

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.54 of 2011

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Jitan Singh, Son of Late Ram Dhani Singh, Resident of Village Lakhanpur,
P.S. Nabinagar, District Aurangabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Krishna Prasad Singh, Senior Advocate
		Mrs. Meena Singh, Advocate
For the State	:	Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

CAV JUDGMENT

Date : 18-08-2018

Heard learned counsel for the appellant and the learned APP
for the State.

2. The present appeal has been filed by the appellant against
the judgment dated 21.12.2010, passed in Sessions Trial No136 of
2007/25 of 2010 by Mr. Jagdish Prasad Mishra, the learned Additional
Sessions Judge, Fast Track Court No.-III, Aurangabad thereby finding
the appellant guilty for committing offence under Sections 452 and 354
of the Indian Penal Code convicted him for the said offence and
awarded sentence of two years and one year of simple imprisonment
respectively however, directed to run the both sentences concurrently.

3. The case of the prosecution, in brief, is that on 15.08.2006
at 12:30 p.m. in the afternoon, Jitan Singh, the appellant turned up at
house of the informant, Premchandra Mishra (PW4) and used abusive
language, out of fear his wife, Usha Devi (PW1) closed the door. One of



the accused Satyendra Singh remained standing outside the door but Jitan Singh pushed the door and started assaulting his wife (PW1) and pushed her in the courtyard and threw her down with bad intention. While her wife (PW1) resisted, he started pressing her neck, in the meanwhile the informant's mother, Chandrawati Kuer (PW2) intervened and tried to rescue her daughter-in-law then he also assaulted her. The wife and mother of the informant came to Panchayat Bhawan at 1:30 p.m. where the informant was watching a programme and narrated the entire incident.

4. Being aggrieved and dissatisfied with the judgment of conviction, the appellant has preferred the appeal.

5. Learned counsel for the appellant submitted that the FIR was registered under Sections 452, 376/511, 323/34 and 504/34 of the Indian Penal Code but the trial court after considering the evidence and hearing the parties came to the conclusion that there is no evidence in support of Sections 376/511 as well as under Section 504 of the Indian Penal Code, so altered the charge into Section 354 of the Indian Penal Code and held guilty under these two Sections. It is further submitted that the trial court has failed to appreciate the delay of two days in lodging the FIR. The occurrence, as per allegation, is dated 15.08.2006 at 12:30 p.m. but the FIR was lodged on 17.08.2006 at 8:30 a.m. and there is no explanation why such inordinate delay was caused in lodging the FIR, which itself reflects the fact that false accusation was levelled against the appellant as an afterthought. The major contradictions in the



deposition of the witnesses were also not considered by the trial court. The FIR is not on the basis of the first information given to the police. The informant's wife, Usha Devi, examined as PW1 has categorically stated in paragraph-8 of cross-examination that first she gave information to the police informing the occurrence accordingly, her statement was recorded thereafter she signed but that statement was withheld by the prosecution and not brought on record. Usha Devi, the wife of the informant, has admitted in paragraph-7 of her deposition that the appellant only pushed her down on the ground as a result of fall her bangles got broken but immediately she stood up. In the meanwhile, her mother-in-law and daughter both turned up there. There is nothing in the evidence of PW1 to show that any act constituting outraging of modesty of the lady was done by the appellant. Even boundary witnesses were not examined on behalf of the prosecution. The case of the defence is that informant's cattle had grazed the standing crop of the appellant, so he went over the house of informant and made complaint and also rebuked them for not tying up the cattle, so in retaliation this false case was lodged.

6. The learned counsel appearing on behalf of the State submitted that six prosecution witnesses examined in the present case have supported the case of the prosecution.

7. Having considered rival submissions and on perusal of the records, the Court finds that altogether six witnesses have been examined by the prosecution. Usha Devi (PW1), the so called victim,



Chandrawati Kuer (PW2), the mother-in-law, Sushila Devi (PW3), who has seen either assaulting PW1 or outraging her modesty rather the said fact was disclosed to her by PW1 as reflected from paragraph-3 of her examination. She also did not find any injury on person of PW1, Premchandra Mishra (PW4), the informant, is not an eye-witness rather hearsay. The occurrence was disclosed to him by his wife (PW1). Neither PW1 nor PW4, the husband and wife, has explained any reason for instituting the FIR after lapse of two days. Surajpati Singh (PW5) is also a hearsay witness and not the eye-witness. The Investigating Officer of the case Sachchidanand Yadav (PW6) has admitted that he did not find any mark of violence or injury on the person of the informant's wife and mother. Even broken bangles were not produced and did not examine any independent witness living in the boundary of the place of occurrence. The trial court did not find any evidence of attempt of rape, so during trial altered the charge under Section 354 of the Indian Penal Code. There is no precise definition of 'outraging modesty' of a woman in the Indian Penal Code. However, the essence of a woman's modesty is her sex. Any act done by the accused having knowledge that by such act modesty of a woman is likely to be outraged is sufficient to constitute the offence. In following circumstances it could be ascertained that act done by the accused constitutes the offence of outraging the modesty. The act of pulling a woman, removing her clothes or *Sari* coupled with a request for sexual favour or intercourse. Such acts would constitute the offence of outraging modesty of a



woman. Even exposing any private part of a woman or pressing or touching her private parts leading to be humiliated or ashamed because of the act of the person may also constitute outraging of modesty. On going through the entire evidence of the prosecution in the present case, no such evidence is found that appellant did anything which exposed her private parts or making a request for sexual favour or intercourse or even her any private parts was exposed causing humiliation to her or affecting her modesty. There is also considerable delay in lodging the case as alleged occurrence, as per the prosecution case, was committed on 15.08.2006 at 12:30 p.m. in the afternoon but the FIR was instituted on 17.08.2006. Even the first information given by the wife (PW1) was suppressed by the prosecution as according to her deposition she narrated the entire incident before the police and thereafter she signed her statement and thereafter her husband made his statement. This fact is admitted in paragraph-8 of her cross-examination. Even no injury was found either on the person of the wife of the informant (PW1) or to her mother. No witness living in the boundary of the informant was examined by the I.O. (PW6) as he admits the fact in paragraph-9 of his cross-examination stating categorically that persons living in the neighbourhood came before him even then their statement was not recorded, so considering the unexplained delay in loding the FIR in the present case coupled with absence of positive evidence suggesting any act constituting outraging of modesty, reasonable doubt is created against the prosecution case, hence the appellant is entitled for giving



benefit of doubt accordingly the appellant is acquitted from the charge of Sections 354 as well as 452 of the Indian Penal Code. Since the appellant is on bail, therefore, also discharged from liability of his bail bond.

8. In the result, the appeal stands allowed.

(Arun Kumar, J.)

S.KUMAR/-

AFR/NAFR	NAFR
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