

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.524 of 2002

**(Against the judgment of conviction and order of sentence
dated 26.08.2002 passed by Shri Awadhesh Kishore Prasad
Singh, Presiding Officer, Additional Court No.1, Nalanda in
Sessions Trial No. 505 of 1989/18 of 2002**

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Prabhakar Pandey @ Lallo Pandey, son of Shri Madan Murari Pandey, resident of
village-Dasrathpur, P.S.-Giriyak, District-Nalanda.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Murari Narayan Choudhary
Mr. Vijay Kumar
Mr. Mohit Kumar Srivastava

For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

Date: 14-10-2017

Heard learned counsel for the appellant and the counsel
appearing on behalf of the State.

2. Appellant was convicted for an offence under section
450 of the Indian Penal Code and Section 27 of the Arms Act. He was
sentenced to undergo rigorous imprisonment for three years for the
offence punishable under section 450 of the Indian Penal Code and
rigorous imprisonment for one year under section 27 of the Arms Act
and both the sentences was ordered to run concurrently.

3. Mr. Murari Narayan Choudhary, counsel appearing on
behalf of the appellant submits that initially case under section 376
and Section 380 of the Indian Penal Code was registered but later on



prosecution has resiled from the main allegation and on the basis of evidence led by the prosecution, the trial court convicted the appellant for the offence under section 450 of the IPC and 27 of the Arms Act.

4. Mr. Choudhary submitted that 18.3.1989 approximately 28 years ago when this case was registered, for offence of rape maximum sentence was 10 years under Indian Penal Code, he submits that even if the case of the prosecution is accepted in its entirety, the appellant cannot be charged for an offence under section 450 IPC. He submits that in order to attract offence under section 450 of the Indian Penal Code, the trespass has to be established for the purpose of committing an offence punishable with imprisonment for life whereas taking the case of prosecution on its face value at the relevant time when the allegation was levelled against the appellant, offence of rape maximum punishment was imprisonment for a term of ten years and as such section 450 of the Indian Penal Code is not attracted. Mr. Choudhary submitted that in the instant case, the prosecution itself has resiled from the allegation of committing rape and in the facts and circumstances of the case when according to the informant no one was in the house other than the informant and there was no intervening circumstances to prevent the appellant for committing rape and if the appellant has any intention to commit rape he could have committed such crime. Mr. Choudhary as such



submitted that at the highest case against the appellant can be taken as house trespass for which the maximum punishment is one year and fine of Rs. 1000/- and as such he submits that for committing offence of house trespass, law provides for imprisonment for one year or fine of Rs. 1000/- or both.

5. He next submitted that in the instant case for an offence under section 27 of the Arms Act although the offence cannot be established in the absence of recovery of arms but even assuming the trial court has rightly convicted and sentenced the appellant for the offence under section 27 of the Arms Act, the appellant has suffered enough ordeal during the intervening period of 15 years of the pendency of the present appeal he submitted that in totality of facts situation the appellant has faced ordeal of trial for nearly 28 years and as such he deserves consideration of his case sympathetically.

6. After hearing the parties and considering the totality of the facts situation, the court feels that in a case like the instant where the allegation against the appellant is only trespass, no useful purpose would be served by sending the appellant in jail custody.

7. In the facts and circumstances discussed above, the application is partly allowed. The sentence of conviction of the appellant under section 450 of the IPC is converted as under section 448 of the Indian Penal Code and considering the period of pendency



of the case, the court deem fit and proper to direct payment of compensation to the victim instead of imprisonment, the sentence is reduced to payment of compensation of Rs. 5000/- to the victim of this case within a period of two months from today.

8. With the aforesaid modification, the appeal is partly allowed and disposed of.

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	19.10.2017
Transmission Date	19.10.2017

