

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.157 of 2008

Sk. Firoz, son of Sk. Harun, resident of village Jawakatiya, P.S. Majhauriya,
District- West Champaran

... .. Appellant/s

Versus

State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ravi Bhardwaj, Amicus Curie
For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA**

ORAL JUDGMENT

Date: 10-04-2025

Heard Mr. Ravi Bhardwaj, Amicus Curiae for the
appellant, and Mr. A.M.P. Mehta, learned APP for the State.

2. The appellant has been convicted under Section 366 and 376 Indian Penal Code by the Judgment dated 17.12.2007 and Sentence of order dated 19.12.2007 passed by the learned Additional District Judge F.T.C. IInd Bettiah (West Champaran) in Sessions Trial No. 264 of 2001 and sentenced to undergo rigorous imprisonment of 10 years in each sentence and also sentenced to fine of Rs. 10,000/- (ten thousand rupees). The sentences were directed to run concurrently.

3. The prosecution case is that the informant namely Sk. Mustak filed a Written report to the Superintendent of police of West Champaran (Bettiah) on 08.07.1998 stating



therein that he used to work in the house of Sk. Haroon for the last 6 years. During that period Sk. Haroon's son Sk. Firoz enticed his daughter Kaushar Johan aged about 18 years and established illicit relations with her and thereby made her pregnant. The informant inquired about the matter but the accused persons threatened to kill the informant. He further alleged that on 05.07.1998 accused Sk. Firoz abducted the girl and took her away. He further alleged that on the same day all the accused persons kidnapped the informant from Jawakatiya Village and took him away to Village Lal Saraiya and confined him in a room and brutally assaulted him threatening that if he would talk about the alleged relationship between the victim girl and the accused Sk. Firoz, he would be killed. The police investigated the case and after completing the investigation submitted Charge-sheet against the appellant and other accused persons. The case was committed to the Court of Sessions and the same was pending in the Court of the learned Additional District Judge F.T.C. IInd Bettiah (West Champaran) as Sessions Trial No.264 of 2001 (State Versus Sk. Firoz and others) for Trial.

4. During the course of trial the Prosecution altogether examined 7 prosecution witnesses: PW-1 Sk. Choukat



(Co-Villager), PW-2- Sarman Nesha (Mother of the Victim). PW-3- Sk. Mustak Ahmad (Informant), PW-4 Sk. Akhtar (Co-Villager), PW-5 Kaushar Jahan (Victim), PW-6 Md. Mazid and PW-7 Ram Pyare Ram (IO). On the other hand, the defence produced one witness- DW-1, Ram Babu Tripathi (Judicial Magistrate who recorded victim's statement under Section 164 Cr.P.C.).

5. PW-1 stated in his examination-in-chief that the occurrence took place at 7:30 PM on 05.07.1998 on Sunday. He stated that Sk. Haroon, Sk. Javed, Sk. Saral, Sk. Feroz, Sk. Johar, Sk. Noordasar and Sk. Shamsheralam kidnapped the victim (PW-5) and forcefully caused her to abort the child she was carrying. He stated that the victim (PW-5) used to work at the house of Sk. Mustaq, Sk. Haroon. During this time, she had an illicit relationship with the son of Sk. Haroon, i.e. Sk. Firoz and she became pregnant, for which a panchayat was held in the village. He further stated that he was informed of the miscarriage by the villagers. He further stated that the accused/appellant brought the informant to Sk. Rauf's place and confined him in a room for two days and kept him hanging upside down where the appellant along with other accused persons assaulted the informant. He stated that after that he and



other villagers freed the informant, Mustaq.

5.i. In his cross-examination, PW-1 stated that at the time of the incident the age of the victim was 12-13 years. He further stated that in the *Panchayat* that was held, there was no *Maulvi* or *Panch*. The members of the *Panch* did not do any investigation. He stated that before the *Panchayat* it was proved that Sk. Haroon had caused the miscarriage of the victim and the matter of abortion was proved to be true. He further stated that apart from the assault on the informant, he did not see any occurrence and his evidence was based on hearsay.

6. PW-2 is the wife of the informant. In her examination-in-chief she stated that her husband, the informant used to work at Sk. Haroon's place and in the course of the same, her daughter used to visit the accused/appellant's house regularly. During this time, Sk. Firoz established physical relations with her daughter because of which she became pregnant. She stated that when she complained to Sk. Haroon, the father of accused/appellant, the accused came to her door with a gun and tied her husband's mouth and took him to the garden of Sk. Rauf in Lal Taraiya, where he along with others tied his hands and hung him upside down and then hit him with a stick on the sole of his feet. She stated that the villagers freed



her husband after three days.

