

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.30 of 2016

Arising Out of PS. Case No.-4 Year-2012 Thana- ARWAL MAHILA District- Jehanabad

Kapil Sao, Son of Late Ramdas Sao, R/o Village-Angari, P.S.-Kinjar, District-Arwal.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Indradeo Prasad, Adv.

For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-05-2023

We have heard Mr. Indradeo Prasad for the appellant and Mr. Abhimanyu Sharma for the State.

2. The appellant has been prosecuted for raping his daughter even when she had not attained the age of mensuration. He is also alleged to have



raped his other daughters, but no complaint in that regard was ever filed against him.

3. Mr. Indradeo Prasad, the learned Advocate for the appellant has taken an alliterative plea that this kind of accusation is absolutely unbelievable, especially in a country like India, and he assigns a peculiar reason for such implication by the own daughter of the appellant. He submits that the appellant had complained the police sometimes in the past that his daughter had been introduced to the vocation of prostitution. Instead of visiting such accusation by investigating the matter, the daughter of the appellant was made to file a case against him.

4. In fact, this explanation itself is unacceptable to us.

5. Be that as it may, we propose to examine this case on the basis of evidence adduced at the trial.

6. This appeal is directed against the



judgment and order of conviction and sentence dated 09.09.2015 and 11.09.2015 respectively, passed in Sessions Trial Nos. 658/2012/01/2015 arising out of Arwal (Mahila) P.S. Case No. 04 of 2012, whereby the appellant has been convicted for the offence under Section 376 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further undergo imprisonment for two years.

7. One of the daughters of the appellant (*hereinafter referred to as 'X'*) lodged a *fardbeyan* before the Officer-in-Charge of Mahila Police Station, Arwal on 21.06.2012, alleging that her father had been subjecting her to sexual misdemeanors for the last five years. When she had once complained about this to her mother, she was rebuffed and was asked to keep quiet. When the brother of the prosecutrix was told about the incident, he too took a peculiar



view of matter and said that only because the victim is asked to work at home, that she has come up with such a weird allegation. It has also been alleged by 'X' that on one occasion, her younger sister (*hereinafter referred to as 'Y'*) had seen such act of her father with her and had also complained to her mother about the same, but she too was silenced by the family members. 'X' has, therefore, alleged that in this act of exploitation, her father, mother and the brother are responsible.

8. On 20.06.2012, *i.e.*, a day before the F.I.R. was lodged, the father, mother and the brother of 'X' had assaulted her for her refusal to marry a person who was physically disabled and was also double her age. This alliance was also opposed by her sister (*hereinafter referred to as 'Z'*), who also was a victim of the lust of her father, but she had never complained about any one of such incidents in her life to any one for fear of any public opinion and



social ostracisation of the family and particularly her.

9. On the basis of the afore-noted *fardbeyan* statement, Arwal (Mahila) P.S. Case No. 04 of 2012 was registered for investigation for the offence under Section 376 of the Indian Penal Code.

10. The police, after investigation, submitted charge-sheet against the appellant, but did not send up the mother and the brother of the prosecutrix for paucity of any evidence against them. It may also be noted here that on such report having been lodged by 'X', the Officer-in-Charge/I.O. immediately swung into action and requested for constitution of a Medical Board for the medical examination of 'X'.

11. On 23.06.2012, a Medical Board was constituted under the chairmanship of Dr. Manjul Kumar, Dr. Mahendra Sharma, Dr. Madhu Sinha (P.W. 4) and Dr. Vijay Pratap Singh (P.W. 3). Though the medical report does not indicate any



incriminating material against the appellant, but that does not assume any significance as the allegation of rape was of a much anterior date. Thus, no external injuries were found on either labia majora or minora and no signs of abrasion on inner thigh was also available. The medical report indicated that the hymen was ruptured, indicating that the victim was subjected to sexual intercourse in the past. On the basis of external signs, size of the tooth and ossification test, she was found to be 17 to 18 years of age. As noted above, even on those medical findings, it was difficult to prove or determine any sexual offense mark of any past incident.

