

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.221 of 2015

Arising Out of PS.Case No. -36 Year- 2014 Thana -PALI District- JEHANABAD

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Akhilesh Prasad @ Akhilesh Kumar Son of Yogeshwar Yadav@Yogeshwar Yadav
Murari resident of Village: Murari Tand, P.s Pali District jehanabad, Bihar

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Abhishek Krishna Gupta, Adv.

For the Respondent/s : Mr. Syed Ashfaq Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 16-10-2017

Sole appellant, Akhilesh Prasad @ Akhilesh Kumar has been found guilty for an offence punishable under Section 354 of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to rupees five thousand in default thereof to undergo S.I. for one year additionally vide judgment of conviction dated 25.03.2015 and order of sentence dated 30.03.2015 passed by Additional Sessions Judge, VIth, Jehanabad in Sessions Trial No.444 of 2014.

2. PW.3 (name withheld) filed written report on 06.10.2014 alleging inter alia that she happens to be student of B.A. Part-II. On 06.10.2014 her parents have gone to purchase medicine. At about 06:00 PM while she was engaged in lightening and being alone, her co-villager Akhilesh Prasad intruded inside her house stealthily, came at courtyard and caught hold her. He threw her on the ground with an intention to commit rape, she resisted whereupon, he used to force. Seeing no an alternative, she raised alarm over which her cousin Kaushlendra as well as her neighbours came, caught hold



him, assaulted Akhilesh. Anyhow, he managed to his escape.

3. On the basis of the aforesaid, written report Pali P.S. Case No.36/2014 was registered under Section 376/511 of the IPC whereunder charge sheet was also submitted after concluding investigation paving way for trial which ultimately 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. Furthermore, it has also been submitted that no occurrence as alleged by the prosecution had ever taken place rather, the prosecution party brutally assaulted the appellant as well as his wife prior to the time of alleged occurrence and for that, on the written report of wife of appellant, namely, Gyanpati Devi, Pali P.S. Case No.37/2014 was registered and only to save their skin, this false case has been filed. In order to substantiate the same Ext.A-Fardbeyan, Ext.B-Charge sheet of the counter case has been made an exhibit.

5. In order to substantiate its case, prosecution had examined altogether four PWs out of whom PW.1-Jagdish Prasad, father of victim, PW.2-Sita Devi, mother of the victim, PW.3-victim herself and PW.4-Chandan Kumar. Side by side had also exhibited Ext.1-Written Report, Ext.2-Endorsement over the written report, Ext.3-Formal FIR. As stated above defence also exhibited FIR as well as charge sheet of the counter case as Ext.A,B respectively. However, no oral evidence has been adduced.



6. The learned counsel for the appellant while assailing the finding recorded by the learned lower court has submitted that during course of recording guilt of the appellant, the learned lower court had acted in mechanical manner. To support the same, it has been submitted that learned lower court had failed to appreciate that FIR named witness at least the cousin brother Kaushlendra Prasad including other witnesses having been withheld by the prosecution without any plausible explanation is indicative of the fact that they, being not in toe with the prosecution on one pretext or other were given up. That being so, due to their non-examination the authenticity of the prosecution case became doubtful. Furthermore, it has been submitted that victim was not medically examined. In case, so examined would have disclosed whether she had sustained injury as, the victim herself had stated that she was caught hold by the appellant, threw her on the ground and while frustrating the effort of the appellant to commit rape, she had actively protested. Apart from this, it has also been submitted that whoever been examined excluding the victim happens to be her parents who, admittedly were not an eye witness to the occurrence. In the aforesaid facts and circumstances of the case, now the only evidence remains that of victim and for that, it has been submitted that her evidence on account of inconsistency happens to be unreliable.