6.i. During cross-examination, PW-2 stated that at the time of the abortion, her daughter was not with her. In Para-9 of her cross-examination she stated that her daughter, the victim did not lodge the FIR after the accused/appellant aborted her child. She further stated in Para-11 of her cross-examination that injuries on her husband were examined by a doctor in Majhaulia hospital.

7. PW-3, Sk. Mustaq is the informant of the case. In his examination-in-chief he stated that accused/appellant Sk. Feroz kidnapped his daughter and when he inquired about the same, Sk. Haroon, Sk. Javed, Sk. Saral, Sk. Feroz (appellant), Sk. Johar, Sk. Noordasar and Sk. Shamsher Alam threatened to kill him if he told anyone about the kidnapping. He stated that on the same day the accused came to his house with *lathi*, *bhala* and guns and took him away to Lal Saraiya where they tied him upside down from a tree in Sk. Rauf's garden and hit him with a stick on the sole of his feet. He stated that they kept him tied for four days. He stated that his daughter, the victim used to work at Sk. Feroz's house and in the course of the same, the accused/appellant Sk. Feroz established illicit relations with her under the false promise of marriage. He stated that he continued



to do so for a year and thereby made his daughter pregnant. He stated that when his daughter informed the accused/appellant about the pregnancy he took her to Bettiah to abort the child. PW-3 further stated that his daughter came back to her home from the accused/appellant's house three years before the date of deposition.

7.i. In Para-10 and 11 of his cross-examination, PW-3 stated that at the time of the occurrence, his daughter was 12-13 years of age and that he was informed of her pregnancy from PW-2, his wife. He also stated that after being informed of her pregnancy he did not have his daughter examined. In Para-12 he stated that he did not file any case of kidnapping of his daughter. The informant was throughout aware of the alleged illicit acts by the accused/appellant but even then he did not lodge an FIR. In Para-15 he stated that he was assaulted by the accused. He further stated that after being informed of his daughter's abortion, he did not lodge any FIR. In Para-16 he stated he stated that the police at Majhauria P.S. did his medical examination in which they recorded injuries on his body. In Para-17 he stated that at the time when he was assaulted PW-1 was present. Further in Para-19 he stated that the he did not know whether the police conducted a medical examination of



his daughter or not and neither was he aware if the S.P. recorded the statement of his daughter. In Para-22 he stated that his daughter was living with him for three years and before that for 6 years she lived with the accused/appellants.

8. PW-4, Sk. Akhtar was declared hostile by the prosecution as he denied having any knowledge about the occurrence.

9. PW-5, Kaushar Jahan is the victim in the instant case and she stated in her examination-in-chief that the accused Sk. Feroz kidnapped her from her house. She stated that since two years before the incident her father used to work at the house of the accused/appellant and during that time she used to visit the house of the accused/appellant along with her father. The accused Sk. Feroz had raped her and when she complained, he gave her a false promise of marriage. Thus, by luring her with the promise to marry, he kept establishing illicit relationship with her and raping her continuously for a year due to which she became pregnant and when her parents came to know about this, her father went to Sk. Haroon's house to complain. At Sk. Haroon's place there were Sk. Saral, Sk. Amanullah, Sk. Johar, Sk. Javed, Sk. Navsoor and Sk. Haroon who threatened her father with assault and then the



accused/appellant took her to Dr. Nirmala Gupta's place in Bettiah and got her abortion done. When her father, PW-3 went to the accused/appellant's place to ask about the matter, all the accused kept her father locked up for four days and beat him.

9.i. During her cross-examination, PW-5 stated that she did not remember when the inspector had recorded her statement. In Para-15 she stated that she had the abortion when she was 8 months pregnant. In Para-16 she stated that no *Panchayat* was held after her abortion. She further stated that police did not conduct any medical examination of her and neither did her father, PW-3 conduct any medical examination of her. In Para-17 she stated that she did not make any complaint to the S.P. and neither did she file any case against the accused/appellant.

10. PW-6, Md. Mazid, Advocate Clerk is a formal witness who only proved the contents of the FIR.

11. PW-7, Ram Pyare Ram is the second Investigating Officer in the instant case. He stated in his examination-in-chief that he did not examine any of the prosecution witnesses and neither did he inspect the place of occurrence. He stated that he only submitted the charge-sheet.

12. DW-1, Ram Babu Tripathi is the Judicial



Magistrate who recorded the statement of the victim (PW-5) under Section 164 of the Cr.P.C.

