

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.88 of 2004

Dr. Ashok Kumar Sinha, Son of Manoranjan Sinha, R/o Mohalla
Bhathiarisarai, P.S. Laheriasarai, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 127 of 2004

Arbind Kumar Mishra @ Been, S/o Late Shri K.G.S. Mishra, R/o Mohalla-
Mishra Tola P.S. Town, District- Darbhanga, Bihar.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (SJ) No. 88 of 2004)
For the Appellant/s : Mr. Lakmesh Marvind, Amicus Curiae
For the Respondent/s : Mr. A.M.P. Mehta, APP
(In CRIMINAL APPEAL (SJ) No. 127 of 2004)
For the Appellant/s : Mr. Prafull Chandra Thakur, Advocate
Ms. Madhumala Kumari, Advocate
For the Respondent/s : Ms. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT
Date : 07-02-2024

1. Both above-mentioned appeals preferred under
Section 374(2) of the Code of Criminal Procedure (in short
'Cr.P.C.') challenging judgment of conviction and order of
sentence dated 09.02.2004 passed in Sessions Trial Case No. 64
of 1999 by learned Additional Sessions Judge, Fast Track Court
No. 4, Darbhanga, wherein abovenamed appellant/convict,
namely Arbind Kumar Mishra (Cr. Appeal (SJ) No. 127 of



2004) convicted for the offences punishable under Sections 376, 304, 314 and 201/34 of the Indian Penal Code and ordered to undergo rigorous imprisonment for ten years for the offence under Section 376 of the Indian Penal Code, ten years for the offence under Section 304 of the Indian Penal Code, eight years for the offence under Section 314 of the Indian Penal Code and three years for the offence under Section 201 of the Indian Penal Code alongwith fine of Rs. 2000/- wherein default of payment of fine, he shall further undergo rigorous imprisonment for six months. All the sentences were ordered to run concurrently. Appellant/accused namely, Dr. Ashok Kumar Sinha (Cr. Appeal (SJ) No. 88 of 2004) convicted for the offences punishable under Sections 304, 314 and 201 of the Indian Penal Code and ordered to undergo rigorous imprisonment for ten years for the offence under Section 304 of the Indian Penal Code, eight years for the offence under Section 314 of the Indian Penal Code, and further rigorous imprisonment for three years for the offence under Section 201 of the Indian Penal Code, alongwith fine of Rs. 2000/- and in default of payment of fine he shall further undergo rigorous imprisonment for six months. All the above sentences were ordered to run concurrently.

2. The case of prosecution, as it springs from the



written information of PW-7, namely, Laxmi Narayan Mishra that the appellant/accused Arbind Kumar Mishra on false pretext of marriage committed rape upon his daughter, namely Seema Kumari @ Mini, where out of occurrence, his daughter becomes pregnant. It further appears from his information that when he alongwith his elder brother, namely, Kedar Nath Mishra (PW-6) started to press appellant/accused, namely, Arbind Kumar Mishra to marry his daughter, same was refused. Subsequently, appellant/accused Arbind Kumar Mishra took his daughter to appellant/accused, namely, Dr. Ashok Kumar Sinha and in collusion with him terminated her pregnancy, whereafter, on 19.09.98, dead body of his daughter was found thrown in Mohallah Mogalpura.

3. After recovery of dead body and getting information about the occurrence, PW-12, namely, Deep Lal Mishra, who is the Investigating Officer of this case, lodged a case, which has been registered as Laheriasarai P.S. Case No. 325/98 on 19.09.98 under Sections 302, 376, 201/34 of the Indian Penal Code. After completion of investigation, he submitted charge sheet under Sections 304, 376, 316, 201/34 of the Indian Penal Code. The learned Chief Judicial Magistrate, Darbhanga took cognizance of the offence on 21.12.98 and



thereafter, matter was committed to the court of sessions on 15.02.99 under Section 209 of the Code of Criminal Procedure (in short 'Cr.P.C.') after making compliance under Section 207 of Cr.P.C. for trial and disposal of the case.

4. On the basis of materials collected during the course of investigation, learned trial court framed charges under Sections 376, 304, 316, 201/34 of the Indian Penal Code against appellants/accused, which were explained to them separately. Both appellants/accused denied the charges explained to them and claimed for trial after making plead "not guilty".

