

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.753 of 2015

Arising Out of PS.Case No. -3 Year- 2013 Thana -LAKHISARAI District-
LAKHISARAI

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1. Rinkoo Kumari Daughter of Late Libu Mallick, Resident of
Village- Pachami, Police Station - Chanan, District - Lakhisarai

.... Appellant

Versus

1. The State of Bihar

2. Bipin Bhagat, Son of Late Dashrath Bhagat, Resident of Village-
Pacham, Police Station - Chanan, District - Lakhisarai

.... Respondents

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Appearance :

For the Appellant : Mr. Narsingh Tanti, Advocate

For the Respondents : Mr. S. N. Prasad, A.P.P.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 18-12-2015

This is an appeal, under the proviso to Section 372 of the Code of Criminal Procedure, putting to challenge the judgment and order, dated 10.07.2015, passed, in Sessions Trial No. 61 of 2014, by 1st Additional Sessions Judge, Lakhisarai, acquitting the sole accused (respondent No. 2 herein) of the charges framed under Sections 376 and 420 of the Indian Penal Code read with Sections 3 (1) (xi) and 3 (1) (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act').

2. As unfolded at the trial, the case of the prosecution is, in brief, as follows:

(i) On the occasion of *Basant Panchmi*, in the year 2011, at about 06:00 PM, while the appellant herein (PW 2, Rinkoo Kumari) was at her house, located close to the *Thakurbari* (a place of worship), accused, Bipin Bhagat (respondent No. 2 herein), who was a visitor to her house, came to her house and, in the course of conversation, expressed his desire to have sexual intercourse. As PW 2 was unwilling to have sexual intercourse with the accused, the accused forcibly had sexual intercourse with PW 2 and committed thereby offence of rape and when she started crying, the accused promised to marry her.

(ii) After the accused left PW2's house, her mother (PW 1) and younger brother came and PW 2 narrated to them the incident. However, none of the family members either protested or reported the matter to anyone.

(iii) After a couple of days, the accused came, again, to the house of PW 2 and assuring to marry her had, again, sexual intercourse with her and, in this manner, both of them started maintaining sexual relationship with each other.

(iv) In course of time, PW 2 conceived and the accused took her to a doctor, where she gave birth to a baby. After the birth of the baby, the accused fled away. PW 2 went

to the house of the accused, but the mother of the accused, his wife and other family members assaulted PW 2 and did not let her enter into their house.

(v) On the following day, PW 2 reported the occurrence to Mananpur Police Station, but no action was taken by the police. Thereafter, on the basis of a complaint filed by PW 2 in the Court of Chief Judicial Magistrate, Lakhisarai, S.C./S.T. Lakhisarai Police Station Case No. 03 of 2013, under Sections 376 and 420 of the Indian Penal Code read with Sections 3 (1) (xi) and 3 (1) (xii) of Act, was registered.

(vi) On completion of investigation, *charge sheet* was laid, under Sections 376 and 420 of the Indian Penal Code read with Sections 3 (1) (xi) and 3 (1) (xii) of the Act, against the sole accused, Bipin Bhagat.

3. At the trial, when charges, under Sections 376 and 420 of the Indian Penal Code read with Sections 3 (1) (xi) and 3 (1) (xii) of the Act, were framed against accused Bipin Bhagat, he pleaded not guilty thereto.

4. In support of their case, prosecution examined altogether 10 (ten) witnesses. The accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in his examination aforementioned, the accused denied that he had committed the offences, which

were alleged to have been committed by him. In support of his case, the accused, too, adduced evidence by examining 2 (two) witnesses including his wife.

5. Having, however, found the accused not guilty of the offences, which he stood charged with, learned trial Court acquitted him accordingly.

6. Aggrieved by the acquittal of the accused, PW 2 (the victim, Rinkoo Kumari) has preferred this appeal.

7. We have heard Mr. Narsingh Tanti, learned Counsel, appearing on behalf of the appellant, and Mr. S. N. Prasad, learned Additional Public Prosecutor, appearing on behalf of the State.

8. While considering the present appeal, it needs to be noted that it is the evidence of PW 2 around whose evidence revolves the entire case of the prosecution. Her evidence is that on the day of *Saraswati Puja*, at about 06:00 PM, while she was in her house, accused came there and, while talking to her, he caught hold of her and forcibly had sexually intercourse with her and when she started weeping, he told her that he would marry her and left her house.

