

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2665 of 2017

Arising Out of PS. Case No.-86 Year-2004 Thana- MINAPUR District- Muzaffarpur

Naresh Ram, Son of Dhannu Ram, resident of Village- Pakhnaha, Sriram, P.S.
Minapur Pannapur (Panapur O.P.) District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Amit Kumar Jha (*Amicus Curiae*)
For the Respondent/s : Mr. Abhay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 30-11-2023

1. Nobody appears on behalf of the appellant despite repeated calls and the appeal is old one, hence learned counsel Mr. Amit Kumar Jha is appointed as an *Amicus Curiae* in the present matter to assist this court.

2. Heard the parties.

3. The instant appeal has been filed by the appellant against the judgment of conviction dated 15.07.2017 and order of sentence dated 18.07.2017 passed by the learned 8th Additional Sessions Judge, Muzaffarpur, in Sessions Trial Case No. 738 of 2006, arising out of Minapur P.S. Case No. 86 of 2004, in which the appellant



has been convicted of the offence punishable under Section 376 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo rigorous imprisonment for 7 years with a fine of Rs. 25,000/- and he was further directed to undergo additional imprisonment for 6 months in case of non-payment of the said fine amount and half of the fine amount was directed to be paid to the victim.

4. The prosecution's story in brief is that on 04.05.2004 at 6 P.M., the victim was alone in her house then the accused/appellant entered into her house and raped her and when she tried to shout, the accused pressed her mouth, even then she grunted (*ghighiyana*) and on hearing hulla some persons namely, Gauri Ram, Bharat Ram and others arrived then the accused fled away, thereafter co-accused persons namely, Dhanu Ram, Sant Ram, Dinesh Ram, Niru Devi, Laldeo Ram and Girija Devi came at her house and abused and assaulted her and they took away a box in which her cloths were kept.

5. The so-called victim filed a complaint in the court of Chief Judicial Magistrate, Muzaffarpur which was



initially registered as a Complaint Case No. 866 of 2004 and thereafter it was sent for investigation by the Chief Judicial Magistrate, Muzaffarpur on that basis Minapur P.S. Case No. 86 of 2004 was lodged for the offences punishable under Sections 376 and 380 of the IPC, which set the criminal law in motion.

6. After completion of the investigation, the police submitted chargesheet against the appellant and some other accused persons and two co-accused persons namely, Chulhai Ram and Baijnath Ram were not sent up by the police and regarding co-accused Dinesh Ram and Dhanu Ram, a separate chargesheet was submitted.

7. The appellant stood charged for the offence punishable under Section 376 of the IPC and co-accused persons namely, Girija Devi, Punkali Devi, Niru Devi, Laldeo Ram and Binod Ram stood charged for the offence punishable under Section 380 of the IPC and all the said accused persons including the appellant were put on trial jointly.

8. During trial, the prosecution examined altogether 11 prosecution witnesses including the so-called



victim and no any type of documentary evidence was given by the prosecution and after the completion of prosecution's evidence, statements of the accused persons, including the appellant, were recorded in which they denied the main circumstances appearing against them from the prosecution evidences and they claimed themselves to be innocent.

9. The appellant examined one person namely, Asharfi Ram in his defence and in documentary evidence, he produced the certified copy of his statement recorded by him in the Complaint Case No. 897 of 2004 lodged by him against Pramod Singh and others and the same was marked as Exhibit-A.

10. After taking evidence of both the sides, the learned trial court acquitted the accused persons namely, Girija Devi, Punkali Devi, Niru Kumari, Laldeo Ram and Binod Ram of the offence punishable under Section 380 of the IPC for which they were charged and the appellant was held guilty of the offence punishable under Section 376 of IPC. While convicting the appellant for the offence of rape, the learned trial court mainly placed reliance upon



the evidence of the prosecution witnesses namely, Gauri Ram, Bharat Ram, Sant Kumar, Sanjay Kumar (I.O.) and the victim, who were examined as PW. 4, 5, 6,8 and 7, respectively.

11. Heard both the sides and perused the evidences available on the case record of trial court and also went through the statement of the accused/appellant. In the present matter, the victim filed a complaint bearing Complaint Case No. 866 of 2004 in the court of Chief Judicial Magistrate, Muzaffarpur and victim's complaint was sent to police for institution. The complaint was filed on 07.05.2004 while as per the prosecution's story described in the complaint, the alleged occurrence had taken place on 04.05.2004 and the complainant who is said to be the victim, did not say anything in her complaint that she had approached to the police to lodge her case before filing her complaint and she also did not explain the reason of the delay of three days which took place on her part in filing the complaint and the said delay remained unexplained during the trial and the said circumstance goes against the prosecution.



12. The victim stated in her complaint that she resided alone in her house while as per the victim's statement, who was examined as PW-7, her father-in-law, mother-in-law and brother-in-law also resided in her house at the time of incident but in this regard her evidence is completely contradictory to the statement made by her in her complaint and the said contradiction raises a question in the credibility of the allegation made by the complainant.

13. The so-called victim deposed in her examination-in-chief that the appellant is brother of her husband and in between the accused persons and her family, there was a tense relation and the accused persons of the present matter also filed a case against her family. From this statement, one thing is clearly evident that the appellant is a relative of the so-called victim and when the alleged occurrence is stated to have taken place there was no good relation in between them and the said circumstance is sufficient to draw the presumption that the complainant might have filed her case with an intention to harass the appellant.



