

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.490 of 2023

Arising Out of PS. Case No.-72 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

=====

Laxman Das, Son of Late Baleshwar Das R/o Vill - J.P. Lane, Road no. 6,
Kanhauli Vishnudatt, R.K. Ashram, P.S. - Bela, Distt. - Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

*Indian Penal Code---section 376---POCSO Act, 2012---section 6, 42---
Criminal Procedure Code---section 164---Appeal against judgment and
order of conviction whereby Appellant was found guilty of sexual
molestation of her daughter (victim)---argument on behalf of appellant that
the only purpose for filing the case was the marriage of the appellant with
another woman and his ill-treatment to his family members---further
argument that initially a case was filed with the ulterior motive of putting a
check on the intemperate ways of the appellant, which allegation was
resiled from and then again because the appellant did not agree to
bequeath the entire property to the victim, her brother and her mother, the
allegations were again repeated before the Trial Court.*

*Findings:- the victim and the other two witnesses did not at all support the
case in their 164 Cr. P.C. statement before the learned Magistrate which
gives a fair idea as to why the case was lodged in the beginning---there
would not have been any occasion for them to reel under any fear for the
reason that the appellant had already been lodged in jail and there is no
complaint by any one of the witnesses about any person having threatened
the victim or the other family members in continuing with the case---that
the victim and her mother chose a particular time to lodge the case, makes
the case unworthy of complete reliance--- If it were true that the victim was
sexually molested by her father, no amount of threat would have made
them say anything else but repeat the accusation before every forum--in*

cases of sexual assault, sole testimony could be relied upon but only if the version of such witness qualifies the test of truthfulness and not otherwise---a victim of sexual offence ought never to be put at par with an accomplice as she is the victim of the crime, and that there would be no need of any further corroboration, but only if her evidence appears to be absolutely reliable---victim and other 2 witnesses have not proved themselves to be sterling witnesses---impugned judgment and order of conviction set aside---appeal allowed. (Para 23, 34, 35, 41-44)

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.490 of 2023

Arising Out of PS. Case No.-72 Year-2021 Thana- MAHILA P.S. District- Muzaffarpur

Laxman Das, Son of Late Baleshwar Das R/o Vill - J.P. Lane, Road no. 6,
Kanhauli Vishnudatt, R.K. Ashram, P.S. - Bela, Distt. - Muzaffarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

| | | |
|----------------------|---|---|
| For the Appellant/s | : | Mr. Pranav Kumar, Advocate Mr. Rajeev Ranjan No. II, Advocate Ms. Priyanka Kumari, Advocate Ms. Anjana Gupta, Advocate Ms. Kumari Seema Singh, Advocate |
| For the Respondent/s | : | Mr. Bipin Kumar, APP |
| For the Informant | : | Mr. Surendra Kishore Thakur, Advocate Ms. Y. Madhavi, Advocate |

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 12-12-2023

We have heard Mr. Pranav Kumar and Ms. Y. Madhavi, learned Advocates for the appellant and the victim respectively. The State is represented by Mr. Bipin Kumar, learned APP.

2. The appellant, who is the father of the victim, has been convicted under Section 376 of the IPC and Section 6 of the POCSO Act, 2012 *vide* judgment dated 23.02.2023 passed by the learned 7th Additional



Sessions Judge-cum-Special Judge, POCSO (W), Muzaffarpur in connection with Mahila P.S. Case No. 72 of 2021. *Vide* Order dated 28.02.2023, he has been sentenced to undergo imprisonment for the remainder of his natural life, to pay a fine of Rs. 1,00,000/- in default of which, to further suffer imprisonment for one year. The fine so paid has been directed to be given to the victim, who is the daughter of the appellant.

3. The DLSA, Muzaffarpur has also been requested to pay a compensation amount of Rs. 5,00,000/- to the victim.

4. No separate sentence has been awarded under Section 6 of the POCSO Act, 2012 in view of Section 42 of the Act.

5. The harrowing tale by a fourteen year old girl would have made up for one of the most abominable crimes under the sun but for the accusation being found to be absolutely groundless.

6. On 12.09.2021, the victim (P.W. 1) lodged a



written report before the officer-in-charge of Mahila Police Station, Muzaffarpur, alleging that way back in the month of September, 2018, the appellant under the pretence of treating her, subjected her to sexual intercourse and threatened her not to tell about the incident to anybody. However, she communicated this fact to her mother (P.W. 3), who, in turn, informed the brother of the victim, a 24 year old person living in Mumbai whereafter the written report was lodged.

7. According to the victim, the appellant had married again, during the subsistence of his marriage with her mother, sometimes in April, 2021.

8. On the basis of the aforementioned written report, Mahila P.S. Case No. 72 of 2021 dated 12.09.2021 under Section 376 of the IPC and Section 4 of the POCSO Act, 2012 was registered for investigation against the appellant.

9. The appellant is said to be an employee of the North Bihar Gramin Bank, posted at Motihari. He



was arrested a day after the lodging of the written report.

