

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.232 of 2023

Arising Out of PS. Case No.-175 Year-2019 Thana- MAHILA P.S. District- Nalanda

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Prabhas Singh, Son of Jai Prakash Chandra @ Dinesh Singh, male, aged
about 27 years, R/o Jagatpur, P.S. - Harnaut (Telmar) Distt. - Nalanda, Bihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Bindhyachal Singh, Sr. Adv. Mr. Sumit Shekhar Pandey, Adv.
For the Informant	:	Mr. Anil Chandra, Adv. Mr. Amit Kumar, Adv.
For the State	:	Mr. Binod Bihari Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 01-05-2024

Heard the learned counsel for the parties.

2. The sole appellant/Prabhas Singh has
been convicted for the offence under Section 376 (3)
of the Protection of Children from Sexual Offences Act,



2012 *vide* judgment dated 04.01.2023 passed by the learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Act, Nalanda, Bihar Sharif in POCSO/G.R. Case No. 113 of 2019, arising out of Mahila P.S. Case No. 175 of 2019. By order dated 06.02.2023, he has been sentenced to undergo R.I. for twenty years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer S.I. for six months.

3. The victim has also been recommended for being paid compensation by the DLSA, Nalanda of an amount of Rs. 6,00,000/-.

4. The victim (P.W. 1) had lodged the written report addressed to the Officer-in-Charge of Mahila Police Station, Bihar Sharif on 24.10.2019, which led to the registration of Mahila P.S. Case No. 175 of 2019 dated 24.10.2019 under Sections 376, 313, 506 and 34 of the I.P.C. and Section 6 of the Protection of Children from Sexual Offences Act, 2012.



5. In the afore-noted written report, she had alleged that about one and half years ago, she developed friendship with the appellant while going and coming back to school. The appellant obtained her telephone number; developed friendship with her; and on the pretext of taking her to Patna for showing her the place, he took her to his brother's house, where he established sexual relationship with her. All this was done on the assurance of marrying the victim. Whenever the victim protested, her nude photographs were shown to her and she was threatened that such photographs would be made public.

6. In the meantime, the victim became pregnant. This was noticed by her mother and on her asking, she disclosed everything to her. On knowing the afore-noted facts from the victim, her parents met the parents of the appellant. They advised the parents of the victim that she should first get an abortion done and then only the marriage proposal could be accepted.



7. The victim was initially reluctant to go for such a proposal, but on the insistence of the appellant, she agreed for abortion. The appellant is alleged to have administered some medicine to her, as a result of which she got her pregnancy aborted. Thereafter, when the victim asked for the formality of marriage to be completed, the appellant and his parents refused.

8. Hence, the written report by the victim.

9. After about thirteen days of the lodging of the F.I.R., the victim gave her statement under Section 164 Cr.P.C. before the Magistrate on 06.11.2019. The afore-noted statement makes an interesting read. According to her, the appellant is the brother-in-law of one of her cousins, namely, Puja, whom she had met in a marriage ceremony. It was in that meeting with the appellant that a proposal of marriage was given by him to her. With consent, she entered into physical relationship with the appellant and as a result of that encounter, she had become pregnant. Later, the



appellant refused to marry her. Fearing public onslaught and social derision, she filed a case against the appellant.

10. On further questioning by the learned Magistrate, she acknowledged the fact that the appellant had married her in accordance with *hindu* religious rites and that at the time of recording of her statement, she was living happily in her matrimonial home. She also specifically stated that she had no complaints against appellant or his parents or any member of his family. She expressed her willingness to live with the appellant. In fact, her brother-in-law (elder brother of the appellant) had come to the Court to bring her back to the matrimonial home.

11. What had happened in the thirteen days that intervened between the filing of the written report and the 164 Cr.P.C. statement?

12. The case should have been closed by then. But it appears that something else happened.



13. The relationship between the appellant and the victim must have been strained after sometime.

14. The investigation, therefore, continued and *charge-sheet* was submitted against the appellant, showing his parents and others, who were initially made accused in the written report, as not sent up for Trial.

