

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.274 of 2009

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RABINDRA PANDIT son of Mishri Pandit, R/O village-Mangrar, PS,
Laxmipur, Distt-Jamui. Appellant/s

Versus

STATE OF BIHAR Respondent/s

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Appearance :

For the Appellant/s : Mr. Amit Narayan, Advocate

Mr. Brajesh Sahay, Advocate

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

13-12-2018

Appellant, Rabindra Pandit has been found guilty for an offence punishable under Section 376 of the IPC and sentenced to undergo RI for 7 years by the learned Sessions Judge-Jamui vide judgment of conviction and order of sentence dated 17.03.2009 passed in connection with Sessions Trial No. 417/2005.

2. As is evident from the record, victim (name withheld) filed complaint petition before CJM, Jamui bearing Complaint Case No. 262C/1997 alleging inter alia that in the midnight of 16.06.1997 while she has gone to meet nature's call near a jackfruit tree, the appellant/accused who happens to be her Devar, caught hold of her and then he raped. On hue and cry, her daughter came and has seen the occurrence. The accused also threatened of dire consequence, in case the matter is reported to any legal authority.

3. After registration of Laxmipur PS Case No.



156/1997 investigation was taken up and after concluding the same, final report was submitted whereupon, informant was noticed but even after lapse of so many years she did not turn up whereupon lastly, vide order dated 10.09.2004, learned CJM after rejecting the final report, took cognizance of an offence punishable under Section 376 IPC and summoned the petitioner to face trial which ultimately concluded by way of recording finding of guilt and sentence impugned, subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has further been pleaded that this case has been filed by the informant at the instance of her husband who in order to grab the property of one Sushila Devi wife of late Maheshwar Modi, has developed some sort of intimacy with her and in the aforesaid background, began to keep her in the house occupied by joint family as a concubine which has been resisted by the appellant. In order to substantiate the same, one DW has also been examined.

5. Altogether three PWs have been examined on behalf of prosecution who are PW-1, Shivani Kumar, PW-2, Victim, PW-3, Keshav Tanti, a formal witness. Side by side has



also exhibited Ext-1, Protest Petition, Ext-2, Formal FIR. As stated above one DW, namely, Dhondhi Yadav has been examined on behalf of defence.

6. PW-1 has stated that at the time of occurrence she was sleeping. Her mother had gone to meet nature's call near the jackfruit tree where the accused/appellant caught hold of her and committed sin. After hearing shout of her mother, she rushed and had seen Rabindra engaged in committing sin whereupon, she began to weep. Later on, Ravindra threatened her as well as her mother of dire consequence in case the matter is reported to the police. Identified the accused. During cross-examination at para-3, she had stated that her father, Basudeo Pandit has three brothers. All the brothers are residing separately having separate house. Then had disclosed the boundary of her house, North-house of Phuleshwar Pandit, South-Barren land of Sharif Yadav and Nago Yadav, East-land of Nago Yadav, West-house of Vimal Pandit. She had also stated that the house of Ravindra Pandit lies away from her house. Then had shown boundary of house of Rabindra Pandit as North-Barren land, South-house of Birendra Pandit, East-road and West- Houses of Birendra Pandit and Vimal Pandit. She had also stated that her grand-father, Mishri Pandit resides separately having boundary



of house as North-barren land, South-orchard, East-house of Natho Pandit and West-barren land. At para-4, she denied the suggestion that all the family members including Mishri Pandit resides in common house. She disowned to identify one Sushila Devi wife of late Maheshwar Modi. In para-6, she had stated that at the time of occurrence only two persons were available at her house, she along with her mother. On alarm raised by her mother so many villagers came but she is unable to disclose their name. Her mother returned back after an hour. So many persons came at her house but she is unable to disclose their identity. Her house lies at the distance of 200 yards from the jackfruit tree. At para-7, there happens to be contradiction relating to whatever been deposed by her during her examination-in-chief happens to be material development. Then has denied the suggestion that she has falsely deposed.

