

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.281 of 2015

Arising Out of PS.Case No. -47 Year- 2006 Thana -PARIHAR District- SITAMARHI

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1. Jitu Rai Son of Jagdish Rai resident of Khoparhiya, P.S. Parihar, District Sitamarhi. Appellant/s

Versus

1. The State of Bihar. Respondent/s

with

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Criminal Appeal (SJ) No. 341 of 2015

Arising Out of PS.Case No. -47 Year- 2006 Thana -PARIHAR District- SITAMARHI

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1. Hansh Lal Rai Son of late Ramjee Rai R/o Village= Khoparheecha, P.s Parihar, District sitamarhi. Appellant/s

Versus

1. The State of Bihar Respondent/s

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Appearance :

(In CR. APP (SJ) No.281 of 2015)

For the Appellant/s : Mr. Kumar Rajiv, Adv

For the Respondent/s : Mr. Z. Hoda, APP

(In CR. APP (SJ) No.341 of 2015)

For the Appellant/s : Mr. Ashok Kumar Jha, Adv

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 11-10-2017

Criminal Appeal (SJ) No.281 of 2015 wherein Jitu Rai happens to be appellant and Criminal Appeal (SJ) No.341 of 2015 wherein Hansh Lal Rai happens to be appellant have been analogously heard on account of arising out of common judgment of conviction dated 20.04.2015 and order of sentence dated 28.04.2015 passed by 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 593/07/136/13 whereby and whereunder they both have been found guilty for an offence punishable under Section 363 IPC and have been sentenced to undergo RI for 4 years and fined of Rs. 1000/- under Section 366(A) IPC sentenced to undergo RI for 7 years and fined of Rs. 5000/-, under Section 376 IPC sentenced to



undergo RI for 10 years as well as fined appertaining to Rs. 5000/- and in default thereof, to undergo RI for 3 months additionally (consolidated) with a further direction to run the sentences concurrently.

2. Virtually, as perceived from the lower court records, it happens to be war of differences in between old generation as well as new generation. It shows conflict of perception, action way of appreciation of life. The informant who happens to be father of the victim (name withheld) PW-7 had filed a written report on 13.06.2006 alleging inter alia that in the night of 03.06.2006, they had gone to sleep at about 9:00 PM. In the midnight when he woke up, he found the victim aged about 15 years missing from her room. He thought that she might have gone to meet the nature's call, on account thereof, he began to wait. Even after an hour, she did not return, whereupon he awoke other family members and then, went in search of the victim and during course thereof, the came to know that Jitu Rai and Hansh Lal Rai allured her and took her away.

3. After registration of Parihar PS Case No. 47/2006, investigation commenced, during course thereof, the victim was traced out, her statement under Section 164 CrPC was recorded, medically examined and then thereafter, completing the investigation charge-sheet was submitted facilitating the trial with ultimate result, subject matter of the instant appeals.

4. Defence case as is evident from the mode of cross-



examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, it has also been pleaded that the victim happens to be major one who volunteered herself and got married with appellant, Jitu Rai out of her own sweet volition. However, neither ocular nor documentary evidence has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs out of whom PW-1, Ramashrai Rai, PW-2, Kapileshwar Rai, PW-3 Amindra Rai, PW-4, Sarvalal Rai, (informant) PW-5, Jai Murti Devi, mother of victim, PW-6, Dr. Sudha Jha, PW-7, victim, PW-8, Ram Bihari, Judicial Magistrate who had recorded statement of victim during course of investigation under 164 CrPC and PW-9, Sri Ram Tiwari, Investigating Officer, as well as had also exhibited Ext-1 series, X-ray plates, Ext-2, Medical report, Ext-3, Statement of victim under Section 164 CrPC, Ext-4, Formal FIR, Ext-5, endorsement over written document.

6. As stated above defence had not produced oral as well as documentary evidence.

7. PW-6, Dr. Sudha Jha had examined the victim on 21.07.2006 on police requisition. She had not found any kind of injury over private part, valve, vagina of the victim. Hymen was ruptured, old tags present, vagina admitted two fingers easily. Vaginal swab was taken and sent for laparoscopic examination. There was absence



of spermatozoa dead or alive. For ascertainment of age, X-ray of different joints were taken and as per medical board, her age was estimated in between 16 to 18 years. It has also been held that it is difficult to say with regard to event of rape though the victim was habitual of sexual intercourse.

8. PW-7 is the victim. On the date of examination that means to say on 25th of November 2010, she had shown her age to be 22 years and in likewise manner, the court had also estimated. During her examination-in-chief, she had completely leaned in favour of accused persons/appellants and further stated that she got married herself with Jitu Rai. Out of the aforesaid wedlock, she had begotten two children, Chandni aged about 3 years and a son aged about 2 years. It had also been narrated by her that first wife of Jitu Rai, namely, Phulwariya Devi is dead. She had further stated that during her statement under Section 164 CrPC, she had stated that Jitu had committed rape on her for about a month and then thereafter, she was raped by Hansh Lal Rai. During course of cross-examination, she had controverted the same by way of stating that she had deposed like so at the instance of her parents.

9. Whenever there happens to be ossification report with regard to ascertaining of age of the victim, it cannot be a conclusive evidence. As per Modi Medical Jurisprudence, there always happens to be scope of variance of two years on either side. And that happens



to be reason behind by a series of judgments, the Hon’ble Apex Court has observed that the opinion in ascending way is to be accepted, admitted whereupon age of the victim varies in between 18 to 20 years, that means to say, on the date of alleged occurrence, she was major. Other family members, that means to say, the parents and the brother of the victim including that of PWs-1 and 2 by their evidences tried to negate as well as condemn the activity of the victim who on account of majority joined hand with the appellants and that being so, their evidences became worthless.

10. Consequent thereupon, the judgment of conviction and sentence rendered by the learned lower court did not find favour and is accordingly, set aside. Both the appeals are allowed.

11. Since both the appellants are on bail, they are discharged from the liability of bail bonds.

(Aditya Kumar Trivedi, J)

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