

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.158 of 2022

Arising Out of PS. Case No.-25 Year-2020 Thana- MAHILA P.S. District- Rohtas

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Jameruddin Ansari @ Jamruddin Ansari Son of Merajuddin Ansari @ Merajul
Ansari R/o Village- Salukpur, P.S.- Akorhigola, District- Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Surendra Kumar Mishra, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-11-2024

Heard Mr. Surendra Kumar Mishra, learned

Advocate for the sole appellant and Mr. Bipin Kumar,

learned APP for the State.

2. The appellant has been convicted under Sections
376, 341, 323 and 504 of the IPC and Section 4(2) of the
POCSO Act, 2012 vide judgment of conviction dated
08.02.2022 passed by the learned Presiding Officer,
Additional District & Sessions Judge, VI, Rohtas, Sasaram in
POCSO Case No. 36 of 2020, arising out of Mahila P.S.
Case No. 25 of 2020. By order dated 10.02.2022 he has



been sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- and in default of payment of fine to further suffer S.I. for three months for the offence under Section 376 of the IPC and Section 4(2) of the POCSO Act, 2012; to undergo S.I. for one month each under Sections 341, 323 and 504 of the IPC.

3. All the sentences have been directed to run concurrently.

4. The victim, a 16 years old girl has lodged the written report addressed to the officer-in-charge of Mahila Police Station Dehri, Rohtas on 03.06.2020, that the appellant had been blackmailing her for the last two years and had established physical relations with her.

5. On 26.05.2020 at about 1.30 in the day when she had gone to attend to the call of nature, the appellant came at that place and raped her. Thereafter he fled away. The victim came back home and narrated about the occurrence to her parents and other members of the family. A Panchayati was held in the village regarding this



occurrence. The father of the appellant refused to accept the victim in his family and also misbehaved with her parents.

6. On the basis of the aforementioned written report by the victim, Dehri Mahila P.S. Case No. 25 of 2020 dated 03.06.2020 was registered for investigation under Sections 376, 341, 323 and 420 of the IPC and Section 4 of the POCSO Act, 2012.

7. The Trial Court after having examined six witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellant as aforesaid.

8. At the Trial, the victim had a completely different story to narrate. She stated before the Trial Court that she had lodged the case against the appellant on 04.05.2020, which in fact was lodged on 03.06.2020. According to her, the appellant had raped her at the place where she had gone to ease herself. Thereafter, the appellant fled away. When the parents of the victim accosted the parents of the appellant, they were misbehaved with.



9. In her cross-examination also, she has not spoken about any earlier connection with the appellant. The tenor of her statement gives an impression that the appellant came from nowhere and subjected her to rape.

10. With respect to her age, she claimed that her date of birth was 01.01.2005. However, the document supplied by the prosecution disclosed that her date of birth was 08.11.2004. This was accepted with the objection of the prosecution. She has also admitted that she had taken the written report which was written earlier, to the police station. Immediately after the occurrence, she claims to have taken bath. According to her, the police had not seized the clothes worn by her at the time of the occurrence.

11. Commenting on the aforementioned deposition of the victim, the learned Advocate for the appellant has submitted that the victim has disentitled herself to be treated as a sterling witness.

12. For saying so, he has referred to the wrong date of lodging of the case; different date of birth and most



importantly, keeping complete silence about earlier relationship with the appellant for the last two years.

13. According to the written report lodged by the victim, the appellant had been continuing with his physical intimacy with the victim for the last two years on the assurance of marriage. This makes her entire deposition absolutely untrustworthy and not fit to be accepted on any score.

14. A further fact which busts up the entire prosecution case is that according to the mother of the victim (P.W. 5) on 26.05.2020, the father of the appellant had himself brought the victim to her home and had abused the family members. He had also threatened of throwing acid on the victim.

15. The mother learnt about the occurrence of rape only through her daughter.

16. If this be true, then perhaps the situation would have been absolutely different. It only indicates at the non-acceptance of the relationship of the appellant with the victim by his father.



17. Where was the occasion for the father of the appellant to have brought the victim home?

18. In this context, the fact of two to three rounds of Panchayati in the village has to be understood.

19. It could be a case of a failed promise or perhaps a sexual relationship which was prohibited because of the minority of the victim. Nonetheless, the entire accusation of the appellant of having come over to the place where the victim had gone for easing herself and raping her, becomes very doubtful.

20. The victim was subjected to medical examination on 03.06.2020 by Dr. Kanchan Singh (P.W. 3). She had found no abnormal stain or any foreign particle or any injury on any body part of the victim including her private parts. There was an old hymen tear. The vaginal orifice was patulous. The vaginal swab was sent for microscopic examination which tested negative for pregnancy. Such test was conducted only for the reason of the accusation that she was subjected to rape and that she



had been in some relationship with the appellant for several months.

21. P.W. 3, therefore, concluded that on the basis of a clinical examination, the victim had sexual intercourse in the past. No assessment, however, was made by P.W. 3 about the age of the victim.

22. The investigator (P.W. 4) has done nothing except collecting the information about the age of the victim from the School, where she had studied and getting her statement under Section 164 Cr.P.C. recorded before the Magistrate.

23. The appellant was arrested by P.W. 4 on 14.06.2020.

24. On inspecting the place where the occurrence had taken place, she found it to be a ditch with no water. The investigation revealed that the house of the appellant was situated at a distance of 25 yards only from the house of the victim. No one who had participated in the Panchayati, appeared before the investigator to speak about the occurrence.



25. Two persons have been examined as defence witnesses, out of whom D.W. 1 offered nothing to the Trial Court to either believe or disbelieve the prosecution case.

26. The father of the appellant deposed as D.W. 2, where he spoke about his dispute with the uncle of the victim viz. Majahar Sah who has been examined as P.W. 2. P.W. 2 has also admitted of Panchayati having been convened for about three to four times after the occurrence.

27. Thus from the entire conspectus of the evidence against the appellant, certain stark facts come to the fore.

28. The victim definitely was below 18 years but she did not come out as a trustworthy witness. She did not speak about the date of lodging of the case correctly. Her first statement in the written report was that she knew the appellant from before who had been extracting carnal pleasures out of her on the assurance of marriage.

29. This fact was kept completely under the fold while she deposed before the Trial Court. The mother of the



victim asserted that the victim was brought back home by the father of the appellant.

30. All this signify that something different must have happened. There would have been opposition to the relationship of the appellant and the victim and this opposition would have been more from the side of the appellant. Hence, the case.

31. The delay in lodging the FIR and absolutely contradictory statements of the witnesses at the Trial, make the case absolutely unworthy of reliance.

32. We therefore set aside the judgment and order of conviction and sentence, giving benefit of doubt to the appellant.

33. The appellant is in jail since 14.06.2020. He is directed to be released from jail forthwith, if not wanted in any other case.

34. The appellant is acquitted of the charges.

35. The appeal stands allowed.



36. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

37. The records of this case be returned to the Trial Court forthwith.

38. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

krishna/nitesh

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.11.2024
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