

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1755 of 2017

Arising Out of PS. Case No.-274 Year-2007 Thana- KISHANGANJ District- Kishanganj

Manoj Kumar Das Son of Uttam Lal Das, Resident of Village- Simalbari,
P.S.- Kishanganj, Dist.- Kishanganj.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Amal Kumar Sinha, Adv.
For the Respondent/s : Mrs.Smt. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 12-01-2024

1. Heard learned counsel for the appellant and learned
A.P.P. appearing for the State.

2. The present appeal has been filed against the
Judgement of Conviction dated 11.04.2017 and Order of Sentence
dated 13.04.2017 passed by learned Additional District & Sessions
Judge-I, Kishanganj, in Sessions Trial Case No. 268/ 2008, arising
out of Kishanganj PS case No. 274/ 2007, whereby and
whereunder the appellant has been convicted for the offence
punishable under Section 376 of the Indian Penal Code
(hereinafter referred as 'IPC') and sentenced him to undergo
rigorous imprisonment for 10 years with a fine of Rs. 20,000/- and
in default of payment of fine to undergo additional rigorous



imprisonment of one year. It has been further directed that the 50% of fine so realized be paid to the victim.

3. The appellant, namely, Manoj Kumar Das, stood charged for the offence punishable under Section 376 of IPC. In every criminal case the F.I.R. is deemed to be very crucial and particularly when it was lodged by the victim herself then it can be deemed to be the basis of prosecution's case. The most important facts appearing from the prosecution's allegation in the light of prosecution's story revealed by the victim in the F.I.R. are that:-

(i) The first occurrence of sexual assault with the victim took place six months before the date of lodging of the F.I.R.

(ii) The first occurrence was committed by the appellant with the victim when she went to attend a call of nature in the maize field and the said occurrence took place in the evening at 7 PM.

(iii) In the first occurrence the appellant firstly pushed the victim to the ground when she sat to attend the call of nature and thereafter stuffed cloth in her mouth when she tried to raise an alarm and threatened to kill her if she tried to raise an alarm and during commission of that occurrence, the appellant tried to convince the victim that he would marry her and also persuaded



her not to disclose the said incident to anyone and assured her that he would definitely marry her if she would continuously keep herself indulge in establishing sexual relation with him.

(iv) The appellant had been establishing sexual relation with the victim for six months from the date of first occurrence of sexual assault on the pretext to marry her and finally the victim became pregnant and at the time of institution of the F.I.R. she was carrying six months old pregnancy regarding which a Panchayat meeting was also held but the appellant did not follow the *Panchayat's* direction.

4. From the above relevant facts, it is clearly apparent that the F.I.R. was lodged by the victim six months after the commission of first occurrence of sexual assault, though she took the defence that the appellant convinced her that he would marry her and believing him she remained in sexual relationship with the appellant for six months and in this regard, the victim's own evidence is crucial.

5. The victim was examined as PW 5. She deposed in her cross-examination that she told her father about her pregnancy after six months from the date of first occurrence but the first offence of sexual assault that had been committed in the maize field was brought in the knowledge of his father on the same day of that



occurrence but his father neither took her to police station nor took her to *Sarpanch* or *Mukhiya*. From the said facts one thing is quite clear that the first alleged occurrence of sexual assault had come in the knowledge of the victim's father on the same day but even then no legal action was taken by her father though there may be a justification on the part of the victim that on account of her being convinced by the appellant that he would marry her she did not take any legal action but such justification can not be deemed to be proper on the part of victim's father.

6. As per allegation made in the F.I.R., the victim was in sitting position in the maize field for the purpose of attending a call of nature when the appellant attacked her but as per victim's evidence, the appellant caught hold of her from behind when she was returning from the maize field after attending a call of nature and the said contradiction raises a serious doubt in the victim's allegation. The victim deposed before the trial court that the appellant threatened her by showing a knife and said that he would kill her if she raised an alarm. But such statement was not made by the victim in her written report and she did not reveal the use of a knife by the appellant while threatening her.

7. As per the F.I.R., at the time of commission of first occurrence of sexual assault the appellant convinced the victim



that he would marry her and persuaded her to keep herself indulge in sexual relation with him continuously and thereafter on the basis of said pretext he sexually exploited her for several months but in this regard, the victim remained mum before the trial court and deposed that the appellant raped her by putting her in fear by showing a knife when she was returning from a maize field after attending a call of nature and on account of that sexual assault she became pregnant and on the next day in the morning a *Panchayat* meeting was held in which the appellant accepted his wrong and promised that he would marry the victim. But the factum of keeping sexual relationship with the victim by the appellant for six months on the pretext to marry her, as alleged in the F.I.R., was not revealed by the victim before the trial court and the said contradiction casts a serious doubt in the prosecution's allegation.

