

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3191 of 2024**

Arising Out of PS. Case No.-132 Year-2018 Thana- MAHILA P.S. District- Patna

Amresh Kumar @ Sonu Son of Arun Kumar Singh @ Arun Singh R/O Vill.-
Jalalpur, P.s.- Kargahar, Dist.- Rohtas

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Rana Vikram Singh, Advocate
Mr. Babu Nandan Prasad, Advocate
Ms. Jyoti Singh, Advocate
For the State : Mrs. Anita Kumari Singh, Addl.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT**

Date : 21-10-2024

Heard Mr. Rana Vikram Singh, learned counsel duly assisted by Mr. Babu Nandan Prasad, learned counsel for the appellant and Mrs. Anita Kumari Singh, learned Additional Public Prosecutor for the State.

2. At the outset, on the request of learned counsel for the appellant, the matter is being taken up for final hearing in view of provision available under Section 374(4) of the Code of Criminal Procedure (hereinafter referred to as 'the Code'), which has also not been objected by learned Additional Public Prosecutor for the State.

3. This appeal has been preferred by the appellant/convict under Section 374(2) of the Cr.P.C.



challenging the impugned judgment of conviction dated 24.06.2024 and order of sentence dated 27.06.2024 passed by learned 1st Additional District & Sessions Judge, Patna in connection with Sessions Trial No. 244/2020 CIS No. 244/2020 arising out of Mahila P.S. Case No. 132 of 2018, whereby and whereunder learned trial court has been pleased to convict the appellant for the offence punishable under Section 376(1) of the Indian Penal Code (for the short the "I.P.C.") and sentenced him to undergo rigorous imprisonment for ten (10) years and fine of Rs. 5,000/-, in default of payment of fine, has to further undergo imprisonment of six months and for the offence under Section 506 of the I.P.C., the appellant has been sentenced to undergo R.I. for two (2) years. The learned trial court ordered that all the sentences shall run concurrently.

4. The brief facts of the case as it appears from the written information of informant/victim (PW-3) that her marriage was already solemnized with one Raj Kumar Singh having two childrens from the said wedlock, but her husband had left Bihar in the year 2008 and did not returned back



and thereafter got traceless. The victim further stated that the appellant/convict namely, Amresh Kumar @ Sonu was residing in the house of the victim since year 2013 as a tenant and he was known to the fact that the husband of the victim has left the victim/informant and solemnized another marriage. She further alleged that the appellant by taking advantage of her aforesaid condition established physical relation with her on the false pretext of marriage. She stated that in the month of October, 2016, the appellant said her that he was going to Bhagalpur for doing job and went away, but between a gap of one or two weeks, he used to come at her house and made consensual physical relationship with her. She further alleged that when she forced to appellant to marry her, he asked her to transfer the house in his name. Thereafter, when she came to know that the appellant was going to solemnize marriage with one another lady, she lodged a complaint with local police against him. She further alleged that the parents and family members of the appellant accepted the fault of the appellant and they promised her to marry with the appellant. Again, in the year



2018, the appellant stayed for two nights in the house of the victim/informant and insisted her to transfer the said house in his name, when she denied to do the same, the appellant denied to marry her. Thereafter, the informant/victim has lodged the present case against the appellant and his parents.

5. On the basis of aforesaid *fardbeyan* Mahila P.S. Case No. 132/2018 under Sections 376, 506, 509, 420 & 34 of the I.P.C. was lodged and police, after investigation submitted charge-sheet against the appellant and other accused persons vide charge-sheet no. 109/2019 dated 31.10.2019 under Sections 376, 506, 509, 420 & 34 of the I.P.C.

6. Learned trial court explained the aforesaid charges to appellant, which he pleaded "not guilty" and claimed trial.

7. To established its case before the learned trial court, prosecution has examined altogether five witnesses namely, PW-1 Bajrang Kumar (Teacher of the children of the informant); PW-2 Sheela Devi (mother of the victim); PW-3



victim, PW-4 Shashi Shekhar Singh (I.O.) and PW-5 Dr. Anuradha respectively.

8. The prosecution has produced and relied upon following documentary evidences also as to substantiate its case during trial, which are as under:

Number of Exhibits	List of Documents
Exhibit – P-1/PW-3	Signature of victim on typed application
Exhibit – P-2/PW-3	Signature of victim on the statement of 164 Cr.P.C.
Exhibit – P-3/PW-4	Paging on the typed application.
Exhibit – P-4/PW-4	Signature of Ravi Ranjana Kumari on Formal F.I.R.
Exhibit – P-5/PW-5	Medical Report dated 29.10.2018.
Exhibit – P-6/PW-5	Medical Report dated 31.12.2018.

