IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1173 of 2017

Arising Out of PS. Case No.-57 Year-2015 Thana- JHAJHA District- Jamui

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ISLAM MIAN @ MD.ISLAM son of Late Liyakat Mian resident of village - Narganjo, P.S. - Jhajha, District - Jamui.

... ... Appellant.

Versus

The State of Bihar

... ... Respondent.

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Appearance :

For the Appellant : Mr. Diwakar Upadhyaya, Advocate.

For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

CAV JUDGMENT

Date : 22-06-2022

By this appeal, the appellant/convicted accused is challenging the Judgment and Order dated 09.03.2017 passed by the learned Additional Sessions Judge-I, Jamui, in Sessions Case No.233 of 2015, thereby convicting him of the offences punishable under Sections 376, 323, 452 and 506 of the Indian Penal Code as well as under Sections 3(1) (xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. For the offence punishable under Section 376 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for 10 years apart from payment of fine of Rs.10,000/- and in default, sentence of six months. For the offence punishable under Section 323 of the Indian Penal Code, he is sentenced to suffer rigorous

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imprisonment for one year. For the offence punishable under Section 452 of the Indian Penal Code, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for two years and for the offence punishable under Section 506 of the Indian Penal Code, he is sentenced to suffer rigorous imprisonment for two years. For the offences under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the appellant/convicted accused is sentenced to suffer rigorous imprisonment for one year on each count. For the sake of convenience, the appellant/convicted accused shall be referred to in his original capacity as "an accused".

2. The facts in brief leading to the prosecution of the accused can be summarized thus:

(a). The prosecutrix is a woman residing in village-Narganjo in District-Jamui. The incident allegedly took place on 09.04.2015. In the morning of that day, the prosecutrix (P.W.4) had been to the brick kiln of the accused for doing the labour work. At the end of the day, she demanded her wages but the accused told her that he will pay the same subsequently. In the evening hours, when the prosecutrix was cooking food, the accused came to her house, dragged her in a room of her house and by closing the door of that room, he committed rape on her.

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The prosecutrix shouted and therefore the villagers gathered. The accused was taken in custody by them and he was tied up to a tree. Subsequently, the relatives of the accused freed him and took him with them. The prosecutrix then lodged the report of the incident on the next day, i.e., 10.04.2015 with the Mahila Police Station which has resulted in registration of the Crime No.57 of 2015 against the accused.

(b). The routine investigation followed and ultimately the accused came to be chargesheeted.

(c). The learned trial court had framed and explained the charge to the accused. He pleaded not guilty and claimed trial.

(d). In order to bring home the guilt to the accused, the prosecution has examined in all seven witnesses. P.W.1 Munni Marandi and P.W.2 Pramila Hembram turned hostile to the prosecution. P.W.3 Karu Prasad is father-in-law of the prosecutrix, who has been examined as P.W.4. P.W.5 Dr. Veena Singh had examined the prosecutrix. P.W.6 Raj Ranjani Kumari is the Investigating Officer and P.W.7 Devraj was the Judicial Magistrate, who had recorded statement of the prosecutrix under Section 164 of the Code of Criminal Procedure.

(e). The defence of the accused was that of total

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denial.

(f). Upon hearing the parties, the learned trial court was pleased to convict the accused and to sentence him as indicated in the opening paragraphs of this Judgment.

3. I heard the learned counsel appearing for the appellant/accused at sufficient length of time. He argued that even if the case of the prosecution is accepted, then also, it is seen that it is of the consensual sex between two adult persons. It is argued that evidence of the Medical Officer, who has examined the prosecutrix, is not supporting the case of the prosecution. There were no injuries on the person of the prosecutix. Evidence on record does not show that the prosecutrix has offered resistance to the act of the accused. As against this, the learned A.P.P. supported the impugned Judgment and Order of conviction and resultant sentence.

4. I have considered the submissions so advanced and also perused the records and proceedings.

5. This is a case of rape and in such case, if version of the prosecutrix is found reliable and trustworthy then it is not necessary that the same should be corroborated by the medical evidence, in order to act upon the same.

6. The prosecutrix is examined as P.W.4. As per her

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version, at about 08.00 P.M. of the day of the incident, when she was cooking food, the accused came to her house and asked her whereabouts to her son. Thereafter, the accused entered in her house and took her in the room thereof. Then, as per version of the prosecutrix, the accused bolted the door of that house, thrusted her on the ground and committed rape on her by pressing her mouth. She further deposed that she made hue and cry upon which the villagers came and apprehended the accused. As per her version, the accused was then tied to a tree but, subsequently, his relatives came and released him.

7. In cross-examination of the prosecutrix, it is brought on record that her son is aged about 4 years and her husband was residing at some other town for earning livelihood. She further stated that she has shown the spot of the incident to the police. Except this, there is nothing in her cross-examination which may create doubt in her version regarding the incident.

8. P.W.5 Dr. Veena Singh had examined the prosecurtrix after the incident. As per version of this Medical Officer, she found no external injuries on the person of the prosecutrix. The Medical Officer was unable to give definite opinion regarding the commission of rape on the prosecutrix.

9. The prosecutrix is a married woman having a son

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aged about 4 years. She was pitted against an adult male in the night hours at her own house. In such situation, it might not be possible for her to offer resistance to the act of the accused. Moreover, mere non offering of resistance cannot amount to consent. Section 375 of the Indian Penal Code makes it clear that consent must be in the form of an unequivocal voluntary agreement showing willingness to participate in the sexual act. Proviso clause of Section 375 of the Indian Penal Code makes it clear that only because a woman does not physically resist to the act of penetration, it cannot be regarded as a consenting to the sexual activity. Moreover, Evidence of the prosecutrix shows that after commission of rape on her, the accused was apprehended by the villagers on the spot of the incident itself.

10. P.W.3 Karu Prasad is father-in-law of the prosecutrix. As per his version, the prosecutrix was shouting and then the accused was apprehended from the spot of the incident itself and he was tied. This witness has deposed that subsequently relatives of the accused came and took him with them. P.W.3 Karu Prasad claimed that he has seen this incident.

11. P.W.6 Raj Ranjani Kumari is the Investigating Officer, who has proved the F.I.R. lodged by the prosecutrix.

12. P.W.7 Devraj, the learned Judicial Magistrate, has

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proved the statement of the prosecutrix recorded by him under Section 164 of the Code of Criminal Procedure.

13. Version of the prosecutrix regarding the incident of commission of rape on her is getting corroboration from the version of her father-in-law P.W.3 Karu Prasad as well as from her version in a statement given to the Magistrate after the incident. Evidence of the prosecutrix is corroborated by her promptly lodged F.I.R. There is nothing on record to suggest the case of the consensual sex between two adult persons. It is, thus, seen that by entering into the house of the prosecutrix, the accused had committed rape on her.

14. In the result, it is required to be held on the basis of evidence on record that the prosecution has proved commission of offences punishable under Sections 376 and 452 of the Indian Penal Code. However, there is no evidence in support of commission of offences punishable under Sections 323 and 506 of the Indian Penal Code as well as under Sections 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Therefore, the following orders:

(I). The appeal is partly allowed.

(II). Conviction and resultant sentence imposed on the

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appellant/convicted accused for the offences punishable under Sections 376 and 452 of the Indian Penal Code is maintained. However, the appellant/accused is acquitted of the offences punishable under Sections 323 and 506 of the Indian Penal Code as well as under Sections 3(1)(xi) and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

(A. M. Badar, J)

P.S./-

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