

Cr. Appeal (SJ) No.1341 of 2006

[Against the Judgment of conviction dated 22.07.2006 and Order of sentence dated 24.07.2006 passed by learned 3rd Additional Sessions Judge, Garhwa in Sessions Trial No. 105 of 2005]

Reyasat Ansari, Son of Shafi Ansari, Resident of village-Behlpahari, Police Station-Bhawanathpur, District-Garhwa.

.... **Appellant**

Versus

The State of Jharkhand **Respondent**

For the Appellant(s) : Mr. Ramesh Kumar, Advocate
For the State : Mr. Gautam Rakesh, A.P.P.

P R E S E N T
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

Dated- 27.11.2024

By Court:- Heard Mr. Ramesh Kumar, learned counsel appearing for the appellant as well as Mr. Gautam Rakesh, learned A.P.P. appearing for the State.

2. The instant criminal appeal is directed against the judgment of conviction dated 22.07.2006 and order of sentence dated 24.07.2006 passed by 3rd Additional Sessions Judge, Garhwa, in Sessions Trial No. 105 of 2005, whereby and whereunder the appellant has been convicted for the offences under Section 376 read with Section 511 of the Indian Penal Code and has been sentenced to undergo R.I. for 5 years and to pay fine of Rs.3,000/- with default stipulation.

Factual Matrix

3. The fact giving rise to this appeal is that on 24th April, 2004 in the night at about 08:00 PM, the victim, who is a married lady

went outside of her house for discharge of nature's call. Meanwhile, the present appellant came from behind and caught hold of her and also gaged her mouth, laid down on the earth and forcibly committed rape with her. Anyhow, the victim raised alarm and became restless, meanwhile, her mother-in-law, father-in-law and other persons arrived at the place of occurrence, then the victim narrated about the occurrence to all the villagers, but the co-accused Sudeshwar Sao did not allow her to lodge case before the police under assurance to amicable settle the matter through village panchayat. When no action was taken through Panchayati, she lodged a complaint case on 05.05.2004, which was sent to the concerned police station under Section 156 (3) of the Cr.P.C. for registration of case and investigation.

4. Thereafter, F.I.R. being Bhawnathpur P.S. Case No. 35/2004 dated 08.05.2004 under Section 376 of the I.P.C. was registered.

5. After completion of investigation, charge-sheet was submitted under Sections 376 and 201 of the Indian Penal Code and after taking cognizance, the case was committed to the court of sessions for trial and disposal, where the charge under Section 376 of the I.P.C. was framed against the appellant and charges under Sections 201 and 214 were not framed against the co-accused.

6. In order to substantiate the charges leveled against all accused persons, altogether 10 witnesses were examined by the prosecution.

7. The case of defence is denial from the charge and further defence is that appellant is innocent who has not committed any offence and he has been falsely implicated in this case.

8. After conclusion of trial, the present appellant has been held guilty for the offence under Sections 376 read with 511 of the I.P.C. and sentenced as stated above.

9. Being aggrieved and dissatisfied with the impugned judgment of conviction dated 22.07.2006 and order of sentence dated 24.07.2006, this Criminal Appeal has been preferred by the appellant.

10. Learned counsel for the appellant submitted that the as per the evidence of victim itself, it is obvious that the appellant has only caught hold her hand, in meanwhile, she raised alarm and liberated herself. Therefore, the offence under Section 376 read 511 of the I.P.C. is not constituted in this case, rather it is a fit case where Section 354 of the I.P.C. is constituted. The appellant has remained in custody during trial of the case since more than two years and has been sufficiently punished for the offence committed by him. The offence is of the year 2006 and two decades has been elapsed. The appellant has been settled in his life and never indulged in criminal activities. Therefore, conviction of the appellant for the offence under Section 376/511 may be set aside and it may be altered for the offence under Section 354 and

accordingly, the appellant may be directed to be released on sentence already undergone by him.

11. On the other hand, learned A.P.P. appearing for the State has opposed the contention raised on behalf of the appellant and defended the judgment on merits and submitted that the appellant has chased the victim lady for committing rape with her, but due to intervention of local villagers could not succeed. Hence, conviction and sentence does not require to be interfered in this appeal, which fit to be dismissed.

12. At the very outset, the evidence of victim lady, who has been examined as P.W.-3 requires to be discussed at length for proper appreciation of the case. She has stated in her examination-in-chief that the incident is about one and a half years ago. She has lodged the case against the appellant in the court, but could not proceed. She further stated that when she has gone outside to defecate herself at about 08:00 PM, then the appellant has caught hold her and upon raising the alarm, he fled away and villagers were gathered. In her cross-examination, she stated in Para-6 that when she has gone to defecate outside, the appellant has caught her hand.

13. The prosecution story, as proved by the victim herself, if given its face value, the offence under Sections 376 and 511 of the I.P.C. is not constituted in the factual aspects of the case. At the same time, the appellant has committed indecent behavior with a

married lady and committed an act likely to outrage modesty of a woman by using criminal force.

14. In view of above discussions and reasons, the conviction and sentence of appellant for the offences under Section 376/511 is hereby set aside and it is modified to the commission of offence under Section 354 of the I.P.C. It further appears that the appellant has remained in custody for more than two years and has already been sufficiently punished. Accordingly, he is sentenced for imprisonment already undergone for the offence under Section 354 of the I.P.C. Accordingly, this appeal is partly allowed with alteration/modification in sentence as stated above.

15. Let a copy of this judgment along with trial court records be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court at Ranchi

Dated:-27.11.2024

Amar-Sunil/-