

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.775 of 2015

Arising Out of PS.Case No. -206 Year- 2014 Thana -RAGHOPUR District- SUPAUL

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Md. Nazeer son of Md. Jahiruddin, resident of Ganpatganj, Hata Tola, P.S.-
Raghopur, District- Supaul.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Pranav Kumar Jha, Adv.

For the State : Smt. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-10-2017

Sole appellant Md. Nazeer has been found guilty for an offence punishable under Section 376 of the IPC and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to rupees ten thousand and in default thereof, to undergo S.I. for one year, under Section 4 of the POCSO Act whereunder no separate sentence has been inflicted against him vide judgment of conviction dated 20.11.2017 and order of sentence dated 25.11.2015 passed by Additional Sessions Judge, Ist-cum-Special Judge, POCSO, Supaul in POCSO Case No.02/2015 arising out of Raghopur P.S. Case No.206/2014.

2. PW.6, victim (name withheld) gave her fardbeyan on 16.11.2014 at her darwaja before the police official disclosing therein that on the same day at about 03:30 PM she had gone to bring her she-goat. At that very time, Md. Nazeer came and said that you looks beautiful and so, he wants to do something whereupon, she ran therefrom chased by Md. Nazeer who caught hold and then committed rape near bamboo cluster, after gagging her mouth. Anyhow, she got



an opportunity and raised alarm whereupon Ayesha Khatoon, Neetu Kumari came and had seen the accused committing rape, who, seeing them, ran away. She came to her place and disclosed the event to her mother. Somebody has informed the police and after arrival of the same, she got her fardbeyan recorded.

3. After registration of Raghapur P.S. Case No.206/2014 investigation commenced and charge sheet was submitted. After taking cognizance, the case was committed as a result of which, trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular or documentary evidence has been adduced on behalf of appellant.

5. In order to substantiate its case prosecution had examined altogether twelve PWs, P.W.-1 Shambhu Sah, P.W.-2 Md. Matin, PW-3 Neetu Kumari, PW.4-Md. Hasim, PW.5-Sahajadi Khatoon, PW.6-Samina Khatoon, PW.7-Takimun Khatoon, PW.8-Ramchet, PW.9-Dr. Mihir Kr. Verma, PW.10-Dr. Nutan Verma, PW.11-Kaili Khatoon, PW.12-Ayesha Khatoon as well as had also exhibited fardbeyan-Ext.1, Formal FIR-Ext.1/1, Ext.2-the medical report issued by PW.9, Ext.3 Medical report issued by PW.10.

6. Now coming to status of the witnesses, it is apparent that Ayesha Khatoon, PW.12 and Nitu Kumari, PW.3, were shown to be an eye witness to occurrence in the fardbeyan who came at the spot after hearing alarm of victim and seeing whom, the appellant escaped,



leaving the victim have gone volte-face to the prosecution and so were declared hostile. In likewise manner, the other witnesses PW.1, PW.2, PW.4, PW.11 have also not been inclined in supporting the case of the prosecution whereupon, were declared hostile.

7. PW.9 is the doctor who had examined vaginal swab of the victim on 17.11.2014, on the next day of the alleged occurrence and found absence of dead or live spermatozoa. PW.10 is the Gynaecologist who had examined the victim on 17.11.2014 and as per her objective finding no sign of rape was found over person of the victim as neither any kind of injury has been over private part of the victim nor over any part of her body.

8. Now remains the evidence of PW.5, PW.6 and PW.7. PW.7 is the witness who had simply disclosed that he was informed by PW.6, mother of the victim that her daughter was raped but, she is not aware nor she has got personal knowledge regarding the occurrence.

9. PW.6 is the mother of the victim, PW.5. During her examination-in-chief she had stated that on the alleged date and time of occurrence her daughter had gone to bring she-goat. She was chased by Md. Nazeer and then, was raped. She had further stated that victim after coming to house had disclosed the same. Side by side also deposed that after hearing alarm she rushed and had seen Md. Nazeer committing rape on her daughter. Then thereafter, she took her daughter to police where her statement was recorded. During cross-examination she had stated that she had seen the occurrence which was committed for half an hour. During course thereof, she had seen



her daughter was lied down over the earth by Md. Nazeer. She was to shout whereupon, Md. Nazeer tied her mouth with towel. Md. Nazeer himself tied the same. Thereafter, she brought the victim to her place. She had informed Moti and police and then all of them carried the victim to police station. As per para-5 she had stated that she along with Shambhu Yadav, Neetu Kumari, Ayesha Khatoon, have seen the occurrence. During course thereof, Shambhu, Neetu, Ayesha were laughing.