12. At the trial, apart from 'X' and 'Z', the prosecutrix and her elder sister, Dr. Vijay Pratap Singh and Dr. Madhu Sinha were also examined. The Judicial Magistrate (Ms. Rachana Raj), who had recorded the 164 Cr.P.C. statement of 'X', has also been examined as P.W. 6. Mr. Gajendra Kumar, the



I.O. of the case, has been examined as P.W. 5. The 164 statement of 'X' and the medical report of the Board have been exhibited during the trial.

13. P.W. 1 ('X'), at the time of deposing before the Court on 04th of June, 2013, had already been married, which appears from the statement made in her voir-dire. She has claimed herself to be the wife of one Suresh Sao. By this time, she had become eighteen years of age. She has given a harrowing account of the experience which she had while residing with her father/the appellant. She has narrated the tale of the mother and brother also not coming to her rescue when such a complaint was made to them regarding the sexual overtures of her father. Forced by this, she had to come to the police station to lodge the case. She was made to see her statement under Section 164 Cr.P.C., which she admitted of having made before the Judicial Officer. Her elder sister ('Z') had fixed her marriage with her



husband when she came to know that she was being pressurized to marry a person of advance age and with identifiable physical disabilities. She, ultimately, got married on 09th of January, 2013 and ever since then, she has been staying in her matrimonial home. She has admitted in her deposition that she had never raised any alarm when she was subjected to such abominable act of her father and except for her mother and brother, she did not speak about such experience with any one, either in the family or outside the family. She was raped for the first time when she had not even attained the age of mensuration. She has denied the suggestion to her that she has lodged the case at the instance of her elder sister.

14. 'Z' has been examined as P.W. 2, who has stated before the Court that 'X' had told her about a year ago about their father having committed rape on her. She was also subjected to the same



treatment at the hands of her father, but she never complained against such act of her father. She admitted of having arranged the marriage of 'X' with an acquaintance of hers. She was married about 12 to 14 years ago and, thereafter, she never visited her father's place. Whenever she wanted to come to her home, she chose to visit her aunt instead. She had met 'X' about three years ago along with her other family members in West Bengal. At that time, 'X' had not narrated to her of any incident like that. But when 'X' was assaulted, she had come for her rescue, but that time she and her one year old son were also assaulted by the appellant. It was at that time, that 'X' had narrated about such series of incidents to her.

15. The two doctors, namely, Vijay Pratap Singh (P.W. 3) and Madhu Sinha (P.W. 4), who were part of the Medical Board, have testified to the medical report over which they had put their signature. They have also denied that such report



was collusive or was for any other oblique purposes.

16. The I.O. of this case (P.W. 5) has stated the sequence of events after the matter was reported to him. Shortly after the F.I.R. was registered, on his instance, a Medical Board was constituted and only thereafter the appellant was arrested. The house of the prosecutrix was visited by the I.O., who found it to be a thatched house without any amenities. He also recorded the statements of Sujit Kumar, Ranjit Kumar, Saroj Singh etc., none of whom have been examined at the trial. The statement of the appellant also was recorded by him. After finding the accusation to be correct, charge-sheet was submitted against the appellant. By way of supplementary report, the mother and brother of the prosecutrix were found to be innocent.

17. Ms. Rachana Raj (P.W. 6) has further testified that she had recorded the statement of the victim on 25th of June, 2012, when the victim had



stated before her that her father/appellant had raped her when she was only 12 to 13 years of age, but this accusation of the victim was never believed by her mother. She was again attempted to be raped on 16.05.2012, when she could any how save herself, but that led to assault on her by the family members. She narrated all this to her elder sister ('Z'), when she also confessed before her that she was also subjected to the same treatment and in her case also, the mother never believed the accusation. On 20.06.2012, the victim went on to narrate, she was assaulted by the appellant, whereafter the case was lodged and the 164 statement was recorded.

