

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.702 of 2015

Arising Out of PS.Case No. -141 Year- 2007 Thana -SIKARPUR District -
WESTCHAMPARAN(BETTIAH)

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Sheikh Safi son of Sheikh Sarai resident of village - Mangarhari, Police Station -
Shikarpur, District - West Champaran.

... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bashistha Narayan Mishra, Adv.

Mr. Brij Kishore Mishra, Adv.

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 25-07-2018

Appellant, Sheikh Safi has been found guilty for an offence punishable under Section 376/511 of the IPC and sentenced to undergo R.I for seven years as well as to pay fine appertaining to Rs. 10,000/- in default thereof, to undergo S.I. for six months additionally, under Section 326 of the IPC and sentenced to undergo R.I. for 5 years as well as to pay fine appertaining to Rs. 10,000/- in default thereof, to undergo S.I. for six months, with a further direction to run the sentences concurrently with a further direction to pay the fine amount to informant if deposited, vide judgment of conviction dated 08.09.2015 and order of sentence dated 14.09.2015 passed by learned Additional Sessions Judge-V, West Champaran at Bettiah in Sessions Trial No. 55 of 2009.

2. The learned counsel for the appellant has confined



his submission mainly on the score of sentence and for that, submitted that appellant remained under custody for 7 ½ months during course of trial, and is under continuous custody since 08.9.2015, from the date of judgment. So, calculating the same the total period of incarceration happens to be approximately 3 ½ years. To justify such submission, it has been submitted that there happens to be admission at the end of the prosecution that occurrence so alleged was in the background of quarrel having amongst the children of the respective families and further, also disclosed that at that very moment, the father as well as wife of the appellant had threatened that she will be given a lesson and that is indicative of the fact that appellant has been victimized as, aforesaid result happens to be developed from the initial version in order to justify the same. Apart from this, it has also been submitted that appellant happens to be poor peasant. The prosecution also could not been able to flash regarding antecedent of the appellant, contrary to that, there happens to be specific suggestion at the end of the appellant that the informant PW-5 was of loose character, more particularly, in the background of absence of her husband since long which was protested by the appellant's family being next door neighbour.

3. The learned Additional Public Prosecutor has submitted that even if the sentence is modified, the amount of fine



which has been directed to be paid to the informant should be retained, as, the same happens to be by way of compensation.

4. It has been alleged by the victim that in the morning of 27/06/2007 at about 4.00 P.M while she was asleep, appellant intruded inside her house after breaking bamboo door so affixed, caught hold her, raped her, and during course of shouting, the accused poured acid upon her. After registration of case, investigation proceeded followed with submission of charge-sheet. During trial, altogether nine witnesses have been examined as well as three Exhibits, i.e. - Ext.1- written report, Ext.2- Injury report and Ext.3- formal FIR have been brought up on record.

5. After considering the evidences having on the record, it is evident that both the parties are next door neighbours. It is further evident that no complaint was ever against the appellants. Furthermore, it is evident that she was threatened by father as well as wife of accused that she will be given a lesson in the background of quarrel amongst the children of both the parties. In the aforesaid backdrop, considering the facts and circumstances as well as considering the fact that only 18% burn injury, superficial, so emerging out, it looks prudent to accept the submission made on behalf of appellant. Accordingly, maintaining the conviction, sentence is modified as already undergone retaining fine inflicted by the



learned lower court with its default clause. In terms thereof, the appeal is being disposed of. If the fine amount is deposited, then the same be handed over to informant on proper identification and the appellant will be released forthwith if not wanted in any other case, otherwise will remain under custody till saturation of the period so prescribed in default thereof.

6. In terms thereof, instant appeal is disposed of.

(Aditya Kumar Trivedi, J)

Ranjeet/-

AFR/NAFR	AFR
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