9. After examination of prosecution witnesses and by taking note of evidence and incriminating circumstances as surfaced during trial, statement of accused/appellant was recorded under Section 313 of the Cr.P.C., which was denied by the appellant in totality by claiming his complete innocence and false implication.

10. On the basis of evidences as surfaced during the trial, the learned trial court convicted and sentenced the appellant/convict, in aforesaid terms. Being aggrieved of which present appeal was preferred.



11. Hence, the present appeal.

12. It is submitted by Mr. Rana Vikram Singh, learned counsel appearing on behalf of the appellant/convict that from perusal of statement of victim as recorded under Section 164 of the Cr.P.C., which is exhibited as Exhibit-P-2/PW-3, it nowhere appears that even any consensual physical relation was established between appellant and the victim. It is pointed out that allegation what maximum can be gathered from her said statement that the negotiation of her marriage with appellant could not settled favourably as appellant demanded the flat/house in dowry where he was tenant. The house in issue belongs to victim and her husband Raj Kumar Singh.

13. It is further submitted by Mr. Singh that the allegation of rape out of consensual relationship was first time deposed by victim during the trial which is an improved version *qua* crime in question and taking note of these two facts which not appears even corroborated with medical examination of victim, the victim cannot be said as "sterling witness", therefore, the conviction as recorded by the



learned trial court on the basis of her sole testimony is fit to be quashed/set-aside on this ground alone. In support of his submission, Mr. Singh, relied upon the legal report of Hon'ble Supreme Court as available through **Rai Sandeep v. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**.

14. It is also submitted that nothing can be gathered from the deposition of victim/PW-3 that intention of appellant *qua* cheating was from very inception of establishing physical relationship, and, moreover, this is a case where allegation is based upon "misconception of fact". It is submitted that on this score also the crime in question cannot be said as rape. In support of his submission, Mr. Singh, relied upon the legal report of Hon'ble Supreme Court as available through **Pramod Suryabhan Pawar Vs. State of Maharashtra and Anr.** as available to us through **(2019) 9 SCC 608**.

15. While concluding argument, Mr. Singh submitted that the victim at the time of alleged occurrence was about 31 years old and mother of two children. It is submitted that admittedly she was married with one Raj



Kumar Singh, and during subsisting said marriage as it was not dissolved as per law, any promise for marriage by appellant not appears convincing. It is further submitted that victim was in relation with one Rajiv also, who said to be the resident of Kankarbagh Colony, Patna, with whom she was also in relation since 2015, much prior to the alleged promise of marriage said to be made by the appellant/convict, as it was alleged to be made in year 2016.

16. In view of aforesaid, it is submitted that the balance of appeal is in favour of appellant/convict and, therefore, considering the facts and circumstances as submitted above, the impugned judgment of conviction as recorded by the learned trial court is fit to be quashed/set-aside.

17. Mrs. Anita Kumari Singh, learned Additional Public Prosecutor, while arguing on behalf of the State, submitted that the victim/PW-3 has categorically deposed against the appellant/convict as to established physical relationship with her on false pretext of marriage. It is submitted that the said fact of consensual relationship was



supported by the mother of the victim/PW-3 and also the tutor of the childrens of the victim, who deposed as PW-1.

18. I have perused the Trial Court Records carefully and gone through the evidence available on record as also considered the rival submissions canvassed by learned counsel appearing on behalf of the parties.

19. After hearing the arguments and upon perusal of record, it appears that the evidence as surfaced during the trial is required to be discussed for the purpose of its re-appreciation for the just and proper disposal of the present appeal.

20. From the aforesaid argument and perusal of records, it appears that the most important witness of the present crime in question is the victim/PW-3 herself. It appears from her deposition that the appellant/convict joined her parental house as co-tenant and everything was normal till 2016. It appears from her deposition that her husband Raj Kumar Singh was traceless since the year 2008. It appears from her deposition that taking advantage of his absence, the appellant developed physical relationship with



her in the year 2016 on pretext of marriage. She identified her signature on her written information and statement recorded under Section 164 Cr.P.C. which has been exhibited as Exhibit – P-1/PW-3 and P-2/PW-3 respectively during the trial.