10. The victim had got her statement recorded under Section 164 of the Code of Criminal Procedure on 14th of September, 2021 in which she denied to have been subjected to any sexual act by her father. In fact, she narrated before the Magistrate that because of the abusive behaviour of her father, the case was lodged so that he is kept at bay.

11. Similar statements were made by the brother and the mother of the victim on the same day before the Magistrate under Section 164 Cr.P.C. In fact, the brother of the victim had stated that his mother is extremely temperamental and because of some marital dispute between them, the subject FIR was lodged.

12. The mother of the victim was aggrieved by the appellant because the appellant had married another woman with whom he had been residing at Motihari.

13. However, at the Trial, the victim has



supported the prosecution case in its entirety. She has repeated the allegation of the appellant having committed rape on her a number of times. She has also stated before the Trial Court that the appellant never allowed her brother to come home. It was only when the brother came home from Mumbai, that he was told about the occurrence and thereafter at his instance the FIR was lodged.

14. With respect to her statement under Section 164 Cr.P.C., she disclosed before the Trial Court that such statement was made by her, her mother and brother under duress and threat by the appellant.

15. Similar accusations have been made by the brother and the mother of the victim at the trial, who have been examined as P.Ws. 2 and 3 respectively. The brother of the victim, however, was very candid in stating before the Trial Court, in his cross-examination, that he had only orally informed the police that he had inquired from his mother, who had narrated about the



incident. He has also ascribed the reason for not making any accusation before the Magistrate under Section 164 Cr.P.C., to the threats doled out by his father who at that time was lodged in jail.

16. Two unknown persons had threatened the victim and him for not supporting the accusation. The mother of the victim (wife of the appellant) admitted that her marriage was going through a rough phase and therefore she had filed the case. However, such statement before the Magistrate was made under threat by the appellant. The suggestion that the accusation has been made because of the appellant having married another lady was but rejected.

17. This takes us to the deposition of the police officer, who had registered the FIR and had recorded the statement of the victim and other witnesses. She has completely denied that the victim had ever told her that the appellant disrobed her under the pretext of treating her for colic pain and that he was alluding his sexual act



to the act which the victim would otherwise have to suffer when she is married. The officer has also denied that the brother of the victim had orally told her that his mother had told him about the occurrence when he had come back from Mumbai.

18. The repeated rape on victim was also not communicated to her by the victim when she had recorded her statement.

19. The victim was put to medical examination.

20. The medical report though records that the hymen was ruptured but no injuries could be detected by the Doctor conducting the examination. The Doctor has been examined as P.W. 5 at the trial.

21. The learned Advocate for the appellant, therefore, has submitted that the only purpose for filing the case was the marriage of the appellant with another woman and his ill-treatment to his family members. The purpose of filing the case was to prevent the appellant from being abusive at home.



22. It has further been argued that the statement of the witnesses that they had not supported the case before the Magistrate because of threats is not acceptable. Before the Magistrate, the witnesses were not under any fear. In fact, the appellant had long been lodged in jail. There was no complaint on record by the brother or the mother of the victim or the victim herself about the two unknown persons having threatened all of them to make a different statement before the Magistrate.

23. In that case, it has been argued that it appears to be quite logical that initially a case was filed with the ulterior motive of putting a check on the intemperate ways of the appellant, which allegation was resiled from and then again because the appellant did not agree to bequeath the entire property to the victim, her brother and her mother, the allegations were again repeated before the Trial Court.

24. The deposition of the I.O. of this case, who



has completely denied of the witnesses having said about the victim being raped a multiple times and the manner in which she was subjected to such misdemeanor, makes the allegation very dubtful.

25. It has further been submitted on behalf of the appellant that he is in custody since the next day of the lodging of the case for no fault of his. His statement under Section 313 of the Cr.P.C. also explains away the reason for his false implication. For some reason or the other, he had married another person but that was in the knowledge of his wife (P.W. 3) who had not raised any objection about his second marriage. Though this may not constitute any consent of a surviving spouse but, it has been argued, it explains the reason for the entire family of the appellant to go against them. There could be a possibility of the witnesses deposing against the appellant for his having not agreed to part with his property in the way in which they wanted it to be apportioned.



26. Lastly, it has been submitted that the Trial Court fell in error in sentencing the appellant for the remainder of his life, which sentence could only be imposed by the higher Courts [refer to ***Union of India v. V. Sriharan alias Murugan & Ors. 2016 (7) SCC 1***].

27. Ms. Y. Madhavi, learned Advocate for the informant, while opposing the arguments, has submitted that the Trial Court has rightly analyzed the evidence as there is nothing on record to doubt the credibility and the trustworthiness of the victim, her brother and mother. The delayed lodging of the written report has been well explained.

28. She has submitted that it would have been socially very difficult for the victim and her mother or her brother to have come out in open against the act of the appellant, as it would have only led to their social ostracisation.

29. The law with respect to cases involving



sexual harassment, molestation etc. by the relatives of the victim is well settled by now. The conviction could be recorded on the sole evidence of the prosecutrix.

30. Here, Ms. Madhavi argues, the accusation has been supported at the Trial by not only the victim but her mother and brother also. Good reasons have been accorded for not invoking the process of law against the appellant in the year 2018 and the Trial Court accepted the same after looking at the sterling quality of the evidence recorded by all the three witnesses including the victim.