5. To establish its case before the learned trial court, the prosecution altogether examined total of 12 witnesses, namely, **PW-1 Lalji Mishra, PW-2 Mahesh Chaubey, PW-3 Niteshwar Chaubey, PW-4 Ravi Verma, PW-5 Vipalw Kumar Chaudhary, PW-6 Kedarnath Mishra, PW-7 Laxmi Narayan Mishra, PW-8 Keshav Nath Mishra, PW-9 Kaushal Kumar Mishra, PW-10 Dr. Pushpa Jha, PW-11 Dr. P.K. Dev, PW-12 Deep Lal Singh.** Documents/exhibits as FIR, inquest report, injury report, *post-mortem* report of the deceased were exhibited during the course of trial as to substantiate the case of prosecution.

6. On the basis of evidences as surfaced during the



trial, the incriminating circumstances/evidences were explained to appellants/accused as to record their statement under Section 313 of Cr.P.C., where they simply denied those incriminating circumstances/evidences and shows their complete innocence.

7. Appellants/accused in their defence examined altogether three witnesses, **who are Sanjeev Kumar Mishra (DW-1), Vinay Kumar Jha (DW-2) and Saroj Kumar Mishra (DW-3).**

8. On the basis of the evidences as surfaced during trial, the learned trial court convicted both appellants/accused and ordered to undergo sentences alongwith fine as discussed above. Being aggrieved of which both appellants/accused preferred present appeals.

9. Hence the present appeals.

10. Mr. Prafull Chandra Thakur, while arguing on behalf of appellant/accused, namely, Arbind Kumar Mishra submitted that from the testimony of PW-6 and PW-7 (informant), it is very clear that the present case was lodged when the negotiation of marriage of daughter of PW-7 failed with appellant/accused. It is submitted that the maximum allegations as appears against the appellant as per testimony of PW-6 & PW-7 is of “last seen” as they said to accompanied



deceased to the clinic of appellant/convict, namely, Dr. Ashok Kumar Sinha. It is submitted by learned counsel that out of testimony available on record none of the prosecution witnesses suggest that appellant/accused even made attempt to terminate the pregnancy rather from the deposition of PW-10, it appears that it was the father of deceased himself i.e. PW-7, who accompanied her on second occasion to the clinic of PW-10 and requested her to terminate her pregnancy, which was refused. It is also submitted by learned counsel that as per the case of prosecution, the dead body was recovered from an open area, accessible by general public, where cause of death could not ascertained by the doctor, who conducted autopsy on deceased. It is further pointed out that in present case, the deceased/victim was not examined. It is submitted by learned counsel that even after the alleged occurrence of rape as per statement of prosecution witnesses, appellant/accused was allowed to the house of deceased/victim as they entered in marriage negotiation with the parents of appellant/accused Arbind Kumar Mishra. which is sufficient to suggest that the physical relation if any, established between deceased/victim with appellant/accused Arbind Kumar Mishra was consensual in nature and cannot be categorized as rape. In support of his



submission, learned counsel relied upon the report of Hon'ble Supreme Court in the matter of ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Ors. (Cr. Appeal No. 1443/2018) dated 22.11.2018.***

11. It is further submitted that nothing surfaced on record, which may establish that appellant/accused Arbind Kumar Mishra was previously acquainted with appellant/accused, namely, Dr. Ashok Kumar Sinha. It is further submitted by learned counsel that even if the statements of PW-6 and PW-7 be taken into consideration, it appears that the termination of pregnancy was even consensual, for the reason that when they arrived at clinic of appellant/accused Dr. Ashok Kumar Sinha, it was told to them from inside by victim/deceased that she will return to home tomorrow.

11.1 Learned *Amicus Curiea* Mr. Lakmesh Marvind appearing on behalf of appellant/accused, namely, Dr. Ashok Kumar Sinha submitted that from the register which was seized from the clinic of appellant/accused, it cannot be said that the deceased/victim was admitted there during the period as alleged. It is also submitted that PW-6 and PW-7 categorically stated that when they arrived at the clinic of appellant/accused, they found the door of clinic closed. It is pointed out by learned amicus



that as per deposition of PW-10, which also pointed out by learned counsel appearing on behalf of appellant/accused Arbind Kumar Mishra, it appears that it was PW-7, who himself accompanied deceased/victim for her Medical Termination of Pregnancy (MTP) to the clinic of PW-10, and as such, there is no question arises subsequently to accompanied appellant for the said purpose. Learned amicus further submitted that the prosecution did not come with case, where appellant/accused, Dr. Ashok Kumar Sinha was not said a “registered medical practitioner” as, to attract the offence *prima facie* under Section 304 of the Indian Penal Code. It is the bounded duty of the prosecution to establish *prima facie* that the appellant/accused was not a “registered medical practitioner”, moreover, the presence of deceased/victim at the clinic of appellant/accused is also appearing doubtful. It is submitted that in view of aforesaid evidence, the testimony as regard to disappearance of evidence cannot be said convincing on its face for the reason that none of the prosecution witnesses are appearing the witness of the fact regarding hospitalization of deceased/victim with appellant/accused Dr. Ashok Kumar Sinha and also to carrying her from alleged medical centre to the place from where the dead body of victim was recovered. It is further submitted by



