

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.287 of 2004**

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

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Shyam Sunder Thakur, son of Yogendra Thakur, resident of village-  
Silouta, P.S- Shambhuganj, Dist- Banka

.... .... Appellant/s

Versus

State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ajay Kumar Thakur  
Mr. Sadanand Paswan

For the Respondent/s : Mr. Ashok Kumar A.P.P

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR  
SRIVASTAVA**

**ORAL JUDGMENT**

**Date: 26-03-2018**

1. This Criminal Appeal has been preferred against the judgment of conviction and sentence order dated 23.04.2004 passed by the Additional Sessions Judge F.T.C Banka in Session Trial no.516 of 1997 by which and whereunder he convicted the sole appellant for the offence punishable under section 376 and 493 of the Indian Penal Code and, accordingly, sentenced him to undergo rigorous imprisonment for 10 years as well as imposed fine of Rs. 5,000/- under section 376 of the Indian Penal Code. Similarly to undergo rigorous imprisonment for 10 years and Rs.



5,000/- was imposed as fine for the offence punishable under section 493 of the Indian Penal Code and, furthermore, in default of payment of fine they were ordered to undergo 3 years rigorous imprisonment. However, both the above stated sentences were ordered to run concurrently.

2. PW 10 Sanja Devi gave written statement to D.I.G Bhagalpur on 27.04.1997 stating therein that marriage of her elder sister had solemnized in village Silota and the appellant used to teach the children of her elder sister. She further alleged in his written report that she had gone to the house of her elder sister to look after her children. The appellant used to treat her elder sister as Bhabhi and to her as Sali and when her elder sister was not at home, the appellant forcibly committed rape on her and threatened to kill her. However, when she made protest the appellant assured her to solemnize his marriage with her and, thereafter, she adopted him as a husband. She further alleged that the appellant took her to his house but after 20 days, he started assaulting her and also started demanding Rs. 5,000/-. Subsequently, he left



his home. She further alleged that when the appellant left his house, his parents and other family members ousted her from their house and, thereafter, she went to Shambhuganj Police Station for lodging F.I.R but the officer-in-charge of Shambhuganj Police Station was bribed by father of appellant was demanded bribe to the parents of the appellants and having taken bribe from father of the appellant, the officer-in-charge of Shambhuganj Police Station made attempt to commit rape on her. However, she could, any how, escape from clutches of officer-in-charge of Shambhuganj Police Station and, thereafter, on the advice of some persons, she approached to Mahila Police Station, Bhagalpur to get her case registered and when she went to the police station, she again failed to lodge the case and, thereafter, the above stated written report was given to D.I.G Bhagalpur.

3. On the basis of aforesaid written report, Shambhuganj P. S Case no. 35 of 1997 was registered on 28.04.1997. The case was investigated by the I.O and after completion of the investigation, I.O submitted charge sheet



under sections 376/493 of the Indian Penal Code against the appellant and after cognizance and commitment, the appellant was put up before the trial court and accordingly, he stood charged for the offences punishable under section 376 and 493 of the Indian Penal Code. The appellant denied of charges.

4. In course of trial, the prosecution examined, altogether, 11 prosecution witnesses and also got exhibited medical report as exhibit-1. The statement of the appellant was recorded under section 313 of the Cr.P.C in which the appellant reiterated his innocence.

5. Although, the appellant did not adduce any evidence in support of his defence but from perusal of trends of cross-examination of prosecution witnesses, it appears that the defence of appellant was total denial of the prosecution story.

6. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and sentence order arguing that the deposition of informant goes to show



that she was a consenting party and she was major at the time of alleged occurrence. Learned counsel for the appellant further submitted that the learned trial court committed error in convicting the appellant for the offences under sections 376 and 493 of the Indian Penal Code.

7. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction and sentence order arguing that the informant clearly stated that she was raped by the appellant and the doctor also corroborated the statement of informant and, therefore, there is no scope to interfere into the impugned judgment of conviction and sentence order because it is well settled principle of law that the judgment of conviction and sentence order for offence under section 376 of the Indian Penal Code can be based on the sole testimony of the victim, if her statement inspires confidence to the court .

8. Having heard the rival contentions of both the parties, I went through the record.

9. The victim (informant) has been examined before



the trial court as PW-10. She stated in her examination –in-chief that she had gone to the house of her elder sister to look after her small children and the appellant used to teach the children of her elder sister. She further stated that on one day, her sister had gone to Patna and she along with children of her sister was alone in the house. In the meantime, the appellant came there and forcibly established physical relation with her. She, further, stated that she started weeping upon which the appellant assured her that he would solemnize his marriage with her. She further stated that she having reposed on the statement of appellant started treating him as her husband and, thereafter, the appellant started establishing physical relation with her almost on each and every day and the aforesaid act of the appellant continued for near about six months but once while the appellant was establishing physical relation with her, her elder sister and her brother-in-law saw them in objectionable position and, thereafter, they started assaulting her and then the appellant disclosed before them that he had already solemnized his



marriage with her and, thereafter, he took her to his home. PW-10 has admitted in her examination-in-chief that when she went to Shambhuganj Police Station to lodge F.I.R, she was not accompanied by her elder sister as well as brother-in-law. It is pertinent to note here that her elder sister and brother-in-law have not been examined in this case as prosecution witness.

10. Learned counsel appearing for the appellant submits that the above stated circumstance goes to show that PW-10 was a consenting party and when she was caught in objectionable condition by her family members, she lodged the present case against the appellant to put pressure upon him.

11. PW11, is doctor Smt. Poonam Mishra, who had medically examined PW-10. She did not find any sign of rape but admittedly, PW-10 was examined on 28.04.1997 that is much after the so called occurrence of rape. The important thing in the deposition of PW-11 is the age of victim. PW-11 has stated in her examination-in-chief that at



the time of examination, the PW-10 was above 16 years but PW-10 had disclosed her age as 19 years when she was examined by the trial court. Therefore, the statement of PW-11 as well as discloser of PW-10 in respect of her age goes to show that PW-10 was major at the time of alleged occurrence.

12. From perusal of the impugned judgment, I find that the learned trial court under misconception observed that the doctor had found the victim aged about 16 years and on that premises the learned trial court treated the PW-10 as minor but the evidence available on record goes to show that victim (PW-10) was major and she was a consenting party. Therefore, in my view, the learned trial court wrongly convicted the appellant for the offences punishable under sections 376 of the Indian Penal Code. So far as section 493 of the I.P.C is concerned, the PW-10 was aware of this fact that she was not legally married wife of the appellant and, therefore, section 493 of the Indian Penal Code is also not attracted in the present case.



13. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, are hereby, set aside. The appellant is on bail. He is discharged from the liabilities of his bail bonds

**(Hemant Kumar Srivastava, J)**

N.K/-

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