15. Before we refer to the evidence of the victim, it would be necessary to refer to the deposition of Sima Kumari, the Investigator, who has been examined as P.W. 6. She has clearly stated before the Court that no medical examination of the victim was conducted on 24.10.2019. An effort was made by the Investigator to have the victim medically examined on 06.11.2019, which she declined. However, on the same day, the statement of the victim was recorded under Section 164 Cr.P.C. Ten days later, the Investigator recorded the statements of Sabut Devi



(P.W. 3), Ram Singh (P.W. 5) and Bachhu Singh, who supported the prosecution case. There is no reference in her deposition of the developments which had taken place between 24.10.2019 and 06.11.2019, when the victim had expressed her willingness to go back to her matrimonial home and live with the appellant as his married wife.

16. The Investigator, thereafter, has only listed the dates on which she received different instructions from superior police officers. On 28.11.2019, supervision note was received by her which was recorded in the case diary. Further reports from superior officers came forth on 10.12.2019, 22.01.2019, 23.01.2020, 04.02.2020, 16.02.2020, 04.04.2020 and 31.03.2021. These were all progress-reports and instructions from the superior police officers.

17. Ultimately, *charge-sheet* was submitted against the appellant, whereas his parents were let off.



18. From the narration made by P.W. 6, it appears that no investigation was made with respect to the age of the victim; the correctness of the allegation made by her against the appellant and others; as also the evidence of witnesses who would have been really important to know about the actual state of affairs. The age of the victim, as claimed by her in her written report, was accepted to be *ex-facie* true by the Investigator.

19. Precisely for this lack of investigation in the matter, a space was made available to the victim to keep changing her stand at different times.

20. In her cross-examination, she (the Investigator) has stated that she did not record anything in the police papers regarding the educational certificate of the victim, which would have disclosed the recorded age of the victim. On being specifically questioned and her attention having been drawn to, she denied that the victim ever stated before her that



she was thrown away from the matrimonial home.

21. The victim had not spoken about Radhika Devi, who is the wife of the elder brother of the appellant as having taken part in any manner whatsoever in getting the victim aborted. None of the allegations which the victim made before the Trial Court was spoken of by her before the Investigator. The story of demand of 12,00,000/- rupees or alienating one and half *bighas* of land for continuing with the marriage was also never spoken of before the Investigator.

22. Even the father of the victim, who has been examined as P.W. 4, did not state anything about any demand of money from the side of the appellant or any pressure for alienating one and half *bighas* of land for keeping the marriage intact.

23. It, therefore, appears that the victim had a field day when she approbated and reprobated, depending upon her equation with the appellant and his



family members.

24. Many other interesting facts have come to the fore in the deposition of the other witnesses.

25. Geeta Devi (P.W. 2) is the mother of the victim, who has made categorical statement that when the victim had become pregnant, she was never taken to any Doctor. Before the victim had become pregnant, she had no idea that she was seeing the appellant. Whenever the victim arrived at home late, her explanation was that she got delayed in the coaching classes. P.W. 2 had no idea that the victim had been going to Patna off and on along with the appellant.

26. The other details regarding the marriage of the victim with the appellant and later the victim falling apart from her matrimonial family has not been stated by her.

27. This appears to be deliberate so as to make out a case of rape against the appellant. When



the victim has herself stated under Section 164 Cr.P.C. as also before the Trial Court that she got married to the appellant, it was an important fact to have been disclosed before the Investigator as also before the Trial Court. The very factum of marriage and the victim staying in her matrimonial home for more than two years would have made the allegations absolutely false.

28. In this context, it would again be profitable to refer to the deposition of the victim.

29. She, in her examination-in-chief, referred to the members of the family of the appellant as her in-laws. She has also admitted that she became pregnant because of the association with the appellant, but when the appellant refused to marry her, she lodged a case. After the case was lodged, the appellant married her and she was happily residing in her matrimonial home.

30. One thing which is very important to



note is that all the while that she made statement before the Magistrate under Section 164 Cr.P.C. and in her deposition before the Trial Court, she had referred to the appellant as having plighted his troth to her. There was obviously love relationship between the victim and the appellant.

31. It appears that the relationship went sour because of some other factors about which suggestion were given to the victim during Trial. The victim was suggested that she has left the matrimonial home of her own accord and is presently residing with somebody else with whom she has a child in her lap. In the end of her cross-examination, she has stated that after seven to eight days of her lodging the written report, her further statement was recorded in which she did not state many things for the reason that by that time, she was happily residing in her matrimonial home with the appellant as her husband.

32. Something must have gone wrong



thereafter in the relationship.