18. We have also examined the statement of victim recorded under Section 164 Cr.P.C., which has been exhibited in this case.

19. Mr. Indradeo Prasad has submitted that an absolutely false case has been lodged against the appellant who is a poor coster-monger and who is



in custody for the last ten years by now. He further submits that had the accusation been true, his wife and son would not have supported him. It has further been argued that the victim/prosecutrix may have approached the police station because she was not desirous of marrying the person with whom the appellant had fixed her marriage and in order to avoid such marital proposal, such kind of false case would have been lodged by her. He further submits that the evidence, though not overtly, indicates that even the elder daughter of the appellant was not happy with him. The elder daughter, it has been argued, was married about 14 to 15 years ago, who had also taken to prostitution and the present case has been lodged against him on the asking of his elder daughter and the son-in-law.

20. It has further been urged by Mr. Prasad that the accusation, on face of it, is unbelievable as a father cannot resort to such lowly



act of raping her own daughters and in the present case, a daughter who had not even come of age.

21. Though not part of the record of the Trial Court, the counsel for appellant has submitted that an application under Section 340 Cr.P.C. was filed by him against the prosecutrix and other witnesses of this case who have deposed falsely in the trial proceedings, but that application has been kept pending, which has really frustrated the effort of the appellant to prove his *bona fides*.

22. Mr. Abhimanyu Sharma, the learned counsel for the State, on the other hand only points out the specific accusation against the appellant by her own daughter.

23. After having heard the counsel for the parties and having perused all the materials available on record, we find that the accusation against the appellant hurled by his daughter cannot be brushed aside lightly. That she ('X') did not



complain when she was first subjected to such abominable act of rape was because she was only 12 to 13 years of age at that time and her mother did not support her. We do recon that the prosecutrix comes from a poor family where the only bread-earner would be the father and under such circumstances, any misdeed of the father may not be objected to by the other family members for fear of being ousted from the home, but that does not discredit the deposition of 'X'.

24. The converse situation also could be correct, but we have no reasons to disbelieve the accusation by the victim. Even if we assume that the first flash-point for the victim to approach the police station with such accusation was after the marriage proposal, which had angered her, but such anger would not have persisted in her mind when she had deposed against her father a year later and by which time she had already been married to a person of her



choice.

25. We have carefully examined the accusation made by P.W. 1, the prosecutrix and her elder sister, P.W. 2. One would be aghast at the beastly behaviour displayed by a person who stands in a special authority of being a father to the victim, of having committed such an act. The promptness shown by the I.O. in getting a Medical Board constituted, where, even before the marriage of the victim, there were signs of sexual intercourse in the past, confirms the accusation.

26. The argument of the appellant that there was no evidence with respect to any forcible sexual intercourse in near past is of no consequence as the accusation is of yesteryears and because of the victim being a person of young age who had not chosen to make any complaint at that time. Nonetheless from the Medical Board's report, it becomes obvious that the victim would not have been



stranger to any such sexual act as the hymen was found to have been ruptured. This development in the female anatomy could also be generated for other factors, but we have taken into account the clear deposition of P.W. 1 that she never came out of her house and remained inside always, we have no reasons to come to any other opinion.

27. We are also of the view that unless forced to the brink, daughters of a father would never allege such act against him.

28. After having examined the deposition of the witnesses and having perused the records, we have no reasons to interfere with the findings of the Trial Court, whereby the appellant stands convicted and sentenced for the offence under Section 376 of the Indian Penal Code.

29. The act of the appellant is unpardonable. He, instead of being the protector and provider for her daughter, was over come with lust.



He has made all his family members vulnerable. It is more shocking than a game-keeper becoming a poacher or a treasury guard becoming a robber. He has betrayed the trust. He needs to be convicted and sentenced appropriately for such a depravity, which has been done by the Trial Court.

30. The appeal is, accordingly, dismissed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

Praveen-II/-

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