

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.437 of 2003

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

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Md. Abulesh @ Lasia, son of Late Md. Kamaruddin, resident of village Haranath
Samastipur, P.S. Sahkund, District Bhagalpur

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Shiwesh Chandra Mishra, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 27-07-2018

Sole appellant has been convicted under Section 452 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years and a fine of Rs.2000/- with default clause by judgment and order dated 16.8.2003 and 25.8.2003 respectively passed by Sri Alok Chandra Prasad, the then 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 768 of 1993/T.R. No. 47 of 1996 by which the appellant was acquitted from the charges under Sections 376, 109, 323 and 380 IPC.

2. Prosecution case as per the fardbeyan of informant Bibhash Devi (PW 3) recorded by A.S.I. Basant Lal of Herneth-Sahkund Police Station, camp Khaira on 13.12.1990 at 6 hours, in short, is that on 12.12.1990 at about 9.10 P.M. informant Bibhash Devi was sleeping in her house and on noise made by her father-in-



law Chamru Pandit (PW 1) she came out after lighting Dibiya and saw the accused persons, namely, Amnu Mian, Lasia alias Abulesh and one unknown, to whom she could not identify. All three accused persons started assaulting her father-in-law and demanding money from him. The informant tried to save her father-in-law, on which miscreants caught hold of her by hairlock and dragged her out. Thereupon the informant began to cry and she was taken near a Neem tree outside the house by lifting her and thereafter she was subjected to rape by accused Amnu Mian and appellant Lasia alias Abulesh. It is also the case of prosecution that from PW 1 they have taken away Rs.700/-.

3. On the basis of above fardbeyan, Sahkund P.S.Case No. 103 dated 13.12.1990 was registered for the offences under Sections 394, 376, 323 and 364 IPC. Charge sheet has been submitted under Sections 452, 380, 323, 354 and 376 IPC. Cognizance of the offence was taken and thereafter after commitment the case traveled to the file of Sri Alok Chandra Prasad, the then 1st Additional Sessions Judge, Bhagalpur for trial and disposal.

4. During trial charges were framed against the appellant under Sections 376, 452 and other sections of the Indian Penal Code and in order to establish its case the prosecution has examined altogether nine witnesses, they are PW 1 Chamru Pandit, PW 2



Ganesh Pandit, PW 3 Bibhash Devi, informant, PW 4 Neelam Kumari, PW 5 Jhaksu Pandit, PW 6 Narsingh Pandit, PW 7 Dr. vinod Kumar Choudhary, PW 8 Lakho Pandit and PW 9 Chhedi Lal Sah. Out of them PW 9 is a formal witness and PWs 6 and 8 have been declared hostile by the prosecution and I.O. has not been examined in this case.

5. Defence of the accused appellant is of innocence and false implication.

6. Learned trial court on conclusion of trial has convicted the appellant under Section 452 IPC and sentenced him as stated above and acquitted him from the charges under Section 376 and other sections of the Indian Penal Code.

7. Learned counsel for the appellant has assailed the judgment on the ground that though learned trial court has convicted the appellant under Section 452 IPC but has failed to appreciate the fact that informant herself has stated in her evidence that appellant has not participated in the occurrence, which will appear from her evidence and PW 2 is not an eye-witness to the occurrence and though PW 1 Chamru Pandit in his evidence has named this appellant also but in view of the evidence of PW 3, the evidence of PW 1 does not appear to be trustworthy so far identification of this appellant is concerned, and PW 2 though an hearsay witness, but his evidence also



disclosed that PW 3 had not named the appellant as such, conviction of the appellant by learned trial court does not inspire confidence, hence is not sustainable in the eye of law.

8. On the other hand, learned counsel for the State has supported the finding of learned trial court on the ground that PW 1 has named this appellant and in spite of his cross examination there is nothing to doubt the same and PW 2 is not an eye-witness to the occurrence but he has also stated that Bibhash Devi (informant) has disclosed about the name of one accused and also stated that one more person was there and as such conviction of the appellant under Section 452 IPC is just and proper and does not require any interference by this Court.

9. In the background of submission of both the parties, on perusal of the evidence it appears that Bibhash Devi (PW 3) is the informant of this case and though she has supported the occurrence in her evidence in chief and also stated that accused appellant was assaulting her father-in-law and one person was also standing near him and further supported the prosecution case of commission of rape upon her but in her cross examination she has categorically stated that appellant has committed rape upon her in her evidence in cross examination in paragraph 14 and further stated in paragraph-19 that appellant was not participated in the occurrence and she has also not



disclosed the name of appellant before police.

10. PW 1 Chamru Pandit, who is father-in-law of PW 3 in his evidence has named this appellant and other accused person Amnu Mian that they came and started assaulting him and demanding Rs.4000/-. However, this witness has not supported the allegation of rape as he has stated that they have taken Rs.700/- and not anything else. PW 2 is not an eye-witness but he has also stated that Bibhash Devi (PW 3) has disclosed the name of Amnu Mian who has committed rape upon her but this witness has also not named this appellant. The Doctor (PW 7), who has examined PW 3, has also not found any sign of rape and I.O. has not been examined in this case.

11. From the entire evidence as discussed above, it appears that the informant (PW 3) has herself not named this appellant and PW 2 though is not an eye-witness but has stated in his evidence that PW 3 has disclosed him the name of the other accused person and his evidence did not disclose that PW 3 has named the appellant, as such there remains evidence of PW 1, who is father-in-law of PW 3 and his evidence is contradictory to the evidence of PW 3, i.e., informant so far the prosecution evidence of participation and identification of appellant is concerned. Learned trial court in spite of such contradiction has convicted the appellant under Section 452 IPC which does not inspire confidence. In such view of the matter, the



appellant at least is entitled to the benefit of doubt in this case.

12. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bonds.

(Vinod Kumar Sinha, J)

spal/-

AFR/NAFR	
CAV DATE	
Uploading Date	30.07.2018
Transmission Date	30.07.2018

