

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.22 of 2004

Arising Out of PS. Case No.-115 Year-1998 Thana- BHAGWANPUR District- Begusarai

=====

RAJA RAM RAI Son of Suraj Rai R/V- Narharipore, P.S- Bhagwanpore Dist- Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv.
	:	Ms. Vaishnavi Singh, Adv.
	:	Mr. Ritwik Thakur, Adv.
For the Respondent/s	:	Mr. Mukeshwar Dayal, APP.

=====

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 30-01-2023

The instant appeal has been filed by the appellant namely Raja Ram Rai against the judgment impugned dated 15.12.2003 and order of sentence dated 17.12.2003 whereby the appellant has been convicted for the offences punishable under Sections 376 and 306 of the Indian Penal Code (in short I.P.C.) and the appellant has been sentenced to undergo rigorous imprisonment for ten years for the offence of Section 376 of I.P.C. and sentenced to undergo rigorous imprisonment for seven years for the offence of Section 306 of I.P.C. from which being aggrieved and dissatisfied the instant appeal has been filed and both the sentences of imprisonment have been directed by the Trial Court to run concurrently.



2. The prosecution's case, in brief, is that one namely Suresh Sah (P.W. 7) filed a complaint case bearing no. 434(c) of 1998 which was sent by the learned Chief Judicial Magistrate, Begusarai to the concerned Police Station for institution of FIR and investigation and accordingly, Bhagwanpur P.S. Case No. 115/1998 was lodged under Section 376/306 of the I.P.C. against the sole appellant. In the said complaint, the informant alleged that on 30.04.1998 at about 2:00 P.M. he went to attend a function at the house of one namely Rajendra Sah with his mother Sudama Devi and brother Sanjay Sah and the house of said Rajendra Sah is situated at village Garsisoy in the district of Samastipur. He further stated in his complaint that on 05.05.1998 he returned back to his village Narharipore with Sudama Devi and Sanjay Sah and met his wife who informed him that on 30.04.1998 at about 4:00 P.M. in the evening when she had gone to collect leaves at a place namely Shirihiyanchi, situated in the same village, then the accused/appellant came and wanted to establish physical relation with her, to which she protested and wanted to flee but the accused thrashed and pushed her on the ground and committed rape on her at the point of Pistol. The informant further alleged in his complaint that his wife told him that she was not willing to continue her life as she had lost her prestige and thereafter he



investigated the matter and also came to know about the occurrence from two persons namely Sambhu Sah and Birkhi Devi and then in the night of 05.05.1998 he informed his villagers about the occurrence but nobody dared to speak against the accused and thereafter on 06.05.1998 in the morning while he had gone to his village then at about 7:30 A.M., his brother Sanjay Sah came and informed him that something wrong had happened with his Bhabhi (Complainant's wife) and thereafter he rushed to his home and found that his wife (victim) had consumed poison out of shame and frustration and thereafter he brought his wife to Begusarai hospital with his mother and villagers Shambhu Sah and Chamru Sah. As no Doctor was available in the Sadar Hospital, Begusarai so he brought his wife to the clinic of one namely Dr. Shashi Bhushan Sharma at Begusarai where his wife died during her treatment. The informant (complainant) further alleged that initially the *post-mortem* of the body of the deceased was not done but thereafter, on his protest the dead body of his wife was brought to Patna Medical College and Hospital (P.M.C.H) where *post-mortem* examination was conducted and after that he approached to Bhagwanpur police station several times for taking legal action against the accused but the officer in-



charge did not take any action against the accused and thereafter he filed his complaint case.

3. On the basis of above-mentioned typed complaint, which was sent under Section 156(3) of Criminal Procedure Code, Bhagwanpur P.S. Case No. 115/1998 was lodged under Sections 376 and 306 of the I.P.C. and the investigation was started and after the investigation the police charge-sheeted the appellant and thereafter the learned Trial Court framed charges for the offences punishable under Sections 376 and 306 of the I.P.C. against the appellant to which the appellant pleaded not guilty and claimed to be tried.