20.1. Upon her cross-examination, it appears that the house in issue was purchased by her husband namely, Raj Kumar Singh, where the informant/victim was residing alone. It was also stated that now the mother of the informant/victim was also started to residing with her. The other co-tenants are also said to be there. It was stated that several whatsapp messages were exchanged between them and further the promise of marriage was not made before any co-tenant or even her mother/PW-2. It was stated that appellant asked to execute the sale-deed regarding house in issue in his favour as a pre-condition for solemnizing their marriage.

21. PW-1 is Bajrang Kumar, who is the tutor of the childrens of the informant/victim and supported the case of the prosecution by deposing that the appellant was in



relationship with victim/PW-3.

21.1. Upon cross-examination, it was stated that he is not the eye witness of the occurrence. He never saw appellant to established physical relationship with victim/PW-3.

22. PW-2 is Sheela Devi. She is the mother of the victim/PW-3. She also supported the case of the prosecution through her examination-in-chief. It was deposed that appellant established physical relationship with victim/PW-3. It further appears from her deposition that the issue travelled up to Mahila Police Station where one compromise was settled between the parties, which was duly signed by them and even thereafter, the appellant refused to marry victim/PW-3.

22.1. Upon cross-examination, this witness stated that the appellant becomes ready to marry victim in terms of compromise. She categorically stated that relationship was consensual. She also supported the factum of first marriage of victim with one Raj Kumar Singh.

23. PW-4 is Shashi Shekhar Singh. He is the



Investigating Officer of this case, who took charge of investigation on 05.06.2019. He identified the endorsement of the then S.H.O. Ravi Ranjana Kumari regarding lodging of this case, which upon his identification exhibited as Exhibit – P3/PW-4. He also identified signature of Ravi Ranjana Kumari on formal F.I.R., which upon his identification exhibited as Exhibit -P4/PW-4. He submitted charge-sheet bearing No. 109/2019 dated 31.10.2019 for the offences under Sections 376, 506, 509, 420, 34 of the I.P.C. against the appellant. Upon cross-examination, it appears that he was the third investigating officer of this case and he only submitted the charge-sheet.

24. PW-5 is Dr. Anuradha. She deposed that on 29.10.2018 she was posted as a medical officer at Gardanibagh Hospital. On that day she examined victim of this case, aged about 31 years, D/o-Late Jai Prakash Singh, R/o Indira Nagar, PS-Patliputra, Dist.-Patna. Time of examination was 01-10 p.m. under order of Civil Surgeon, Patna order no. 7679 dated 29.10.2018. Victim was brought before her by ASI Sangita Devi of Mahila PS. Registration



No. ER/5600 dated 29.10.2018 of Gardanibagh Hospital. MI -1. Old scar mark above lateral side of left eyebrow, 2. Til mark on right cheek. Upon Physical Examination-No mark of injury could be seen over any part of the body. Height: 5 feet 5 inches, Weight-65 kgs, Teeth-16+16=32. She has undergone hystereoscopy in 2013. She has two children out of which the youngest child was 11 years old. On pelvic examination no mark of injury could be seen over her private parts. Vaginal swab taken and sent to department of pathology, PMCH, Patna. Opinion reserved till report is received from PMCH. The above report is in her handwriting and bears her signature. She identified it upon which it was marked as Ext-P5. On 31.12.2018 pathological report was received from PMCH having report no. 292, dated 31.10.2018 – where spermatozoa was not seen. The above report was in her handwriting and bears her signature, which upon her identification was marked as Ext-P6.

24.1. In her cross examination, this witness stated that after removal of uterus the patient will never be able to bear child in future.



25. From the discussion of aforesaid oral evidences, it appears that conviction in the present case was recorded on the sole testimony of victim/PW-3. Now, the mute question which arises as to whether victim can be treated as sterling witness as to support the conviction, which was recorded by the learned trial court. In this context, it would be apposite to reproduce para 22 of **Rai Sandeep's Case** (supra), which reads 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."

26. From perusal of aforesaid discussion of evidence, it appears that the victim/PW-3 nothing stated in



her statement recorded under Section 164 Cr.P.C. that she established physical relationship with the appellant. It appears from her said statement that the negotiation of her marriage with appellant was under progress and as the appellant asked her to execute sale-deed of her house in his favour as dowry, the present allegation was raised. It also appears from her statement that she was in relationship with one Rajiv since 2015, whereas the promise as alleged by the appellant and subsequently physical relationship was established only after the year 2016. From the testimony of victim, it appears that there was no occasion to stop Rajiv in 2015 to marry victim/PW-3.