9. It is in the evidence of PW 2 that when her mother (PW 1) and younger brother came home, she narrated the occurrence to them. Strangely enough, neither PW 2 nor her mother (PW 1) and/or her younger brother reported the

occurrence to anyone. This apart, neither the mother nor the younger brother of PW 2 is claimed to have confronted the accused and/or protested to him what the accused had allegedly done.

10. It is also in the evidence of PW 2 that the accused, thereafter, started coming to her house and, giving assurances to marry her, continued to have sexual intercourse with her and, in course of time, she conceived, whereupon the accused took her to a doctor, where she gave birth to a baby and, then, the accused fled away and when she went to the house of the accused, the mother and other family members of the accused assaulted her and threw her out.

11. Apart from the fact, as already indicated above, that neither PW 2 reported the occurrence to anyone nor did her mother (PW 1) or her younger brother reported the occurrence to anyone, the evidence of PW 2 gives no indication at all that either her mother or her younger brother expressed any anguish or anger against the accused nor is it the evidence of PW 2 that she, her mother or her brother, ever protested to the accused coming to their house even after he had committed rape as alleged. This apart, it is the evidence of PW 2 that the accused had sexual intercourse with her 2½ years back. However, the learned trial Court has noted, in the judgment under challenge, that the child was born 3 years

back. In fact, the evidence of PW 2 is that the accused used to come not only at night, but also during the day-time and he used to have sexual intercourse with her without any objection being raised by her.

12. Though, it is in the evidence of PW 2 and also in the evidence of her mother (PW 1) that they had given information about the commission of rape on PW 2 to the two elder brothers of PW 2, it is their evidence that PW 2's elder brothers did not bothered to enquire. This is yet another strange circumstance which cannot be readily ignored and one cannot resist that PW 2's elder brothers had not been reported the occurrence; or else, there is no reason why PW 2's elder brothers did not react.

13. Close on the heels of PW 2, PW 1 (mother of PW 2) has deposed that when she returned home on the day of the occurrence, her daughter (PW 2) told her that the accused had committed rape on her by assuring to marry her.

14. What is of great significance to note, at this stage, is that while in the complaint, PW 2 had alleged that the accused had sexual intercourse with her by promising to marry her, her evidence is that the first sexual intercourse, which the accused had with her, was without any promise of marriage and it was only when she started crying after being subjected to rape that the accused promised to marry her. In contrast, is

the evidence of her mother (PW 1) that the accused had sexual intercourse with PW 2 by promising to marry her.

15. Glaringly thus, when the evidence of PW 2 is read in light of the other evidence on record, including the evidence of her mother (PW 1), we find that the evidence adduced by the prosecution suffers from several twists and turns and thereby make the evidence of PW 2 and PW 1 highly unsafe to place reliance upon.

16. It is the evidence of PW 1 that the accused used to come to their house on and of and had sexual intercourse with her daughter and, in course of time, PW 2 became pregnant. It is admitted by PW 1 that she never reported the occurrence to anyone. In fact, it is the categorical admission of PW 1 that though the accused used to have sexual intercourse with her daughter for one year, she (PW 1) never raised any objection thereto. Such a conduct of PW 1 is so unnatural that her evidence is render unreliable, more particularly, when there is no allegation that the accused had, at any stage, threatened or intimidated PW 1 or any member of her family asking them not to reveal what the accused had done.

17. The remaining witnesses have not thrown any light on the case; rather, the prosecution's remaining witnesses have cast aspersions on the character of PW 2 and her family.



18. There can be no escape, in the light of the provisions of Section 114A of the Evidence Act, that when a woman claims, in her evidence, that she did not consent to the sexual intercourse by an accused, the Court shall presume that the consent did not exist meaning thereby that the burden would shift, in such a case, to the accused to show that there was consent if the evidence on record shows the accused having had sexual intercourse with the woman concerned.

19. In the case at hand, the accused has denied having ever sexual intercourse with PW 2. Apart from the fact that the belated claim of PW 2 that the accused (respondent No. 2) had committed rape on her (i.e., had sexual intercourse with her without her consent or against her will), cannot be readily accepted, it is worth pointing out, in this regard, that it is the evidence of PW 2 that the accused, first, committed rape on her 2½ years back, but the child was born, the trial Court has noted, 3 years back. Moreover, if the evidence of PW 2 and PW 1 were true, not only PW 2 would have objected and been angry with the accused, but even PW 1 would have been mad with rage or, at least, felt hurt; more so, when the accused is not even alleged to have threatened or intimidated PW 1 and/or anyone else and/or that the accused had stopped or prevented them, in any manner from disclosing the occurrence to anyone. There is nothing in the evidence of PW 1 and/or PW

2 that PW 1 raised objection to either visiting her house or having sexual intercourse with her daughter. In fact, it is not even the evidence of PW 1 that when her daughter informed her that the accused forcibly had sexual intercourse with her (PW 2), she (PW 1) raised objection, when the accused came again to her house or she (PW 1) rebuke the accused.