learned amicus that despite of all such poor evidence, the appellant/accused was convicted mere on the ground that he after arrest submitted an application to the police regarding admission of deceased/victim in his clinic by appellant/accused Arbind Kumar Mishra on 16.09.98 at about 12:00 A.M. It is further submitted that this is amounting to confession, while in police custody eclipsed under provision of Section 24 of the Indian Evidence Act. It is submitted that just to exist from the pervuew of Section 24 of the Indian Evidence Act, police recorded the statement of appellant/accused under Section 164 of the Cr.P.C. but same is also not helping prosecution in the background of available evidence. It is submitted that it is well settled law as statement recorded under Section 164 of the Cr.P.C. can be used only for the purpose of corroboration or contradictions, the statement/evidence available on record and same cannot be permitted to write a new story on the basis of imagination, what exactly happened in present case.

12. Learned APP while appearing on behalf of State submitted that in present case “last seen” circumstances cannot be said weak piece of evidence, as appellant/accused Arbind Kumar Mishra took deceased/victim from her house for the clinic of appellant/accused Dr. Ashok Kumar Sinha, where her



pregnancy was medically terminated. It is further submitted by learned APP that the statement of appellant/accused Dr. Ashok Kumar Sinha as recorded under Section 164 of the Cr.P.C. fully corroborate with the facts of the case and with the oral evidences as deposed by several prosecution witnesses during the course of trial. It is submitted that minor discrepancies are bound to be surfaced and mere on the grounds of minor discrepancies, the conviction as recorded by learned trial court cannot be viewed with doubt.

13. This Court perused the entire records and considered the arguments as canvassed by learned counsel appearing on behalf of the parties, it would be apposite to discuss the evidence for the purpose of its re-appreciation and just disposal of present appeal.

13.1 PW-1 Lalji Mishra, he is only eye-witness of the dead body of Seema Kumari, daughter of PW-7.

13.2 Upon cross-examination, he stated that Seema Kumari was daughter of Laxmi Narayan Mishra (PW-7) and he is not aware that how she died. He categorically stated that the statement of Laxmi Narayan Mishra (PW-7) was not recorded by police (Daroga) before him, rather police obtained his signature subsequently. PW-2, namely, Mahesh Chaubey, PW-3,



namely, Niteshwar Chaubey and PW-5, namely Viplaw Kumar Chaudhary were declared hostile by prosecution, where nothing surfaced in their cross-examination as examined by State, which may use for the purpose of contradictions or corroboration with testimony of other prosecution witnesses, who appears to be supported the case of prosecution.

14. PW-4 Ravi Verma, is the seizure list witness and stated that on 19.09.98 before him the seizure was prepared and a patient register was seized from the clinic of Dr. Ashok Kumar Sinha. He identified his signature over seizure list and on his identification, same was exhibited as **Exhibit No. 2/1** before the trial court. He deposed that the dead body of Seema was found from an open road near to Gauri Shankar School, in front of the house of one Mahendra Prasad.

14.1 Upon cross-examination, it was stated by him that he never saw appellant/accused namely, Arvind to visit the house of Laxmi Narayan Mishra. He never talked with deceased/victim Seema.

15. PW-6 Kedarnath Mishra, who is the brother of informant, namely, Laxmi Narayan Mishra @ Lala Mishra/PW-7, it appears from his examination-in-chief that deceased/victim Seema Kumari @ Mini was the daughter of PW-7, who was the



student of 1st year of B.A. was killed by appellants/accused and after committing her murder, dead body was thrown near to Mugalpura area of the city near to the house of one Mahendra Prasad Sinha. It appears from his deposition that the appellant/accused namely, Arvind Kumar Mishra was Sanskrit tutor of deceased and while teaching her, he committed rape upon her, as a result of which she become pregnant and started to face different medical complexities out of said pregnancy and when he asked victim regarding her medical problems, it was told that she is pregnant from Arvind Kumar Mishra (appellant/accused). Knowing this fact, he talked with father of appellant/accused and after giving pressure, he became ready to marry with deceased/victim but postponed the marriage for one or another reasons. It further transpires from his deposition that on 16.09.98 appellant/accused Arvind came to PW-7 and take away Seema with him for a doctor. It was also stated by him that Arvind went with Seema to the clinic of doctor Ashok Kumar Sinha (appellant/accused) at Bhatiarisarai, thereafter, Seema never returned to home, where her dead body was found on 19.09.98. It was deposed by him that he saw the dead body of Seema, where he found black marks on her neck and chest.