4. To prove the charges levelled against the appellant the prosecution examined altogether following eight witnesses :-

P.W. 1 Mahavir Rai

P.W. 2 Raj Kishore Rai (full-fledged witness)

P.W. 3 Birkhi Devi (Gotni of the Deceased and eye-witness)

P.W. 4 Jeevachh Rai

P.W. 5 Shambhu Sah (Villager- hearsay witness)

P.W. 6 Dayali Rai (Hearsay witness)

P.W. 7 Suresh Sah (Informant and husband of the deceased)



P.W. 8 Chandra Mauli (formal witness)

5. The following documents were produced and marked as exhibits :-

Exhibit-1:- Signature of P.W.-5 namely Shambhu Sah on his statement recorded under Section 164 of Cr.P.C.

Exhibits :- 2, 3, 4, 4/1 - formal FIR, Complaint petition, the signature and writing of Birkhi Devi and Sanjay Sah on their statements of 164 of Cr.P.C. respectively.

6. After the completion of prosecution evidences, the statement of accused was recorded and the circumstances appearing against him from the prosecution evidences were explained to him to which he denied the said circumstances and claimed himself to be innocent and mainly took the defence that he has been falsely implicated.

7. The appellant/accused examined one person namely Ram Udgar Pandit as a defence witness and in documentary evidence the following documents were produced and marked as exhibits in defence evidence :-

Exhibit-A :- The formal FIR

Exhibit-B :- Fardbeyan in U.D. Case No.- 01/1998

Exhibit-C :- Chargesheet of Bhagwanpur P.S. Case No.-154/1997



Exhibit-D :- Photocopy of case diary of U.D. Case No. 01/1998

Exhibit-E :- A letter dated 28.03.2003 issued under the signature of Dr. Arvind Kumar Singh, Assistant Professor, Department of Forensic Medicine, Patna Medical College, Patna as well as a letter of Department of Forensic Medicine.

Exhibit-F :- Photocopy of a report dated 21.09.1998 under the signature of Dr. Arvind Kumar Singh.

Exhibit-G :- Photocopy of *post-mortem* report of deceased Sunita Devi.

8. After the completion of the evidences of both the sides the learned Trial Court after having heard both the parties convicted and sentenced the appellant for the offences charged upon him in the manner mentioned-above.

9. Learned counsel for the appellant has mainly argued that the prosecution failed to explain about the U.D. Case No. 01/1998 lodged by the mother of the informant, the complaint was filed after an inordinate delay by the husband of the deceased and the said delay was not properly explained and the prosecution withheld the earlier version given by the informant in respect of the cause of death of the deceased and according to the evidence of informant, P.W.-3 is stated to be an eye-witness of the alleged occurrence of rape but as per the statements made by the said



witness in the cross-examination she was not an eye-witness of the alleged occurrence and was a tutored witness and during the trial the investigating officer as well as the Doctor who conducted the *post-mortem* examination on the body of the deceased were not produced and examined by the prosecution. Further argument is that as per the FIR the informant is not an eye-witness of the alleged occurrence of rape and one prosecution witness namely Shambhu Sah is stated to be the person from whom the informant got the knowledge of the alleged incident of rape but in between the statement of this witness and statement of the most important witness P.W.-3 who is also stated to be an eye-witness of the alleged occurrence of rape, serious contradictions appear but the same were not considered by the learned Trial Court in right perspective. Further argument is that the prosecution failed to establish the cause of death of the deceased as according to the *post-mortem* report no finding as to any poisonous substance being found in the body of the deceased was given and the Doctor concerned who conducted *post-mortem* examination also denied the sexual assault with the deceased and accordingly, the medical evidence did not support the offences charged.

