
(2011) 04 PAT CK 0043

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 17 of 1995

Bechan Mian

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 448

Citation : (2011) 04 PAT CK 0043

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellant has been convicted u/s 376 and 448 I.P.C. and sentenced to rigorous imprisonment for 7 years under the first count but no separate sentence has been awarded u/s 448 I.P.C. by the 4th Additional Sessions Judge, Madhubani in Sessions Trial No. 89 of 1993/21 of 1994 by the judgment dated 28/29. 11.1994.

2. The case of the prosecution is that on the night of 20.9.1990 while she was sleeping with her mother-in-law and daughter aged about 4 years the Appellant entered into her room who was identified in the light of the "Debiya" and inspite of her protest the Appellant committed rape upon her and fled away.

3. During trial the prosecution examined 7 witnesses out of whom P.W. 1, 2, 4 and 7 are the close relatives of the informant, P.W. 3 is on the point of having seen the Appellant fleeing away from the place of occurrence, P.W. 6 is the doctor who examined the informant whereas P.W. 5 is the Investigating Officer.

4. Even though it has been stated that the mother-in-law was sleeping in the same courtyard of the house but she has not been examined which is vital lacuna in the prosecution case.

5. Further, the fact that P.W. 4 did not wake up in the course of the physical

relationship having forcibly been established by the Appellant and in course of protest by the informant her presence appears doubtful.

6. Further, the evidence of P.W. 1, 2 and 7 that they had seen the Appellant fleeing away from the place of occurrence also does not seem to be probable since admittedly it was dark night and the chances of the Appellant having been identified is doubtful. However, since the prosecutrix herself has given vivid description of the act committed by the Appellant, I am inclined to accept her version as true.

7. In the result, the appeal is dismissed but with modification in sentence to the period already undergone by him during trial.