

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.143 of 2015

Arising Out of PS.Case No. -125 Year- 2013 Thana -GWALPARA District- MADHEPURA

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Ritesh Kumar Rajak son of Sri Kari Rajak, resident of village- Pirnagar, P.S.-
Gwalpara, District- Madhepura

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Shailendra Kumar Singh

For the Respondent/s : Mr. Sujeet Kumar Singh

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 08-12-2017

Appellant Ritesh Kumar Rajak has been found guilty for an offence punishable under Sections 376/511 of the I.P.C. and sentenced to undergo rigorous imprisonment for five years as well as to pay fine appertaining to Rs.5,000/- in default thereof to undergo simple imprisonment for six months with further directions that the period already undergone during course of trial will be set off in terms of Section 428 of the Code of Criminal Procedure vide judgment of conviction dated 10.02.2015 and order of sentence dated 12.02.2015 passed by Additional Sessions Judge 1st, Madhepura, in Sessions Trial No. 84 of 2014/ CIS No. 115/2014 arising out of Gwalpara P.S. Case No. 125/2013.

2. P.W.2 Santosh Sao, filed his written report before the Officer-in-Charge of Gwalpara Police Station on 30.12.2013 alleging,



inter alia, that his daughter, namely, Richa Kumari aged about 10 years while had gone to field along with her she goat, Ritesh Kumar Rajak took her to bamboo cluster on the pretext of giving firewood where he untied her pant on account of which she raised alarm attracting the villagers as well as her elder mummy. Ranju Devi who chased Ritesh, apprehended. During course thereof he had also been assaulted.

3. On the basis of the aforesaid written report Gwalpara P.S. Case No.125 of 2013 was registered followed with an investigation as well as submission of charge sheet paving way to trial which ultimately concluded in a manner, the subject matter of the instant appeal.

4. Defence case as is evident from the mode of cross examination as well as statement recorded under Section 313 of the Code of Criminal Procedure is of complete denial. However, neither ocular nor documentary evidence has been adduced.

5. In order to substantiate its case prosecution has examined altogether seven P.Ws. out of whom P.W.1 Nawal Kishore Sah, P.W.2 is Santosh Sah (the informant), P.W.3 is Amaru Pawan, P.W.4 is Sanju Devi, P.W.5 is Umanath Singh, P.W.6 is Vikash Sah and P.W. 7 is Richa Kumari (victim girl). Prosecution has also exhibited as Ext. 1 signature of the informant over written report, Ext. 1/1 endorsement over written report, Ext. 2 Formal First Information Report.

6. From the trend of the evidence having adduced on behalf of the prosecution it is evident that in due course of time they have compromised this case as well as its counter case and in support thereof, compromise petition as well as complaint petition has also been filed as is



evident from the evidence of P.W.2, informant Santosh Sah. That happens to be reason behind that since after examination of P.W.2, there happens to be some sorts of perversity/deflection in the evidence of P.Ws. Most surprising evidence is of P.W.7(victim herself) who had stated that she has been brought to Court by her Dada to depose. She has further stated that about two months ago she had gone to graze her she goat in a sweet potato field where none was present. She has further stated that this case has been instituted by her father but she is unable to say for what. She has further stated that as she was alone so, she raised alarm out of fear. Her elder mummy came there on her cry. Then she felt quite calm. Thereafter, her elder mummy informed her father whereupon her father came there along with so many persons. Thereafter, she returned back to her house. Then this witness was declared hostile whereupon she was confronted with her previous statement. In paragraph 5 she has not claimed identification of the accused present in the dock. That being so, the victim has completely demolished the case of the prosecution. P.W.4, Sanju Devi, is elder mummy of P.W.7, the victim, who has stated that on the alleged date and time of the occurrence she had gone to her field. Richa was grazing her she goat. She raised halla whereupon she had gone there. She had seen Rajak fleeing. Some people arrived and then all of them chased Ritesh and caught him. On query Richa disclosed that Ritesh untied her pant. She had identified the accused. During course of cross examination at paragraph 5 she has stated that on account of grazing of crop Ritesh quarreled with her. On the basis of suspicion she has instituted this case. In paragraph 6 she has stated that she had not seen



any kind of occurrence. She has further stated that Richa had disclosed that on account of grazing of crops Ritesh quarreled with her and during course thereof, there was push & pull whereupon she raised alarm. She also disclosed that Ritesh had not done anything with her. She has further stated that this case as well as cross case has already been compromised. P.W.2 is the informant. He had stated that his daughter, Richa aged about 10 years had gone to graze her she goat on the alleged date and time of the occurrence. Ritesh came near her and then took her towards orchard in order to give firewood. After taking her to that place, Ritesh tried to rape her whereupon his daughter raised alarm. Sanju Devi, his bhabhi came there and had seen Ritesh fleeing from there. On hue and cry large number of persons assembled there who chased Ritesh and caught him. Then Sanju Devi informed O.C. of the police station who came and before whom he had filed written report. Accused was taken away by the O.C. He has identified the accused in the dock. During course of cross examination, he has admitted that the brother of appellant had also instituted a case against him as well as against other family members. He has further admitted that both the cases have been compromised. He has further stated that as the victim happens to be minor on account thereof he had signed over compromise/ permission petition representing her. He has further stated that only on the basis of suspicion he has instituted this case. Then he had said that this case has been instituted at the instance of the villagers.

7. In the background of the aforesaid evidence, other witness P.W.1 who does not claim to be an eye witness to the occurrence



and P.W.3 who also failed to support the case of the prosecution, P.W.6, who also happens to be in similar fashion are of no use and in the aforesaid background, the evidence of P.W.5, the I.O. serves no purpose.

8. That being so, the judgment of conviction and sentence recorded by the learned lower court do not find favour and is, accordingly, set aside. The appeal is allowed. Appellant is on bail. Hence, he is directed to be discharged from the liability of his bail bond.

(Aditya Kumar Trivedi, J)

AnilKrSinha/-

AFR/NAFR	
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