15.1 Upon cross-examination, it was stated by him



that Arvind Kumar Mishra (appellant/accused) was giving tuition to Seema Kumari prior to ten months of the occurrence. The tuition classes were generally given in room, which he objected on several occasions as to teach her in open Verandah. It further appears that when appellant/accused Arvind Kumar Mishra did not pay heed to said objection, engagement of appellant/accused Arvind Kumar Mishra was terminated as a tutor but even, thereafter, he usually comes to the house of victim/deceased. He produced the copy of Seema before the court in support of the fact that she was taking tuition from appellant/accused Arvind Kumar Mishra. It was stated that he came to know about the occurrence on the same day and time, when it took place as Seema cried during the occurrence and thereafter, came out from the room which was forcibly opened by them. By that time accused/appellant Arvind Kumar Mishra was seated inside in the room but immediately as he made promise for marriage, he was not handed him to police, neither the occurrence was reported. It was stated that the said occurrence took place before six months of the death of Seema. It was stated that at the time of death, Seema was carrying pregnancy of 5-6 months. He did not raised any suspicion while Seema was taken alone by Arvind as he promised to marry her.



It was stated that Seema was weak and was regularly vomiting in that period, for that she was taken for doctor by Arvind (appellant/accused). It appears from his deposition that when Seema did not return on 17th morning then he went to clinic of appellant/accused Ashok Kumar Sinha in evening on same day but he did not find Seema there, as the clinic was closed from inside but Seema replied that she will return tomorrow. He could not imagine that Arvind taken away Seema for her termination of pregnancy. He denied the suggestion of defence that he alongwith family members administered tablets to Seema for terminating her pregnancy and even thereafter, when it was not terminated, same was terminated by one untrained attendant/nurse. He on drawing attention stated that he made all such statements before the police as he said to be stated above.

16. PW-7 is Laxmi Narayan Mishra, who is the informant of this case and father of deceased/victim, namely, Seema Kumari. He also deposed on the line of PW-6 and stated that appellant/accused, namely, Arvind Kumar Mishra was giving tuition to his daughter, namely Seema and in this connection, he usually visited his house. It was deposed by him that marriage of Seema was under negotiation with appellant/accused Arvind Kumar Mishra, prior to six months of



the occurrence but in meantime, Seema became pregnant and ill. It was deposed by him that prior to sixth day of the recovery of dead body of his daughter, the appellant/accused Arvind Kumar Mishra came to him and said that he is taking Seema to doctor Ashok Kumar Sinha (appellant) for her treatment but she did not return. On 17th he visited the clinic of appellant/accused Dr. Ashok Kumar alongwith his brother Kedar Nath (PW-6), where he met with appellant/accused Arbind Kumar and his daughter, where it was said by his deceased daughter that she will return to home after recovery. He again visited on same day to clinic of Dr. Ashok (appellant/accused) but found same closed. He called his daughter from outside but was not responded and thereafter, he returned to home. As per his deposition, the dead body was recovered on 19.09.98 near Mugalpura area, which was identified by him as a dead body of his daughter Seema Kumari. He made his statement before police at place of occurrence itself, which was signed by him. On his identification, his signature was exhibited as Exhibit No. 1/1 during the trial. It was stated that Seema told him that she became pregnant from Arvind Kumar. It was stated by him that at the time of occurrence, the age of Seema Kumari was 21 years. It was stated by him that he was searching suitable match for his



daughter. He said that the Seema was suffering from pregnancy related problems. It was stated by him that he said to police officials that appellant/accused Arbind was tutor of his daughter but the said statement was not recorded. He stated that the Arbind and Seema said from inside that they would come tomorrow after recovery and thereafter, he came at the home. He identified the pages of copies running in different pages, which were in the handwriting of appellants/accused Arbind Kumar Mishra which were exhibited during the court.

17. PW-8 Keshav Nath Mishra, who deposed on the same line as of PW-6 and PW-7 and same not requires to be repeated for the sake of convenience and brevity. **P.W. 9 Kaushal Kumar Mishra**, who is the son of PW-6 said in his examination-in-chief that PW-1 Lalji Mishra signed over fardbeyan in his presence, which on his identification exhibited as **Exhibit no. 2**. He also appears relative of informant as he himself stated that he is the nephew of Laxmi Narayan Mishra (PW-7). He is also the seizure list witness of recovery of dead body.

