

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.430 of 2003

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

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Devendra Yadav, son of Shri Lakshman Yadav, resident of village Hariyari, P.S.
Phulparas, District Madhubani

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Anil Kuamr Jha, Sr. Adv.
Mr. Prabhu Narayan Prabhakar, Adv.

For the Respondent : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 26-07-2018

The sole appellant has been convicted under Section 376 of the Indian Penal Code and sentenced to undergo R.I. for seven yeas and further been convicted under Section 506 of the IPC and sentenced to undergo R.I. for six months and also convicted under Section 448 of the IPC and sentenced to undergo R.I. for three years, vide judgment and order dated 26.7.2003 passed by Sri Rajendra Sinha, 2nd Addl. Sessions Judge, Madhubani in Sessions Trial No.112 of 2002. All the sentences were directed to run concurrently.

2. The prosecution case as per the informant Harihar Devi (P.W.4) is that the husband of the informant was living outside for earning his livelihood for 1 ½ years and in the meantime, appellant Devendra Yadav started coming in his house and tried to persuade



her for having physical relationship and on her refusal, on the point of pistol thrashed her down and committed rape upon her. It is also alleged that the informant did not disclose it due to social fear. It is also her case that at the house only father -in -law of the informant Dhakai Yadav was residing in addition to the informant. It is also the prosecution story that during this period the accused committed rape several times on the point of pistol. In the meantime, the informant became pregnant on which accused gave her poison to kill her pregnancy and told that all things will be O.K. and the informant went to her father's house and disclosed it to her *Bhaisur* and her husband and they came with her to the police station and a case has been lodged. The prosecution case is also that earlier a panchayati was also held.

3. On the basis of the aforesaid fardbeyan, Phulparas P.S.Case no.182 of 2001 was registered and the police after investigation submitted charge-sheet, cognizance has been taken and the case has been committed to the court of sessions, which ultimately came to the court of Sri Rajendra Sinha, 2nd Addl. Sessions Judge, Madhubani for trial and disposal.

4. During the trial the charges under Section 376 of the IPC as well as under Section 506 of the IPC, 448 of the IPC has been framed and the prosecution in order to establish its case has examined



altogether four witnesses, they are P.W.1 Louhati Yadav, P.W.2 Dhakai Yadav, P.W. Chattu Yadav and P.W.4 Harihar Devi informant. On behalf of the defence no ocular or documentary evidence has been adduced, however the defence of the appellant as per the statement made under Section 313 of the Cr.P.C. is of false implication and of innocence.

5. The learned trial court on conclusion of the trial has convicted the appellant under Section 376 and other Sections of the IPC as stated above and sentenced them as mentioned above.

6. The learned counsel for the appellant has assailed the judgment on the ground that in this case the trial court has himself admitted that all the witnesses are interested witness and except P.W.4 they are not eye witness of the occurrence and so far P.W.4 is concerned, it is submitted that prosecution story does not look like probable that the appellant used to come to the house of the informant and having physical relationship and no *hulla* was raised nor the same was disclosed to any person; whereas the evidence discloses that P.W.2 father -in -law and the P.W.4 are residing in the same house along with the family of his three sons. Apart from that Doctor has not been examined in this case to corroborate the evidence of rape and in absence of that allegation of rape by the appellant under Section 376 of the IPC and other Sections of the IPC does not inspire confidence



and appear to be not sustainable in the eye of law.

7. On the other hand the learned counsel for the state has defended the judgment on the point that evidence of P.W.4 is consistent and the same has been corroborated by the FIR, which is the earliest prosecution version, as such the conviction of the appellant is just and proper and it does not require any interference of this Court.

8. In view of the background of the submission of the parties while considering the evidence it appears that P.W.4 is the informant in this case and she has narrated in the prosecution case that her husband is living outside in connection with earning livelihood and in the meantime, the appellant started coming to her house and forcibly committed rape upon her on the point of pistol and he continued to commit rape upon her on the point of pistol and she could not say it to anyone due to social fear.

9. P.W.1 is the *Bhaisur* of the informant, P.W.2 is father-in-law of the informant and P.W.3 is the cousin father-in-law of the informant and they are not eye witness of the occurrence, however, on close scrutiny of the evidence it appears from the evidence of P.W.2 that in the same *Aangan*, the family of his other two sons are also residing and in such a situation the allegation of P.W.4 that she was subjected to intercourse continuously does not appear to be probable



as had it been so that must be noticed by the other members of the family and that must be objected by them but neither there is any evidence, showing that there was any protest or objection nor the informant informed about the same. None of the witnesses have stated that she has disclosed the fact to P.W.1 to 3. The evidence of P.W.4 on close scrutiny appears that she had consensual relationship with the appellant. It further appears from the evidence of P.W.4 of para 5 that she had also informed the husband and her husband come and informed the police, but the police has not taken any action and surprising enough the husband of the informant has not been examined in this case. In such view of the matter, possibility that the informant was consenting party is not ruled out and later on she came with such a prosecution story that she was subjected to rape on the point of pistol in order to save her from social stigma.

10. Section 375 of the IPC is definition of the rape and it provides as follows :

***“375. Rape-A man is said to commit ‘rape’ if he –
First.- Against her will.***

Secondly- Without her consent.

Thirdly- With her consent when her consent has been obtained by putting her or any person in whom she is interested, in fear or death or of hurt.

11. But in the present case though she has alleged that on



the point of pistol she was subjected to commit rape but evidence of none of the witnesses (P.Ws. 1 to 3) disclosed that she disclosed that on the point of pistol, she was subjected to rape, as such there is no evidence that she has been subjected to physical relationship under fear and there is no evidence that she was below the age of 18 years rather she appears to be consenting party. Hence the case does not come under the purview of Section 375 of the IPC .

12. Considering the discussions made above, it appears that the appellant is at least entitled for benefit of the doubt in the case.

13. Accordingly, this appeal is allowed and the judgment and order are set aside. As the appellant is on bail, he is discharged from all the liabilities of his bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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