8. As per F.I.R., the victim was carrying six months old pregnancy when she lodged the F.I.R. but during investigation, in her restatement she stated before the police that she was carrying eight months old pregnancy. Here it is important to mention that the relevant portion of victim's said re-statement which was given on the same day of the F.I.R. was proved by the defence by drawing attention of the victim towards her said part of re-statement.



PW 2 is said to be father of the victim who deposed in the cross- examination that her daughter (victim) gave birth to a daughter one or two months after lodging the F.I.R. and from this statement it can be deemed that at the time of institution of the F.I.R. the victim was carrying the pregnancy of more than six months old.

PW 3 deposed that the victim gave birth to a child 5-6 months after the institution of the case. In this way, regarding the time when the victim conceived, there are serious contradictions among the statements of the prosecution's witnesses and moreover, the victim was not medically examined during the investigation though the prosecution took the plea that on account of victim's pregnancy being at advanced stage she was not medically examined but admittedly the victim gave birth to a child and thereafter also no step was taken by the prosecution to ascertain the child's paternity by way of scientific methods such as D.N.A. test and the said circumstances goes against the prosecution.

9. As per F.I.R., when the victim became pregnant then a *Panchayat* meeting was held in between the victim's family and the appellant and it was deposed by the prosecution's witnesses that a document was also prepared in the said *Panchayat* meeting and some of the prosecution's witnesses deposed that several



Panchayat meetings were held but in this regard, neither any document concerned to the said *Panchayat* meetings nor any of the *Panchas* was produced and examined before the trial court and the said circumstance goes against the prosecution.

10. As per F.I.R., nobody except the victim saw the commission of occurrence of first sexual assault and the victim did not name anyone as to showing him to have seen the appellant committing the alleged occurrence but PWs 3 and 4 deposed before the trial court that when the victim raised an alarm they rushed to the spot and saw the appellant lying over the victim and as per their statements, they saw the appellant committing the first sexual assault with the victim but regarding the presence of these witnesses the victim herself remained mum in the F.I.R.

11. PW 2, victim's father, deposed in the cross-examination that the case would not have been lodged if the accused/ appellant married the victim. He further deposed that the appellant had also lodged two cases against him and others prior to institution of their case. From these facts, it is clear that at the time of institution of the F.I.R. there was strained relationship in between the victim's family and appellant's family on account of prior litigations which were running in between them.



12. In this matter, PW 1 is said to be an independent witness and he deposed in the cross- examination that there was love affair in between the appellant and the victim and they were often seen in company of each other for one year before the commission of the alleged occurrence and when appellant's father and uncle did not agree to marry the victim then the present case was lodged.

13. From the above discussed facts appearing from the statements of prosecution witnesses, one thing is quite clear that the F.I.R. of present matter was lodged with an intention to pressurize the appellant to marry the victim or to harass him when he and his family members refused to marry the victim.

14. After having discussed the prosecution's evidences this court forms the opinion that the prosecution failed to establish before the trial court the first occurrence of alleged sexual assault and also did not succeed to prove the sexual relationship between the appellant and victim which was alleged to have been established by the appellant with victim on the basis of false pretext or assurance to marry the victim made by the appellant and there are serious contradictions, discussed in earlier paragraphs, in between the victim's evidence, who is the most crucial witness of the prosecution, and the facts revealed by the victim herself in the



F.I.R. and there are also serious contradictions among the statements of the prosecution witnesses regarding the relevant facts of the F.I.R., as discussed above, and the evidences available on the case record of the trial court are not just and sufficient for the conviction of the appellant regarding the alleged offence of rape hence, the impugned judgement and order convicting and sentencing the appellant for the charged offence punishable under Section 376 of IPC are set aside and the present appeal stands allowed.

15. Let the release direction be sent to the Jail Superintendent concerned for immediate release of the appellant in the present matter if his custody is not required in any other case.

16. Let the Judgement’s copy be sent to the learned trial court for information and compliance.

17. Let the L.C.R. be sent back to the learned trial court forthwith.

(Shailendra Singh, J)

BKS/-

AFR/NAFR	AFR
CAV DATE	N. A.
Uploading Date	19.01.2024
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