

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.665 of 2021

Arising Out of PS. Case No.-25 Year-2018 Thana- MAHILA P.S. District- Nalanda

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Ravindra Kumar, Son of Sant Kishore Prasad @ Sante Mahto, R/O
Village- Woiao, P.S.- Asthama, District- Nalanda, At Present House No.-
499 G/F Ranibagh, Sakurbasti, Delhi-34

... .. Appellant

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Ajay Kumar Thakur, Advocate
Mr. Ajay Mukherjee, Advocate
Mr. Ganesh Sharma, Advocate

For the State : Ms. Shashi Bala Verma, Addl. PP

For the Informant : None.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 21-06-2024

The present appeal has been filed by the appellant against the judgment of conviction and order of sentence dated 13.09.2021 and 17.09.2021 respectively passed by the learned Additional Sessions Judge-VI-cum-Special Judge, POCSO Act, Bihar Sharif, Nalanda in POCSO/G.R. Case No. 1146/2018 arising out of Mahila P.S. Case No. 25/2018 whereby and whereunder the appellant has been held guilty of the offences punishable under

section 376 of the Indian Penal Code (in short 'IPC') and under sections 4 and 6 of the Protection of Children from Sexual Offences Act (in short 'POCSO Act') and for these offences, the appellant has been sentenced to undergo rigorous imprisonment for twenty years with a fine of Rs. 20,000/- (Twenty thousand rupees) for the offence under section 6 of POCSO Act and the trial court in view of the provisions of section 42 of the POCSO Act has not awarded the punishment to the appellant for the offence under section 376 of IPC as the punishment for the offence under section 6 of POCSO Act is greater than that of section 376 of IPC. The learned trial court has directed that the amount of fine shall be given as compensation to the victim and in case of default of payment, the convict/appellant shall further undergo six months of simple imprisonment and in addition to the said compensation, the District Legal Services Authority, Nalanda has been directed by the trial court to grant compensation of Rs. 5,00,000/- (Five lakhs rupees) to the victim under the Victim's compensation fund or scheme for the purpose of compensating and rehabilitating the victim.

2. The prosecution's case appearing from the typed report of the informant-cum-victim alleged therein inter alia, in short, is that the victim's sister's marriage has been solemnized

with the appellant according to Hindu customs and rites on 22.04.2016 and the appellant is an employee in Railway Department posted as Loco Pilot and he is brother-in-law of the informant. As per the narration of the FIR, the informant was aged about 17 years at the time of lodging her FIR and after victim's sister's marriage, the appellant persuaded her to go with him to Delhi to visit the historical places such as Red Fort, Qutub Minar, etc. and in the effect of that persuasion, the informant boarded the Magadh Express train at Ekangarsarai railway station on 05.07.2016 with her sister (wife of the appellant) and the appellant and they reached Delhi on 06.07.2016 in the evening at about 6-7 P.M. and on the same day, just after reaching at the residential flat of the appellant, the victim's sister went to bathroom for taking bath then taking advantage of that situation, the appellant established physical relationship with the victim and at that time, her age was 15 years 3 months and 4 days. After establishing physical relationship, the appellant convinced the informant that he loved her and would marry her and thereafter, on 20.07.2016 he again established physical relationship with her and since then, he continued to establish relationship with her whenever he got a chance and in that course, he succeeded to make a video and photographs of her in her nude condition which was used by him

to threaten her. The informant further alleged in the FIR that even after returning from Delhi at her parental village Gauragarh, the appellant again established physical relationship with her several times from the month of September 2016 to October 2016 on the promise to marry her. The informant further alleged that when she asked the appellant to marry her then the appellant said to her that he used to establish sexual relationship with several girls and ladies including his relatives and threatened her to remain in physical relationship with him otherwise he would make viral the video and photographs containing the obscene picture of her on social media and he started torturing her mentally and finally, on 28th October, 2016 she ate poison to commit suicide but anyhow her life was saved.

3. On the basis of the typed FIR (Ext.-5) of the informant, the formal FIR bearing registration no. 25/2018 (Ext.-6) was registered at Biharsharif Mahila police station which set the criminal law in motion and the investigation was started.

After completion of the investigation, the appellant was chargesheeted for the offences under sections 376 of IPC and under sections 4, 8 and 12 of POCSO Act and also under sections 67 of the Information Technology Act (in short 'IT Act') and on

that basis, the Special court of POCSO Act took cognizance of the alleged offences.

4. The appellant stood charged for the offences under sections 366(A) and 376 of IPC and also charged for the offences under sections 4, 8 and 12 of the POCSO Act. The said charges were read over to the appellant and explained in hindi by the trial court to which he did not plead guilty rather claimed to be tried for the charged offences.

