

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.810 of 2006

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SK.SEFAZ son of SK. Bashir, R/v Sonapur, P.S. Narpatganj, Distt. Araria

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramesh Kumar Singh
For the Respondent/s : Mr. A.M.P. Mehta

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 20 -03-2024

Heard Mr. R.K. Singh, learned counsel appearing
on behalf of the appellant as well as Mr. A.M.P. Mehta,
learned Additional Public Prosecutor for the State.

2. This appeal has been preferred by the appellant
challenging the judgment of conviction dt. 30.08.2006 and
order of sentence 31.08.2006 passed by Sri. Arun Kumar
Sinha, Additional District & Sessions Judge (Fast Track
Court No. V), in Sessions Trial no. 492 of 1999 and
21/2006 whereby and whereunder appellant has been
convicted for the offence punishable under Section 376 of
the Indian Penal Code and sentenced to undergo rigorous
imprisonment for seven years.

3. The prosecution case, in short, is that on
5.9.1996 at about 12:00 O'clock, while the informant was



sitting alone, appellant entered into her courtyard and started filthy talk with her. She was feeling uneasy and went inside her house. It is further alleged that appellant also entered into her house and committed rape forcefully. On hearing hulla raised by the informant/victim, her brother and mother came there and caught the appellant red handed. Appellant gave them assurance of marriage with the victim girl. Thereafter, they released him and on pretext of marriage, he started to establish physical relation regularly with her. It is further alleged that later on appellant denied marriage with the complainant/victim, thereafter the present case.

4. Victim/informant filed a complaint case bearing Complaint Case No. C43 of 1997 before learned S.D.J.M., Araria which was sent to Narpatganj Police Station under Section 156(3) Cr.P.C. for instituting and investigation the case. On the basis of complaint case, FIR was instituted by the police as Narpatganj P.S. Case No. 78 of 1997 under Sections 376, 493 and 323 of the Indian Penal Code against the appellant. After completing the investigation, police submitted chargesheet. On 15.6.1999



learned CJM, Araria took cognizance and the case was committed to the court of Sessions for trial and disposal.

5. Charges have been framed u/s 323 and 376 of the Indian Penal Code against the appellant. Trial court explained the charges to the appellant to which he pleaded not guilty and claimed to be tried.

6. To substantiate the charges leveled against the appellant, altogether seven witnesses have been examined by the prosecution. P.W.-1 Umanand Rideo, P.W.-2 Most. Amna Khatoon (mother of the informant), P.W.-3 Md. Ali Hussain (step brother of the informant), P.W.-4 Sk. Abul (independent witness), P.W.-5 Sk. Dalal (independent Witness), P.W.-6 Dr. Usha Rani Jaiswal and P.W.-7 Mohan Prasad Bhagat (Formal witness). In defense only one witness was examined as D.W.-1 Md. Nurul Hssan. He has proved the Nikahnama, which is exhibited as Ext-A.

7. P.W. 1, Umanand Rideo is eye witness of the occurrence and deposed in his evidence that on the alleged date of occurrence he was passing through the road and heard the crying sound of the victim. He went inside her house where he found that appellant was committing rape



with her. He stated in para 1 of her deposition that as a result of rape, she got pregnant. In para 3 of his cross examination, he stated that after 7-8 months of the occurrence, appellant performed marriage with the victim/informant. He has not stated anything on the point of assault by the accused persons.

8. P.W. 2. Most. Amna Khatoon (mother of the victim/informant) deposed in para-2 of her examination-in-chief she stated that after filing of complaint case against the appellant, he had performed marriage with the victim/informant and after two months of marriage, she delivered a baby boy, who died after 34 days. In para -4 of her cross-examination, she stated that she has not seen the occurrence. On point of assault, she has stated in para-7 of examination-in-chief that she and her daughter were assaulted by the accused persons by means of lathi and ballam but doctor who examined the informant did not find any injury on the person of victim. And medical report regarding assault was not produced by the prosecution.

P.W.-3 Md. Ali Hussain is step brother of the victim/informant. He has also supported the prosecution



story and evidence of P.W.- 1 and P.W.-2. On the place of occurrence, P.W.-3 caught hold the appellant but he released him on his promise regarding marriage with the victim. He stated that on the pretext of marriage, he regularly used to exploit her sexually resulting into her pregnancy and later on he refused to marry her. After filing the compliant case, he performed marriage with the victim and after two months of marriage, a baby boy was borne out of their wedlock.

9. P.W. 4 Sk. Abul and P.W.-5 SK. Dalal said that their statements were not recorded by the police and they declared hostile by the prosecution.

