

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1431 of 2017

Arising Out of PS. Case No.-3048 Year-2012 Thana- PURNIA COMPLAINT CASE District-
Purnia

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Sk. Sotamani, Son of Md. Samed, resident of village Kocheli Rampur, P.S.
Dagarua, District Purnea (Bihar).

... .. Appellant/s

Versus

1. The State of Bihar
2. Sarina Begum, D/o Md. Nurul, resident of Rampur Kochaili, P.S.
Dagaruwa, Distt.-Purnea.

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh-Advocate

For the Respondent/s : Mr. Zeyaul Hoda-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

07-05-2019

Appellant Sheikh Sotamani has been found guilty

for an offence punishable under Section 376 of the I.P.C. and
sentenced to undergo R.I. for ten years as well as to pay fine
appertaining to Rs.20,000/- and in default thereof, to undergo
S.I. for one year vide judgment of conviction dated 22.03.2017
and order of sentence dated 25.03.2017 passed by the Presiding
Officer, Fast Track Court-1, Purnea in Sessions Trial No.627 of
2014/ Trial No.25 of 2017.

2. Name withheld, an unmarried girl aged about 15
years was firstly raped by the appellant and being apprehensive
over subsequent steps as disclosed, offered to marry and under
such allurements, succeeded in continuance of physical intimacy,
on account of which, the girl (victim) became pregnant. After



having disclosure to the appellant, he refused to marry her, whereupon, she disclosed the event to her parents, who convened a Panchayati and as Panchayati did not materialize, gone to police station, where found unresponded, hence Complaint Petition No.3048 of 2012 has been filed on 24.07.2012, whereupon she was examined on Solemn Affirmation, also medically examined and further, proceeded with an inquiry under Section 202 of the Cr.P.C. followed with order of cognizance, trial, meeting with the ultimate result, hence this appeal.

3. Defence case, as is evident from mode of cross-examination as well as statement under Section 313 of the Cr.P.C. is that of complete denial. However, nothing has been adduced at the end of the defence.

4. In order to substantiate its case, prosecution has examined altogether six PWs, who are PW-1, Noorul Haque, father, PW-2, Bibi Golenoor, PW-3, Md. Shafique, PW-4, victim, PW-5, Dr. Shiwani Singh and PW-6, Uday Shankar Singh, a formal witness, who has exhibited the complaint petition. On behalf of prosecution following documents have been exhibited, Exhibit-1, D.N.A. Test Report F.S.L. Ranch dated 15.12.2014, Exhibit-1/a, D.N.A. Test Report of F.S.L.



Ranchi dated 19.11.2014, Exhibit-2, petition of Complaint Case No.3048 of 2012, Exhibit-3, Birth certificate of one Saddam, son of the complainant and the accused, Exhibit-4, Medical examination report of the complainant. As stated above, defence is blank.

5. Many grounds have been raised on behalf of appellant in order to assail the judgment impugned. The first and foremost ground is that there happens to be inordinate delay in filing the case without any cogent, legal explanation. Delay, so far criminal case is concerned, always lent an assurance over false implication unless properly examined. Accordingly, on this aspect alone, the whole prosecution case is fit to be rejected.

6. Apart from this, it has also been submitted that conduct of the prosecutrix should also be seen. From the evidence available on the record, it is manifest that both are next door neighbour, they might have developed some sort of affection towards each other and on account thereof, they might have indulged in physical relationship, but when she became pregnant, the whole blame came over the appellant. After all, had the prosecutrix not been a consenting party, on the first day of occurrence itself, the matter would have taken ugly turn, but sitting idle, getting indulged repeatedly, is a circumstance,



which suggest that the outcome whatever might be, consensual one. That being so, the judgment impugned is fit to be set aside.

7. On the other hand, learned Additional Public Prosecutor vehemently opposed the same and submitted that on false promise, life of a minor has been spoiled by the accused, a next door neighbour on the pretext of marriage, which happens to be permissible under Mohammedanism and so, rightly been convicted and sentenced.