5. During the trial, the prosecution produced and examined the following witnesses and also proved several documents in documentary evidence and got them marked as Exhibits and the ocular evidence and documentary evidence are being detailed as under : -

P.W. 1 : - Kishori Mahto

P.W. 2 : - Raj Kumari Devi

P.W. 3 : - Anju Kumari

P.W. 4 : - XXXX (victim/informant of the case)

P.W. 5 : - Dr. Sangita Verma (who examined the victim)

P.W. 6 : - Anju Tiwari (I.O. of the case)

The documents exhibited and proved on behalf of prosecution : -

Ext. 1 : - Signature of informant-cum-victim on the FIR

Ext. 2 : - Signature of victim on her statement recorded
u/s 164 Cr.P.C.

Ext. 3 : - Signature of victim on Medical Report

Ext. 4 : - Educational certificate of victim issued by
Bihar School Examination Board

Ext. 5 : - An endorsement on the FIR

Ext. 6 : - Formal FIR

Ext. 7 : - Chargesheet

Ext. 8 : - Certified copy of Deposition of a witness in
matrimonial (Divorce) case No. 19/2019

Three photographs which were marked as X to X/2 for
identification.

6. After the completion of the prosecution evidences, the statement of the appellant was recorded wherein the main circumstances appearing against him from the prosecution evidences were explained to him which were denied by him. While recording the statement under section 313 of the Code of Criminal Procedure (in short 'Cr.P.C'), the appellant took the specific defence that the informant was her sister-in-law (sister of his wife) and he had been dragged in a false case as he could not have fulfilled the demand of money made by his in-laws and there were litigations in between him and his wife.

7. The appellant did not give any ocular evidence in his defence but produced several certified copies of the cases concerned to the matrimonial case, informatory petition, maintenance case and notice etc. relating to the litigations which were running between him and his wife and got them marked as exhibits which are being detailed as under : -

Ext. A - Certified copy of deposition of P.W. 1/father of victim, in maintenance case No. 190(M) of 2017 u/s 125 Cr.P.C. filed by P.W.-3, wife of appellant, against him on 12.12.2017.

Ext. B – Certified copy of the order sheet of matrimonial case No. 21/2018 dated 25.06.2019

Ext. C – Certified copy of the order sheet dated 04.01.2018 of informatory petition vide Misc. Petition No. 23C7/2018 filed by Balmiki Kumar (brother of the appellant) against the wife and in-laws of the appellant.

Ext. D – Certified copy of the petition of Maintenance Case No. 190(M) of 2017 filed by P.W.-3, wife of the appellant.

Ext. D/1 – Certified copy of an affidavit in Case No. 190(M) of 2017 sworn in by P.W.-3, wife of the appellant.

Ext. D/2 – Certified copy of Misc. (Informatory) Petition No. 23C7/2018 filed by Balmiki Kumar (brother of the appellant).

Ext. D/3 – Complaint of Matrimonial Case No. 21/2018 filed by the appellant on 23.01.2018.

Ext. E – Notice dated 22.03.2018 issued from Mahila P.S. against the appellant and his family members on the complaint by wife of the appellant Ravindra Kumar for counselling between both the parties dated 26.03.2018.

8. After taking the evidence of both the sides and recording the statement of the appellant, the learned trial court convicted and sentenced the appellant in the manner discussed in the paragraph No. 1.

9. Mr. Ajay Kumar Thakur, learned counsel for the appellant assisted by learned advocate, Mr. Ajay Mukherjee, has argued that an unexplained inordinate delay took place on the part of the informant in lodging the FIR regarding the incident allegedly committed by the appellant with her and the said delay in itself is sufficient to create a serious doubt in the informant's allegations as the incidents of physical relationship allegedly established by the appellant with the informant took place in the month of July, September and October of 2016 but the FIR was lodged in the year 2018 after the delay of one and a half years i.e. on 10.04.2018. In fact, there was a matrimonial dispute between the appellant and sister of the informant (wife of the appellant) and

a maintenance case had been filed by the wife of the appellant against him and the matrimonial suit was filed by him prior to the institution of the FIR of the present matter and the matrimonial dispute in between the appellant and his wife had started prior to the institution of the FIR of the present matter. The informant lodged the FIR just some months after the filing of the matrimonial case by the appellant which shows a malafide intention on the part of the informant to create pressure or harass him and an informatory petition showing an apprehension of false implication in a case had been filed by the brother of the appellant against the prosecution party which is also sufficient to draw the inference that the informant did not come with clean hands before the police while lodging her case.