20. In the circumstances indicated above, the inference, drawn by the learned trial Court that even if the claim of PW 2, that the accused had sexual intercourse with her, were true, such sexual intercourse was with her consent and not against her will. We do not find the inference, so drawn by the learned trial Court, as absurd or so unreasonable that no prudent man can draw such an inference or reach such a conclusion.

21. It is trite that the presumption of innocence in favour of an accused stands reinforced and fortified with the passing of an order of acquittal, in his favour, by the trial Court and unless the findings of the trial Court, leading to acquittal of accused, are found to be perverse, absurd and/or wholly unreasonable and unless the trial Court is found to have excluded from considering relevant and clinching materials without any justification or the trial Court has found to have taken into consideration an irrelevant piece of evidence of an irrelevant case, the appellate Court cannot interfere with the

judgment of acquittal of the accused.

22. What surfaces from the discussion of the evidence on record is that there is neither any convincing and reliable evidence of rape having been committed on PW 2 nor is there any reliable evidence that the accused committed offence of cheating.

23. Situated thus, we are clearly of the view that as far as the charges under Sections 376 and 420 of the Indian Penal Code are concerned, the prosecution failed to prove its case beyond reasonable doubt.

24. While considering the acquittal of the accused-respondent No. 2 of the charges framed under Sections 3 (1) (xi) and 3 (1) (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, it may be noted that an offence under Section 3 (1) (xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, is committed, when a person, not being a member of a Scheduled Caste or a Scheduled Tribe, assaults or uses force to any woman belonging to a Scheduled Caste or a Scheduled Tribe *with intent to dishonour or outrage her modesty*. The statutory provisions, thus, lay stress on the intention of the accused in committing such offence. Merely because a victim of rape is a member of a Scheduled Caste or a Scheduled Tribe, it would not constitute an offence under Section 3 (1)

(xi) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; rather, the knowledge that the victim belongs to Scheduled Caste or a Scheduled Tribe must be coupled with the intention to dishonour or outrage her modesty as a person belonging to Scheduled Caste or a Scheduled Tribe.

25. In the present case, there is not even a particle of evidence on record to show that the accused-respondent No. 2 had sexual intercourse with PW 2 in order to dishonour or outrage her modesty, because she belongs to Scheduled Caste. The learned trial Court is, therefore, correct in pointing out that it has not been the case of the prosecution that the rape was committed on PW 2, because she was a member of Scheduled Caste.

26. So far as the offence under Section 3 (1) (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, is concerned, it may be pointed out that in order to make a person liable for conviction under Section 3 (1) (xii) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, it is necessary that the accused must be in a position to dominate the will of a woman belonging to Scheduled Caste or a Scheduled Tribe and uses such position to exploit her sexually to which she would not have otherwise agreed to.



27. In the case at hand, the learned trial Court correctly points out that the accused was not in a position to dominate PW 2's will and exploit her sexually and it has never been the case of the prosecutrix that the rape was committed on PW 2, because she was a member of Scheduled Caste and/or that the accused had sexually abused her by committing rape on her, because he was in the dominant position to commit rape.

28. We notice that there is not even an iota of evidence to show that PW 2 had agreed for sexual intercourse with the accused only, because of the fact that the accused was in a position to dominate her will; her case was, rather, that the accused forcibly had sexual intercourse with her, which means that the accused, according to her, had committed offence of rape *simpliciter*. This part, it has also been her case that the accused made false promise of marriage and thereby induced her to have sexual intercourse with her. Here again, the fact that PW 2 belongs to Scheduled Caste was immaterial.

29. Having come to the conclusion that the learned trial Court was not wrong in drawing an inference that PW 2 was a consenting party to the sexual intercourse, which the accused allegedly had with her, neither any offence of rape could be said to have been committed nor is there any reliable

and safe evidence to hold the accused-respondent No. 2 guilty of having committed offence of cheating and/or offence under the penal provisions of the Act.

30. Because of what have been discussed and pointed out above, we do not find that the impugned judgment suffers from any infirmity, legal or factual. This appeal is, therefore, not admitted and is accordingly stand dismissed.

(I. A. Ansari, ACJ.)

AFR/
Prabhakar Anand/-

(Chakradhari Sharan Singh, J.)

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