

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.228 of 2019**

Arising Out of PS. Case No.-465 Year-2011 Thana- KISHANGANJ District- Kishanganj

Manowwar Alam @ Manowar Alam @ Guddu, Son of Md. Faruque Alam
alias Faruque, Resident of Village Dhanpura, P.S. Kochadhaman, District
Kishanganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ashok Kumar, Advocate
Mr. Ram Prawesh Kumar, Advocate
For the Respondent/s : Mr. Zeyaul Hoda, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT**

Date :09-07-2021

The sole appellant-Manowwar Alam @ Manowar Alam @ Guddu has challenged the judgment of conviction dated 16.05.2018 and order of sentence dated 19.05.2018 passed in Sessions Trial No. 442 of 2015 corresponding to C.I.S. No. 257 of 2015 arising out of Kishanganj P.S. Case No. 465 of 2011. The appellant was found guilty for offences under Sections 376, 366(A) and 372 of the Indian Penal Code and rigorous imprisonment of ten years along with fine of rupees twenty thousand was awarded for each of the above referred offences. In default of payment of fine, one year rigorous imprisonment was ordered. The sentences of imprisonment are to run concurrently.



2. The prosecution case as disclosed in the written report dated 17.11.2011 lodged with Kishanganj Police Station by Mr. Jasimuddin (P.W.2) is that his minor daughter, aged about fifteen years, was a student of Class-IX. On 09.11.2011, she had gone to take tuition as usual but she did not return in the evening and after hectic search, her whereabouts could not be traced. Hence, a report was submitted to the police station on 11.11.2011. Later on, the informant came to know that the appellant resident of village Dhanpura had induced her to go with him. A mobile call came from the victim who reported that Guddu had handed over to her to one Mukhtar and Mukhtar forcefully married with her and established physical relation with her. Mukhtar was in Chandigarh. She further disclosed that on promise of marriage, Guddu boarded her on train and got her married with Mukhtar. The informant suspected that the victim has been thrown into flesh trade. The written report is Ext. 1.

3. On recovery, the victim was medically examined on 03.12.2011 and her statement under Section 164 Cr.P.C. was recorded on 07.12.2011. In her statement under Section 164 Cr.P.C., the victim-girl disclosed that three months back, she had come to the house of her uncle (Khala). In the market, Md. Guddu @ Manowwar Hussain (appellant) met her. Thereafter, the appellant used to meet her off and on and stated that he is an



Advocate Clerk in the Court. Appellant further expressed that he loves her and promised to marry with her. The appellant provided her a mobile phone and used to talk with her on mobile phone. On 09.11.2011, appellant took her to Islampur on a bus. At Islampur, another Guddu met. Thereafter, the three took meal in a hotel and the appellant took her to his village Dhanpura where father of the appellant was also there. The father asked the appellant to take her to the house of her uncle. Then the appellant took her to the house of his uncle. In the night, the appellant was in physical relation with her. Thereafter, the appellant with the help of Irfan got two new suits for the victim and took her to Pachim Pali. Again, the second “Guddu” accompanied her and took her to Kishanganj railway station and from there they boarded Mahananda express for Delhi and from Delhi to Chandigarh. At Chandigarh, they reached at the house of Babalu. Babalu had three wives and all were engaged in prostitution. One Sahnaz, a girl disclosed to the victim that on the pretext of love, the victim was brought there for flesh trade. Thereafter, anyhow, the victim escaped to the house of her cousin Amir who was in Chandigarh itself.

4. After investigation, the police submitted charge-sheet and the appellant was put on trial which resulted in conviction as stated above. Hence, this appeal.



5. Mr. Ram Pravesh Kumar, learned counsel for the appellant submits that there is unexplained delay of about one week in lodging the FIR. The victim had lodged a case under Section 498(A) of the Indian Penal Code after marriage with the appellant. Hence, she was married wife of the appellant. In the circumstance, the offences for which charges have been framed are not attracted. The father of the appellant had executed a registered sale deed transferring his ten Kathas of land in favour of the victim on 17.12.2011 vide Ext. A. The victim was recovered from her own house on 02.12.2011. Hence, the allegation of kidnapping etc. appears to be palpably false when matrimonial discord started, the false case was lodged just to pressurize.

