
(2011) 05 PAT CK 0060

In the Patna High Court

Case No : Criminal Appeal No. 260 of 1995 (S.J.)

Rajesh @ Guddu Shrivastava

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2011) 05 PAT CK 0060

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Anjana Prakash, J.—The Appellant has been convicted u/s 376/511 I.P.C. and sentenced to R.I. for three and half years and a fine of Rs. 1000/- by a judgment dated 16/17.11.1995 passed by the Sessions Judge, Muzaffapur in Sessions Trial No. 507 of 1994.

2. The case of the prosecution is that on 12.5.1995 while the villagers were engaged in performing a Puja, the Appellant reportedly called the daughter of the informant on the pretext of taking some articles from his house to the location of the Puja and committed rape upon her.

3. During trial the prosecution has examined eight witnesses in all. Out of whom, P.W. 1 is the informant and P.W. 2 and P.W. 5 are hearsay witnesses. P.W. 4 is the mother of the victim, who is also hearsay witness, whereas the P.W. 6 is the doctor, who examined the victim girl. P.W. 7 is the victim herself, whereas the P.W. 8 is the Investigating Officer.

4. It has been submitted that even though P.W. 7, the victim girl, had stated that she was raped, but this fact was not supported by P.W. 6, the doctor, who found the hymen intact and, therefore, the Appellant was convicted u/s 376/511 I.P.C. substantially disbelieving the prosecution case.

5. However, in view of the unequivocal and trustworthy evidence of P.W. 7, the victim, who was merely between 9-12 years, I am not inclined to interfere with the conviction of the Appellant.

6. In the result, the appeal is dismissed but the sentence is modified to the period already undergone by him during trial. If the Appellant is alive, he shall pay the fine imposed by the Trial Court within eight weeks from the date of receipt of such notice and in default of which further three months R.I.