

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.956 of 2023

Arising Out of PS. Case No.-4 Year-2020 Thana- KODHOBARI District- Kishanganj

Victim (X.N.P), aged about 24 years, female, D/o Haswbul Rehman, Village-
Gorumara, W.No-6, P.S.- Kodhobari, Dist- Kishanganj

... .. Appellant/Informant

Versus

1. The State of Bihar
2. Nasir Alam, male, age not given Village- Gorumara, W.No-6, P.S.-
Kodhobari, Dist- Kishanganj

... .. Respondents

Appearance :

For the Appellant : Mr. Mrityunjay Kumar, Advocate
For the Respondents : Mr. Satya Narayan Prasad, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

3 22-02-2024 Heard Mr. Mrityunjay Kumar, learned counsel for the
appellant/original informant and Mr. Satya Narayan Prasad,
learned A.P.P for the Respondent/State.

2. The present appeal has been filed by the
appellant/original informant under Section 372 of the Code of
Criminal Procedure, 1973 (hereinafter referred to as “**Code**”)
against the judgment and order of acquittal dated 17.07.2023
passed by learned Additional Sessions Judge-1st, Kishanganj in
Sessions Trial No. 77 of 2020/CIS No. 77 of 2020 (arising out
of Kodhobari Police Station Case No. 04 of 2020) whereby, the
concerned Trial Court has acquitted the accused/private



respondent of the charges levelled against him for offences punishable under Sections 376, 323, 504 & 506 of the Indian Penal Code.

3. Learned counsel for the appellant/original informant has placed on record the copy of the deposition of the prosecution witnesses as well as the copy of the FIR. Learned counsel referred to the same and thereafter submitted that, in the present case, the appellant/informant, who is the victim, had lodged the FIR under Sections 376, 323, 341, 354 & 504 of the Indian Penal Code against the concerned accused including the present private-respondent.

4. It is further submitted that after investigation, the Investigating Officer filed the charge-sheet against all the accused before the concerned Magistrate Court. However, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code. It is further submitted that before Sessions Court, the prosecution had examined eight witnesses and also produced documentary evidence. Thereafter, the statement of the accused, under Section 313 of the Code, came to be recorded. After conclusion of the trial, the Trial Court has passed the impugned order, whereby all accused have been acquitted.



4.1. At this stage, learned counsel submits that the appellant/informant has filed the present appeal against only one accused, namely, Nasir Alam against whom, allegation of rape is made. It is fairly submitted that against the order of acquittal passed against the other four accused, the appellant has not preferred any appeal.

5. Learned counsel for the appellant would thereafter submit that PW-5, who is the victim, aged about 25 years, has specifically deposed against the present private-respondent and stated before the Court, the manner in which, the occurrence took place. It is further stated that statement of the victim under Section 164 of the Code was also recorded by the learned Magistrate. Thereafter, learned counsel submits that the medical evidence also supports the case of the victim despite which the Trial Court has passed the impugned order of acquittal in favour of the private-respondent. Learned counsel, therefore, urged that the impugned order be quashed and set aside.

6. Learned counsel for the appellant has placed reliance upon the decision rendered by the Hon'ble Supreme Court in the case of *Anurag Soni vs. State of Chhattisgarh* reported in (2019) 13 SCC 1. Learned counsel has more particularly placed reliance upon paragraphs 13 to 15.



7. On the other hand, learned APP for the Respondent-State has also referred to the deposition of the prosecution witnesses including the deposition given by the Doctor, PW-8. Learned APP thereafter referred to the reasoning recorded by the Trial Court and thereafter contended that the Trial court has not committed any error while passing the impugned order and, therefore, this Court may not entertain the present appeal. However, learned APP has also submitted that looking to the facts and circumstances of the present case, this Court may pass appropriate order. At this stage, it is also submitted that till today, the State has not preferred any acquittal appeal against the order passed by the Trial Court.

8. We have considered the submissions canvassed by the learned counsels appearing for the parties and also perused the material placed on record including the deposition of prosecution witnesses. From the record, it would emerge that the victim, who is the major girl, submitted written application in which, it has been alleged that about 6 months prior to the lodging of the FIR, the accused Nasir Alam, who was cousin brother of the informant, came to her house and taking advantage of her loneliness, raped her against her will. Thereafter, it has been also alleged that the accused promised to



marry to the informant, therefore, she did not inform about the incident to anyone. Thereafter, accused again entered into sexual intercourse with the informant on the promise of marriage but in the meantime, about 15 days prior to lodging of the FIR, quarrel took place between the father of the informant and the father of the accused with regard to the ownership of bamboo as a result of which the accused denied to marry the informant.

