

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.486 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- BUXAR

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1. Kedar Yadav @ Kedar Singh
2. Hiranman @ Hiranman Yadav, both sons of Late Mangru Yadav
3. Kariman Yadav, son of Saral Yadav
4. Bhikhari Yadav, son of Raj Girhi Yadav, all residents of village Giridhar
Beraon, P.S. Nawanagar, District Buxar

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s :Mr. Rajesh Kumar Sharma, Advocate (amicus curiae)
For the Respondent: Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 08-03-2018

All the appellants stand convicted under Sections 323/34 and 354/511 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months under both counts and both the sentences were directed to run concurrently vide judgment and order dated 16.8.2003 passed by Sri Sheo Nandan Yadav, the then 3rd Additional District and Sessions Judge, Buxar in Sessions Trial No. 195 of 1998.

2. Prosecution case as per the complaint lodged by P.W.4 Parwati Kumari is that while she was sitting in “dumukhua” accused persons came and lifted her and brought her on a lane and they have thrown her on the ground and appellant Kedar Yadav gagged her



mouth by “gamchi” and one of the accused caught hold of her hands and one of the accused caught hold of her legs and thereafter Kedar Yadav laid over her with bad intention. However, when her mother came and raised alarm she was assaulted by accused persons and thereafter when her brother and uncle came there, they have also been assaulted by the accused persons and on arrival of the villagers they fled away.

3. The aforesaid complaint was sent for registration under Section 156(3) Cr.P.C. and on that basis Nawanagar P.S.Case No. 97 of 1995 was registered. Police after investigation submitted charge sheet and cognizance of the offence has been taken and the case has been committed to the court of sessions, which ultimately came to the file of learned trial judge for trial and disposal.

4. During trial charges under Sections 323/34 and 376/511 were framed against all the accused appellants. It further appears that during trial altogether seven witnesses have been examined on behalf of prosecution, they are PW 1 Rajgrihi Sharma, who claims to be eye-witness to the occurrence and uncle of the complainant/informant, PW 2 Bhuli Sharma, who claims to be one of the eye-witnesses and injured, PW 3 Kalawati Devi, who is mother of the complainant/informant and injured, PW 4 Parwati Kumari, who is complainant/informant and injured, PW 5 Dharmender Sharma, who



claims to be one of the eye-witnesses to the occurrence and injured, PW 6 Dr. Rajiv Ratan, who has examined the injured persons at Sub-Divisional Hospital, Buxar and PW 7, Vedbrat, who is I.O. of the case and has investigated the case.

5. On behalf of defence neither oral nor documentary evidence has been adduced and their defence is false implication, innocence and their further plea is that no such occurrence has taken place.

6. Learned trial court on conclusion of trial, not finding the appellants guilty for the offences under Sections 376/511 IPC, has convicted the appellants under Sections 354 and 323 IPC and sentenced them as stated above.

7. Since nobody appears on behalf of the appellants on repeated calls, Mr. Rajesh Kumar Sharna, Advocate, who is present in Court, has been appointed as amicus curiae to assist this Court.

8. Contention of learned amicus curiae is that in this case allegation has not been found true by learned trial court as appellants were not found guilty for the offences under Sections 376/511 IPC, however, on the basis of same evidence, learned trial court has convicted the appellants under Sections 354 and 323 IPC. Further submission of learned counsel for the appellants is that all the witnesses are related witnesses and no independent witness has been



examined and moreover case of the prosecution has been developed stage by stage and no consistent story has been given by the prosecution and even if the complaint is believed as true, at best it is a case of fight between the parties and there was no intention to outrage the modesty of the girl, as such, conviction of the appellants under Sections 354 and 323 IPC is not sustainable in the eye of law.

9. On the other hand, learned counsel for the State has defended the impugned judgment stating that the judgment of conviction is just and proper which does not require any interference as evidence is consistent on the point of outraging modesty and assault are concerned.

10. Having heard both sides and considered the rival submissions of the parties and perused the record, from which it appears that PW 4 is the complainant/informant in this case and she has supported the complaint case in the court stating that she was thrown by appellant Kedar Yadav and one of the accused persons caught hold of her hands and one accused caught hold of her legs and appellant Kedar Yadav laid over her body and thereafter when her mother came she was also assaulted and other family members were also assaulted. However, on close scrutiny of the evidence of this witness it appears that she has herself stated in cross examination that she was not assaulted by any of the accused persons and also stated



that inside the house the accused appellants have not misbehaved with her and whatever they have committed, they have committed in the lane. Her evidence has further been corroborated by evidence of other witnesses and Doctor has found injuries on their persons. However, on close scrutiny of the evidence of PW 4 it appears that appellant Kedar Yadav has not committed any wrong with her though she has further stated that as her mother has come. Her evidence also shows that a large number of persons are residing in the house and if there was any intention on the part of appellants to outrage the modesty of the complainant they ought not to have brought her in the lane and thereafter tried to outrage her modesty, rather they could have outraged her modesty inside the house itself. However, it appears that those injuries are superficial in nature and the evidence available on record is consistent on the point of assault only. There is also allegation that frock and kachha were torn but evidence of PW 5, brother of complainant, is that when he reached at the place of occurrence he saw Parwati (PW 4) wearing samij and kachha and in his cross examination he has not stated that her samij and kachha were torn and he has stated that he does not know where the torn kachha and frock were lying and PW 3, who is mother of the complainant, has stated the kachha and frock were damaged. Hence, so far conviction under Section 354 IPC is concerned, it appears that the



prosecution story does not look probable and suffers from inconsistencies but the learned trial court has not considered the same.

11. As such, so far conviction of appellants under Section 354 IPC is concerned, the same does not inspire confidence as evidence appears to be not free from inconsistencies and infirmities. So far conviction under Section 323 IPC is concerned, there are consistent evidence available on record, as such, the conviction of the appellants under Section 323 IPC is affirmed and their conviction under Section 354 IPC is set aside.

12. It appears that appellants were sentenced to undergo rigorous imprisonment for three months in both counts and sentences were directed to run concurrently and appellant No.1 Kedar Yadav has remained in custody for two months and occurrence is of the year 1995 and 22 years long period have already passed and appellants have suffered mental agony for long 22 years. Submission of learned counsel for the appellants is that benefit of Probation of Offenders Act has not been allowed to the appellants by learned trial court and for that no reason has been assigned by the learned trial court, as such, miscarriage of justice has been committed to the appellants.

13. Considering the aforesaid fact, so far sentence of appellant No.1 Kedar Yadav is concerned, the same is reduced to the period already undergone by him and so far sentence of appellants



Nos. 2 to 4, namely, Hiranman @ Hiranman Yadav, Kariman Yadav and Bhikhari Yadav is concerned, instead of affirming the sentence, they are directed to be released on due admonition.

14. With the aforesaid modification in the judgment of conviction and order of sentence, the appeal is disposed of.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	12.3.2018
Transmission Date	12.3.2018