14. Here, it is important to mention that the complainant (victim) deposed in her evidence that the accused persons used to come at her house even after the institution of her case. The said statement also goes against the prosecution as in normal course, in the offence of rape when it has been committed by a relative, a good relation between the victim's family and accused's family cannot be presumed after the occurrence and institution of the criminal case.

15. In the present matter, the so-called victim was not medically examined by the Doctor concerned for ascertaining the commission of rape on her and in this regard her statement is relevant in which she deposed that she was not subjected to medical examination and the *saree* and *blouse* etc. which she wore at the time of commission of the alleged incident were not given to the police. In this way, it is clearly evident that there is no any medical evidence to substantiate the allegation of rape, though a period of 1 month and 8 days had passed before the lodging of the FIR but the prosecution could not explain the reason of said delay moreover the victim filed



her complaint after 3 days from the commission of the alleged occurrence of rape without giving any explanation, though after the lapse of such period there was a less possibility to get a relevant evidence from the medical examination of the victim but after the start of investigation by the police the victim's clothes, which were worn by her at the time of commission of the alleged incident, could have been examined by an expert but in this regard, the investigating officer did not make any effort to get the said clothes from the victim and the said flaw on the part of investigating officer goes against the prosecution.

16. The so-called victim gave the details of 8 persons as witnesses of the occurrence but she made a general statement in respect of their presence and mentioned in her complaint that on hearing her cry the witnesses detailed in the complaint, came to the spot and attempted to catch the accused. Out of the said witnesses, PW.1 Shiv Kumari Devi, PW.2 Lakhendra Ram and PW.3 Samudri Devi went hostile and they did not support the prosecution's case. Bhukal Ram and Nagendra Ram, who



were shown as witnesses, were not produced by the prosecution. Though, prosecution witnesses namely, Gauri Ram and Bharat Ram whose names were given in the complaint petition, were not declared hostile and the learned trial court placed reliance upon their evidence while convicting the appellant but after going through their testimonies, this court does not find their evidence to be reliable and sufficient to substantiate the allegation of rape.

17. PW.4 Gauri Ram, deposed that the complainant, victim, is his relative and he further deposed that he has no good relation with the appellant and he has no social relation with the family of appellant. By this fact, it is clearly evident that PW.4 is a relative of the victim and he cannot be deemed to be an independent person to prove the alleged offence of rape and moreover, his evidence does not seem to be reliable as admittedly he has no good relation with the appellant.

18. PW.5 Bharat Ram, deposed that when he reached at the place of occurrence on hearing the cry of the victim, he did not find Samudari Devi, Mina Devi, Shiv Kumari Devi, Lakhindar Ram and Bhukal Ram, while as



per the victim herself, these persons were also present at the place of occurrence and they witnessed the commission of the occurrence and the said contradiction casts a serious doubt in the credibility of the evidence of this witness as well as in the prosecution's story. The learned trial court placed reliance upon the evidence of PW.6 namely, Sant Kumar Ram @ Santu Ram but the victim did not reveal the name of the said person in her complaint petition as a witness of the occurrence and the witness deposed in the cross-examination that the appellant had lodged a case against him, so in view of these facts, the witness cannot be deemed to be reliable on account of his bad relation with the appellant.

19. After having discussed the above evidences given by the prosecution witnesses during trial of the appellant, upon which the learned trial court placed reliance, this court finds that the said witnesses are not reliable and their evidence is not sufficient to prove the alleged offence of rape and the prosecution failed to explain the inordinate delay having taken place on the part of the so-called victim in filing her complaint petition and



the victim filed her complaint without approaching to the police and after the institution of the FIR on the basis of victim's complaint, the investigating officer did not make any effort to get the victim's clothes, which she wore at the time of commission of the alleged offence of rape, for chemical examination and even the said victim was not subjected to medical examination, so in the light of these circumstances going against the prosecution, it was not proper and legal for the trial court to hold the appellant guilty of the alleged offence of rape and this court finds strong reasons, discussed above, to interfere in the judgment and order impugned convicting and sentencing the appellant for the alleged offence of rape. Hence, the impugned judgment and order of sentence whereby the appellant has been convicted and sentenced for the offence of rape punishable under Section 376 of the IPC, for which he was charged, are set aside and the present appeal stands allowed.

20. The appellant was sentenced by trial court to undergo rigorous imprisonment for 7 years for the offence charged and as per the statement given in paragraph no. 16



of the memo of appeal, he was taken in custody on 15.07.2017, the date of conviction, since then he had been languishing in jail and the case record of the trial court goes to show that during trial, the appellant remained in judicial custody for a considerable period, hence, in view of these facts, it can be deemed that the appellant has served the complete sentence of imprisonment, however let a copy of the judgment be sent to the trial court as well as Jail Superintendent concerned for needful.

21. Mr. Amit Kumar Jha, learned *Amicus Curiae* shall be entitled to remuneration, as per notification dated 18.05.2017 issued by the State Government, to be paid by the Patna High Court Legal Services Committee for assisting this court as *Amicus Curiae*.

22. Let the L.C.R. be sent back to the trial court forthwith.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
CAV DATE	NA
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