

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1450 of 2019

Arising Out of PS. Case No.-67 Year-2015 Thana- RAMGARH District- Kaimur (Bhabua)

Munna Bind S/O Late Mukhram Bind R/O Village- Bindpurawa, P.S.-
Ramgarh (Nuaon), District- Kaimur At Bhabua

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Tribhuvan Narayan, Advocate
Amicus Curiae	:	Mr. Pratik, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

9 05-12-2024 Heard the learned counsel for the appellant and the
learned APP for the State.

2. This appeal has been preferred against the judgment of conviction dated 18.02.2019 and order of sentence dated 22.02.2019 passed by the learned Sessions Judge, Kaimur at Bhabhua in Sessions Trial No. 369 of 2015 arising out of Ramgarh (Nuaon) P.S. Case No. 67/2015 by which the appellant was convicted for the offences under Section 376/511 of the Indian Penal Code and sentenced to undergo R.I. for the period of five years and to pay a fine of Rs. 30,000/- for the offence under Section 376/511 of the Indian Penal Code and in default of payment of fine, the appellant shall further remain in jail for one year.



3. The prosecution case, in brief, on the basis of written report is that, while the informant/*Meera Devi* was harvesting linseed crops in her field, the appellant/*Munna Bind* went near her and by holding her breast, pulled her down and lifted her sari and when the informant/*Meera Devi* raised alarm, he gagged her mouth with scarf and started slapping her and told her to take cash of Rs. 20,000/- and let him do whatever he is doing but she got freed herself and ran to her house.

4. On the basis of the written report of the informant/*Meera Devi*, Ramgarh (Nuaon) P.S. Case No. 67 of 2015 was lodged against the appellant under Section 341, 323, 354 of the Indian Penal Code. After investigation, police submitted charge-sheet under Section 376/511 of the Indian Penal Code thereafter the Addl. Chief Judicial Magistrate took cognizance on 29.10.2015 under Section 376/511 of the Indian Penal Code and committed the case in Sessions by the order dated 16.12.2015 for trial.

5. Learned counsel for the appellant as well as the learned amicus curiae; Sri *Pratik* have submitted that Id. Sessions Judge has framed the charges on 16.01.2016 under Section 376/511 of the I.P.C. and commenced the trial, where in course of trial, prosecution has examined seven witnesses in



order to substantiate the allegation. The witnesses are P.W-1/Shambhu Bind, P.W-2/Ghuru Bind, P.W-3/Ram Pravesh Bind, P.W-4/Lalmuni Devi (mother-in-law of the victim/informant), P.W-5/Sheo Kumari Devi(the wife of the brother of the husband of victim.), P.W-6/Mina Devi, P.W-7/Kamlesh Ram (I.O. of the case) and got exhibited these documents as Ext.-1 is Seizure list, Ext. 1/1 is handwriting and signature of I.O. on the seizure list, Ext. 2/2 is Endorsement made by the S.H.O. on the written report.

6. After hearing both the sides, the Sessions Judge, Kaimur at Bhabhua has passed the judgment in Sessions Trial No. 369 of 2015 and convicted the appellant under Section 376/511 of the Indian Penal Code and cancelled his bail bond and taken him into custody and subsequently passed the order of sentence dated 22.02.2019 and sentenced the appellant to undergo R.I. for the period of five years with a fine of Rs. 30,000/- for the offences under Section 376/511 of the I.P.C.

7. Learned counsel for the appellant as well as the learned amicus curiae; Sri *Pratik* have further submitted that the witnesses have failed to prove the prosecution case beyond reasonable doubt and no offence under Section 376/511 is made out against the appellant.



8. They have further submitted that from the deposition of P.W-2 and P.W-3 it has come that informant/*Meera Devi* had uprooted the gram crops from the field of the appellant/*Munna Bind* due to which quarrel started and the court below has convicted the appellant under Section 376/511 of the I.P.C.

9. Learned APP for the State has supported the conviction of the appellant and supported the punishment awarded to the appellant. The defect of the appellant is denial of the occurrence.

10. I have considered the submissions of the parties.

11. P.W-1 is *Shambhu Bind*. Though he has not seen the occurrence but he has supported the facts of the case. He has stated that on hearing *halla*, he saw accused running away and he was informed by *Meera Devi* that accused/appellant had committed rape with her. Earlier also accused/appellant had committed rape with her but after mediation, no case was lodged. He has also stated that from the place of occurrence, broken bangles, ear-ring etc., were recovered and he had signed the seizure list and his signature was marked as Ext. 1. In his cross-examination, he has said that though he had signed the seizure list but the police did not ask anything from him and the



seizure list was signed by him on the PO. He has also said that the victim/*Meera Devi* was his relative. He has denied that she was raped one year before and there was no mediation.

12. P.W-2 is *Ghura Bind*. He has said that *Munna Bind* had fought with and abused *Meera Devi*. He has also said that *Meera Devi* had taken out gram from the field of *Munna Bind* for which *Munna Bind* had fought.