6. To contra, Mr. Zeyaul Hoda, learned Additional Public Prosecutor contends that the victim-girl as P.W.3 has consistently supported the aforesaid allegation against the appellant and she has specifically stated that marriage with the appellant, subsequent to the offence, was a sheer fraud as the appellant never remained in matrimonial relationship. Moreover, the act of transfer of ten Kathas of land was also a fraudulent act as the said land was already sold to someone else and just to save the skin from the present criminal case, those transactions were brought on the record.



7. P.W. 1 Gulakha Khatoon, the mother of the victim-girl has supported the prosecution case as hearsay witness, what was disclosed to her by her daughter.

P.W. 2 Jasimuddin is father of the prosecutrix and informant of the case. He has supported his statement in the first written report

P.W. 4 Dr. Urmila Kumari and P.W. 5 Dr. Rafat Hussain were members of the Medical Board, who had examined the victim. They noticed hymen of the victim ruptured.

Since the victim was examined on 03.12.2011 much after the date of offence, hence, the finding of the Doctor that vaginal swab did not show any spermatozoa was obvious. The Doctor's Team assessed the age of the prosecutrix between fifteen to seventeen years.

P.W. 6 Muzaffar Hussain and P.W. 8 Rafique Alam are hostile witnesses.

P.W. 7 Surya Deo Dubey and P.W. 9 Madan Gopal are Investigating Officer of the case. They have supported the investigation done by them.

P.W. 9 had collected the school document of the victim in support of her date of birth wherein date of birth of the victim is entered as 01.01.1999.



P.W. 9 is specific that he had collected school certificate of the victim wherein her date of birth is entered as 01.01.1999. The said document is available with the case diary. There is no suggestion to any of the prosecution witnesses that the witnesses have not deposed correctly about the date of birth of the prosecutrix or that the said school document is not a genuine document.

Since the prosecution has brought on the record the best document in support of date of birth of the victim, hence, it is established that on the date of occurrence, the victim was a minor i.e. of age incapable of giving consent.

8. The defence examined D.W. 1 Farid Alam, who is a witness of formal nature and has proved the sale deed executed by the father of the appellant in favour of the victim-girl on 17.12.2011 vide Ext. A.

D.W. 2 Gulam Sarwar had deposed that the victim and one Saddam Hussain were wandering together in the public place and the police took them to the police station. The police report is marked as Ext. B. Ext. B is a document dated 06.06.2015 submitted by the Officer-in-Charge of Mahila Police Station wherein it is mentioned that the victim and Md. Saddam were noticed together on 08.01.2015. Both were taken to the police station and both disclosed that they were meeting with



each other since long as both were in love with each other. This act of the victim is a subsequent act of years after the alleged crime committed against her. Hence, it has no adverse effect on the crime alleged nor the subsequent act of the victim is any offence in the eyes of law.

9. P.W. 3 the victim-girl, examined on 19.10.2016, stated her age as twenty years and disclosed that the occurrence took place five years and two months back at about 09:00 a.m. She was going to Girls High School at Khagra Karbala to take tuition. There appellant Guddu met her and said that he is an Advocate Clerk in Kishanganj Court and thereafter he started talking with her and pretended for marriage. On the date of occurrence, on inducement of Guddu, she along with Guddu, took a bus for Islampur. At Islampur, friend of the appellant (another Guddu) met them. All took their meal in a hotel. Then the appellant took her to his house, locked her in a room. When the father of the appellant protested, the appellant took her to the house of his uncle in village Dhanushna and there forcefully ravished her. In the next morning, the appellant telephonically called to his maternal uncle Irfan along with two new suits for the victim and then they proceeded for Pachim Pali where another Guddu met them. The appellant asked her to go along with another Guddu of Islampur and promised that as soon as he



would get money, he would marry with the victim. Thereafter Guddu of Islampur took her to Chandigarh by train. At Chandigarh, Mukhtar, Sahnaz, Babalu were there. Babalu had three wives. Sahnaz disclosed to the victim that the victim has been trapped as the place was a brothel. The victim was further informed that she has already been sold away. For three to four days the victim was at Chandigarh. Thereafter, she phoned to her father. Then her cousin with the help of police took her out. Thereafter, she has described about her medical examination and statement before the Magistrate under Section 164 Cr.P.C. In the cross-examination, she stated that after the occurrence, the appellant married with her on the pressure of people. Father of the appellant executed a registered sale deed in respect of ten Kathas of his land in favour of the victim which was a sham transaction as the said land was already sold to someone else. The appellant never remained with the victim after marriage. P.W. 2 has also said that after return from Chandigarh, the local MLA and others forcefully got the victim married with the appellant.

