

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5534 of 2023

Arising Out of PS. Case No.-10 Year-2023 Thana- SC/ST District- Patna

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1. Nirmal Kumar Sikdar, S/O Nitipad Sikdar R/O Village-Bangali Colony, Bel Bag, A.G. Mission School Road, Bettiah, P.S-Bettiah (Town), District-West Champaran.
 2. Sunita Devi, W/O Nirmal Kumar Sikdar R/O Village-Bangali Colony, Bel Bag, A.G. Mission School Road, Bettiah, P.S-Bettiah (Town), District-West Champaran.
 3. Pranav Kumar Sikdar, S/O Nirmal Kumar Sikdar R/O Village-Bangali Colony, Bel Bag, A.G. Mission School Road, Bettiah, P.S-Bettiah (Town), District-West Champaran.

... .. Appellant/s

Versus

1. The State of Bihar
2. Priyanka Choudhary, D/o Hari Narayan Choudhary R/o Rukunpura, Patel Chowk, P.S-Rupaspur, District-Patna.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjeev Kumar Shrivastava
For the Respondent/s	:	Ms. Usha Kumari 1- Special P. P.
		Mr. Bimlesh Kumar Pandey
		Mr. Krishna Kant Pandey

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 29-02-2024 Heard learned counsel for the appellants, the learned Special Public Prosecutor for the State and learned counsel for the respondent no.2.

2. The appellants have challenged the order dated 18.10.2023 passed by the learned Exclusive Special Court, SC/ST Act, Patna in connection with A.B.P. No.6370 of 2023 arising out of Patna SC/ST P. S. Case No.10 of 2023 instituted for the offences under Sections 376, 420, 504, 506 and 34 of the Indian



Penal Code, Sections 3 and 4 of the D. P. Act and Sections 3(i)(r) (s)w(ii)/ 3(2)(v) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, whereby their prayer for grant of anticipatory bail has been rejected.

3. The learned counsel for the appellants submits that appellants are persons with clean antecedent and being parents and brother of Arnav Kumar have been falsely implicated in the present case as the informant has alleged that she came in relationship with Arnav Kumar in the Year 2013 and thereafter, he continued establishing physical relation on pretext of marriage and ultimately refused and even abused the respondent by her caste name and when she talked with his parents, they also abused her by addressing her by using her caste name.

4. The learned counsel for the appellants submits that the SC/ST (P.O.A.) Act was enacted with a laudable object of ensuring protection to the SC and ST, but of late, it is being seen that the act is being used as a tool of harassment. The learned counsel for the appellants next submits that it absolutely defies all logic, wisdom and reasonable human behaviour that how come such an educated lady did not realize that she was taken for a ride on the pretext of marriage.

5. The learned counsel further relying on the case of



Maheshwar Tigga vs. State of Jharkhand (2020) 10 SCC 108

submits that the Hon'ble Supreme Court based on the facts of the case recorded at Paras-10 and 14:-

“10. They were both smitten by each other and passions of youth ruled over their minds and emotions. The physical relations that followed was not isolated or sporadic in nature, but regular over the years. The prosecutrix had even gone and resided in the house of the appellant. In our opinion, the delay of four years in lodgement of the FIR, at an opportune time of seven days prior to the appellant solemnising his marriage with another girl, on the pretext of a promise to the prosecutrix raises serious doubts about the truth and veracity of the allegations levelled by the prosecutrix. The entire genesis of the case is in serious doubt in view of the admission of the prosecutrix in cross-examination that



no incident had occurred on 9-4-1999.

14. Under Section 90 IPC, a consent given under a misconception of fact is no consent in the eye of the law. But the misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of four years. It hardly needs any elaboration that the consent by the appellant was a conscious and informed choice made by her after due deliberation, it being spread over a long period of time coupled with a conscious positive action not to protest. The prosecutrix in her letters to the appellant also mentions that there would often be quarrels at her home with her family members with regard to the relationship, and beatings given to her.”

6. It is next submitted that rape cannot continue in eternity without the prosecutrix realizing that the accused does



not have any intention to marry. It is submitted at the cost of repetition that it is difficult to fathom that the prosecutrix, over a prolong period of time nearly 7 years in the present case, was not able to realize that promise of marriage was false from the beginning and there was a possibility of breach. It is next submitted that it is not in dispute that a consent given under a misconception of fact is no consent in the eyes of law, but then, misconception of fact has to be in proximity of time to the occurrence and cannot be spread over a period of nearly 7 years. It is further submitted that relationship between Arnav and the respondent no.2 was consensual and when the relationship soured, the present false case came to be instituted. It is also submitted that as far as these appellants are concerned, they, being parents and brother of Arnav Kumar, have been falsely implicated in the present case in order to coerce Arnav Kumar into submission. It is next submitted that process under Section 82 Cr.P.C. was issued against the appellants, when they were availing their remedy of anticipatory bail before this Court and thus, were not absconding. It is submitted that process under Section 82 Cr.P.C. was issued after the appellants filed the instant Criminal Appeal before this Court, hence mere issuance of process under Section 82 Cr.P.C. in a mechanical manner will



not come in the way while considering the appeal of the appellants.

7. The learned Special P. P. along with learned counsel for the respondent no.2 opposes the appeal, but are not in a position to rebut the submission of the learned counsel for the appellants that the respondent no.2 and Arnav Kumar were in relationship for more than seven years and relationship was consensual and also the fact that it is difficult to fathom that the respondent no.2 in these seven years did not realize that Arnav Kumar was establishing physical relation based on false promise of marriage. Further, the learned counsel for the respondent no.2 is not in a position to rebut the factual submission of the learned counsel for the appellants regarding issuance of process under Section 82 Cr.P.C.

8. Regard being had to the aforesaid submissions, the order dated 18.10.2023 is set-aside.

9. The appeal stands allowed.

10. The appellants, above-named, in the event of their arrest or surrender before the learned Court below within a period of eight weeks, are directed to be released on bail on their furnishing bail-bonds in the sum of Rs.5,000/- (Rupees Five Thousand) each with two sureties of the like amount each to the satisfaction of learned Exclusive Special Court, SC/ST Act, Patna



in connection with Patna SC/ST P. S. Case No.10 of 2023, subject
to the conditions laid down under Section 438(2) of the Cr.P.C.

(Satyavrat Verma, J)

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