
(1932) 08 PAT CK 0021
In the Patna High Court

Tarini Mahton

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 31-08-1932

Acts Referred:

Penal Code, 1860 (IPC) — Section 376
Whipping Act, 1909 — Section 5

Citation : AIR 1932 Patna 334

Judgement

1. The appellant has been convicted u/s 376, I. P.C., of rape upon a girl of about seven years of age in circumstances involving injury to the girl and has been sentenced to four years rigorous imprisonment and a whipping of 15 stripes.
2. The appeal is preferred from jail. The appeal has been admitted to consider the applicability of Section 5, Whipping Act. That section sets out that any juvenile offender (an expression which is defined to mean an offender whom the Court shall find to be under 16 years of age) may, when convicted of committing certain offences of which rape is one, be punished with whipping in lieu of any other punishment to which he may for such offence be liable.
3. In the first place, Section 5 does not supersede Section 4 under which the punishment awarded in this case is legal. Section 5 is meant to be applied in proper cases alternatively with Sections 3 and 4 which apply to juvenile offenders as well as to offenders who are not within the definition of juvenile offenders.
4. Again the learned Sessions Judge, though pointing out that the medical evidence which is that the appellant is 16 or 17 years of age, "does not definitely show that he is not under 16 years of age," has nowhere come to the finding which is essential to bring the case u/s 5, that the appellant is actually under 16 years of age. And indeed there is no evidence upon which he could come to such a finding. There is thus no mistake in law in the sentence appealed against. Further the conviction is correct and the sentence is, in the circumstances of the case, proper. We accordingly dismiss the appeal.