10. P.W. 6 Dr. Usha Rani Jaiswal is doctor. She examined the victim/informant on 14.5.1997. She found the age of the victim above 18 years and pregnancy of seven months. Medical reports are exhibited as Ext. 1/a and 1/b. She further stated that since the lady was pregnant of seven months, it was difficult to say about rape.

11. Learned counsel appearing on behalf of the appellant has submitted that learned trial court wrongly drawn the inference that the prosecution has established the



charges leveled against the appellant and illegally relied upon the evidences of prosecution witnesses. No any witness is the eye witness except the victim/informant herself but she was not examined before the court as she died. Allegedly, occurrence took place at victim's house on 5.9.1996 and from the place of occurrence, appellant was caught red handed by P.W.-3 but surprisingly, case was not registered against him on the same day, which shows that there was consensual relationship between victim and appellant. There is delay of about eight months in filing the complaint case. As per medical report, victim was major and above 18 years of age. It is further submitted that only to pressurize the appellant for marriage, he has been implicated in the present case. As per FIR, rape was committed with the victim on 5.9.1996 and her medical examination was conducted after more than eight months i.e. on 14.5.1997 and doctor found pregnancy of seven months only, which creates doubt in authenticity of the prosecution story. Umanand Risideo, witness no. 3 is said to be an eye witness of the occurrence as per complaint petition but in para -3 of his cross-examination he has stated



before the police that he came to know about the incident when he reached to the victim's house after the commission of crime. Evidence of P.W.-1 are full of contradictions. In view of the evidence on record, learned court below ought to have given a reasonable benefits of doubt to the appellant. The court below acted illegally in relying upon the evidence of the prosecution witnesses in convicting the appellant and reasons given are entirely erroneous, unsound and illegal. The learned trial Court's findings lack material evidences, reasoning and merit. Therefore, the impugned judgment of conviction and order of sentence should be set aside.

14. Learned APP appearing for the state argued that the impugned judgment in question is based on cogent and consistent evidence. Judgment of conviction and order of sentence is fit and proper and there is no need for interference in it and appeal is liable to be dismissed. Prosecution has been able to proof its case beyond all reasonable doubts. As a result of commission of rape, victim became pregnant. After filing the complaint case, appellant performed marriage with the victim and after two



months, she delivered a baby boy, who died after a month. Witnesses were cross-examined at length by the defense but nothing has come in their evidence to disbelieve or discredit them.

15. I have gone through the entire prosecution evidence, documents and exhibits on record. From perusal of the complaint petition, on the basis of which this case came into light and FIR has been lodged against the appellants, is exhibited as Ext-3. Victim/complainant specifically stated that witness no. 1 Sheikh Abdul and witness no. 2 Sheikh Dalal came on spot and they seen the occurrence. In this case, both witnesses were produced by the prosecution and they were examined as P.W.-4 and P.W.-5 and both declared hostile. So far as, P.W.-1 is concerned, he seems to be concocted and managed witness because in complaint petition of the victim, although his name is not mentioned as eye witness but in his deposition, in para 1 of his examination-in-chief, he claims to be an eye witness and in para-3 of his cross-examination, he retracts from his earlier statement and stated that before the police that he came to know about the occurrence, when he reached at the



house of the victim after the commission of crime. Hence, evidence of P.W.-1 became falsify by his own statement made in para-3 of his cross-examination. Due to non-examination of I.O., evidence of P.W.-1 has no importance and the same is contradictory and not believable. Victim/informant herself was not examined by the prosecution due to her death during trial. P.W.-2 Most. Amna Khatoon is mother of the victim and she is heresay witness. Evidence of medical report is not in consonance with the prosecution case as the occurrence of rape took place on 5.9.1996 and her medical examination was conducted after more than eight months but doctor found her pregnancy of seven months only. Investigating Officer, who conducted the investigation of the case was not examined by the prosecution, whose evidence was vital for determination of the case. In such situation, benefits of doubt goes in favour of the appellant. Medical report regarding assault to victim and her mother are not available on record. The prosecution has failed to prove the charges levelled against the appellant by the consistent and cogent evidence, the appellant is entitled to get benefits of doubt.



16. The ordeal of trial faced by the appellant since beginning of the case and considering that the prosecution has failed to prove the charges levelled against the appellant by the consistent and cogent evidence as well as defense has succeeded to raise the doubt in the prosecution version, so appellant is entitled to get the benefits of doubt. The impugned judgment of conviction and order of sentence is hereby set aside and the appellant is acquitted after getting the benefits of doubt.

17. Appellant is discharged from the liabilities of the bail bonds.

18. Accordingly, the instant appeal is hereby allowed.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	13.03.2024
Uploading Date	20.3.2024
Transmission Date	20.3.2024