10. PW.5 is the victim, she had disclosed that on the alleged date and time of occurrence she had gone near pond to bring her she-goat, where, Nazeer had committed rape on her. She came to her house and disclosed regarding the occurrence to her mother. Nazeer had raped her thrice. She had recorded her fardbeyan at the police station whereupon, she put her RTI. She had also stated before the Magistrate on produced by the police. She was medically examined. She identified the accused in dock. During cross-examination at para-5, she had stated that as per instruction of her father she had instituted this case. She on her own had not lodged the case. She had further stated that Nazeer was known since before. He had not indulged in any kind of activity with her since before. When she had gone to bring she-goat Nazeer had committed rape. In para-6, she had stated that there was blood stain over her cloth which was handed over to the police. In para-7, she had disclosed that she was raped in presence of Ayesha Khatoon, Neetu and Shambhu. They have caught hold Nazeer but, later on released. She had further stated that she was raped for one and half an hour in their presence. She was raped thrice. Her mouth was gagged with handkerchief by Nazeer.



She is unable to say whether he had taken away the handkerchief. She had denied the suggestion that at the instance of Moti this case has been instituted.

11. PW.8 is the Investigating Officer. He had deposed that in his presence fardbeyan of victim was recorded by the Officer-in-charge (exhibited). Formal FIR was drawn up (exhibited). He was entrusted with the investigation during course of which, he had examined the victim, visited the place of occurrence, got the victim medically examined. Produced her before the Magistrate. Her statement under Section 164 Cr.P.C. was recorded. Took statement of the witnesses and then, after completing the investigation, submitted charge sheet. He had also stated that P.O. happens to be the place situated 200 steps west to house of the victim of bamboo cluster belonging to Narayan Choudhary. He had further disclosed that during course of investigation of the P.O., he had found trampling mark. He had identified the boundary of the P.O. North- Narayan Choudhary, South-Sitaram Choudhary, East-Narayan Choudhary, West-Ramdev Singh. During cross-examination, he had stated in para-6 that he had conducted investigation in routine manner.

12. After having analytical approach of the evidence adduced on the record, it is evident that none other than PW.5 and PW.6 that means to say the victim and her mother supported the case of the prosecution including that of the doctor. PW.5, the victim had not shown her mother, PW.6 to be an eye witness to occurrence but, during course of evidence, PW.6 claimed so. Though, no cross-examination on that very score happens to be in detail more



particularly, challenging her status to be an eyewitness by way of drawing her attention towards her previous statement recorded under Section 161 of the Cr.P.C. but the fact remains that her conduct appears to be suspicious in the background of the fact that in spite of presence of Neetu Kumari, Ayesha Khatoon, Shambhu Sah she herself seen the occurrence for half an hour without any activity at her end even protesting, resisting, shouting in order to rescue PW.5 her daughter. Her conduct is found abnormal in the background of the fact that Neetu Kumari, PW.3 and Ayesha Khatoon, PW.12 both female along with Shambhu Sah, father of PW.3 have been alleged at the end of PW.6 that they were laughing seeing her daughter being raped by Nazeer. It looks also improbable that a mother will see her daughter being raped without any protest, or asking for help.

13. Now coming to the evidence of PW.5, victim, it is needless to remind that in case of reliability of the evidence of the victim her sole testimony happens to be sufficient to draw conviction and sentence against the rapist irrespective of the fact that same does not find corroborated by the medical evidence in the background of the fact that slight penetration happens to be sufficient to instituted offence of rape. From her evidence, it is evident that at an initial stage she had simply disclosed that she was raped, but during course of evidence disclosed that she was raped thrice which continued for one and half an hour. The aforesaid eventuality which happens to be a major development would not have been ignored at the end of doctor had there been such kind of activity. Apart from this, from her evidence it is apparent that her apparel sustained blood stain which were handed over to the police however, from the evidence of PW.8,



I.O. it is evident that victim had not produced apparel before him nor he had seized apparel of the victim.

14. However, considering the evidence on record coupled with the objective finding of the I.O. whereunder he found presence of trampling mark at the place of occurrence the probability of push and pull in between appellant as well as victim could not be ruled out, whereupon appellant is found guilty of outraging modesty of PW.5 and for that, is held guilty under Section 354 IPC. Coming to the score of sentence, it is apparent from the record that he happens to be under custody since 18.11.2014 and so, his sentence is modified as the period already undergone, maintaining the quantum of fine having been inflicted by the learned lower court along with default clause. In terms thereof, this appeal is partly allowed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	
Transmission Date	