13. P.W-3 is *Ram Pravesh Bind*. He has not supported the prosecution case and has been declared hostile.

14. P.W-4 is *Lalmuni Devi*, the mother-in-law of the victim/*Meera Devi*. She had said in her deposition that after hearing *halla*, she went to the place of occurrence and she was informed about the occurrence by her daughter-in-law. She has also said that *Munna Bind* had earlier also committed rape with victim/*Meera Devi* but was forgiven after mediation and no case was registered also.

15. P.W-5 is *Sheo Kumari Devi*, the younger sister-in-law of victim. She has said that she saw *Munna Bind* running away from the field where victim/*Meera Devi* was cutting “*Tisi*” (linseed). When they went to place of occurrence, they found the ear-ring and bangles of *Meera Devi* broken and *Meera Devi* informed her that the accused/*Munna Bind* wanted to commit



rape with her and she was somehow saved. She had also said that *Munna Bind* had earlier raped victim/*Meera Devi* and had been let off after mediation. She has also put her thumb impression on the seizure list. Her husband had also signed the seizure list. In her cross-examination, she has said that victim/*Meera Devi* was treated in a private hospital.

16. P.W-6 is the informant and victim. She has said that while she was working in the field, accused/*Munna Bind* came there and put her down by holding her breast and started assaulting her. He was also removing her sari and when she raised *halla*, the accused/*Munna Bind* gagged her mouth with *Lungi*. When her sister-in-law (*Jethani*) was about to reach the place of occurrence, the accused fled away and she became unconscious and she was treated in a private hospital. She has also said that earlier also one occurrence had taken place.

17. P.W-7 *Kamlesh Ram*, is the I.O. of the case. He has also supported the prosecution case and has said that the victim had given the statement before him. He has also said that from the place of occurrence, the broken pieces of bangles was recovered. Nothing important has come in the evidence of the I.O.

18. Informant/victim has supported the prosecution



case as stated in the F.I.R. that the appellant/*Munna Bind* had tried to commit rape with her. The version of the informant has been supported by almost all the witnesses though one witness has said that the rape was committed with her.

19. From the evidence of the witnesses including the informant, the occurrence cannot be doubted. From the evidence on record, I am unable to take a different view which has been taken by the trial court so far as the conviction of the appellant is concerned. In my opinion, the prosecution version is truthful and credible. The appellant had tried to outrage the modesty of the prosecutrix but on *halla* being raised by her, she fled away and she was saved.

20. The only question which has to be considered is as to under what section, the appellant is required to be convicted for the offence that he has committed. The Trial Court has convicted the appellant under Sections 376/511 of the Indian Penal Code.

21. The Hon'ble Supreme Court in the case of *Tarkeshwar Sahu V/s State of Bihar (Now Jharkhand)* reported in (2006) 8 SCC 560 has held after examining the facts of the case that slight degree of penetration of the penis in the vagina is sufficient to hold the accused guilty of the offence



under Section 375 of the IPC punishable under Section 376 of the IPC.

22. In the present case, no offence under Section 376/511 is made out as there is no penetration. There has been no attempt of penetration. The appellant was convicted under Section 376/511 of Indian Penal Code and sentenced to undergo R.I. for a period of five years with fine of Rs. 30,000/-. The question arises here is that if the appellant is not found guilty under Section 376/511 of Indian Penal Code, he can be convicted for committing any other offence pertaining to outraging the modesty of the victim. This question has again been answered in the case of *Tarkeshwar Sahu (Supra)* and it has been held that when an accused is charged with major offence and ingredients of the major offenses are missing and ingredients of minor offence are made out then he may be convicted for the minor offence even though he was not charged with it.

23. Section 354 of the Indian Penal Code reads as follows:-

“354. Assault or criminal force to woman with intent to outrage her modesty.—Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that



he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

24. Intention to outrage the modesty of a woman or knowledge that the act of the accused would result in outraging her modesty is the gravamen of the offence under Section 354 of Indian Penal Code. The intention of the accused is the crux of the matter and any action on the part of the offender which is capable of shocking the decency of a woman will result in conviction of the accused under Section 354 of the Indian Penal Code.

25. In my opinion, though the appellant cannot be convicted under Section 376/511 of the Indian Penal Code but as the appellant has outraged the modesty of the victim, the ingredients of Section 354 are attracted, and on the basis of evidence, the conviction of the appellant under Section 376/511 of Indian Penal Code is unsustainable, and consequently his conviction by the Trial Court under Section 376/511 of Indian Penal Code is hereby set aside. On examination of the evidence and materials on record, the appellant is held guilty of the offence under Section 354 of Indian Penal Code and is convicted under Section 354 of Indian Penal Code and is



sentenced to undergo rigorous imprisonment for seven months.

26. The appellant has remained in custody for 7 months and 14 days. If this is the position, the appellant shall not be taken into custody. The Trial Court will verify from the records as to whether the appellant has completed the sentence awarded to him or not.

27. The appeal is partly allowed.

28. The *amicus*; Sri Pratik shall be paid Rs. 15,000/- (Fifteen Thousand) by the Patna High Court Legal Services Committee for his valuable assistance to the Court in the present case.

29. Since the appellant is on bail, he shall be discharged from the liabilities of the bail bonds if he has completed his sentence.

30. The records of the case be returned to the concerned Trial Court forthwith.

31. Interlocutory application/s, if any, shall also stand disposed off accordingly.

(Sandeep Kumar, J)

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