13. Learned counsel for the appellant submitted that *firstly*, there was an unexplained delay in lodging of the FIR. The informant was well aware of the kidnapping of PW-5 which took place on 05.07. 1998 and yet he filed the FIR on 08.07.1998. PW-5 (victim) herself stated that she was living with the accused/appellant for over a year when the appellant was having an illicit relationship with her and thereby became pregnant. When the informant confronted the accused/appellant he was allegedly threatened by him but the informant still did not lodge an FIR. *Secondly*, the doctor who is said to have done the abortion of PW-5 has not been examined and no evidence has been produced by the prosecution to show that abortion was done. He further submitted that there is no proof of pregnancy of victim girl apart from oral testimony of the victim and her family members. The doctor, namely Dr. Nirmala Gupta who allegedly conducted the abortion has not been examined. No medical report has been produced by the prosecution to show that she was pregnant. *Thirdly*, learned counsel submitted that there is no injury report on record to support PW-3's statement that he was assaulted and that there was injury on the person of



the informant. Further there are no eye-witnesses to the alleged assault on the informant. Fourthly, no independent witnesses have been examined in support of the prosecution case. Fifthly, the statement of PW-5 (victim) under Section 164 Cr.P.C. does not show any allegation against the accused' side. Learned counsel further stated that in Para-5 of his cross-examination, PW-3 stated that his daughter came back home three years before the date of recording of his statement. The statement of PW-3 was recorded in 2004 therefore PW-3 admitted that his daughter came back in 2001 which means that even after lodging the FIR in the year 1998, the victim was staying at accused/appellant's house for three years.

14. On the other hand, learned Additional Public Prosecutor has vehemently opposed this appeal and submitted that there is direct allegation against the present appellant, for kidnapping the informant and raping the victim PW-5. In view of the aforesaid statements and the evidence on record, learned trial Court has rightly convicted the appellants and the present appeal should not be entertained.

15. At this stage, I would like to appreciate the relevant extract of entire evidence led by the prosecution before the Trial Court.



16. Having perused the FIR, statement of the witnesses and materials available on record and after considering the submissions made by the learned counsels for the respective parties, it is seen that in the instant case out of the seven witnesses presented by the prosecution, none of the witnesses are independent. PW-4 the sole independent witness turned hostile. It is further observed that the FIR was lodged on 08.07.1998 whereas the incident occurred on 05.07.1998. Moreover as per the statement of PW-3 (victim), her relationship with the accused/appellant was going on for a year but no FIR was lodged for the alleged offence of rape. PW-2, the mother of the victim admitted in Para-9 of her cross-examination that the victim did not lodge the FIR after the accused/appellant aborted her child. She further stated in Para-11 of her cross-examination that injuries were examined by doctor in Majhauria hospital but no injury report has been brought on record. On perusal of the records it is further clear that the prosecution has not presented any evidence to show that the victim was pregnant and neither any medical report has been filed to show that there was termination of pregnancy. PW-5 named the doctor who did her abortion, but the doctor has also not been examined by the prosecution. There is no prove of



illicit relationship or alleged pregnancy or even abortion of PW-5. The statement of PW-3 (informant) that he was tied by his legs upside down and assaulted on his feet is also not supported by any documentary or oral evidence. PW-2 who supported the incident of assault was not an eye-witness and hence her statement is not cogent evidence. PW-5 gave her statement under Section 164 Cr.P.C. but the same does not reveal any allegation against the accused/appellant. It is further observed that there is contradiction in the statement of the PW-3 (informant) given before the Court and the FIR with respect to the age of the victim. In the FIR he stated that his daughter was 18 years of age at the time of occurrence but in his statement before the Court he stated that his daughter is 12-13 years of age. In Para-5 of his cross-examination, PW-3 stated that his daughter came back home three years before the date of recording of his statement. The statement of PW-3 was recorded in 2004 therefore PW-3 admitted that his daughter came back in 2001 which means that even after lodging the FIR in the year 1998, the victim was staying at accused/appellant's house for three years.

17. Thus, in light of the above discussion, it is clear that the prosecution has failed to produce any cogent



evidence which would establish the offences alleged to have been committed by the appellant beyond shadow of all reasonable doubt. In such circumstances, it would not be proper to uphold the order of conviction of the appellant/accused.

18. In view of the above, the judgment of conviction dated 17.12.2007 and order of sentence dated 19.12.2007 by the learned Additional District Judge F.T.C. IInd Bettiah (West Champaran) in Sessions Trial No. 264 of 2001 arising out of Majhauria P.S. Case No. 149 of 1998, GR No. 1380 of 1998 is set aside and the appellant is acquitted of all the charges leveled against him. The appellant is set at liberty if in custody. Bail bond executed, if any, shall stand canceled.

19. Before parting with this appeal, Secretary, Patna High Court Legal Services Committee is directed to pay Rs. 5,000/- (five thousand) to the learned Amicus Curiae, namely, Mr. Ravi Bhardwaj towards honorarium for assisting this Court in the present appeal.

20. Let a copy of first and last page of this judgment be handed over to the advocate Mr. Ravi Bhardwaj, learned Amicus Curiae and Office is directed to proceed further in granting honorarium to him which is to be paid by Patna High Court Legal Services Committee.



21. Accordingly, this appeal is allowed.

(Ramesh Chand Malviya, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