8. Three aspects is involved in this appeal. The main plank of submission at the end of appellant is found completely watered down by own conduct of the appellant and for that, the submission at the end of the learned counsel for the appellant while moving prayer for bail before the High Court under Cr. Misc. No.23966 of 2014 is to be taken note of. *“Learned counsel for the petitioner submits that though there is allegation of repeated rape against him on the false pretext of marriage, but the same is incorrect and he has been falsely implicated. It is submitted that the petitioner is under custody since 29.04.2014. Learned counsel for the petitioner submits that he is ready to undergo D.N.A. Test child born to the complainant and accordingly, consequences may follow.”* In pursuance thereof, a positive direction followed and under the guise of the order of the Hon’ble Court, D.N.A. Test was conducted and the reports are exhibit of the record as Exhibit-1, 1/a, wherefrom it



is evident that after proper examination, it has been opined as appellant to be the father of the son of the victim (PW-4). So, from the aforesaid report having at the appellant himself, physical indulgence is found proved as, without the same, PW-4, victim, would not have conceived and delivered a child. When the evidence on this score has been gone through, it is evident that during course of cross-examination of the witnesses including victim (PW-4), appellant has not suggested that victim was a major, she was a consenting party and they have conjointly coition under free-will, without any kind of deception and for that, there was consent at the end of the victim. Contrary to it, there happens to be complete denial at the end of the appellant. No cross-examination has been at his end to the prosecutrix on that very score. That means to say, her allegation on that very score remained unchallenged. Not only this, no effort was at the end of appellant to disclose the D.N.A. finding.

9. Furthermore, in order to search out any kind of ambiguity, the evidence of PW-4 has properly been gone through. During examination-in-chief, she has stated that one day while she had gone to tie the she-goat, accused overpowered her, committed rape, whereupon she began to weep, scolded him, whereupon he consoled her and then, said



not to weep as, he will marry her and in the aforesaid background, she was raped by him, ultimately impregnated her, followed with Panchayati and refusal to marry and then, institution of the case. During cross-examination at Para-3, she has stated that this case has been instituted after three months of the last indulgence in sexual activity by the accused. Then, she has stated that she is unable to disclose the date, month of the incident. She has further stated that when she became pregnant and refusal at the end of the accused to marry, compelled her to file this complaint case. If accused had consented, there would not have an occasion for institution of the case. She has further stated that after institution of the case, she has begotten a son. In Para-7, she has stated that as accused had offered an assurance, on account thereof, she had not disclosed the occurrence at an earliest.

10. PW-5 is the doctor, who had examined the victim on 25.07.2012 that means to say, on the following day of filing of complaint on an order of the Chief Judicial Magistrate, who has found the victim to be pregnant. She had also shown the expected date of delivery on 09.01.2013. She had also shown the age of the victim above 15 years.

11. PW-1 and PW-2 are the parents of the victim,



who had corroborated the evidence of PW-4 as well as over Panchayati, which is also suggested by the PW-3 is the co-villager, who deposed on the score of Panchayati.

12. From the evidence as stated above, it is crystal clear that neither identification of victim to be major on the date of alleged occurrence nor during course of continuation of the relationship has been shown at the end of the appellant. Even during course of examination of doctor, she was not even suggested that the victim was major one, above 18 years of age. That being so, the status of victim, minor, goes out of controversy. In the aforesaid background, consent or not consent became irrelevant.

13. Furthermore, as per definition so prescribed under **Section 375 of the I.P.C.**, a consent given by a minor is not a consent and for that, proper appreciation of Section is quoted below:-

1/375. Rape.—A man is said to commit “rape” who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions:-

(First) — Against her will.

(Secondly) — Without her consent.

(Thirdly) — With her consent, when her consent has been obtained by putting her or any person in whom



she is interested in fear of death or of hurt.

(Fourthly) — With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

(Fifthly) — With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

(Sixthly) — With or without her consent, when she is under sixteen years of age. Explanation.— Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

(Exception) — Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.]

14. As the appellant failed to rebut the finding of the D.N.A. Test, which was effected at his instance and while praying so, undertook to face its consequences followed with evidence of the PW-4, a minor, did not provide any clue for rescue.



15. Thus, this appeal sans merit and is accordingly, dismissed. The appellant is under custody, which he will remain till saturation of the sentence.

(Aditya Kumar Trivedi, J)

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