

GANGA PRASAD MAHTO

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v.

STATE OF BIHAR & ANR.

(Criminal Appeal No. 526 of 2019)

MARCH 26, 2019

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**[ABHAY MANOHAR SAPRE AND  
DINESH MAHESHWARI, JJ.]**

*Penal Code, 1860:*

s. 376 – Rape – Conviction by courts below – On appeal, C held: It is evident from the facts of the case that prosecution failed to prove the case beyond reasonable doubt – Accused is entitled to be acquitted.

**Allowing the appeal, the Court**

**HELD:** The complainant was not examined by the Doctor after the alleged incident. In absence of any medical examination done, the prosecution did not examine any doctor in the trial in support of their case. It was not disputed that similar type of complaints were being made in past by the complainant against other persons also and such complaints were later found false. It was also not disputed that there was enmity between the appellant and the husband of the prosecutrix, due to which their relations were not cordial. It had also come in evidence that the prosecutrix was in the habit of implicating all the persons by making wild allegations of such nature against those with whom she or/and her husband were having any kind of disputes. There was no eye witness to the alleged incident and the one, who was cited as witness, i.e., PW-2 was a chance witness on whose testimony, a charge of rape could not be established. So far as PW-1, husband of the complainant, is concerned, he admitted that he was away and returned to village the next day morning of the incident. In the light of the aforementioned reasons, the prosecution has failed to prove the case of rape alleged by the Complainant (PW-3) against the appellant beyond reasonable doubt. The appellant is acquitted from the charges leveled against him. [Paras 11, 12 and 14] [23-C-G; 24-B]

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- A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 526 of 2019.

From the Judgment and Order dated 30.01.2014 of the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 251 of 2002

- B Rajnish Kumar, Amrendra Singh, Shantanu Kumar, Advs. for the Appellant.

Abhinav Mukerji, Ms. Bihu Sharma, Ms. Pratishtha Vij, Ms. Purnima Krishna, Advs. for the Respondents.

The Judgment of the Court was delivered by

- C **ABHAY MANOHAR SAPRE, J.** 1. Leave granted.

2. This appeal is directed against the final judgment and order dated 30.01.2014 passed by the High Court of Judicature at Patna in Crl.A. No.251 of 2002 whereby the High Court dismissed the appeal filed by the appellant herein and upheld the order dated 24.04.2002 of D the 4<sup>th</sup> Additional District & Sessions Judge, Samastipur in Sessions Trial No.233 of 1999.

3. The appeal involves a short point as would be clear from the facts stated *infra*.

- E 4. The appellant was prosecuted and eventually convicted for an offence punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) and sentenced to undergo rigorous imprisonment for 7 years by the Sessions Judge. The conviction and sentence was upheld by the High Court. The appellant (accused) is now in appeal in this Court against his concurrent conviction/sentence.

- F 5. So, the short question, which arises for consideration in this appeal, is whether the two Courts below were justified in convicting the appellant for an offence punishable under Section 376 IPC.

- G 6. PW- 3 lodged a complaint on 15.12.1997 complaining therein that the appellant in the previous night at around 8.00 PM entered into her house when she was alone and threatened her by showing pistol and committed rape on her. This, in substance, was the allegation in the FIR, which was lodged by PW-3 on the next day of the incident.

- H 7. The prosecution examined three witnesses. Hari Narain Singh (PW-1) is the husband of the complainant. Ram Udgar Singh(PW-2)

claims to be the person living near the complainant's house and PW-3 is A the complainant(prosecutrix).

8. As mentioned above, the Sessions Judge and the High Court convicted the appellant placing reliance on the evidence of three prosecution witnesses.

9. Having heard the learned counsel for the parties and on perusal B of the record of the case, we are constrained to allow the appeal and set aside the impugned order.

10. In our considered opinion, the prosecution has failed to prove C the case of rape alleged against the appellant at the instance of the complainant(PW-3). This we say for the following reasons:

11. First, the complainant was not examined by the Doctor after D the alleged incident. Second, in absence of any medical examination done, the prosecution did not examine any doctor in the trial in support of their case; Third, it was not disputed that similar type of complaints were being made in past by the complainant against other persons also and such complaints were later found false; Fourth, it was also not disputed E that there was enmity between the appellant and the husband of the prosecutrix, due to which their relations were not cordial; Fifth, it had also come in evidence that the prosecutrix was in habit of implicating all the persons by making wild allegations of such nature against those with whom she or/and her husband were having any kind of disputes; Sixth, there was no eye witness to the alleged incident and the one, who was cited as witness, i.e., PW-2 was a chance witness on whose testimony, a charge of rape could not be established; and lastly, so far as PW-1, husband of the complainant, is concerned, he admitted that he was away F and returned to village the next day morning of the incident.

12. In the light of the aforementioned seven reasons, we are G of the considered opinion that the prosecution has failed to prove the case of rape alleged by the Complainant(PW-3) against the appellant beyond reasonable doubt. In other words, there is no evidence adduced by the prosecution to prove the commission of the offence of rape by the appellant on PW-3 and the evidence adduced is not sufficient to prove the case of rape against the appellant.

13. Both the Courts below were, therefore, not justified in H convicting the appellant for an offence punishable under Section 376

- A IPC and sentenced him to undergo rigorous imprisonment for seven years. He was entitled for acquittal.

14. In view of the foregoing discussion, the appeal succeeds and is accordingly allowed. The impugned order is set aside. The appellant is acquitted from the charges leveled against him. He is accordingly set  
B free. His bail bonds are accordingly discharged.

Kalpana K. Tripathy

Appeal allowed.