18. PW-10 Pushpa Jha, who is a doctor stated in her examination-in-chief that on 27.08.98, one patient, namely, Mini came to her and asked for her treatment, where on examination



PW-10 found her pregnant of five months. It was stated that she came alone to her clinic. She identified her register, having entries of outdoor patient for that day, which on her identification exhibited as **Exhibit No. 4**, where deceased/victim was sent to her clinic on request of one “**Been Bhaiya**” she failed to disclose that why it was endorsed by her compounder. She stated in her cross-examination that patient again came to her after 3-4 hours alongwith her father (PW-7) and requested to terminate her pregnancy, which was refused by her.

19. PW-11 Dr. P.K. Das- On 19.09.98 at 2 P.M. , he conducted P.M. examination on the body of deceased Seema Kumari @ Mini daughter of Shri Lakshmi Nath Mishra of Mohalla Missir Tola P.S. Town, Distt- Darbhagna. The dead body was brought and identified by constable no. 428 Ganesh Jha and constable 427 Deoki Murali. The body was of average built and it was soiled with mud and weeds. Both the eyes were found congested. The face, nail beds and lips were found cyanosed. Four needles prick marks were seen over right of cubital fossa apparently made for I.B. extension. No external injury could be detected on the parts of the body. Breasts were found enlarged with darken areola and prominent nipples.



Montgomery's tubercles were present on the areola, pubic hairs were not shaved.

2. Labia majora were found separated apart exposing the labia minora vaginal orifice admitted two fingers loosely with blood discharge in vaginal canal. The hymen had several old tear. Vaginal swabs were taken and were examined under the microscope immediately after collection of sample. No spermatozoa living or dead, intact or broken were seen in the smear. The uterine survey was found dilated bruised with lacerated margin through which bloody fluids were found leaking. Uterus measured 10" x 8" x 1" and weighed twelve hundred grams. Uterine wall was found oedematous and extensively hemorrhagic with dark red colour. Raw inflamed areas at the posterior wall indicated site of placental attachment. Both ovaries were found enlarged with formation of corpus luteum. Ovaries and fallopian tubes were deeply congested.

3. Both the lungs and all the abdominal viscera were found pale. Stomach contains about 100 millilitre dark brown liquid with pale congested. Both sides of heart found empty. Urinary bladder was found empty. Brain and meninges were found pale. Vesica was preserved and forwarded to R.F.S.L. Bela Muzaffarpur for chemical analysis. Above noted features



were ante mortem.

Opinion about cause of death was kept reserved pending the report of chemical analyst. Time since death is within 12 to 18 hours from the time of post mortem examination in the department.

This P.M. report is in my pen and signature with proper seal. Marked Ext. 5.

19.1 Cross examination on behalf of Arbind Kumar Mishra (appellant of Cr. Appeal (SJ) No. 127 of 2004)

4. The dead girl was Hindu female aged about 21 year. I have not found any external injury except needle pricks marks which could have caused death. I preserved the Vesera alongwith whole uterus for chemical analysis and as such I could not give my finding about the cause of death. Visera report could not be available up to date and as such I can not say about the cause of death.

19.2 Cross examination on behalf of accused Dr. Ashok Kumar Sinha.

5. The general examination shows that the lady was habitual to sexual intercourse. I preserved only portion of lungs, liver and portion of uterus alongwith splin, one kidney and stomach with its contains.



20. PW-12 Deep Lal Singh, who is the Investigating Officer of this case, who stated that after recovery of dead body, he prepared the inquest report and recorded statement, he went to Bhatiyarisarai to the clinic of Dr. A.K. Sinha (appellant/accused) and arrested him. He visited place of occurrence/recovery of dead body. He stated that the second place of occurrence is the clinic of Dr. A.K. Sinha (appellant/accused), where victim was alleged to kill. He recorded the statement of Dr. A.K. Sinha in defence, where on his identification, his signature was exhibited as **Exhibit No. 9**. On the basis of evidence/material collected during the course of investigation, he submitted charge sheet under Sections 304, 376, 316, 201/34 of the Indian Penal Code against appellants/accused.