9. It further transpires from the record that except the victim, nobody has seen the alleged incident. It is true that on the basis of the deposition given by the victim only, conviction can be recorded without corroboration. However, it is well settled that the sole testimony of the informant must be of sterling quality and she must be trustworthy. The “sterling witness” has been dealt with and considered by the Hon’ble Supreme Court in the case of ***Rai Sandeep vs. State (NCT of Delhi)*** reported in ***(2012) 8 SCC 21***. The Hon’ble Supreme Court has observed in para 22 as under:

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be



immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court



without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

10. In the case of ***Krishan Kumar Malik vs. State of Haryana reported in (2011) 7 SCC 130***, the Hon’ble Supreme Court has considered the aspect of “*sterling witness*”.

11. Keeping in view the aforesaid decisions, if the deposition given by PW-5, victim, is examined, it is revealed that for the alleged occurrence of rape, she had given the written application after the period of six months. It is further revealed that as per the case of the victim, the occurrence took place somewhere in April, 2020. However, as per the FIR, which was recorded on 29.02.2020, the occurrence had taken place six months prior to the lodging of the FIR that means somewhere in August, 2019. It would further reveal from the deposition of the victim that the victim has not specifically given the date and time of the occurrence. She has also referred to her statement, which was recorded under Section 164 of the Code, in which



she has admitted to have voluntarily eloped with accused Nasir Alam (present private respondent) and remained in his house for three days. The said aspect has also been admitted by her in paragraph 14 of her cross-examination. Further, in para 16 of her statement, she stated that she could not have filed the case if Nasir Alam had married with her but thereafter, in paragraph 18, she further states that now, she does not want to marry Nasir Alam. Thus, from the deposition of the said witness, who is the victim, it is revealed that there are major contradictions in the story put forward by the said witness. It is required to be noted at this stage that, the FIR came to be filed when the respondent/accused refused to marry the victim because of the quarrel which took place between both the families.

12. Thus, from the FIR lodged by the victim, the deposition given by her and from statement given by the victim under Section 164 of the Code, it can be said that initially, the private-respondent/accused was having intention to marry the victim. However, because of the quarrel took place between two families, he has refused.

13. At this stage, we would like to refer to the decision rendered by the Hon'ble Supreme Court in the case of ***Dr. Dhruvaram Murlidhar Sonar vs. State of Maharastra &***



Ors. reported in (2019) 18 SCC 191. The Hon'ble Supreme Court has observed in *para 23* as under:

“23. Thus, there is a clear distinction between rape and consensual sex. The court, in such cases, must very carefully examine whether the complainant had actually wanted to marry the victim or had mala fide motives and had made a false promise to this effect only to satisfy his lust, as the latter falls within the ambit of cheating or deception. There is also a distinction between mere breach of a promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape. There may be a case where the prosecutrix agrees to have sexual intercourse on account of her love and passion for the accused and not solely on account of the misconception created by accused, or where an accused, on account of circumstances which he could not have foreseen or which were beyond his control, was unable to marry her despite having every intention to do. Such cases must be treated differently. If the complainant had any mala fide intention and if he had clandestine motives, it is a clear case of rape. The acknowledged consensual physical relationship between the parties would not constitute an offence under Section 376 IPC.”

14. From the aforesaid decision rendered by the



Hon'ble Supreme Court, it can be said that there is a clear distinction between rape and consensual sex. The Court in such cases must very carefully examined whether the accused had actually wanted to marry with the victim and *mala fide* motives and had made false promise to this effect only to satisfy his lust. It is further observed that there is also a distinction between mere breach of promise and not fulfilling a false promise. If the accused has not made the promise with the sole intention to seduce the prosecutrix to indulge in sexual acts, such an act would not amount to rape.

15. In the case of *Anurag Soni (Supra)* upon which the reliance is placed by the learned counsel for the appellant, the Hon'ble Supreme Court has recorded the facts in paragraph 13 and thereafter observed in paragraphs 13, 14 & 15 as under:

“13. Applying the law laid down by this Court in the aforesaid decisions, the following facts emerging from the evidence on record are required to be considered:

13.1. That the family of the prosecutrix and the accused were known to each other and, therefore, even the prosecutrix and the accused were known to each other.

13.2. That though the accused was to marry another girl Priyanka Soni, the accused continued to talk of marriage with the prosecutrix and continued to give the promise that he will marry the prosecutrix.



13.3. That on 28-4-2013 the appellant expressed his wish telephonically to meet with the prosecutrix and responding to that the prosecutrix went to the place of the accused on 29-4-2013 by train, where the accused received her at Railway Station Sakti and took her to his place of residence in Malkharauda.

13.4. That during her stay at the house of the accused from 2.00 p.m. on 29-4-2013 to 3.00 p.m. on 30-4-2013, they had physical relation thrice.

13.5. That as per the case of the prosecutrix, the prosecutrix initially refused to have physical relation, but then the appellant allured her with a promise to marry and had physical relation with her.

13.6. That, thereafter the prosecutrix called the accused number of times asking him about the marriage, however, the accused did not reply positively.