10. There is no cross-examination to these witnesses i.e. P.W. 2 and P.W. 3 or to any of the prosecution witness to disbelieve what they have stated in their examination-in-chief.



11. It is well settled by a catena of judicial pronouncements that while appreciating the evidence of the victim of sexual assault, it should be treated on a par with the evidence of an injured witness. The reason is simple that a girl or a woman in the traditional bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society. When, in face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. In normal course, the Indian woman has tendency to conceal such offence even before her family members much less before public or before the police. Therefore, testimony of the prosecutrix to some extent, stands on higher pedestral than that of an injured witness.

Corroboration is not an imperative component of judicial credence in every case of rape. Refusal to act on the testimony of the victim of sexual assault, in absence of corroboration as a rule, is adding insults to the injury. If totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence as no self-



respecting women would come forward to make a self humiliating statement in casual manner. Reference may be made to **State of Punjab Vs. Gurmit Singh and Ors.** reported in **(1996)2 SCC 384** and **Motilal Vs. State of M.P.** reported in **(2008)11 SCC 20**.

At the same time, in **Raju & Ors. Vs. State of Madhya Pradesh** reported in **(2008)15 SCC 133**, the Hon'ble Supreme Court cautioned by saying that no doubt, rape causes greater distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. Therefore, the accused must also be protected against the possibility of false implication. The Court should carefully see that the prosecutrix is consistent in her statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. The prosecutrix should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of it. If other witnesses are there, there must be consistent match with the version of every other witnesses. If the testimony of the prosecutrix withstands the aforesaid test, she would be treated as



a “sterling witness” and no corroboration is needed to base the conviction on the sole testimony of the prosecutrix. Reference may be made to **Rai Sandeep @ Deepu Vs. State (NCT of Delhi)** reported in **(2012)8 SCC 21**.

12. In the case on hand, the prosecutrix has consistently supported what had happened with her as referred above. There is no cross-examination to doubt the trustworthiness of the prosecutrix or to have any inclining of motive for false implication of the appellant. The medical opinion is that hymen of the prosecutrix was ruptured and non-finding of spermatozoa was natural as the victim was examined much after the commission of the crime alleged. The prosecutrix is specific that she got married with the appellant under pressure of the people and that marriage was itself a fraud as appellant never maintained the relationship. The land transferred in favour of the victim was a sham transaction. The prosecution has successfully proved that on the date of occurrence, the prosecutrix was a minor. Hence, her consent and no consent was immaterial. Since the victim was a minor below eighteen years of age on the date of occurrence and she has claimed that she was ravished against her will, the offence under Section 375 of the Indian Penal Code stands proved against the appellant. The prosecution evidence is that appellant intentionally had handed



over the victim to one Guddu who in turn carried her to Chandigarh and put her in a place of prostitution. Hence, the offence under Section 372 of the Indian Penal Code also stands proved against the appellant. Likewise, the prosecution has successfully proved the charge under Section 366(A) of the Indian Penal Code as the victim a girl below eighteen years was induced to leave her house knowingly that she would be forced to illicit intercourse with another person.

13. On the basis of material on the record, I do not find any merit in the submission of the learned counsel for the appellant that the delay in lodging the first information report is an unexplained delay or it has in any way caused prejudiced to the appellants. The subsequent act of fictitious marriage or institution of a case under Section 498(A) of the Indian Penal Code would not minimize the effect of the present criminal act committed earlier. The victim was not cross-examined on this point at all nor any other prosecution witnesses were tested on this point.

14. Since the learned trial Court has awarded minimum punishment prescribed for offence under Section 376(2)(i) of the Indian Penal Code, hence, the sentence, under Section 376 of the Indian Penal Code, requires no interference. The learned trial Judge has awarded maximum punishment



prescribed for offence under Sections 366(A) and 372 of the Indian Penal Code, however, the sentences have been ordered to run concurrently. Hence, no prejudice is going to be caused to the appellant. Accordingly, the Court declines to interfere with the order of sentence.

15. In the result, I do not find any infirmity with the judgment of the trial Court. Accordingly, this appeal stands dismissed as devoid of any merit.

(Birendra Kumar, J)

Kundan/-

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