20.1 Upon cross-examination, he stated that he did not mention name of the person, who informed about the dead body of victim over telephone on 19.09.98. It was stated that he did not mention in inquest report regarding inserted needles in wrist of victim and also failed to mention whether any blood stain was present over her cloth. It was stated that Kedarnath Mishra PW- 6 did not stated before him during investigation that appellant/accused Arbind Kumar was tutor of deceased Seema



Kumari and was usually coming to home. It was stated by him that said witness stated during investigation that appellant/accused Arbind Kumar established illicit relation with deceased/victim but did not said that he committed rape upon her. He also denied to be stated by said witness during investigation that he asked deceased Seema Kumari regarding her pregnancy, where he was told by deceased that she is carrying pregnancy of appellant/accused Arbind. He affirmed that said witness stated during the course of investigation that when he saw the dead body of Seema he found black marks over her neck and chest and also found an inserted needle on her. He also denied that said witness stated during investigation that victim did not return in the morning of 17th and thereafter, he visited to the clinic in the evening, where he found door of clinic was closed from inside. Similarly, he also denied regarding informant (PW-7) that he made any statement during investigation that two days prior to the recovery of dead body appellant/accused Arbind Kumar Mishra came to his house and taken Seema (deceased/victim) with him to the clinic of Dr. Ashok Kumar (appellant/accused). He also contradicted the version of Keshav Nath Mishra (PW-8). He categorically stated that in patient register, the name of victim/deceased was not



available. He sent Visera to Forensic Science Laboratory.

21. DW-1 and DW-2 are advocate clerks, who identified the signatures of Judicial Magistrate over statement of appellant/accused, namely Dr. Ashok Kumar Sinha and handwriting and signature of Judicial Magistrate respectively, which on their identification exhibited as **Exhibits A and B** respectively.

22. DW-3 Saroj Kumar Mishra, from his deposition, it appears that he is acquainted to both appellants/accused and stated that they were not involved in present occurrence, rather he stated that both appellants/accused are good friends of PW-6/Kedarnath Mishra.

23. From the above discussed evidence, it appears that none of the prosecution witnesses are the eye-witness of the occurrence and the present case rest heavily upon the circumstantial evidence. It appears out of deposition of the prosecution witnesses that the appellant/accused, namely, Arbind Kumar Mishra acquainted with deceased/victim and her family members in capacity of Sanskrit tutor. In support of said claim/allegation besides oral evidence, certain copies were exhibited before the trial court, which claims to be in handwriting of appellant/accused, Arbind Kumar Mishra. There



is nothing on record in form of scientific/expert finding, which can suggest that the said handwriting is of appellant/accused Arbind Kumar Mishra. The date of visit in capacity of tutor is also not appears confirmed from the oral deposition of prosecution witnesses. There is no evidence either oral or documentary, which may suggest that appellant/accused, Arbind Kumar Mishra was paid any amount as a tutor. No educational certificate of appellant/accused Arbind Kumar Mishra was brought on record by the prosecution in support of the fact that he was capable of giving tuition of Sanskrit to a college student of B.A. 1st year. In absence of all such fact, it can be said safely that the first and foremost circumstances as to establish appellant/accused Arbind Kumar Mishra as a Sanskrit tutor of deceased/victim Seema Kumari appears not conclusively proved by prosecution.

24. From the deposition of Kedar Nath Mishra (PW-6), it appears that the occurrence of rape took place somewhere five months prior to the death of Seema Kumari. As per his version, the occurrence took place on single occasion. The matter was not reported to family members of the appellant/accused, namely, Arbind Kumar Mishra, neither to police, in fact as per own deposition of PW-6, it appears that he



pressurized the parents of appellant/accused Arbind Kumar Mishra for solemnizing marriage with deceased. It appears from his deposition that the occurrence took place in locked room, which was opened by victim herself after making a cry and narrated thereafter to PW-7 regarding the occurrence, which clearly suggest that he is not the eye-witness of the said occurrence of the rape. Occurrence of alleged rape was compromised under the garb of negotiation of marriage of appellant/accused Arbind Kumar Mishra with deceased/victim and for the said reasons, the matter was not reported to the police neither the victim was examined by any doctor on the point of rape.

25. From the plain reading of the examination-in-chief of PW-7/informant, it appears that no rape was ever committed upon victim/deceased Seema Kumari, whether it appears that some occurrence took place and there was a talk regarding marriage negotiation with appellant/accused Arbind Kumar Mishra but in the meantime, she became ill and pregnant. It further appears from his deposition that before six day of recovery of dead body, Seema was taken to Dr. Ashok Kumar (appellant/accused) for her treatment, where he saw both appellant Arbind Kumar Mishra and deceased together, where it



was said by victim/deceased that she would return to home after getting well.