10. Learned APP has argued that during the trial the prosecution succeeded to prove the guilt of the appellant for the



offences for which he was charged and the reason of delay in filing the complaint petition was also properly explained by the informant. From the evidence of the prosecution witnesses, any enmity in between the appellant and the informant's family was not established so there was no reason for the informant to lodge a false case against the appellant and the material witness P.W.-3 who is stated to be an eye-witness of the alleged occurrence of rape fully supported the said offence and claimed herself to be the eye-witness of the alleged occurrence of rape committed by the appellant on the victim and there is no illegality in the judgment of conviction and order of sentence passed by the learned Trial Court and there is no merit in this appeal and same is liable to be dismissed.

11. I have heard both the sides and perused the evidences adduced by both the sides which are available on case record of the learned Trial Court and also gone through the statement of the accused.

12. The main points for consideration are as follows :-

(i) Whether the prosecution succeeded to prove the alleged sexual assault (rape) having



been committed by the appellant with the victim
(wife of the complainant) at the point of Pistol ?

(ii) Whether the prosecution succeeded
to prove a direct connection in the form of
abatement between the death of the deceased and the
act of rape allegedly committed by the appellant
with the victim and if the prosecution succeeded to
prove the reasonable connection between both the
incidents then whether the alleged act of rape was
sufficient to abate the victim to commit suicide ?

13. In the present matter altogether eight witnesses
were examined by the prosecution and among them, P.W. 1 and
P.W. 4 went hostile and they denied to have any knowledge of the
alleged incident and also denied to have recorded any statement
before the police. The main defence taken by the appellant is that
the victim was tortured by her husband (informant) and her
mother-in-law due to which she committed suicide. The said
defence has been supported by the prosecution witnesses P.Ws. 1
and 4. Though P.W. 2 namely Raj Kishore Rai did not go hostile
but his evidence completely goes against the allegation of
prosecution rather goes in favour of defence of the
accused/appellant and he deposed that quarrel often took place in



between the deceased and her husband and her mother-in-law and one day before the suicide committed by the victim, the informant and his mother assaulted the victim, owing to which the victim consumed poison. Accordingly, the evidence of both the said witnesses of the prosecution does not support the case of prosecution, rather their evidence goes in favour of the defence of the appellant.

14. In the present matter, the most important witness is P.W. 3 namely Birkhi Devi on whose evidence the case of the prosecution completely depends as according to the prosecution's story, the said witness is stated to be an eye-witness of the alleged occurrence of rape. The witness deposed in her examination-in-chief that the accused Raja Ram Rai raped the victim Sunita Devi by putting her in fear by showing a pistol and during that course one person namely Dayali Rai also arrived at the place of occurrence and then the accused/appellant fled away leaving the victim. According to the said statement, one more person namely Dayali Rai saw the victim and convict/appellant at the place of occurrence at the relevant time and so in view of this fact the evidence of Dayali Rai is also important. The said Dayali Rai was examined as P.W. 6 and he deposed that he was returning with fodder(grass) then he heard cry of a woman and found the



victim and met her and on query the victim revealed to him that the accused Raja Ram Rai misbehaved with her and thereafter fled away. It is important to mention here that the said witness Dayali Rai did not reveal the presence of P.W. 3 namely Birkhi Devi at the place of occurrence which creates a serious doubt in the credibility of P.W.-3.

15. P.W.-3 deposed in the cross-examination that an incident of quarrel had taken place between the victim and her mother-in-law just three to four months before the alleged occurrence. The said statement goes to show that there was some tense relation between the deceased and her mother-in-law and same also goes in favour of the defence of the appellant. P.W.-3 deposed in the cross-examination that she used to start her Kansar at 2:00 P.M. or before that time every day and run her Kansar till evening before 6:00 P.M. to 7:00 P.M. and on the day of alleged occurrence several persons came at her Kansar. As per the prosecution's story, the victim went along with this witness at 4:00 P.M. to a particular place Shirihi ganchi for the purpose of collecting leaves. P.W.-3 did not explain the fact as to why did she go with the victim after leaving her busy schedule at her Kansar while according to her statement several persons had come at her Kansar during the relevant time and the said fact



