

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.60 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- BHAGALPUR

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Sanju Maraiya @ Gunddi Maraiya, son of late Thakur Maraiya, resident of village
Kajha Gorgama, P.S. Amdanda (Sanholla), Distt. Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjan Kumar Jha, Advocate.
Mr. Mritunjay Mishra, Advocate.
Mr. Sanjeev Kr. @ Deepak, Advocate.
For the State : Mr. Bal Mukund Pd. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date: 16-08-2018

1. This Criminal Appeal has been filed against the Judgment of conviction and order of sentence dated 13.01.2009 passed by the learned Additional Sessions Judge, Fast Track Court No. I, Bhagalpur, in Sessions Trial No. 1408 of 2005, G.R. No. 1070 of 2005 arising out of Amdanda (Sanholla) P.S. Case No. 35 of 2005 by which the appellant has been convicted under Section 354 and 341 of the Indian Penal Code and sentenced to undergo simple imprisonment for two years under Section 354 Indian Penal Code and one month simple imprisonment under Section 341 Indian Penal Code. Both the sentences are ordered to run concurrently.

2. Heard learned counsel for the appellant and learned counsel for the Additional Public Prosecutor.



3. Counsel for the Appellant has submitted that although the victim has stated in her cross-examination that she was pushed down by the Appellant forcibly on the ground, but no injury was found on her person. It is also submitted that Investigating Officer, during course of inspection of place of occurrence, did not find any mark of violence. The *Bhabhi* of the informant (PW-2) is an eye witness. She has nowhere stated that any mark of violence was found on the body of informant.

4. Learned A.P.P. has submitted that victim girl (informant) has stated in her evidence that petitioner has attempted to commit illegal act with her.

5. The prosecution case as per written report filed by the victim girl (informant) is that on 9.4.2004 she went in *Bahiya* towards North East of her house along with cattle for grazing. The other villagers, namely, Mina Kumari, Dibi Moh and Sanju @ Gunddi Maraiya (Appellant herein) also went there along with their cattle. It is alleged that at about 10/11 a.m. the other villagers were returning to their house along with their cattle. The informant also started to bring her cattle towards her house, then Appellant intentionally caused her cattle to run towards North side. Thereafter, she went to bring back her cattle. In the meantime, other villagers went away. The informant and Sanju Maraiya @ Gunddi Maraiya (Appellant) remained there. It



is further alleged that Appellant caught her intentionally and pushed her on the ground forcibly and attempted to have sexual intercourse with her. On hearing *hulla*, Maimun Khatoon (PW-2), *Bhabhi* of the informant came there. The accused Sanjay Maraiya @ Gunddi Maraiya (Appellant) fled away on seeing *Bhabhi* of the informant.

6. The case was initially registered for the offence under Sections 341, 376 and 511 of the Indian Penal Code. Charges were also framed for the offence under Sections 341, 376 and 511 of the Indian Penal Code. The Trial Court however found the case true for the offence under Sections 354 and 341 Indian Penal Code and convicted the Appellant under Sections 341 and 354 of the Indian Penal Code.

7. The Prosecution during Trial has examined nine witnesses. The important witnesses are informant Imrana Khatoon (PW-5) and her *Bhabhi* Maimun Khatoon (PW-2). Maimun Khatoon (PW-2) is only eye witness of the occurrence.

8. The victim (informant) Imrana Khatoon has stated in her examination-in-chief that Appellant caught hold her and attempted to remove her *Shalwar*. She raised *hulla*, then her *Bhabhi* Maimun Khatun arrived. On seeing *Bhabhi* of the informant, Appellant fled away from the place of occurrence. Thereafter, informant came to the Police Station and gave written report. In cross-



examination she has stated that Appellant pushed her on the ground with force. She has further stated that cloth which she was wearing was not torn. Police has not taken *Shalwar* from her.

9. The *Bhabhi* of informant Maimun Khatun (PW-2) has stated in her evidence that she did not find any mark of violence on the person of the informant. She has stated in her evidence that when her *Nanad* did not return she went to search her and saw the Appellant was trying to outrage her modesty by pushing her on the ground. He fled away on seeing her.

10. The Investigating Officer has been examined as PW-6. He has stated in his evidence that during inspection of place of occurrence, he did not find any mark of violence either at the place of occurrence or at nearby places. He also did not find any mark of violence on the person of victim girl.

11. The defence of accused is that an altercation took place for grazing the cattle and just for that petty altercation, Appellant has been implicated in this case.

12. From the written report itself, it appears that the victim girl (informant) had gone along with the Appellant and other persons as named in the written report for grazing her cattle. It is also mentioned in the written report that some altercation took place because appellant allowed her cattle to run away towards North. It is



further alleged that Appellant attempted to outrage her modesty.

13. In Such circumstances, this Court finds that Prosecution has not been able to substantiate the charges levelled against the Appellant beyond all reasonable doubts.

14. Therefore, the judgment of conviction and order of sentence dated 13.01.2009 passed by the Additional Sessions Judge, Fast Track Court-I, Bhagalpur, in Sessions Trial No.1408 of 2005, G.R. No. 1070 of 2005 arising out of Amdanda (Sanholla) P.S. Case No. 35 of 2005 is not in accordance with law and is hereby set aside. The Appellant is acquitted of the charges levelled against him. He is discharged from the liabilities of bail bonds.

15. This Criminal Appeal is accordingly allowed.

S.Ali/-

(Sanjay Priya, J)

AFR/NAFR	NAFR
CAV DATE	N.A.
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