26. From careful analysis of oral testimony of PW- 6 and PW-7, it appears that deceased/victim became pregnant from appellant/accused Arbind Kumar. She was in advance stage of her pregnancy i.e. of about 6 (six) months. Both these witnesses stated about marriage negotiation of appellant Arbind Kumar Mishra with deceased but same could not negotiated. PW-10 specifically stated that deceased came to her clinic with PW-7/informant to terminate her pregnancy. It implies with all connection that PW-7 being father was helping her deceased daughter to terminate her pregnancy. Appellant/accused specifically denied to engage as a Sanskrit teacher of victim/deceased or to commit rape upon her. There is no scientific evidences as to connect appellant Arbind Kumar Mishra with occurrence of rape.

27. It would be apposite to re-produce the report of Hon'ble Supreme Court in the matter of ***Dr. Dhruvaram Murlidhar Sonar Vs. State of Maharashtra and Ors. (Cr. Appeal No. 1443/2018) dated 22.11.2018***, Where it was observed in paragraph nos. 19 and 20 as under:-

“19. “In *Deelip Singh V. State of Bihar*, the Court framed the following two questions



relating to consent:-

(1) "Is it a case of passive submission in the face of psychological pressure exerted or allurements made by the accused or was it a conscious decision on the part of the prosecutrix knowing fully the nature and consequences of the act she was asked to indulge in?"

(2) Whether the tacit consent given by the prosecutrix was the result of a misconception created in her mind as to the intention of the accused to marry her"?

In this case, the girl lodged a complaint with the police stating that she and the accused were neighbours and they fell in love with each other. One day in February, 1988, the accused forcibly raped her and later consoled her by saying that he would marry her. She succumbed to the entreaties of the accused to have sexual relations with him, on account of the promise made by him to marry her, and therefore continued to have sex on several occasions. After she became pregnant, she revealed the matter to her parents. Even thereafter, the intimacy continued to the knowledge of the parents and other relations who were under the impression that the accused would marry the girl, but the accused avoided marrying her and his father took him out of the village to thwart the bid to marry. The efforts made by the father of the girl to establish the marital tie failed. Therefore, she was constrained to file the complaint after waiting for some time.

20. With this factual background, the Court held that the girl had taken a conscious decision, after active application of mind to the events that had transpired. It was further held that at best, it is a case of breach of promise to marry rather than a case of false promise to marry, for which the accused is prima facie accountable for damages under civil law. It was held thus:-

"35. The remaining question is whether on the basis of the evidence on record, it is reasonably possible to hold that the accused with the fraudulent intention of inducing her to sexual intercourse, made a false promise



to marry. We have no doubt that the accused did hold out the promise to marry her and that was the predominant reason for the victim girl to agree to the sexual intimacy with him. PW 12 was also too keen to marry him as she said so specifically. But we find no evidence which gives rise to an inference beyond reasonable doubt that the accused had no intention to marry her at all from the inception and that the promise he made was false to his knowledge. No circumstances emerging from the prosecution evidence establish this fact. On the other hand, the statement of PW 12 that "later on", the accused became ready to marry her but his father and others took him away from the village would indicate that the accused might have been prompted by a genuine intention to marry which did not materialise on account of the pressure exerted by his family elders. It seems to be a case of breach of promise to marry rather than a case of false promise to marry. On this aspect also, the observations of this Court in Uday case at para 24 come to the aid of the appellant".]

28. This is the admitted position that victim/deceased was not examined in this case, where nothing adverse suggest out of autopsy report which may suggest that rape was committed upon victim. Even the cause of death could not ascertain and for that a Visera was preserved and sent for forensic examination.

29. In view of aforesaid discussed evidence, it can be said safely that prosecution failed to establish the charge of rape against appellant/accused Arbind Kumar Mishra.



30. Upon searching truth further regarding charge of Section 304 of the Indian Penal Code out of available evidences, it appears that the deceased who an adult lady of 21 years, accompanied appellant, namely Arbind Kumar Mishra on her own in presence of PW-6 and PW-7. PW-7 being parent/father was aware that she was going to the clinic of appellant/accused namely, Dr. Ashok Kumar Sinha for her treatment. Admission register regarding outdoor patient of appellant/accused Dr. Ashok Kumar Sinha was exhibited, where on said date, no such patient i.e. Seema Kumari was admitted/visited thereof for treatment. Presence of appellant/accused Arbind Kumar Mishra and deceased in the clinic of appellant/accused Dr. Ashok Kumar Sinha also appears doubtful, in view of depositions of PW-6 and PW-7, as PW-6 said, he heard only deceased Seema Kumari, whereas PW-7 said that he met with both appellant/accused Arbind Kumar Mishra and deceased but remain silent about the presence of appellant/accused Dr. Ashok Kumar Sinha over there, who was the doctor of the clinic. Admittedly, as per case of prosecution, the dead body of Seema Kumari was recovered from an open area, much ahead of clinic of appellant/accused Dr. Ashok Kumar Sinha. From deposition of PW-6 regarding visit of the clinic of appellant/accused Dr.



