

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.118 of 2006

Ajay Kamkar, son of Sri Kailash Kamkar, resident of Village-Chanda, P.S.-
Bramhpur, District-Buxar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shankar Dayal Singh, Adv

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

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 11-03-2024

Heard Mr. Shankar Dayal Singh, learned counsel
for the appellant and Mr. Abhay Kumar, learned A.P.P
for the State.

2. The present appeal has been filed against
the judgment of conviction dated 06.12.2005 and order
of sentence dated 08.12.2005 passed by learned
Additional Sessions Judge, F.T.C-III, Buxar in connection
with Sessions Trial No. 23 of 2004/18 of 2004, arising
out of Brahampur P.S. Case No. 168 of 2003, whereby
and whereunder the appellant was found guilty and
convicted for the offences punishable under Section 376
of the Indian Penal Code and he was sentenced to
undergo rigorous imprisonment for ten years for the



offence punishable under Section 376 of the Indian Penal Code.

3. The prosecution case as per the F.I.R is that on 16.09.2003 at about 6:00 P.M, while the informant was returning after attending the call of nature and reached in the street between the house of Nandjee Gosie and Vipin Upadhaya, the appellant caught hold her and took her to a vacant land and forcefully committed rape upon her.

4. On the basis of the aforesaid statement of the informant, Brahampur P.S. Case No. 168 of 2003 was registered against the appellant for the offences punishable under Section 376 of the Indian Penal Code.

5. After completion of the investigation, cognizance was taken and the case was committed to the Court of Sessions for trial.

6. During the course of trial, altogether eight prosecution witnesses were examined on behalf of the prosecution.



7. On behalf of the defence four witnesses were examined before the Trial Court.

8. The learned Trial Court, after examining the witnesses had found the appellant guilty and convicted him for the offences punishable under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Section 376 of the Indian Penal Code.

9. P.W. 1 Bimla Devi is the informant of this case who has stated in her examination-in-chief that she had gone for easing in the field and while she was returning, this appellant caught her in his lap and in an open filed, he committed rape upon her. The informant tried her best to release herself from the clutches of the appellant and in the resistance, the bangles of the informant was also broken. The informant (P.W. 1) came at the house and narrated the incidence to her husband (P.W. 2) and thereafter, the informant and her husband went to the police station and registered the



present F.I.R. The informant was thereafter sent to the Buxar Sadar Hospital for her treatment and examination.

10. P.W. 2 Dhanjee Upadhaya is the husband of the informant who has stated in his examination-in-chief that his wife narrated the incidence to him that this appellant had raped her while she was coming after attending the call of nature. The P.W. 2 and the informant (P.W. 1) thereafter rushed to the police station and registered the present case against the appellant.

11. P.W. 3 Dr. Raghubans Mani Pandey has done the pathological examination of the vaginal swab of the victim informant Bimla Devi (P.W. 1) and did not find spermatozoa either alive or dead. The pathological report has been marked as Exhibit-5 to the appeal.

12. P.W. 4 Sri Krishna Baitha is the Investigating Officer of the case who has stated in his examination-in-chief that he had recorded the statement of the witnesses including the re-statement of the



informant. He inspected the place of occurrence on 17.09.2003 and found five pieces of broken bangles. This witness had prepared the seizure list which has been marked as Exhibit-2 and after completing the investigation, he had submitted charge-sheet in this case.

13. P.W. 5 Baidhnath Singh is the formal witness.

14. P.W. 6 Dr. Manju Sahay had examined the victim Bimla Devi (P.W. 1) on 18.09.2003 at 1:20 P.M and found the following conclusion:-

(i) Bimla Devi was 5 feet height of 39 Kg weight. Breast developed, public hair and auxiliary hair present.

(ii) No external bodily injury on face, chest, back, buttock, abdomen and thigh.

(iii) On private part examination, no injury on valva and vagina. Hymen absent. Vaginal orifice admits two finger easily. Uterus is anti-verted and normal size.

(iv) L.M.P is 10 days back as said by victim. She has passed stool and urine



several times. There is no foreign hair found.

(v) In pathological report of vaginal swab examination given by doctor, spermetoxzoa was absent either dead or alive.

15. The aforesaid finding of the doctor was marked as Exhibit-4.

16. P.W. 7 Manoj Kumar has recorded the 164 Cr.P.C statement of the victim which has been marked as Exhibit-6.

17. P.W. 8 Madan Pandey is a formal witness who has marked the fardbeyan of the informant as Exhibit-7.

18. The defence had also examined four witnesses.

19. D.W. 1 Ramesh Tiwari is the Mukhiya of the Gram Panchayat who has stated that appellant is a man of good character while the informant Bimla Devi is a woman of questionable character as before living with her present husband Dhanjee Upadhaya, she had left



three or four husbands earlier.

20. D.W. 2 Birendra Kumar Upadhaya has stated that appellant is a labourer and is a man of good character and he has been made accused only to put pressure to do labour at the behest of Dhanjee Upadhaya (P.W. 2).

21. D.W. 3 Radheshyam Giri and D.W. 4 Subhash Sharma have stated that appellant is a man of good character and has wife and four children while informant Bimla Devi is living with Dhanjee Upadhaya (P.W. 2) after leaving her two husbands.

22. Mr. Shankar Dayal Singh, learned counsel appearing on behalf of the appellant has submitted that admittedly, except victim herself, there is no eye witness to the occurrence. During the course of investigation, not a single witness has come forward to claim himself/herself to be the eye witness to the occurrence. The victim/informant is a married lady and even in the pathological examination of the victim (P.W. 1) no sign



of rape was found by the doctor. It had come during the course of investigation that appellant was a labourer and doing work in the house of the informant. The husband of the informant was putting pressure upon the appellant to work without payment of labour charge and when the appellant denied since payment for earlier work was not given by the husband of the informant, this false case was registered against the appellant.

23. *In contra*, learned A.P.P appearing on behalf of the State has stated that after 48 hours of the occurrence, the informant was examined by the doctor and under this circumstance, it is quite natural that the victim lady had to discharge the stool and urine under compulsion as a nature call and then it is not possible that spermatozoa will be found in the vaginal swab. Moreover, the statement of the informant was corroborated by the evidence of P.W.s 2, 3, 4 and 6. The defence had tried to malign the character of the informant (P.W. 1). If that be so, even a women of easy



virtue could not be raped by a person.

24. From perusal of the records and on going through the evidences, this Court finds none of the prosecution witnesses except the informant (P.W. 1) have seen the occurrence nor any witness, during the course of investigation has come forward to claim himself to be the eye witness to the occurrence. The evidence of victim is not corroborated by any independent witness or medical evidence. The victim herself is interested witness. The medical evidence does not substantiate the charge of committing rape levelled against the appellant which led to create a serious doubt upon the evidence of the victim. Hence, the conviction of the appellant is not sustainable in the eye of law. The victim is a married lady and the doctor during the course of medical examination had not found any sign of recent sexual assault against the informant (P.W. 1). Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the



manner and motive of the occurrence. Hence, the appellant is entitled to get the benefits of doubt.

25. In that view of the matter, the judgment of conviction dated 06.12.2005 and the order of sentence dated 08.12.2005 passed by the learned Additional Sessions Judge, F.T.C-III, Buxar in connection with Sessions Trial No. 23 of 2004/ 18 of 2004, arising out of Brahampur P.S. Case No. 168 of 2003 is set aside and the appeal is allowed.

26. The appellant is acquitted of all the charges after getting the benefits of doubt.

27. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

28. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
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