27. It further appears that the victim first time while deposing before the court during trial as PW-3 improved her version and stated that appellant established physical relationship on several occasions with her on false pretext of marriage. From the deposition of PW-5, it appears that she was already undergone for hystereoscopy in the year 2013 itself. The effect of which that she would never be able to bear a child in future as his uterus was removed. It also



appears from her testimony that the promise of marriage was not made before any co-tenant despite of the fact that there was five co-tenants in the said house. It was not made even before PW-1 or PW-2. Interestingly, the compromise petition which appears to be a sole document, which may be relevant in support of the alleged promise *qua* marriage could not be brought on record, and therefore, even alleged promise *qua* marriage with victim made by appellant does not appear convincing.

28. In this context, it would be apposite to reproduce para 9, 10, 11 and 12 of **Pramod Suryabhan Pawar's case (supra)**, which reads as under:

"9. The present proceedings concern an FIR registered against the appellant under Sections 376, 417, 504, and 506(2) of the IPC and Sections 3(1) (u), (w) and 3(2)(vii) of SC/ST Act. Section 376 of the IPC prescribes the punishment for the offence of rape which is set out in Section 375. Section 375 prescribes seven descriptions of how the offence of rape may be committed. For the present purposes only the second such description, along with Section 90 of the IPC is relevant and is set out below:

"375. Rape – A man is said to commit "rape" if he –

* * *

under the circumstances falling under any of the following seven descriptions –

Firstly -



Secondly. – Without her consent.

* * *

Explanation 2. – Consent means an unequivocal voluntary agreement when the woman by words, gestures or any form of verbal or non-verbal communication, communicates willingness to participate in the specific sexual act:

Provided that a woman who does not physically resist to the act of penetration shall not by the reason only of that fact, be regarded as consenting to the sexual activity.”

“90. Consent known to be given under fear or misconception - A consent is not such a consent as is intended by any section of this Code, if the consent is given by a person under fear of injury, or under a misconception of fact, and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception; or”

10. Where a woman does not “consent” to the sexual acts described in the main body of Section 375, the offence of rape has occurred. While Section 90 does not define the term “consent”, a “consent” based on a “misconception of fact” is not consent in the eyes of the law.

11. The primary contention advanced by the complainant is that the appellant engaged in sexual relations with her on the false promise of marrying her, and therefore her “consent”, being premised on a “misconception of fact” (the promise to marry), stands vitiated.

12. This Court has repeatedly held that consent with respect to [Section 375](#) of the IPC involves an active understanding of the circumstances, actions and consequences of the proposed act. An individual who makes a reasoned choice to act after evaluating various alternative actions (or inaction) as well as the various possible consequences flowing from such action or



inaction, consents to such action. In ***Dhruvaram Sonar***⁵ which was a case involving the invoking of the jurisdiction under Section 482, this Court observed:

“15. ... An inference as to consent can be drawn if only based on evidence or probabilities of the case. “Consent” is also stated to be an act of reason coupled with deliberation. It denotes an active will in mind of a person to permit the doing of the act complained of.”

This understanding was also emphasised in the decision of this Court in ***Kaini Rajan v State of Kerala***⁶ :

“12. ... “Consent”, for the purpose of Section 375, requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance of the moral quality of the act but after having fully exercised the choice between resistance and asset. Whether there was (2013) 9 SCC 113 consent or not, is to be ascertained only on a careful study of all relevant circumstances.”

29. In view of the aforesaid discussions, it can be safely gathered that victim/PW-3 cannot be accepted as “sterling witness” and also the promise of marriage by appellant appears doubtful, therefore, the conviction as recorded by the learned trial court *qua* appellant appears questionable and same is fit to be set-aside/quashed.

5. Dhruvaram Murlidhar Sonar V. State of Maharashtra, (2019) 18 SCC 191

6. (2013) 9 SCC 113: (2013) 3 SCC (Cri) 858



30. Hence, the impugned judgment of conviction dated 24.06.2024 and order of sentence dated 27.06.2024 passed by learned 1st Additional District & Sessions Judge, Patna in connection with Sessions Trial No. 244/2020 CIS No. 244/2020 arising out of Mahila P.S. Case No. 132 of 2018 is hereby quashed and set-aside.

31. Accordingly, the appellant, namely, Amresh Kumar @ Sonu is acquitted of the charges leveled against him by the learned trial court. He is directed to be released forthwith, if his presence is not required in any other case.

32. The appeal stands allowed.

33. Let a copy of this judgment alongwith the Trial Court Records be sent to the learned Trial Court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.10.2024
Transmission Date	23.10.2024