10. Learned counsel has further argued that as per the prosecution's story, the informant consumed poison and attempted to commit suicide but in this regard, no evidence was given by the prosecution and even the investigating officer did not find any evidence in support of the said consuming of poison by the informant.

11. Learned counsel further argued that no electronic evidence in order to prove and support the allegation of clicking photographs containing obscene picture of the informant and

making video of the informant in her nude condition could be produced by the prosecution and the said allegation remained “disproved” during the trial. In fact, there was an illicit relationship between the appellant’s wife and her brother-in-law that had started prior to the lodging of this case and on account of this illicit relationship, a matrimonial case was lodged by the appellant against his wife which was going on before the institution of the FIR of the present matter. An attempt was made for settlement of matrimonial dispute between the appellant and his wife but the same went futile and thereafter, only to harass the appellant and to extort money from him, the FIR of the present matter was lodged on 10.04.2018 i.e. the date on which the conciliation efforts failed.

12. Learned counsel has further argued that in respect of the alleged events described by the informant, the main prosecution witnesses including the victim herself made such statements which are contradictory to each other and during investigation, the investigating officer did not find any cogent and incriminating evidence against the appellant and in this regard, the evidence of I.O./P.W.-6 is relevant.

13. Here it is important to mention that today, no body appears on behalf of the informant despite her advocate having made his appearance on earlier occasion.

14. Though, Ms. Shashi Bala Verma, learned Additional PP appearing for the State has opposed this appeal but fairly accepted that there are serious contradictions in between the testimony of the prosecution witnesses and an inordinate delay took place on the part of the informant in lodging her FIR and the same remained unexplained. Learned APP has not shown any cogent material to rebut the above-mentioned defences taken by the appellant.

15. While convicting the appellant, the learned trial court mainly placed reliance on the victim's statement recorded by her under section 164 of Cr. P.C. and also on the evidence deposed by the victim before the trial court and deemed the evidence of P.Ws. 1, 2 and 3 as hearsay evidence. Here, it is important to mention that the learned trial court observed in the judgment impugned that the investigation remained faulty and also did not place reliance upon the victim's story as to her consumption of poison with an intention to commit suicide. Despite these weaknesses of the prosecution's case, the learned trial court

believed the victim's allegations to be true and finally convicted the appellant for the charged offences.

Consideration : -

16. We have heard both the sides, perused the materials available before this Court and also have gone through the statement of the accused. The prosecution's story consists of three allegations. As per the first allegation made by the informant/victim, the appellant, who happens to be husband of the victim's elder sister, firstly, persuaded her to visit Delhi to see historical places such as Red Fort, Qutub Minar, etc. and on his persuasion, she went with the appellant and her elder sister (appellant's wife) to Delhi on 05.07.2016 by Magadh Express train and they reached on 06.07.2016 and on that day in the evening when the victim's sister went to bathroom, the appellant after finding the victim alone established sexual relation with her after promising to marry her and at that time, her age was 15 years 3 months and 4 days and thereafter on 20.07.2016, the appellant again established physical relationship with her and in the meantime, he succeeded in making her obscene nude video and taking her obscene photographs which he used as a tool to threaten her.

17. The Second allegation made by the victim is that after returning from Delhi to her village *Gauragarh*, the appellant established physical relationship with her several times between September 2016 and October 2016 on the pretext to marry her and when she asked him to perform marriage with her then the appellant avoided her request and told her that he used to make illicit relationship with several ladies and girls including his relatives and threatened her to make her obscene video and photographs viral if she did not remain continue in physical relationship with him.

18. The third allegation made by the victim is that on 28.10.2016, she consumed poison with an intention to commit suicide but her life was saved by her family members.

19. The main defences taken by the appellant are that the alleged occurrence of establishing physical relationship with the victim by the appellant is said to have taken place in the months of July, September and October, 2016 but the FIR was lodged in the year 2018 after the delay of about one and a half years and the FIR was lodged with malice intention.

20. The second defence is that all the four material witnesses of the prosecution including the victim, made contradictory statements regarding the main allegations which are

sufficient to raise a serious doubt in the credibility of the victim's allegations.

21. The third defence is that the investigating officer did not investigate the allegations of the informant properly as the alleged places of occurrences were not visited by her and the evidence of the investigating officer is, in itself, sufficient to disprove the allegations of the informant/victim.

22. The fourth defence is that before the institution of the instant matter, a matrimonial dispute between the appellant and his wife (P.W. 3) was going on and when the settlement could not be reached out in between them then the informant, who happens to be younger sister of this appellant's wife, lodged the FIR with false allegations after considerable delay of one and a half years from the date of the alleged acts.

