

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3368 of 2019

Arising Out of PS. Case No.-20 Year-2005 Thana- JOKIHAT District- Araria

Quddus @ Md. Quddus S/O Israil @ Md. Israil R/O Village- Pipra, Ward No. 7, P.S.- Jokihat, District- Araria (Bihar)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rama Nand Poddar
For the Respondent/s : Mr. A.M.P. Mehta

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 13-11-2024 Heard the learned counsel for the appellant and the learned counsel for the State.

2. This appeal has been directed against the judgement and order dated 11.06.2019 as well as dated 15.06.2019 passed by the learned 1st Additional District and Sessions Judge, Araria in Sessions Trial No. 901 of 2009, arising out of Jokihat P.S. Case No. 20 of 2005 registered for offence alleged under Sections 376, 493 of the Indian Penal Code by which the court below has awarded 10 years imprisonment and a fine of Rs. 50,000/- in Section 376 of the Indian Penal Code in default of payment of fine, further undergo a simple imprisonment of six months and also out of the said fine Rs. 40,000/- shall be paid to the victim as compensation under the provision of Section 357 of the Cr.P.C.



3. The prosecution case in short is that the accused-appellant had sexual intercourse with the victim by giving false assurance to the victim that he would marry her. After that she got pregnant but the accused refused to marry her and he has gone outside the village and when he returned to the house of victim on 28.8.2004 at 10:00 A.M. while the victim was alone in her house, the accused finding opportunity came in her courtyard and asked her to go inside the house, on her refusal he forcibly entered in her house and committed rape upon her for which *Panchayti* in the village was convened but the accused did not ready to marry with the victim. From this evidence, it is evident that the accused never intended to marry her and procured her consent only for the reason of sexual relation with her.

4. It has been submitted by the learned counsel for the appellant that after investigation, the Police submitted charge sheet against the appellant for the offence alleged under sections 376, 493 of the Indian Penal Code and the learned court below has taken cognizance for the offence under sections 376, 493 of the Indian Penal Code. Thereafter, the case was committed and the charge was framed for the offence under section 376, 493 of the Indian Penal Code against the appellant for which he



pleaded not guilty and claimed to be tried.

5. The defence of the appellant is total denial of the occurrence and false implication in this case. On behalf of the prosecution altogether 13 witnesses were examined P.W-1 is Jannati Khatoon (Sister-in-law of the Informant), P.W-2 is Jakir (father of the informant), P.W-3 is Md. Yakub (Brother of the informant), P.W- 4 is Udesha Khatoon (mother of the Informant), P.W-5 is Quayum, P.W -6 is Md. Sabir, P.W-7 is victim-Informant herself, P.W-8 is Badiyujjama@ Badarulijama, P.W-9 is Ravi Lal Rishideo, P.W-10 is Anirudh Rajak (Investigating Officer), P.W-11 is Nilambar Bharti (2nd Investigating Officer), P.W-12 is Md. Ishmail and, P.W-13 is Md. Mumtaz Alam. Out of 13 witnesses, 2 witnesses are investigating officers, 6 witnesses become hostile and narrated another story and all other witnesses are family members of the informant/Victim.

6. From the records and from the statement of the victim girl (P.W-7), it appears to be a case of consensual sex though the victim girl (P.W-7) has said in her cross-examination in chief that she was raped by the appellant but the victim girl (P.W-7) in her evidence in paragraph no. 09 of her cross-



examination has said that the appellant had not stopped her from shouting and he did not tell her that he will marry her.

7. P.W-1 is the Sister-in-law (Nanad) of the victim (P.W-7). In her deposition she has said that appellant was caught inside her house with the victim girl. She had found the door closed and she heard the voice of the appellant who was inside the room. The door was opened by the victim girl (P.W-7) and the appellant. P.W-1 had caught the appellant. She had not raised any *Halla*. She allowed the appellant to leave.

8. P.W-2 namely Jakir (father of the victim) has said that he has not seen the occurrence but was informed about the occurrence by his daughter-in-law.

9. P.W-3 namely Md. Yakub (brother of the informant) has said that he has also not seen the occurrence. He says that after one hour of occurrence, they all had come back as they had gone out for working. There was a mediation in the Madarasa which was attended by all his family members.

