

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.419 of 2013**

Arising Out of PS. Case No.-117 Year-2009 Thana- BARARI District- Katihar

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Kundan Kumar Ram S/O Ashok Ram Resident Of Village- Jagdishpur, Police
Station- Barari, District- Katihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Bimal Kumar, Advocate

For the Respondent/s : Ms. Abha Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT**

Date : 24-06-2024

Heard Mr. Bimal Kumar, learned counsel for the
appellant and Ms. Abha Singh, learned A.P.P. for the State.

2. The present appeal is directed against order/judgment
dated 14.02.2013 and sentence dated 16.02.2013 passed by
learned Additional Sessions Judge-IV, Katihar in Sessions Trial
No. 73 of 2011 arising out of Barari P.S. Case No. 117 of 2009
dated 09.07.2009 under Section 376 of the Indian Penal Code
whereby and whereunder the appellant has been convicted under
Sections 376 and 511 of the Indian Penal Code and sentenced
him to undergo for rigorous imprisonment of 7 years.

3. According to the prosecution case, this appellant is
alleged to have committed rape upon the informant and fled
away from the place of occurrence.



4. Learned counsel for the appellant submits that on the basis of the written report, a formal F.I.R was registered bearing Barari P.S. Case No. 117 of 2009 under Section 376 of the Indian Penal Code and the police after investigation submitted a charge sheet under Sections 376 and 511 of the Indian Penal Code and thereafter, the case was committed to the Court of Sessions and appellant was put on trial and finally he was convicted. He further submits that charge sheet no. 220 of 2009 dated 31.08.2009 under Sections 376 and 511 of the Indian Penal Code was submitted and on 12.05.2011 charge has been framed under Section 375 and 511 of the Indian Penal Code.

5. Learned counsel for the appellant submits that altogether 8 witnesses have been examined. P.W.1, Arun Kumar Pandit is the eye witness but in course of the trial he became a hearsay witness and he has not supported the person of the victim. P.W.2, Kartik Pandit is also a hearsay witness and he is a formal witness and he has put his signature on the seizure list as a seizure list witness but in his cross examination he deposed that clothes and cap were belong to whom he does not know. P.W.3, Dr. L. Sen who found that the age of the victim was about 17 to 18 years and she has also stated that no injury was found on the private parts of the victim and hymen was intact.



P.W.4, Indradeo Paswan (Investigating Officer), P.W.5, Mahawati Devi who is mother of the victim, P.W.6, Ram Narayan Pandit who is father of the victim, P.W.7, Pushpa Kumari the informant and P.W.8, Shekhar Singh (formal witness) and from the defence side also one witness was examined, namely, Upendra Ram as D.W.1.

6. Learned counsel for the appellant submits that from perusal of the paragraph no. 22 of the impugned judgment which states that learned Court has come to the conclusion that the appellant accused tried to commit rape upon the victim but luckily the victim's voice was heard by Arun Pandit (P.W.1) who came at the place of occurrence and after seeing him the accused fled away. He further submits that despite finding of the learned Trial Court, the Trial Court held the accused guilty of offences under Section 376 and 511 of the Indian Penal Code and awarded him sentence of rigorous imprisonment for 7 years.

7. Learned counsel for the appellant submits that P.W.1 and one Mamta Kumari came at the place of occurrence where P.W.1 clearly stated that he is a hearsay witness and Mamta Kumari was not examined by the prosecution. He further submits that the case of the informant is that the appellant fled away leaving behind his clothes, caps and slippers but the P.W.2



who is seizure list witness deposed that he has no knowledge about the said clothes and other items and he does not know to whom it belong. Although he has put his signature on the seizure list and he has also stated that the said seizure list was prepared at the door of Ram Narayan Pandit (P.W.6) who is father of the informant.

8. Learned counsel for the appellant submits that from perusal of the deposition of Dr. L. Sen, it is clear that she has not found any marks of external or internal injury on the private parts of the informant and hymen was intact and even the P.W.4 who is Investigating Officer did not found any marks/sign at the place of occurrence. He further submits that it has come in the paragraph no. 14 of the judgment that P.W.1 has clearly stated that he has heard that “rape has been committed with the daughter of Nand Narayan Pandit”. It is further stated that the P.W.2 has also clearly mentions that “the clothes actually belong to whom he does not know and the police officer had not read over anything to him”. P.W.3 who is doctor stated in paragraph no. 16 of the impugned judgment that “she had examined Pushpa Kumari, daughter of Ram Narayan Pandit and found her age between 17 to 18 years and she had not found any injury on the private part and hymen intact and no definite opinion about



rape can be taken. She also identified the report and the same is marked as Ext.2. In her cross examination she has stated that the opinion about the age may differ as up to 1 to 2 years”.

9. Learned counsel for the appellant further submits that from perusal of the F.I.R it appears that on *hulla* made by the informant, P.W.1, Arun Pandit and one Mamta Kumari came at the place of occurrence but the P.W.1 clearly deposed that he heard about the occurrence and Mamta Kumari was not examined by the prosecution and due to the aforesaid reason, it is clear that the entire prosecution story is false and fabricated and even the doctor has not found any sign of rape on the person of the victim and all the independent witnesses have been withheld and only the family members of the victim have been examined by the prosecution. He further submits that the doctor has also not supported the case of the prosecution and despite that the learned Court below without considering the same has passed order of sentence against the appellant which is fit to be set aside.

10. Learned counsel for the appellant submits that from perusal of the impugned order in paragraph no. 22 of the judgment, the learned Court below has come to the conclusion :-

“on the basis of the scrutiny of the oral evidence adduced by the prosecution I find that one the alleged date of occurrence the



accused namely Kundan Kr. Ram had tried to commit rape on the person of victim Pushpa Kumari although he could not find himself able to perform rape but luckily the victim was saved as on coming of Arun Pandit and Mamta Kumari to the place of occurrence the accused fled away after leaving his belongings accordingly I find and hold him guilty of committing an offence punishable u/s 376 read with section 511 of the I.P.C. and convict him for the same.”

11. It appears that the appellant had tried to commit rape on the person of the victim although he could not find himself able to perform rape but despite of that the learned Court below has convicted the appellant for the offences punishable under Section 376 read with Section 511 of the Indian Penal Code. Apart from that the appellant was in custody since 18.08.2009 to 26.11.2009 before the conviction and after conviction he was in custody since 14.02.2013 to 21.06.2013.

12. It appears that the learned Court below on the basis of the evidence adduced by the prosecution that the appellant had tried to commit rape but the learned Court below had convicted the appellant under Section 376 read with Section 511 of the Indian Penal Code, in fact, the appellant had not committed rape upon the victim and as per the case of the prosecution the appellant had only tried to commit rape upon the victim and witnesses have not supported the case of the prosecution and even the Dr. had not found any injury on the



private part and hymen was intacted and according to the Dr. the rape was not committed upon the victim.

13. Considering the aforesaid facts and circumstances of the case, the orders dated 14.02.2013 and 16.02.2013 passed by learned Adhoc Additional Sessions Judge-IV, Katihar in Sessions Trial No. 73 of 2011 arising out of Barari P.S. Case No. 117 of 2009 are set aside and the appeal stands allowed. The appellant is acquitted from all the charges levelled against him in the present case.

14. Let the appellant be set free at once, if he is not warranted in any other case.

(Rajesh Kumar Verma, J)

Vanisha/-

AFR/NAFR	NAFR
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