7. PW-2 is the victim. She had stated that on the alleged date and time of occurrence, she woke up after hearing barking of the dogs and then thereafter, she came out from her house to meet nature's call. When she came near jackfruit tree, Ravindra caught hold of her and indulged in scuffle. She tried to raise alarm whereupon her mouth was gagged. Then she was forced to lie down and then, he committed rape. Anyhow, she



raised alarm whereupon, her daughter, Shivani came. After coming of Shivani, accused left her. At that very time, accused had threatened of dire consequence if the matter is reported to police. She had further stated that on the following day she had gone to the police station where Darogaji had directed her to go to the court. Then she approached the learned counsel, divulged the incident whereupon, he drafted complaint, read over to her and finding it correct, she put her thumb impression. Identified the accused. In para-4, there happens to be cross-examination with regard to status of the family. She had further disclosed that she happens to be mother of five daughters and two sons. She has further stated that her eldest daughter and son were at Nanihal while Shivani and Lalita were along with her. She had also disclosed that after the occurrence, she had begotten three more children. In para-5, she had also admitted presence of three siblings of the accused and in likewise manner, two sons and three daughters to another Devar. At para-6, she denied the suggestion that all of them are residing in a common house. Then had denied with regard to existence of one Sushila Devi wife of Late Maheshwar Modi and in para-9, she denied the suggestion that her husband had developed some sort of intimacy with her and in order to grab her property, he used to



bring her at the house which was resisted by the accused whereupon, at the instance of her husband, this case has been filed. In para-10, she had stated that after occurrence so many persons came but as she was perturbed so, she could not identify them. She had further stated that on the following morning, she became relaxed. When the villagers came at the morning, she was not present as, she had already left for police station and so, has not met with them. She had not made written complaint at police station. There was one sepoy who disclosed that as Darogaji is not present, so you should go to the court. Accordingly, she came to the court with the clothe which she was wearing at the time of occurrence. She had shown the clothe to the learned Magistrate. She had further stated that learned Magistrate had not directed for medical examination.

8. PW-3 is the formal witness. DW-1 has been examined on the score that all the family members are residing in a common house under the guardianship of Mishri Pandit, father -in-law of the informant.

9. After perusal of the lower court record, it is evident that there happens to be no remark of the learned CJM that the victim had produced any clothe. In likewise manner, the order is completely silent whether there was any petition at the



end of the victim praying therein to get herself examined by the doctor. That means to say, there happens to be complete absence of any step at the end of the victim to have corroborative piece of evidence in support of allegation.

10. Furthermore, it is evident from the evidence of PW-1, that there happens to be barren land available adjacent to the house of the victim. It was the dead of night as, the time has been disclosed as 12 midnight to 1:00 AM. Instead of going to the adjoining open land, covering a distance of 200 Yards that too without any source of light, being a rainy season (month of June) prone to insects/reptiles, was really a probable story and further, from the evidence of PW-1 itself, it is evident that the house of the accused was at a long distance, then in that event, it is very improbable to accept that accused was knowing since before that at about midnight the dog will bark, whereupon, the victim (PW 2) will come out from her house and instead of utilizing the barren land having in boundary of her house will choose to cover 200 yards, will come to near jackfruit tree where, he could rape her. The aforesaid improbability could be seen through another angle. As per prosecution case, the victim and her daughter PW-1 was alone in her house. Accused is her Devar. Had there been his inclination to rape her, there was



every opportunity available to him to commit rape as, at 2 sides of her house, there was barren land having a proper access.

11. Apart from this, during course of investigation, the final report was submitted by the I.O. Informant was noticed, that had gone unresponded for years together and the order of cognizance is peculiar as, it has been incorporated therein that perused the FIR, Case Diary as well as protest petition, contradictory to each other. Apart from this, the I.O. has not been examined which has caused serious prejudice to the interest of the appellant, more particularly, in the background of the fact that had there been examination of the I.O. the material contradiction visualizing from the evidence of PW-1 as well as the objective finding relating to place of occurrence, the distance in between the house of the victim as well as the alleged P.O. near the jackfruit as well as distance in between house of informant to accused, distance in between house of accused to jackfruit tree could not come, which has got a serious impact.

12. Thus, the totality of the event did not justify the finding recorded by the learned lower court. Consequent thereupon, the same is set aside. Appeal is allowed.

13. Since the appellant is on bail, he is discharged



from the liability of bail bond.

(Aditya Kumar Trivedi, J)

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