. Appellant/Md. Ilyas @ Ilyas is alleged to have committed rape with the informant one month prior to 01.10.2004 at about 4:00 P.M. With the aforesaid allegation, a complaint was lodged by P.W. 6 which was sent under Section 156(3) of the Code of Criminal Procedure, 1973 for institution of a regular case, whereupon Bahadurganj P.S. Case No. 123 of 2004, dated 26.10.2004, was instituted for investigation for the offences under the aforesaid sections of the I.P.C.

11. After investigation, charge-sheet was submitted on 31.03.2006 and cognizance was taken. Thereafter, the appellant and others were put to trial.

12. The learned Trial Court, after examining nine witnesses on behalf of the prosecution, acquitted the other accused persons, but convicted the appellant for the offence under Section 376 of the I.P.C. and sentenced him as



aforesaid.

13. Out of nine prosecution witnesses, P.Ws. 1, 2, 3, 4, 5 and 7 have claimed complete ignorance about the occurrence and have been declared hostile.

14. P.W. 8 is the second Investigating Officer of the case, who has only submitted charge-sheet against the accused persons including the appellant. He, in his cross-examination, has admitted that only on the orders of the Superintendent of Police, he submitted charge-sheet and he did not record the statement of any of the witnesses.

15. Bhola Singh/P.W. 9 is an another Investigating Officer of this case, who had taken up the investigation; but after his transfer, he handed over the charge to the S.H.O. of the concerned police station. He has proved the formal F.I.R. (Ext.-3) as well as the signature of Aslam Ali on the complaint petition (Ext.-2). However, he has stated that the prosecutrix/P.W. 6 did not state before him that she had married Hasib or the appellant.

16. Thus, the only evidence which is crucial for any decision in this case is the evidence of the prosecutrix (P.W. 6). She has categorically stated before the Court that she had married the appellant. The occurrence is stated to be of the year 2004 and at that time, she was married to some other person from before. The appellant abducted her without



her consent and committed rape on her. Thereafter, she married the appellant and effected a settlement with him. At the time of the occurrence, she claims her age to be 16 – 17 years. However, while deposing before the Trial Court, she wept inconsolably and told the Trial Court that she was not treated well by her husband. On question being put to her about her future plans, she stated that she wished to stay with the appellant only, but feared serious consequences at the hands of the appellant.

17. Learned counsel appearing for the appellant has submitted that the statement of the victim girl that she was 16 – 17 years of age at the time of the occurrence does not appear to be correct. The occurrence is said to have taken place a month prior to 01.10.2004 and the prosecutrix deposed before the Trial Court on 06.01.2007, *i.e.* after less than three years later. That time, she stated her age to be 22 years. This renders the age of the victim/prosecutrix more than 18 years on the date of the occurrence. Secondly, it has been argued that there could have been no reason for the prosecutrix to have reported the matter a month later than the occurrence, unless the association of the appellant with the prosecutrix was voluntary and with her consent. Had it not been the case, there would have been litigation at the instance of aforesaid Hasib with whom the prosecutrix is said



to have been married prior to her marriage with the appellant. That apart, if that was the case, the victim would not have agreed to become the wife of the appellant.

18. In that view of the matter, it has been argued on behalf of the appellant that the allegation is absolutely incorrect and cannot be believed.

19. The inordinate delay in bringing the matter to the Court further renders the prosecution version highly doubtful. In that event, it has further been argued that the Trial Court ought not to have relied upon the statement of the prosecutrix that she has not being treated well after marriage. This was not the charge for which the appellant was tried; rather, it was a subsequent event. It has, therefore, been argued that the Trial Court has gone on emotional reasons to convict the appellant under Section 376 of the I.P.C. Even if the fact that the victim was not treated well after her marriage with the appellant is correct, then also, no case under Section 376 of the I.P.C. can at all be said to have been made out.

20. Considering the aforesaid facts, the conviction of the appellant under Section 376 of the I.P.C. does not appear to be inconsonance with the facts and the law. As such, there is no way in which the same can be sustained.

21. Thus, for the reasons aforesaid, the



judgment of conviction dated 16.09.2016 and order of sentence dated 20.09.2016, passed by the learned Additional District & Sessions Judge-I, Kishanganj in Sessions Trial No. 601 of 2006, arising out of Bahadurganj P.S. Case No. 123 of 2004, are, hereby, set-aside.

22. The appeal stands allowed.

23. Appellant/Md. Iliyas @ Iliyas is in custody. He is directed to be released forthwith from jail, if not wanted in any other criminal case.

24. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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