

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (SJ) No.283 of 2002**

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Ram Gyani Rai, son of Late Jageshwar Rai @ Budhu Rai, resident of Village-  
Bharat Nagar, P.S.-Gaighat, District-Muzaffarpur

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Arun Kumar Tripathi(Amicus Curiae)

For the State : Mr. Z. Hoda, APP

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**ORAL JUDGMENT**

**Date: 07-10-2017**

Challenging his conviction to undergo four years rigorous imprisonment for the offence under Sections 376/511 of the Indian Penal Code, this appeal has been filed by the appellant accused.

It is the case of the prosecution that at 2:00 Clock in the night intervening 08.06.1994 and 09.06.1994 while the prosecutrix in the Angan of her house along with her child was sleeping, she suddenly woke up when she felt somebody lifting her Saree. She enquired as to who is this, it is said that accused threatened her, told that he is Ram Gyani Rai and when she raised an alarm, her father-in-law Lakhan Sah, Dewar Saukhi Sah and various other persons including her mother-in-law came there, caught hold Ram Gyani Rai. The villagers also assembled there and he was handed over



to the police. The First Information Report was lodged on the basis of the fardbeyan given by the informant/prosecutrix herself and the appellant was prosecuted for the offence under Sections 448, 354, 504 of the Indian Penal Code but the case was thereafter committed to the Court of Sessions after the Judicial Magistrate finding certain offence under Section 376 of the Indian Penal Code to have been made out. The appellant was put on trial and the prosecution examined the following witnesses. P.W. 1 Lakhan Sah who is father-in-law of the prosecutrix and he speaks about that he come to the spot hearing hulla made by his daughter-in-law and when he came to the Angan, he saw accused Ram Gyani Rai committed rape forcibly on his daughter-in-law. He is said to have informed the police about the same. The next witness examined is P.W. 2 Raj Kishore Sah who also speaks in the same manner as P.W. 1, Lakhan Sah. P.W. 3 Krishna Deo Sah who is also a resident of the house who also suggests in the same manner as P.W. 1 and P.W. 2. P.W. 4 Tildeo Sah is not an eye witness but he is informed about the incidence by other witnesses. He admits that he did not see anything. P.W. 5 is Shankar Sah and he also speaks about his rushing to the Angan when he saw the accused lying on the body of the prosecutrix. P.W. 6 Madan Devi is mother-in-law of the prosecutrix who speaks about that she woke up after hearing hulla and saw many persons caught hold the accused person Ram Gyani Rai.



P.W. 7 Shambhu Sah is also member of the family and is said to have seen the accused caught in the Angan of the house. P.W. 8, Gita Devi, the prosecutrix herself and she speaks about the appellant trying to commit rape on her forcibly. However, in the First Information Report lodged by P.W. 8 vide Exhibit-1, the story narrated and the story given by her in the Court are entirely different. P.W. 8 the prosecutrix only speaks about somebody trying to lift her sari, she making the commotion and the other persons of the house coming. However, her statement in the Court, she develops story about the accused lying over her body and trying to commit the offence of rape. Interestingly the prosecutrix is not subjected to medical examination. No medical evidence has been produced and there is no iota of evidence except oral testimony of the witnesses to prove the offence under Section 376 of the Indian Penal Code. The defence of the accused is that he has been falsely implicated. He has gone with the consent of the prosecutrix.

Taking note of the aforesaid facts of the case, it is clear that the prosecutrix has given contradictory statement initially in the First Information Report, Exhibit-1 and in the statement recorded as P.W. 8 in the Court. She has not been subjected to the medical examination and the allegation with regard to commission for the offence under Section 376 of the Indian Penal Code has not been



proved beyond reasonable doubt. That apart, from the record, it is seen that the statement of the appellant under Section 313 has not been examined in accordance to the requirement of law laid down by the Ho'ble Supreme Court in the case of ***Sukhjit Singh versus State of Punjab (2014) 10 SCC 270***. In the aforesaid case, after taking note of the law laid down in the case of ***Hate Singh Bhagat Singh versus State of Madhya Bharat AIR 1953 SC 468***, the principle laid down is that the statement of the accused to be recorded under Section 313 Cr. P.C is not an ample formality. It is a statutory protection granted to the accused under law and the statement has to be recorded after following the set principle which has been laid down in the case of ***Ranvir Yadav versus State of Bihar (2009) 6 SCC 595*** and ***Tara Singh versus The State AIR 1951 SC 441***, wherein, it contemplates that the object of Section granting appropriate opportunity of explaining the circumstances which appears against him and fairness of the trial requires compliance of this mandatory requirements and after considering all these judgments, it has been held by the Hon'ble Supreme Court that if requisite question has not been put to the accused and if the compliance of Section 313 Cr. P.C has not been properly made, it proceeded to cause prejudice to the accused and the entire trial stands vitiated on this ground alone and on the basis of such a proceeding the trial is unsustainable. If the statement of the



appellant recorded on 14<sup>th</sup> of March, 1997 available in the record is taken note of, it seems that the requirement of law as contemplated hereinabove has not been complied with.

In the facts and circumstances of the case, it appears that there are various other lacuna for which the conviction of the appellant cannot be sustained.

Accordingly, the appeal is allowed. The judgment of conviction and order of sentence dated 02.05.2002 passed by the learned IInd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 158 of 1995 is set aside. The appellant is on bail, hence, he is discharged from the liability of the bail bonds.

**(Rajendra Menon, CJ)**

Shageer/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 12/10/2017 |
| Transmission Date | NA         |