23. The fifth defence is that the prosecution failed to bring any evidence regarding the attempt of suicide which is said to have been made by the informant/victim.

24. In the light of the above allegations and the defences/pleas taken by the appellant, we are now going to analyze the evidence of the material witnesses of the prosecution to find out the actual truth which is as follows : -

Analysis of the evidence of the prosecution witnesses

25. P.W. 1, father of the victim, deposed that the appellant, his wife and the informant returned from Delhi after 2 or 3 months while as per victim's evidence, she returned on 21.07.2016 and she remained in Delhi with the appellant for about 15 days. This witness further stated that his daughter (victim) told him about the alleged acts of the appellant in the month of January 2018 but as per the evidence of P.W. 3, sister of the informant, the alleged acts of the appellant came in her knowledge before 30.05.2017 and at that time, she remained in Delhi with the appellant and became pregnant and thereafter returned back and then she got the knowledge of the alleged occurrences. Likewise, P.W. 2, mother of the informant, stated that some days after the returning of the informant from Delhi, she had a conversation with her daughter (victim) and then she got the knowledge of the alleged acts of the appellant. From these statements of the witnesses, it is clearly evident that P.W. 1 made a false statement regarding his knowledge about the commission of the alleged occurrence and as per the evidence of P.W. 2 and P.W. 3, the alleged crime had come in the knowledge of the informant's family members just some days after the returning of the informant

from Delhi but the FIR was lodged on 10.04.2018 which creates a serious doubt in the allegations levelled by the informant.

26. The informant's elder sister, P.W. 3, is wife of the appellant and as per her evidence, just some months after her marriage, the matrimonial relationship between her and the appellant became tensed and firstly, the witness P.W. 3 filed a maintenance case against the appellant in the family court at Biharsharif, Nalanda on 12.12.2017 and thereafter, on 23.01.2018, the appellant filed his matrimonial suit bearing no. 21/2018 (Ext. D/3) for the restitution of his conjugal rights. The most important thing is that as per the evidence of P.W. 2 and P.W. 3, the occurrences of physical relationship allegedly made by the appellant with the informant had come in the knowledge of PW-3 and her other family members just some months after the commission of the first part of the occurrences but even then P.W.-3 did not make the illicit relationship allegedly made by her husband (appellant) with the informant a ground in her maintenance case rather she made the allegation in her application of maintenance case that her husband/appellant had an illicit relationship with another woman and in this regard, the statement made by PW-3 in paragraph nos. 16 and 17 of her deposition is relevant. If the appellant had established physical relationship with

her sister then the said relationship ought to have been disclosed by PW-3 in her maintenance case but she remained mum. Further, the important thing is that the informant lodged her case on 10.04.2018 just some months after the institution of the matrimonial suit by the appellant against the sister of the informant and in this regard, the statement made by PW-3 in paragraph no. 18 of her deposition is relevant. As per the prosecution's story, the first incident of physical relationship happened on 06.07.2016 and the same continued to remain in force till October, 2016 but the FIR was lodged on 10.04.2018 shortly after filing of the matrimonial suit by the appellant and the said circumstance raises a serious doubt in the credibility of the allegations levelled by the informant and it appears that the informant lodged her case with malicious intention to harass the husband of her sister.

27. As per prosecution's story narrated by the victim, in the FIR, she attempted to commit suicide by consuming poison on 28.10.2016 but her life was saved. In support of this incident, the prosecution failed to produce any evidence while as per PW-4/victim (informant) a Doctor, namely, Mahendra, treated her after she had consumed poison but regarding this said fact, the investigating officer neither collected any evidence nor any interrogation was made by her from the victim regarding her

consuming the poison and in this regard, the investigating officer remained completely careless. However, the factum of the said attempt of suicide could have been proved by the prosecution by adducing the evidence of the Doctor concerned who is said to have treated the informant after she had consumed the poison but the prosecution did not take any attempt to examine the doctor.

28. P.W.4/ victim (informant) deposed in her examination-in-chief that she was taken to a hotel by the appellant located at *Ramchandrapur* where the appellant again established physical relationship with her but the informant did not say anything about the said incident in her FIR and the investigating officer/P.W. 6 stated that during investigation, the informant did not reveal the name of the hotel where the appellant made physical relationship with her and she further stated that she did not get any evidence regarding the said allegation.