casts a serious doubt in the credibility of this witness and particularly in respect of this witness presence at the place of occurrence with the victim. The witness is a relative of the victim so she cannot be deemed to be an independent witness. The said witness deposed in the cross-examination that she knew the meaning of rape and according to her when one person puts his hand on the body or chest of a lady then the act of rape is considered to be complete. This statement clearly shows that the witness does not understand the meaning of rape and moreover she is a relative witness and her presence at the place of occurrence with the victim is also highly suspicious as her presence does not get corroboration from P.W.-6 who is stated to have seen the victim and the accused at the place of occurrence and in the opinion of this Court the evidence of this witness is not sufficient to prove the alleged offence of rape. P.W.-7 is the husband of the victim and his evidence is important in respect of the alleged incident of rape though he is stated to be a hearsay witness and admittedly he was not present at his village when the alleged incident of rape took place. But this witness deposed in the examination-in-chief that before the alleged occurrence of rape he had left his village with his mother namely Sudama Devi and brother Sanjay Sah. During the trial, the prosecution failed to



produce the mother and brother of this witness as prosecution witnesses and accordingly, the reason for absence of this witness from his village at the relevant time of alleged occurrence could not be proved by the said family members of the witness while they could be easily produced and examined by the prosecution during the trial and moreover the evidence of this witness is not sufficient to prove the alleged offence of rape as he got the knowledge of the incident of rape from his wife.

16. During the trial, the prosecution placed reliance upon the evidence of P.W.-5 but the said witness does not seem to be reliable person in respect of the alleged incident of rape as according to his own statement made by him in the examination-in-chief he got the knowledge of the incident on 30.04.1998 but in the cross-examination he deposed that he did not meet the victim or her mother-in-law one day before the alleged occurrence and he did not go to the house of the victim on the alleged day of occurrence and he met the victim, victim's family members and victim's husband five days after the alleged occurrence. The said fact creates a doubt in the credibility of this witness and moreover he appears to be a hearsay witness of the alleged occurrence of rape.



17. During the trial, the prosecution failed to produce and examine the Investigating Officer and Medical Officer who conducted the *post-mortem* examination on the body of the deceased which also goes against the prosecution and as per the FSL report, on the body of the deceased any sign of recent intercourse was not found by the expert concerned. As per the defence regarding the death of the deceased an U.D. Case No.01/98 was registered by the mother of the informant and on that basis the investigation was made and the statements of several villagers of the informant including the mother of the informant were recorded and during the trial the Fardbeyan of the victim's mother-in-law was produced by the defence and the same was exhibited as Ex.-B and in that Fardbeyan which was recorded before the institution of the FIR no details of the alleged rape was given and according to that Fardbeyan the victim consumed poison in mistake of some medicine owing to which she died. During the trial, the prosecution remained silent on the investigation made by the police in the said U.D. Case and the said fact goes in favour of the defence.

18. In the light of above discussed facts, I am of the considered view that the evidences adduced by the prosecution are not sufficient to prove the offence of rape allegedly committed



by the appellant with the wife of the informant and as the prosecution failed to establish the said offence of rape so the appellant cannot be held liable to have abated the victim to commit suicide. Therefore, the conclusion made by the learned trial Court is not sustainable in the eyes of law and accordingly, the conviction as well as order of sentence of the appellant for the offences punishable under Sections 376 and 306 of I.P.C. stands set aside and the instant appeal stands allowed. As according to learned counsel for the appellant, the convict (appellant) has already completed and undergone the period of sentence of imprisonment, so there is no need to pass any direction with regard to the release of the appellant.

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.02.2023
Transmission Date	17.02.2023