31. In that event, it has been argued that though sentencing the appellant for the remainder of his life for the offence under Section 376 of the IPC may not be within the four corners of law but so far as conviction under Section 376 of the IPC is concerned, with the evidence of the victim in Court, it cannot be faulted.

32. Similar arguments have been advanced by



the learned Counsel for the State.

33. After having examined the entire case in some detail, we have found that there was some reason for the victim to have lodged the case after three years of the occurrence.

34. The appellant was married for the second time sometimes in the month of April, 2021. The case was lodged five months thereafter. According to the victim, she was subjected to rape a multiple number of times at Muzaffarpur. However, during cross-examination, she has stated that she had the occasion to stay with her step-mother at Motihari also. No complaint was made by her regarding the step-mother prompting the appellant from not giving any part of the property to the victim. The details of the act, which has been narrated in the FIR, though was repeated before the Trial Court, but was not stated before the police officer investigating the case.

35. The element of fear in the mind of the



victim or her mother and brother is not justified for the reason that the victim had overcome her fear in coming to the police station and reporting about the matter. That all of them including the victim did not at all support the case in their 164 Cr. P.C. statement before the learned Magistrate, gives a fair idea as to why the case was lodged in the beginning. All the witnesses have categorically asserted that before the Magistrate when they were making their respective statements, they were not under any fear.

36. There would not have been any occasion for them to reel under any fear for the reason that the appellant had already been lodged in jail.

37. We have not found any complaint by any one of the witnesses about any person having threatened the victim or the other family members in continuing with the case. The allegation of the witnesses therefore do not, at all, appear to be trustworthy.

38. The timing of lodging of the case also



assumes importance.

39. For the first time, the victim was put to such travails in the year 2018. Many years had passed by thereafter. The appellant had been residing at Motihari, for he was posted in a branch of the bank located at Motihari. The victim along with her mother stayed at Muzaffarpur. The brother of the victim had been pursuing his studies at Mumbai. In this background, it would be difficult to accept the stereotype of the families not coming out in the open with respect to offence perpetrated by a family member.

40. As is true legally and morally, for not treating a victim of sexual crime to be an accomplice, equally true would be to avoid and discard the stereotypes of the reluctance of the family members in reporting the case against the accused.

41. The appellant had not been residing all the time with the victim and her mother. There were plenty of occasions for the victim and her mother, with the aid



of her brother, to have invoked the process of law in order to save themselves from further attack as also to bring to the book the guilty. That the victim and her mother chose a particular time to lodge the case, makes the case unworthy of complete reliance. If it were true that the victim was sexually molested by her father, no amount of threat would have made them say anything else but repeat the accusation before every forum.

42. One might agree for a while that before the Magistrate they were under some threat but even before the police officer, where the victim had gone along with her mother, no specific accusation was disclosed. Neither the victim nor her mother were under any threat before a police officer. The Trial Court appears to have been swayed by the allegation made by the daughter against her father, which allegation was supported by both, her brother and mother.

43. We are not in a position to accept the accusation made by the victim, her mother and brother



for the reason that they have not proved themselves to be sterling witnesses.

44. There is no gainsaying that in cases of sexual assault, sole testimony could be relied upon but only if the version of such witness qualifies the test of truthfulness and not otherwise.

45. In all the cases which have been referred to by Ms. Madhavi viz. ***Phool Singh vs. The State of Madhya Pradesh, Criminal Appeal No. 1520 of 2021; Ganesan v. State, (2020) 10 SCC 573; Santosh Prasad v. State of Bihar, (2020) 3 SCC 443; State of H.P. v. Manga Singh, (2019) 16 SCC 759 and State (NCT of Delhi) v. Pankaj Chaudhary, (2019) 11 SCC 575***, the statements of the prosecutrix and passed the muster of reasonableness and truthfulness.

46. In the present set of circumstances, the evidence does not inspire confidence about the accusation being correct. We do reckon that a victim of



sexual offence ought never to be put at par with an accomplice as she is the victim of the crime, and that there would be no need of any further corroboration, but only if her evidence appears to be absolutely reliable.

47. We have examined the deposition of the witnesses with utmost sensitivity at our command, completely overlooking the minor discrepancies in the deposition of the witnesses, only for the reason that if the allegations were true, it would have been really difficult for the victim or her mother to have come forward.

48. However, the background facts do not convince us that the witnesses were making correct statements.

49. We have seen the case records with broader probabilities but have not been able to find truth in the accusation.

50. The appellant would have to be given benefit of doubt.



51. For the aforementioned reasons, we set aside the judgment and order of conviction of the appellant and acquit him of all the charges levelled against him.

52. He is directed to be released forthwith if not wanted or detained in any other case.

53. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

54. The records of this case be returned to the Trial Court forthwith.

55. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

krishna/-

| | |
|-------------------|------------|
| AFR/NAFR | AFR |
| CAV DATE | NA |
| Uploading Date | 13.12.2023 |
| Transmission Date | 13.12.2023 |

