

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.77 of 2015

Arising Out of PS.Case No. -13 Year- 2011 Thana -ARA HARIJAN District- BHOJPUR

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BALESHWAR SINGH SON OF RAMJANAM SINGH, RESIDENT OF
VILLAGE- CHHAPRA, P.S. NARAYANPUR, DIST- BHOJPUR.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Rajendra Nath Sinha, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 01-09-2017

Appellants, Baleshwar Singh who has been found guilty for an offence punishable under Section 493 of the IPC and sentenced to undergo R.I. for three years vide judgment of conviction and sentence dated 14.01.2015 passed by First Addl. Sessions Judge cum Special Judge (SC/ST), Bhojpur at Ara in SC/ST Case No.49/2012.

2. PW.3, Kalawati Devi had filed Complaint Petition No.768(C) of 2011 which was sent to the P.S. concerned for registration and investigation under Section 156(3) Cr.P.C. as a result of which Bhojpur Sadar SC/ST P.S. Case No.13/2011 was registered under Section 376, 3(i),(x),(xi) of the SC/ST (POA) Act followed with an investigation as well as submission of charge sheet facilitating the trial which concluded in a manner, subject matter of instant appeal.

3. The allegation having put forward at the end of the



aforesaid Kalawati is that she happens to be resident of village-Sandesh. While she was aged about 18-20 years, appellant/accused began to visit her place and in the month of March 1990, after saying that you happens to be like his wife but, evaded himself to marry in accordance with law on the plea that on account thereof, he will be defamed, disgraced in the society even then, physical intimacy was there though, she called it being victimized on account of constantly raped at his end. During midst thereof, there was promise at the end of the accused to provide her independent land, building, livelihood and under garb of aforesaid promise, offer she was regularly raped. On account of aforesaid deceitful promise, complainant could not marry. At the present stage, when the health of complainant is deteriorated, she has been deserted. She persuaded him but gone unheeded. Panchayati was also convened but could not yield fruitful, whereupon, instant case has been filed.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that complainant at the instance of Madheshwar Verma (PW.2) tried to blackmail him, and on his protest, this false case has been filed at the instance of aforesaid Madheshwar Verma.

5. In order to substantiate its case prosecution had examined altogether four PWs who are PW.1 Chandra Kumar Singh,



PW.2 Madheshwar Verma, PW.3 Kalawati Devi and PW.4 Satya Narayan Uraon, the Investigating Officer. Side by side also exhibited Ext.1-Signature of PW.3 over complaint petition, Ext.2-Signature of Officer-in-charge over formal FIR.

6. Charge against appellant was framed against the appellant under Section 376,493 of the IPC, 3(i)(x)(xi) of the SC/ST (POA) Act however, after analyzing the evidence available on the record so produced on behalf of prosecution during trial, the learned lower court had acquitted appellant for an offence punishable under Section 376 of the IPC as well as Section 3(i)(x)(xi) of the SC/ST (POA) Act at the other end convicted and sentenced for under Section 493 of the IPC.

7. In order to properly appreciate the evidence inconsonance with the niceties relating to Section 493 of the IPC it looks prudent to have a glance over Section 493 of the IPC which reads as follows:

“493. Cohabitation caused by a man deceitfully inducing a belief of lawful marriage.--Every man who by deceit causes any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.”

8. From perusal of the Section, it is evident that it application is only permissible when there happens to be deceitful



action at the end of the accused by which victim is kept under illusion of valid marriage irrespective of the fact that no valid marriage was solemnized and under banner of aforesaid illusory event, the victim submits herself in continuation of sexual relationship.

9. Coming to the evidence on the record, the most important witness on this score happens to be PW.3, the victim herself. She had deposed that occurrence is of the year 1990. She is unable to disclose the date as well as month. She used to go to house of Madheshwar Verma (PW.2) where accused also visited. On account thereof, both became known to each other. Accused requested Madheshwar Verma to act as middle man in getting negotiation of marriage finalized in between he himself with her, which she refused. Then Baleshwar Singh met with her mother and also requested. Baleshwar Singh also came to her place and threatened to commit suicide if she declines. Out of aforesaid threatening, she began to reside with Baleshwar Singh. She remained in his company for the last 20 years. They had cross all barrier. They have developed, continued with physical relationship. Baleshwar took her away to different places of his posting. When Baleshwar Singh enticed her away she was aged about 20 years. She repeatedly requested Baleshwar Singh to marry but he refused. He put vermilion only to show the others that she happens to be her legally wedded wife. He also performed some rituals on that pretext to deceive others. He had promised that after retirement, he will construct house



for her. He had also promised that he will reside with her. He had also promised that her name will be in the pension book. As he failed, so this case has been filed.

10. During cross-examination, at para-6 she had stated that Madheshwar Verma happens to be her co-villager. Madheshwar Verma is instrumental in getting this case filed. She became known to accused Baleshwar Singh at the place of Madheshwar Verma. At that very time she was aged about 20 years. One month thereafter Baleshwar Singh requested Madheshwar Verma to get him married. In para-8 she had stated that she had not fled from her house rather she accompanied Baleshwar Singh she use to regularly visit him. In para-9 she had further stated that whatever she deposed today she had not incorporated in the complaint petition. In para-11 she had further stated that she will file document in support of her company with Baleshwar Singh for the last 20 years. Then had denied the suggestion. (Though not filed)

Therefore, from her evidence alone, it is evident that she was never kept in dilemma or on false promise or under illusion of getting herself married with appellant Baleshwar Singh which could be valid one irrespective of the fact that the same was not valid. That being so, the major ingredient for constitution an offence punishable under Section 493 of the IPC is found lacking. So far status of other witnesses are concerned, those are also not going to



improve the case of the prosecution.

11. That being so, the judgment impugned did not justify its prevalence whereupon is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. However, it will be at the option of the informant/complainant to take shelter under Domestic Violence Act.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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