
(2011) 07 PAT CK 0037

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 57 of 1997

Bishun Dayal Sah

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2011) 07 PAT CK 0037

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellant has been convicted u/s 376 I.P.C. and sentenced to R.I. for eight years as also a fine of Rs. 5,000/- and in default of which further R.I. for one year by a judgment dated 17.1.1997 passed by the 3rd Additional Sessions Judge, Siwan in Sessions Trial No. 129 of 1995.

2. The case of the prosecution according to the informant-prosecutrix (P.W.6) is that on 1.6.1994 at about 11 P.M. when she was participating in a marriage ceremony, the Appellant suddenly came there and lifted her physically and took her beside the house of one Bhagelu Sah and committed rape upon her. When she attracted the attention of the mother by cries she came there and then the present case was instituted.

3. During trial, the prosecution has examined seven witnesses. Out of whom, P.W.1 and P.W.2 have been declared hostile, whereas P.W.3 and P.W.4 are the doctors, who examined the prosecutrix. P.W.5 is the mother of the prosecutrix and P.W.6 is the prosecutrix herself. P.W.7 is the Investigating Officer.

4. On going through the evidence of P.W.6, I find that she has supported the fact that while she was attending the marriage ceremony, the Appellant lifted her bodily and took her forcibly to the house of one Bhagelu Sah where he committed rape upon her. This part of the prosecution case appears to be highly

improbable since at a marriage ceremony, it is suspected that many persons would be present. However, the evidence of the doctors reveal that they had found scratch injury on the back of the prosecutrix and also hymen was found ruptured while thick discharge was present in the under clothes of the prosecutrix which suggested sexual activity. Even though the doctors have not stated conclusively that in their opinion rape had been committed, but in the facts of the case in my view the prosecution has been able to prove that the Appellant had sexually assaulted the prosecutrix.

5. Thus finding no merit in the appeal the same is dismissed. However, considering that the Appellant has remained in custody for about four and half years and the occurrence had taken place about 17 years ago, the period undergone by him during trial shall be sufficient punishment to meet the ends of justice.

6. In the result, the appeal is dismissed with the aforesaid modification.