

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.43 of 2016**

Arising Out of PS. Case No.-267 Year-2014 Thana- BARBIGHA District- Sheikhpura

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Pramod Chaudhary Son of Bharat Choudhary, Resident of village - Kewati,
P.S.- Barbigha, District - Sheikhpura

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate

For the State : Mr. Abhay Kumar, APP

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**CORAM: HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT**

Date : 21-10-2024

The present appeal has been preferred against the impugned judgment and order of sentence both dated 11.01.2016 whereby the sole appellant has been found guilty under Section 376 read with Section 511 of the Indian Penal Code and Section 8 of the POCSO Act and sentenced to rigorous imprisonment for 10 years and to pay fine of Rs.50,000/- under Section 376/511 of the Indian Penal Code and rigorous imprisonment for five years and to pay fine of Rs.50,000/- under Section 8 of the POCSO Act. In case of default to pay the fine he has been directed to undergo additional simple imprisonment for six months under each Section.



Prosecution case.

2. The prosecution case as emerging from the written report of the victim is that she was 15 years of age and in the night of 7/8th of August, 2014 she was sleeping alone on roof of her house. At 1:00 O'clock in the night, all of a sudden, appellant Pramod Chaudhary living in the neighbouring house came to her and sat beside her and wanted to untie the string of her *payjama* with ill intent. She got awake and raised *hulla* and the appellant fled away from the roof.

Factual background.

3. On the basis of the written report, formal F.I.R. was lodged for the offence punishable under Sections 376/511 of I.P.C. and Sections 4,5 and 6 of POCSO Act on 08.08.2014 at 05:30 O'clock against the sole accused Pramod Chaudhary. After investigation, charge sheet bearing no. 237 of 2014 dated 31.08.2014 was submitted against the Appellant for offence punishable under Section 376 read with Section 511 of the Indian Penal Code and Sections 7/8 of the POCSO Act. The charges were framed against the appellant under Section 376 read with Section 511 of the Indian Penal Code and Section 8 of the POCSO Act and the same were read over and explained to him to which he pleaded not guilty and claimed to be tried.



Hence, the trial commenced.

4. During trial, altogether five witnesses were examined on behalf of the prosecution. P.W.-1 is cousin of the victim; P.W.-2 is sister-in-law (*bhabhi*) of the victim; P.W.-3 is mother of the victim; P.W.-4 is victim herself and P.W.-5 is Mahanand Jha, I.O. of the case.

5. The prosecution also brought on record Ext.1- (signature of the victim/informant on the written report).

Statement under Section 313 Cr.PC

6. After closure of the prosecution evidence, the accused was examined under Section 313 Cr.PC confronting him with incriminating circumstances which came in the prosecution evidence, so as to afford him opportunity to explain those circumstances. During this examination, he admitted that he had heard the evidence of prosecution witnesses against him. But he did not explain any circumstance, though he claimed that the prosecution evidence is false and he is innocent and has been falsely implicated.

7. The appellant has also examined one witness in his defence - D.W.-1 (Sudhir Prasad).

Findings of the Trial Court.

8. Learned Trial Court after appreciating the evidence



on record and considering the submissions of the parties, passed the impugned judgment of conviction and order of sentence whereby the sole appellant has been found guilty and sentenced accordingly.

9. I have heard learned counsel for the appellant and learned APP for the State.

Submissions of the parties.

10. Learned counsel for the appellant submits that the impugned judgment of conviction and order of sentence passed by learned Trial Court are not sustainable in the eyes of law or on facts. Learned Trial Court has failed to appreciate the evidence on record and erroneously passed the impugned judgment of conviction and order of sentence.

11. He further submits that even going by the prosecution case and the whole evidence on record, no case is made out under Section 376 read with Section 511 of the Indian Penal Code and Section 8 of the POCSO Act. The alleged *actus reus* at most constitute only preparation for rape which is not punishable and even going by the definition of sexual assault under Section 7 of the POCSO Act, the alleged *actus reus* does not get covered under Section 7/8 of the POCSO Act. At most, the alleged facts and circumstances of the case constitute



outraging of modesty of the alleged victim punishable under Section 354 of the Indian Penal Code.

12. He further submits that going by the whole evidence on record, the informant is the only eye-witness and she is not trustworthy and reliable witness in view of major discrepancies and contradictions in her statement before learned Trial Court. She further submits that informant is habitual to file false case of similar nature. She refers to paragraph-4 of her testimony wherein she has admitted that similar case has been filed against the another accused/Rajesh Choudhary also.

13. Hence, she submits that the appellant is entitled to get benefit of doubt.

14. However, learned counsel for the State defend the impugned judgment and the order of sentence submitting that the prosecution has proved its case beyond all reasonable doubts and the appellant has been appropriately sentenced.

15. I have thoroughly perused the relevant materials on record and given thoughtful consideration to the submissions advanced by both the parties.

Appreciation of the evidences and finding of this Court

16. From perusal of the evidence on record, I find that altogether five prosecution witnesses have been examined



and only the informant who is P.W.-4 is eye-witness to the alleged offence and other non-official witnesses are at most witnesses to pre and post occurrence facts and circumstances of the case and all non-official witnesses are closely related with the informant.

17. From perusal of the testimony of P.W.-4 (informant), I find inherent contradictions and improbability in her testimony. In her written report and examination-in-chief, she has deposed that she was sleeping at the roof alone whereas in paragraph-15 of her cross-examination, she has deposed that even her mother and *bhabhi* were also sleeping there, but on account of rain, they came down in the house from the roof whereas she was still there. Such statements of the informant creates serious doubt in the prosecution case. If the weather was not suitable for her mother and sister-in-law to sleep on the roof, how can it be suitable for her ? I also find that similar case has been also filed by the informant against another man called Rajesh Choudhary.

18. Moreover, even the alleged *actus reus* do not constitute offence of attempt to rape. As per the testimony, the appellant wanted to untie the string of the *Paijama* of the informant. At most, it may constitute *mens rea* to commit rape.



But only *mens rea* alone does not constitute any offence.

19. At most, the alleged facts and circumstances may constitute offence of outraging modesty.

20. But in view of the contradictions and improbability in the testimony of the informant, the appellant is entitled to get benefit of doubt.

21. Accordingly, the present appeal is allowed acquitting the appellant of all charges.

22. Appellant Pramod Choudhary is already on bail. Hence, he is discharged from his liability under his bail bond.

23. The record of the case be returned to the Trial Court forthwith.

24. Interlocutory application/s, if any, also stand disposed of.

(Jitendra Kumar, J.)

ravishankar/S.Ali

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