13.7. That thereafter the prosecutrix informed about the incident to her family members on 6-5-2013.

13.8. That the family members of the prosecutrix negotiated with the family members of the accused.

13.9. That on 23-5-2013, the appellant expressed his willingness to marry the prosecutrix and a social function was scheduled on 30-5-2013, which did not take place.

13.10. That, again the family members of both the parties had talks, in which the marriage was negotiated and a social



function was scheduled on 10-6-2013, which was again not held and further, the social event was fixed for 20-6-2013.

13.11. *That on 20-6-2013, the appellant telephonically informed the prosecutrix that he has already married.*

13.12. *That, Priyanka Soni, PW 13, who is the wife of the accused stated that one year prior to the marriage that took place on 10-6-2013, the negotiations were going on.*

13.13. *That the accused married Priyanka Soni on 10-6-2013 in Arya Samaj, even prior to the social function for the marriage of the accused with the prosecutrix was scheduled on 10-6-2013 and even thereafter the social event was fixed for 20-6-2013.*

14. *Considering the aforesaid facts and circumstances of the case and the evidence on record, the prosecution has been successful in proving the case that from the very beginning the accused never intended to marry the prosecutrix; he gave false promises/promise to the prosecutrix to marry her and on such false promise he had physical relation with the prosecutrix; the prosecutrix initially resisted, however, gave the consent relying upon the false promise of the accused that he will marry her and, therefore, her consent can be said to be a consent on misconception of fact as per Section 90 IPC and such a consent shall not excuse the accused from the charge of rape and offence under Section 375 IPC.*

15. *Though, in Section 313 CrPC statement, the accused came up with a case that the*



prosecutrix and his family members were in knowledge that his marriage was already fixed with Priyanka Soni, even then, the prosecutrix and her family members continued to pressurise the accused to marry the prosecutrix, it is required to be noted that first of all the same is not proved by the accused. Even otherwise, considering the circumstances and evidence on record, referred to hereinabove, such a story is not believable. The prosecutrix, in the present case, was an educated girl studying in B. Pharmacy. Therefore, it is not believable that despite having knowledge that the appellant's marriage is fixed with another lady Priyanka Soni, she and her family members would continue to pressurise the accused to marry and the prosecutrix will give the consent for physical relation.”

16. If the facts of the present case are examined, we are of the view that the aforesaid decision rendered by the Hon'ble Supreme Court in the Case of *Anurag Soni (Supra)*, would not be applicable in the facts of the present case and, therefore, would not render any assistance to learned counsel for the appellant.

17. At this stage, we would also like to refer to the deposition given by Doctor PW-8, Dr. Devendra Kumar for examined the victim. The said doctor has stated that he was a part of the Medical Board which examined the victim girl. He



has also stated that the victim was composed and well oriented and there was no external or internal sign of violence, hymen was found old ruptured, no stain of sign of violence, injury or any foreign body parts were found or inner side of thigh. Pregnancy test came negative, no spermatozoa, alive or dead were found or vaginal swab. As per the doctor girl was aged about 18 years and there was no evidence of recent sexual intercourse. Thus, the medical report also did not confirm the commission of rape even when the girl was examined on the same day.

18. From the aforesaid deposition given by the *Doctor*, we are of the view that the medical evidence does not support the version given by the victim.

19. At this stage, we would also like to refer to the order dated 10.01.2014 passed by this court in *Criminal Appeal (DB) No. 550 of 2023*. In the said order, the Division Bench of this Court has considered the decisions rendered by the Hon'ble Supreme Court and thereafter observed in para 21, 22, 23 as under:-

“21. At this stage, it is also pertinent to note that we are dealing with the acquittal appeal filed by the informant against the order of acquittal rendered by the concerned trial court. The Hon'ble



Supreme Court in the case of Chandrappa and Ors. Vs. State of Karnataka, reported in (2007) 4 SCC 415 has observed in Paragraph-42 as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappraise and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to



interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

*22. Recently, the Hon'ble Supreme Court in the case of **Nikhil Chandra Mondal Vs. State of West Bengal**, reported in (2023) 6 SCC 605 has observed in **Paragraph No. 22** as under:-*

*“22. Recently, a three-Judges Bench of this Court in the case of **Rajesh Prasad v. State of Bihar** has considered various earlier judgments on the scope of*



interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

23. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption in favour of the accused. When the order of acquittal has been recorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence is that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further



reinforced, reaffirmed and strengthened by the court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

20. Keeping in view of the aforesaid principle laid down by the Hon’ble Supreme Court as well as this Court, the impugned order passed by the Trial Court is carefully examined, we are of the view that the Trial Court has not committed any error while passing the impugned order and the scope of interference in the acquittal appeal is governed by the aforesaid decisions rendered by the Supreme Court and, therefore, in the present acquittal appeal filed by the appellant/informant, we are not inclined to interfere with the impugned order.

21. Accordingly, the appeal stands dismissed.

(Vipul M. Pancholi, J)

(Sunil Dutta Mishra, J)

Gaurav Kumar/-

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