Ashok Kumar Sinha on 17th day of the month in issue be taken into consideration, it appears that the door of clinic was found closed from inside but deceased said him from room without opening it that would return home next day. It appears from his deposition that the response of deceased was made without putting any questions from outside, which makes a question on face that how victim/deceased came to know regarding presence of PW-6 outside door.

31. This Court finds that self-incriminating application written by appellant/accused Dr. Ashok Kumar Sinha addressing station house officer, explaining all about the occurrence is of no evidentiary value and same appears to be made after his arrest. Any such statement is prohibited strictly in view of provisions as laid down under Section 24 of the Indian Evidence Act.

32. In view of aforesaid discussed evidence, it can be said safely that prosecution also miserably failed to establish charge under Section 304 of the Indian Penal Code also, against both appellants/accused.

33. Now, upon searching truth for the charge of Section 314 of the Indian Penal Code, it appears out of deposition of prosecution witnesses that the deceased/victim



made an earlier efforts prior admitting her to the clinic of appellant/accused Dr. Ashok Kumar Sinha on two different occasions for her medical termination of pregnancy as it appears from the deposition of PW-10 Dr. Pushpa Jha, where during second attempt, the victim was accompanied with her father, who is the informant of this case and examined as PW-7. From the deposition of prosecution witnesses, it nowhere appears that appellant/accused Arbind Kumar Mishra ever accompanied victim during five months of her carrying pregnancy to made any attempt to get it abort. On 16th day of months in issue, victim was taken to clinic of appellant/accused Dr. Ashok Kumar Sinha as she was not feeling well and vomiting regularly. From the deposition of I.O. of this case, who examined as PW-12, it appears that patient register of appellant/accused Dr. Ashok Kumar Sinha did not shows any entry in the name of deceased/victim for that day, even the *post-mortem* report did not shows anything medically/scientifically which may suggest that deceased was carrying pregnancy which terminated recently, causing her death and as cause of death could not ascertain by the doctor, her Visera was preserved. Appellant/accused Dr. Ashok Kumar Sinha categorically stated while making his statement under Section 313 of the Cr.P.C. that



victim/deceased never admitted to his clinic. Moreover, PW-6 and PW-7 whenever visited the clinic of appellant/accused Dr. Ashok Kumar Sinha were not found there.

34. In view of discussed evidence, it can be said safely that prosecution failed to establish the charge against appellant under Section 314 of the Indian Penal Code also.

35. It is admitted position that the dead body of victim recovered from an open place, accessible by general public. None of the witnesses claimed to saw deceased admitted in clinic of appellant Dr. Ashok Kumar Sinha and to carry her dead body therefrom to the place of recovery. Appellant/accused were also noticed around place of occurrence. In this background, the finding/recovery of dead body of deceased from an open place which is accessible by general public, nowhere suggest that appellants were involved in disappearance of evidence. Therefore, it appears that the prosecution also failed to prove its case under Section 201 of the Indian Penal Code.

36. In view of aforesaid re-appreciation of evidence and finding it can be said safely that prosecution failed to answer several material doubts during the trial.

37. Accordingly, appeals stand allowed.



38. The impugned judgment of conviction and order of sentence dated 09.02.2004 passed in Sessions Trial Case No. 64 of 1999 by learned Additional Sessions Judge, Fast Track Court No. 4, Darbhanga is set aside. The accused/appellants are acquitted of the charges levelled against them. Accused/Appellants are on bail as submitted, On acquittal, their bailors and sureties stand discharged.

39. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5,000/- (Rupees Five Thousand) to Mr. Lakmesh Marvind, learned Amicus Curiae for rendering his valuable professional service in Cr. Appeal (SJ) No. 88 of 2004 for the disposal of present appeal.

40. LCR, if any, be sent back to learned trial court along with the copy of this judgment. Fine, if any, paid by accused/appellants in furtherance of order of sentence, be refunded to them immediately.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	19.02.2024
Transmission Date	19.02.2024

