

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.244 of 2010

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1. Bindeshari Mishra @ Bindeshwar Mishra S/O Late Ramnandan Mishra R/O
 Vill.-Sagarpur,P.S.-Sakri,Dist.-Madhubani.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhinay Raj, Adv.

For the Respondent/s : Mr. S.P. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 05-08-2015

Instant appeal has been preferred by the sole appellant, Bindeshari Mishra @ Bindeshwar Mishra against judgment of conviction dated 24.02.2010 whereby and whereunder he has been found guilty for an offence punishable under Section 354 of the IPC and order of sentence dated 25.02.2010 whereby period of custody already undergone has been inflicted therefor by Adhoc Additional Sessions Judge-FTC-II, Madhepura in Sessions Trial No. 166/2009.

2. Bereft of unnecessary details, Guria Kumari aged about 14 years (PW-6) gave her Fard-e-beyan on 25.07.2009 disclosing therein that while her father accompanied her mother in the night of 24.07.2009 to PHC where she happens to be a nurse, she along with her sister and brother had gone to upstairs to sleep. While she was sleeping, another tenant of the same building whereunder she also was an occupant as tenant belonging to one Nageshwar Yadav, came and



began to molest. Then thereafter, he untied her string and attempted to commit rape, on account of which, she raised alarm. Her brother and younger sister got awaken and on account thereof, Bindeshari Mishra @ Bindeshwar Mishra escaped therefrom. Subsequently thereof, her father returned back who came to know the fact. Then he informed her mother over which she also came back. Thereafter, Bindeshari Mishra @ Bindeshwar Mishra was caught hold. Her mother also informed Incharge, Doctor who sent the guard as well as compounder, Naeem Ji and with the help of aforesaid person, Bindeshari was taken to hospital. Police Station was informed. After arrival of Officer Incharge, her Fard-e-beyan has been recorded.

3. On the basis of aforesaid Fard-e-beyan, Udakishunganj PS Case No.92 of 2009 was registered under Sections 354, 376, 511 of the IPC whereunder charge-sheet was also submitted after conclusion of investigation. Cognizance was also taken thereunder and on account thereof, the case was committed and met with ultimate result after conduction of trial, the subject matter of instant appeal.

4. The defence as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence as well as of false implication.

5. During course of trial, prosecution had examined

altogether seven PWs out of whom PW-1, Kulanand Yadav, PW-2, Md. Naimuddin, PW-3, Dr. Pradeep Kumar Jha, PW-4, Shiv Narain, father of victim, PW-5, Sudha Devi, mother of the victim, PW-6, Guria Kumari, the victim herself and PW-7, Brahamdeo Singh.

6. The prosecution also exhibited, Ext-1, signature of FIR attesting witness, Ext-1/1, signature of informant over Fard-e-beyan, Ext-2, Fard-e-beyan, Ext-3, Formal FIR.

7. So far status of the witnesses is concerned, PWs-1, 2, 3 did not support the case of the prosecution and on account thereof, were declared hostile. PW-4 is the father of victim. Admittedly, he does not happen to be an eyewitness to the occurrence because of the fact that at the relevant time, he was away from his house along with his wife in order to accompany her to PHC where his wife PW-5 was a nurse. He had stated that after returning back, he found his daughter weeping who, on query narrated the incidents which she had faced. During cross-examination, he had stated that Guria had not disclosed anything to him as well as to his wife. He further stated that the case has been compromised amongst the parties. He had further stated that he along with his wife did not want to carry with the instant prosecution.

8. PW-5, Sudha Devi is the mother of the victim. Her status also happens to be that of hearsay. In this way, she had stated that



when she returned back after being informed by her husband, she found her daughter weeping. On query, she disclosed that Bindeshari had caught hold her. Then thereafter, she along with accused and others came to PHC where police came and Fard-e-beyan of Guria was recorded. During cross-examination, she had stated that she remained at hospital whole night. On the following morning, she came to know about the same. She had further stated that case has been compromised.

9. PW-6 is the victim herself who had stated that on the alleged date and time of occurrence, accused had teased her. She raised an alarm, over which, accused fled away. She had instituted instant case on the following day. During cross-examination at para-3, she had stated that Bara Babu did not indulge in any sort of activity. She further stated that the case has been compromised.

10. PW-7 is the Investigating Officer. He had stated that on being informed, he came to PHC where he had recorded Fard-e-beyan of Guria Kumari and on the basis of which, a case was registered, examined the witnesses and after concluding the investigation, charge-sheet was submitted against the accused. Then thereafter, the statement of the hostile witnesses were confronted followed with cross-examination at the end of the accused.

11. After going through the judgment impugned, it is



apparent that the learned lower court in spite of having sufficient material to discredit the prosecution version, proceeded and discussed the legal eventualities under para-14 of the judgment in the background of Sub-Section 4 of Section 320 of the Cr.P.C. in the background of informant being a minor below the age of 18 years and held that as signature of father is not found over the compromise petition as well as permission petition on account thereof, the compromise petition as well as permission petition were not maintainable in the eye of law and for that purpose referred Section-6 of the Hindu Minority and Guardianship Act, 1956 whereunder father, if the age of daughter or son happens to be more than five years, has been found natural guardian.

12. To have proper appreciation on this very score, first of all Sub-Section of 4 of Section 320 Cr.P.C. is to be adjudged in its right perspective and for that the same is quoted below:-

(4)(a) When the person who would otherwise be competent to compound an offence under this section is under the age of eighteen years or is an idiot or a lunatic, any person competent to contract on his behalf, may, with the permission of the Court compound such offence.

(b) When the person who would otherwise be competent to compound an offence under this section is dead, the legal representative, as defined in the Code of Civil Procedure, 1908 (5 of 1908) of such person may, with the consent of the Court compound such offence.

13. From plain reading of Sub-Section 4 (a) of Section 320



Cr.P.C, it is apparent that nowhere it speaks with regard to presence of natural guardian rather it suggests that any person competent to contract on his behalf. In vague term, it may be presumed that natural guardian happens to be only competent to contract on behalf of minor but legally, it could not be accepted that natural guardian should be exclusively identified to be competent enough to contract on behalf of minor. Apart from this, status of mother being natural guardian of a minor below 18 years, son or daughter has come up for consideration before the Hon'ble Apex Court in the case of ***Githa Hariharan v. Reserve Bank of India (1999)2 SCC 228*** wherein the Hon'ble Apex Court has held that mother also happens to be natural guardian relating to her son or daughter below the age of 18 years. That being so, presence of PW-5, Sudha Devi over compromise petition as well as permission petition as a natural guardian of PW-6, Guria Kumari would not be considered suffering from any sort of legal deficiency. That being so, the finding arrived at by the learned lower court rejecting compromise petition as well as permission petition on the basis of finding recorded under para-14 of the judgment impugned is not at all found to be legally sound.

14. Apart from this, from cross-examination of PW-4, it is apparent that during cross-examination, he had admitted the factum of compromise amongst the parties and on account thereof, his implied

presence as well as consent relating to compromise petition as well as permission petition could not be ruled out. Accordingly, the compromise petition as well as permission petition are found to be in order. As such, considering the quality of the evidence, conduct of the parties and further perceiving their intention and the nature of offence, permission is accorded to compromise the case. That being so, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside.

15. The appeal stands allowed.

(Aditya Kumar Trivedi, J)

Patna High Court
August 5th 2015
Perwez/AFR

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