

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.761 of 2019

Arising Out of PS. Case No.-157 Year-2013 Thana- KATORIYA District- Banka

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Budhinath Tudu Son of Charan Tuddu Resident of Village- Malbathan, Police
Station- Katoria, District- Banka

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Ajay Mukherjee, Advocate
For the State	:	Ms.Abha Singh, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

8 29-10-2024 Heard learned counsel for the appellant and learned
Spl. P.P. appearing on behalf of the State.

2. The present appeal has been filed against the judgment and order of conviction dated 09/01/2019 passed by the Presiding Officer, F.T.C. 1, Banka in Sessions Trial No. 200 of 2015/ T.R. No. 266 of 2017 (arising out of Katoria P.S. Case No. 157 of 2013) whereby and whereunder the appellant was convicted and sentenced to undergo rigorous imprisonment for 10 (Ten) years for the offence U/s 366A of Indian Penal Code and to pay a fine of Rs. 50,000/-. The appellant was further sentenced to undergo rigorous imprisonment for ten years under Section 376 of the Indian Penal Code and for a period of one year rigorous imprisonment under Section 323 of the Indian Penal Code. The sentences were ordered to run concurrently.



3. The prosecution case in short is that one Surajmuni Hembram filed a complaint case before the Chief Judicial Magistrate, Banka on 21.03.2013 and after that F.I.R. has been instituted on 26.08.2013. It is alleged in the complaint petition/F.I.R. that the complainant/informant was going to take tuition and when she reached at village Jagat, the appellant came and insisted her to marry showing dagger and also threatened her that if she does not accompany him, she will be given dagger blow. Due to fear, the complainant rode on the cycle of the appellant, reached Jaipur Bazar and from there they reached Jasidih and thereafter to Delhi by train. It is further alleged that the appellant established physical relation with her on the pretext of marriage and the money earned by the informant was also kept in his possession. On 15th August 2012, the appellant came to his house with the informant where appellant and his family members abused her and also assaulted her with fists and slaps and the appellant used to establish physical relation with her. It is also alleged that on 12.09.2012, they ousted her from the house of appellant.

4. On the above complaint, Katoria P.S. Case No. 157 of 2013 under Sections 366A/34 of the Indian Penal Code have been lodged against the appellant and others and after



completing investigation, the I.O submitted chargesheet under Sections 366A, 376, 323, 504 of Indian Penal Code. After submission of chargesheet, the court below took cognizance of the offences under section 366A, 376, 323, 504 of Indian Penal Code against the appellant and committed the case to the court of Sessions for trial. During the trial, altogether 6 witnesses have been examined by the trial court, they are as follows:-

P.W.-1 is Darshan Soren,

P.W.-2 is Babulal Soren,,

P.W.-3 is Suresh Hembram,

P.W.-4 is Sukumari Soren (mother of victim),

P.W.-5 is Kishore Tudu and

P.W.-6 is Surajmani Hembram (victim).

5. Learned counsel for the appellant has argued that the F.I.R. which has been registered on the basis of a complaint has been lodged after a long delay and the statement of the alleged victim P.W.-6 Surajmani Hembram also does not support the prosecution case. From the statement of the victim P.W.-6 Surajmani Hembram, it appears that the P.W.-6 has travelled with the appellant from her village to Jaipur, thereafter took her to Jasidhi and from Jasidhi, she was taken to Delhi from where she was kept for 2 ½ months where she was working as a labour



and, thereafter she was taken back to home and thereafter her mother took her away. Though she alleged that the appellant used to beat her and also sexually assault her. In her cross-examination, she has said that she did not raise any *hulla* and had not complained to anyone while travelling from Jashidih to Delhi. She has further said that in Delhi while working as a labour, she was working with many others and was getting wages of Rs. 250. She knew the other co-workers. She has further said that she used to stay with the appellant as wife and they used to go together for work. The police was not informed by her mother though her mother knew that she was in Delhi.

6. In the present case, the date of occurrence is 30.06.2012, the complaint was filed on 21.03.2013 and the FIR has been registered on 26.08.2013.

7. The Hon'ble Supreme Court in the case of ***Dilawar Singh v. State of Delhi reported in (2007) 12 SCC 641*** has held that unexplained delay in lodging the FIR is fatal to the prosecution.

“9. In criminal trial one of the cardinal principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the



court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.”

8. The Hon’ble Supreme Court in the case ***P. Rajgopal v. State of Tamil Nadu reported in (2019) 5 SCC 403***, has held as follows:

“12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely.”

9. Similarly, the Hon’ble Supreme Court in the case of ***State of Punjab v. Ramdev Singh reported in (2004) 1 SCC 241*** has held as follows:

“Delay in lodging the FIR cannot be used a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment



in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version....”

In the present case also, there is a long delay in lodging the complaint i.e., the delay of about nine months and it appears that from the conduct of the victim/informant and from her deposition, it appears that the victim had eloped with the appellant and thereafter, she has returned home. The complaint was filed after nine months as an afterthought by the P.W. 6 and from the reading of the evidence of the victim, it appears that it is a case of elopement and consensual sex and for such an occurrence, the appellant cannot be convicted.

10. From the evidence of the prosecutrix, it appears that she had willingly travelled to Delhi with the appellant and she stayed with the appellant as his wife and they worked together in Delhi.

11. The inordinate delay in lodging the F.I.R. is also fatal to the prosecution. There is every chance of concoction of evidence by the prosecution because of the delay in lodging the F.I.R.

12. Considering the statement of the prosecutrix and the delay in lodging the F.I.R., I am of the view that the prosecution has not been able to prove the case beyond a reasonable doubt and therefore, the conviction of the appellant is set aside.

13. Accordingly, the conviction of the appellant by the



order dated 09/01/2019 passed by the Presiding Officer, F.T.C.
1, Banka in Sessions Trial No. 200 of 2015/ T.R. No. 266 of
2017 is set aside.

15. This appeal is allowed and the appellant is acquitted.

(Sandeep Kumar, J)

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