

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1 of 2016

Arising Out of PS.Case No. -10 Year- 2008 Thana -MEERGANJ District- PURNIA

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1. Naziba Khatoon Daughter of Syed Haris resident of village- Rangpura,
P.S. Mirganj, District- Purnea

.... Appellant/s

Versus

1. The State of Bihar
2. Md. Tanbir @ Md. Tanjir son of Late Kasimuddin resident of village-
Rangpura, P.S. Mirganj, District- Purnea

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh

For the Respondent/s : Mr. Mayanand Jha(App)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

1 18-03-2016

In the present appeal, the appellant seeks to assail the judgment of acquittal, dated 5th of October, 2015, passed by the learned 2nd Additional Sessions Judge, Purnea, in Sessions Case No. 462 of 2010/Trial No. 814 of 2014, whereby and whereunder the learned trial Court has held that the charge, under Section 376 of the Indian Penal Code, against the respondent no. 2 had not been proved beyond reasonable doubt and has accordingly acquitted the accused of the charge under Section under Section 376 of the Indian Penal Code.

2. The prosecution's case, as it was narrated at the trial, is, in brief, that about six months ago, while the mother of



the prosecutrix was away to Purnea, the accused-respondent No. 2, at 11.0 Clock in the night of 25.02.2008, forcibly entered into the house of the complainant by breaking open the door and forcibly committed rape on her at the point of knife. The accused asked her to keep quite and threatened to slaughter her. He further assured her that if she kept quite, then, he would marry her. She kept quite and, on the assurance of marriage, he repeatedly committed sexual intercourse with her and, as a result thereof, she became pregnant. However, when the appellant asked the accused, respondent No.2 herein, to solemnize marriage with her, respondent no. 2 replied that in pregnancy, how can the marriage be solemnized. Thereafter, in the absence of the appellant's mother, all the named accused persons, including respondent No. 2, came to the house of the prosecutrix and forcibly took her to Purnea, where they kept her in a thatched house. They also forcibly tried to make her drink some medicine, but she closed her mouth. On alarm being raised by her, the people, residing nearby, rushed there and all the accused persons made good their escape. Thereafter, the prosecutrix, somehow, managed to reach her house and narrated the whole incident to her mother, who went to the Sarpanch for justice. However, the Sarpanch advised her to file a case in the court.



3. The appellant, then, filed a complaint case bearing Complaint Case No. 491 of 2008, on 03.03.2008, in the Court of the Chief Judicial Magistrate, Purnea. The said complaint was sent to the police under Section 156(3) of the Code of Criminal Procedure for institution and investigation of the case and, accordingly, Mirganj P.S. Case No. 10 of 2008 was registered under Sections 313 and 376 of the Indian Penal Code. After investigation, *charge sheet* was submitted against the accused respondent No. 2 under Section 376 of the Indian Penal Code.

4. In support of their case, prosecution examined altogether 9 (nine) witnesses. Accused was, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in his examinations aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial. No evidence was adduced by the defence.

5. Having, however, arrived at the finding that the charge against the accused-respondent No. 2, under Section 376 of the Indian Penal Code, had not been proved, the learned trial Court acquitted him.

6. Aggrieved by the acquittal of the respondent No. 2, under Section 376 of the Indian Penal Code, the complainant

of the case has preferred this appeal.

7. Heard Mr. Ajit Kumar Singh, learned Counsel for the appellant, and Mr. Maya Nand Jha, learned Additional Public Prosecutor for the respondent-State.

8. According to the evidence of P.W.1, he heard from his wife that the prosecutrix was being visited by the accused and they were both having love affairs and had also been in physical relationship with each other. Clearly, the evidence of PW 1 is *hearsay* and cannot be given any credence at all.

9. P.W.2 has deposed that she knows the prosecutrix, who lives with her mother, her father, having divorced her mother and that is why she lives with her mother separately from her father. According to the evidence of PW 2, the prosecutrix is a labourer and she resides next to this witness's house. She had seen the accused frequently visiting the house of the prosecutrix and when the prosecutrix became pregnant, the mother of the prosecutrix asked the mother of the accused to marry the accused with her daughter, but they declined. Subsequently, a son was born to the prosecutrix.

10. P.W. 3 the mother of the appellant, she deposed that about three years back, while she was at Purnia in



connection with her own case, the accused entered into her house forcibly and committed rape on her daughter, but she came to know about this incident six months thereafter, when her daughter became pregnant, whereupon this witness requested the father of the accused to marry his son with this witness's daughter, but the accused refused and, then, they filed a case in the court.

11. P.W. 4 has deposed that about three years back, at around 8 A.M., he was at the *bazar*, where he saw a girl being pulled away by a boy and, on enquiry, he learnt that the boy and other persons had been trying to take her for an abortion against her will. He, then, reprimanded them and went on his own way. The evidence of PW 4 is too vague inasmuch as he did not identify as to who were the boy and the girl.

12. P.W. 6 has deposed that the complainant lived with her mother whereas her father lives separately in the same village. He has also deposed that the prosecutrix was married 10 years ago and has not yet been divorced. She works as a labour. She became pregnant two-and-half years back, but when her mother asked the accused to marry her daughter as the child she was carrying was the child of the accused, the accused declined to do so, whereupon the mother of the prosecutrix told the

accused to give her either two khatas of land or face prosecution.

This witness has deposed that the accused is a married man and he has three children.

13. PW 7 is the doctor, who examined the victim girl and found her to be pregnant by 16 weeks. PW 8 is the Investigating Officer, who has registered the case and given a description of the house of the complainant and recorded statements of the prosecution witnesses including the complainant.

14. At the trial, the Complaint Case No. 4304 of 2012 was produced along with the order passed therein on 03.09.2013, marked as Exhibit A, which shows that the complainant of the present case had filed a complaint against the accused and others alleging that as a result of love affairs between them, the accused had entered into a *Nikaah* with her on 21.11.2005 and, thereafter, she continued to live with him peacefully in her matrimonial house for one year, but after she became pregnant, she was sent to her mother and a demand of Rs. 1 lac and also one motorcycle had been raised by the accused. It was alleged that on failure to fulfil the demand so raised, she was not taken back by the accused to her matrimonial house and she (the complainant), continues to live with her

mother.

15. In the light of the evidence pointed out above, the learned trial Court held, as indicated above, that the case against the accused could not be proved beyond reasonable doubt.

16. In the case at hand, except the complainant herself, there is no other witness to the alleged occurrence of rape committed by the accused. Before the complainant/informant became pregnant, she never raised any grievance that she had been subjected to rape. Apart from the above fact that the accused was already married man, exhibit A shows that according to the complainant-appellant herself, her marriage to the accused has been solemnized and it was only when she became pregnant that she had been sent back to her mother. The evidence so adduced by the prosecution was nothing but an ad-mixture of half-truth and untruth, and the truth, if any, was so inextricably mixed with each other that it has become impossible to disengage the truth from falsehood.

17. In the light of the evidence, which we have discussed above, we do not find that the learned trial Court committed any error, factual or legal, in coming to the conclusion that it reached and in acquitting the accused respondent.

18. This appeal is, therefore, not admitted and is accordingly dismissed.

(I.A. Ansari, ACJ)

(Anjana Mishra, J)

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