33. Similarly, the father of the victim (P.W. 4) also expressed his complete ignorance about the victim having married the appellant and having lived in her matrimonial home for many years.

34. It may be noted here that the victim had also stated before the Trial Court that even after she was thrown out of her matrimonial home, the appellant kept on visiting her parental home for about sixty to seventy times.

35. All these are not isolated facts.

36. It appears that initially a relationship had developed between the victim and the appellant. The victim, perhaps, became pregnant. The appellant developed a cold feet in marrying an already pregnant lady. However, after the lodging of the case, out of fear, the marriage ceremony was performed. The victim gave birth to a child. After some time, the victim fell out with the appellant and left the



matrimonial home. This, perhaps, would have happened as it appears from the prevaricating statements made by the witnesses including the victim. That good relations were restored between the appellant and the victim during the course of investigation is evident from the fact that no further investigation was done by the Investigator. Precisely for this reason, no effort was made by the Investigator to know about the age of the victim, especially at the time of the first encounter, when she had become pregnant.

37. Was she a minor at that time?

38. The issue was not decided perhaps for lack of any objection with respect to the age of the victim by the defence and any investigation by the police on that account.

39. However, it appears that during the course of Trial, Ext. P/6 was brought on record, viz., the matriculation certificate of the victim, which showed



her age to be 01.04.2003. Counting from that date of birth, the victim was a minor when she had met the appellant for the first time and had continued with her relationship for a very long time during her minority.

40. In this context, we have examined the deposition of the defence witnesses, who are known to the family and one of whom is the elder brother of the appellant.

41. Arvind Singh (D.W. 1) is a resident of the same village, who knew about the affairs of the family of the victim and the appellant. In fact, there was a proposal of the marriage of the victim with the appellant at the instance of the father of the victim, but finding the victim to be not of the marriageable age, the marriage ceremony was deferred for the victim to attain majority. This, perhaps, was taken as a denial of the offer of marriage and because of the existing love relationship between the appellant and the victim, pressure was put on the family of the appellant and,



thereafter, the marriage took place. After about two months of her stay in her matrimonial home, the victim is said to have eloped with another person and her whereabouts were not known to anybody.

42. Almost similar statements have been made by Subhash Singh (D.W. 2), who has affirmed the fact that the offer of the marriage of the victim with the appellant was delayed on account of the minority of the victim. The marriage was performed only after the subject F.I.R. was lodged. The victim stayed in the matrimonial home for quite some time and, thereafter, she left the company of the appellant voluntarily.

43. Rampravesh Prasad (D.W. 3) and Navin Kumar Singh (D.W. 4) have also made similar statements before the Trial Court.

44. Seen in totality, thus, it appears that the victim may have come across the appellant while she was still a minor. Every effort was made by the



appellant and his family members to avoid marriage for the victim being a minor at that time. This, as noted above, may not have gone well with the family of the victim and a case was lodged for the offence of rape. Thereafter, the marriage was performed.

45. Some part of it happened when the victim was still a minor, but was on the cusp of attaining majority. When did she attain majority remains unknown as no investigation was made on that account.

46. *Prima facie*, it appears to be a case of a gun-shot marriage and, thereafter, that marriage having failed for some reason or the other.

47. For the reason of the victim having voluntarily accepted the matrimonial relationship with the appellant and staying in her matrimonial home for three years, which fact was clearly admitted by her in her deposition before the Trial Court and there being no investigation about the minority of the victim, we do



not find it to be a case of rape. The Trial Court has gone on the proposition of law with respect to the determination of age and has referred to various citations which are of no use in the facts of this case. If the date of birth of the victim is taken into account, one and half years before lodging of the written report, she would be around fifteen years of age, but the details of the year in which such association was made by the appellant with the victim not being known or referred to, there is no proof of the fact that the relationship was consummated when the victim was only a minor and had not crossed over the date of majority.

48. For the afore-noted reasons, we find the accusation against the appellant to be unworthy of complete reliance. We, therefore, cannot put our imprimatur to the opinion arrived at by the Trial Court.

49. The judgment and order of conviction, referred to above, is set aside and the appellant is



acquitted of the charges leveled against him.

50. Since, the appellant/Prabhas Singh is in jail, he is directed to be released from jail forthwith, if his detention is not required in any other case.

51. The appeal stands allowed.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Manoj

AFR/NAFR	NAFR
CAV DATE	N/A
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