29. As per the prosecution's story, the appellant clicked and made obscene video and photographs of the informant which was used by him for giving threat to the informant. In this regard, the investigating officer deposed in paragraph No. 7 of her cross-examination that during investigation, not a single person or witness came before her revealing that he/she had seen the alleged nude video in the mobile phone of the appellant and as per the

evidence of this witness, it does not appear that any evidence regarding the capturing of nude photographs or making the obscence video of the victim by the appellant in electronic form was given by the victim or her family members to the investigating officer.

30. The victim/PW-4 stated in paragraph 21 of her cross-examination that she went to police station one or two months after she had made her parents aware of the occurrence and before that she submitted a separate written application to the Superintendent of Police which was also sent to the police station and the Superintendent of Police wrote something upon that application. The prosecution did not produce the said application which was filed by the informant before the Superintendent of Police and the same appears to have been withheld by the prosecution intentionally which creates a doubt in the credibility of the prosecution's allegation.

31. Here, it is relevant to mention that the brother of the appellant had filed an informatory petition (Ext.-D/2) in the court concerned showing his apprehension of false implication in a case by the prosecution party prior to the institution of the FIR and in this regard, the statement made by PW-1 in paragraph no. 14 of his evidence is relevant. PW-1, father of the informant, stated in the

cross-examination that his daughter (elder sister of the informant) filed a maintenance case (Ext.-D) against the appellant on 12.12.2017 in the Family Court concerned in which he recorded his evidence on 06.03.2019 and he revealed the alleged acts of the appellant which were committed by him with the informant (victim) of this case but later on, this witness stated in the cross-examination that he had no knowledge of the present matter which shows that he made contradictory statements and further, in support of the said evidence of PW-1 given by him in the maintenance case of his elder daughter, the copy of his deposition was not filed by the prosecution. The said witness stated in the cross-examination that he did not reveal before the police that the appellant used to establish physical relationship with the victim. The witness did not give any explanation regarding his silence with regard to the non-revelation by him before the police in respect of the alleged sexual relationship which remained in force from 6th July, 2016 to October 2016 between the appellant and the informant.

32. The informant alleged in the FIR that in effect of persuasion made by the appellant, she went to Delhi with him and lived there for fifteen days but in regard of her journey as well as residing in Delhi, no evidence was given by her and in the cross-

examination, she stated that she had no photograph with the appellant in support of her residing in his company in Delhi and the Investigating Officer/PW-6 stated that she did not go to Delhi for the investigation and no statement of any person was recorded in connection with the first occurrence which was allegedly committed by the appellant with the informant in Delhi and she further stated that she did not collect any evidence regarding the informant's going to Delhi with appellant which shows that the I.O. completely remained careless in making proper investigation in respect of the main part of the occurrences.

Conclusion:-

33. From the above discussion of the facts and circumstances which have emerged from the prosecution's evidences, we are of the considered opinion that the informant lodged her case with malifide intention in order to harass the appellant as well as to make pressure upon him on account of the matrimonial dispute which had started between the appellant and the sister of the informant prior to lodging of the FIR and in that course, the victim's sister, firstly, lodged her maintenance case and thereafter, the appellant lodged a matrimonial suit and the informant's sister remained silent regarding the alleged acts of the appellant in her maintenance case which were allegedly committed

by him with her sister and as per evidence of PW-1, the appellant's brother had filed an Informatory Petition showing his apprehension regarding false implication in a case by the prosecution party prior to the institution of the FIR and the Investigating Officer did not find any cogent evidence to corroborate the victim's allegations and the prosecution did not succeed to prove the informant's attempt to commit suicide as stated by her in the FIR and further, a long unsatisfactory delay took place on the part of the informant or her parental family members in lodging the FIR against the appellant despite the alleged occurrence having come in the knowledge of the victim's family members several months before the institution of the FIR, so, these circumstances as well as contradictions in the evidence of prosecution witnesses as discussed above seriously affect the prosecution's case and create serious doubts in the credibility of the allegations made by the informant against the appellant. The prosecutrix as well as the prosecution witnesses such as P.W. 1, P.W. 2 and P.W. 3 are wholly unreliable witnesses. The learned trial court evaluated the prosecution's evidences in wrong manner and its conclusion regarding the guilt of the appellant in respect of the alleged charged offences does not appear to be proper and legal, so, the same needs interference from this Court. The

appellant has made out a case of clean and honourable acquittal. Accordingly, we acquit the appellant of the offences for which he was charged and set aside the judgment and order impugned convicting and sentencing him for the charged offences.

34. The appellant is in custody, hence, he is directed to be released forthwith from the jail if his custody is not required in any other case.

35. Let the LCR be sent back to the trial court concerned forthwith.

36. Let the judgment's copy be sent to the trial court as well as jail authority concerned for needful.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.06.2024
Transmission Date	27.06.2024