10. P.W-4 namely Udesb Khatoon (Mother of the informant) has said that her daughter had caught the victim girl (P.W-7) and the appellant. She is not an eyewitness of the occurrence but an hearsay witness.

11. P.W-5 namely Quayum, P.W-6 namely Md. Sabir



and P.W-8 namely Badiujjama @ Badarulijama have been declared hostile. P.W-9 namely Rati Lal Rishideo is a formal witness. P.W-10 is the I.O of the case. He has deposed that he had not recorded the evidence of any eyewitness and it has come during investigation that the victim girl (P.W-7) was in relationship with many persons of the village. The victim girl (P.W-7) was not medically examined. P.W-11 is the second I.O. of the case who has not done any investigation. P.W-12 & 13 have also been declared hostile.

12. In the present case, the date of occurrence mentioned in the complaint petition is 20.03.2004 and 28.08.2004. The complaint was filed on 28.09.2004 and the F.I.R. has been registered under Section 156(3) of the Cr.P.C. on 03.04.2005. The complaint has been filed after one month of the second date of occurrence and there is no explanation for the delay in the complaint. The prosecution has not explained the delay in lodging the complaint on the basis of which F.I.R. was registered subsequently.

12. The Hon'ble Supreme Court in the case of ***Dilawar Singh v. State of Delhi reported in (2007) 12 SCC 641*** has held that unexplained delay in lodging the FIR is fatal to the prosecution.

"9. In criminal trial one of the cardinal



principles for the court is to look for plausible explanation for the delay in lodging the report. Delay sometimes affords opportunity to the complainant to make deliberation upon the complaint and to make embellishment or even make fabrications. Delay defeats the chance of the unsoiled and untarnished version of the case to be presented before the court at the earliest instance. That is why if there is delay in either coming before the police or before the court, the courts always view the allegations with suspicion and look for satisfactory explanation. If no such satisfaction is formed, the delay is treated as fatal to the prosecution case.”

13. The Hon’ble Supreme Court in the case ***P. Rajgopal v. State of Tamil Nadu reported in (2019) 5 SCC 403***, has held as follows:

“12. Normally, the Court may reject the case of the prosecution in case of inordinate delay in lodging the first information report because of the possibility of concoction of evidence by the prosecution. However, if the delay is satisfactorily explained, the Court will decide the matter on merits without giving much importance to such delay. The Court is duty-bound to determine whether the explanation afforded is plausible enough given the facts and circumstances of the case. The delay may be condoned if the complainant appears to be reliable and without any motive for implicating the accused falsely.”

14. Similarly, the Hon’ble Supreme Court in the case



of *State of Punjab v. Ramdev Singh* reported in (2004) 1 SCC 241 has held as follows:

“Delay in lodging the FIR cannot be used a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version....”

In the present case also, there is a long delay in lodging the complaint i.e., the delay of about nine months and it appears that from the conduct of the victim/informant and from her deposition, it appears that the victim had eloped with the appellant and thereafter, she has returned home. The complaint was filed after nine months as an afterthought by the P.W. 6 and from the reading of the evidence of the victim, it appears that it is a case of elopement and consensual sex and for such an occurrence, the appellant cannot be convicted.

15. In the present case, the complaint has been filed after a long delay which is in the facts of the case is fatal to the



prosecution case. From the statement of the victim girl (P.W-7) it appears that she was in relationship with the appellant and the victim girl knew the consequences of her association with the appellant. Other witnesses also don't say that any rape has been committed by the appellant. In a case of consensual sex, the ingredients of a rape are not made out.

16. In the facts of the case, I am of the view that this is a case of consensual sex between the appellant and the victim (P.W-7). The prosecution has failed to prove any charges levelled against the appellant therefore, the conviction of the appellant is set aside.

17. Accordingly, the judgement and order dated 11.06.2019 as well as sentence dated 15.06.2019 passed by the learned 1st Additional District & Sessions Judge, Araria in Sessions Trial No. 901 of 2009 arising out of Jokihat P.S. Case No. 20 of 2005 is hereby set aside.

18. This appeal is allowed and the appellant is acquitted.

(Sandeep Kumar, J)

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