7. In order to support the same, it has been submitted that from the initial version there happens to be specific disclosure that the accused came inside, had not locked the main door, the victim got no opportunity to see the accused since before having been



apprehended by him, which is found completely demolished during course of cross-examination and for that referred para-10 of the cross-examination wherefrom it is apparent that victim had seen the appellant at a distance of two steps and further had not raised alarm. She raised alarm after two minutes and this interval gives otherwise picturisation of the incident than whatever been exposed by the prosecution. Furthermore, referring the evidence of PW.3 in its entirety in consonance with the evidence of I.O. PW.4, it has been submitted that there happens to be complete absence of corroborative evidence at the end of PW.4, I.O. whereupon, taking into account the non-examination of the material witnesses, the witnesses who ever examined being the parents who did not stood the test of an eye witness, it looks unsafe to rely upon the evidence of PW.3, victim and that being so, appeal is fit to be allowed.

8. On the other hand, repelling the argument having made on behalf of learned counsel for the appellant, it has been submitted at the end of learned Additional Public Prosecutor that victim happens to be consistent so far manner of occurrence is concerned. Minor inconsistency, though, the written report is not expected to be an encyclopedia containing minute to minute details, even then, the evidence happens to be intact. It has also been submitted that from the cross-examination of the victim, it is apparent that appellant happens to be her cousin brother and so, it was but natural over absence of witnesses who happens to be related with both of them otherwise than her family members and that happens to be reason behind non-examination of other PWs. It has also been



submitted that in terms of Section 134 of the evidence Act, it is the quality not the quantity which is relevant for proper appreciation of the evidence. Even evidence of single witness is found sufficient to record conviction in case the same inspires reliability, credibility, authenticity which, from the evidence of PW.3 is found.

9. After going through the evidence available on the record, it is apparent that there happens to be no dispute amongst the parties since before. From the evidence of PW.3, paragraph-18 she had stated that no such kind of activity was ever taken up at the end of appellant. That means to say there was no occasion for the prosecution to have this case instituted with an ulterior motive. It is further evident from the evidence of victim that she was alone at her house during course of commission of the occurrence so alleged as, her parents had gone to purchase medicine, which is found duly substantiated by the PW.1 as well as PW.2 (parents) and on account thereof happen to be hearsay witness to some extent could be perceived admissible in terms of Section 6 of the Evidence Act as on account of having been appraised by the victim on their arrival with regard to activity having taken up by the appellant against her, they were informed by the victim.

10. Now coming to the evidence of the victim, it is apparent from her deposition that on the alleged date and time of occurrence while she was alone in her courtyard, appellant Akhilesh Prasad made house trespass silently, caught hold her hand and then, pushed her on the ground. Then, thereafter, Akhilesh attempted to commit rape whereupon she shouted attracting the Kauslendra 'Ghamandi' and



other villagers, who, caught hold him, assaulted him and during course thereof, managed to escape. After sometime, her parents came whom she disclosed the event. Then thereafter, she had gone to P.S. along with her parents where filed written report. During course of cross-examination at para-9, she had stated that Akhilesh happens to be son of his cousin uncle. Then had shown her location in the court yard to be at extraneously southern side of her court yard. In para-10 she had stated that she saw Akhilesh from a distance of two hands. She had not raised alarm after seeing him. She had raised alarm after two minutes. At that very time, main gate was opened. In para-11 she had stated that her house is density populated. She tried to flee through main gate. In para-10, she had stated that she had not sustained any injury. In para-14 she had stated that occurrence took place for about two minutes, she had admitted presence of counter case having instituted by the wife of the appellant. In para-20 she had stated that her mother was suffering from ailment. She is not knowing from where, she was to bring medicine. In para-21 she had stated that she was lightening lamp over Tulsi. The occurrence took place near Tulsi Chaura. She had denied the suggestion that no occurrence as alleged had taken place.

11. From her evidence it is apparent that no contradiction has been found. That being so, whatever been raised at the end of the appellant that there happens to be inconsistency amongst the written report as well as deposition of the PW.3, is found non-entertain able in the eye of law as, unless and until attention of the witness is drawn to that extent, could not be taken into consideration. Furthermore, it is



also evident from the cross-examination of the PW.3 that she was not at all cross-examined over the occurrence rather, the defence, due to the reason best known to the defence itself, did not tried to test veracity of the PW.3 on that very score. So, the manner of occurrence remained unchallenged.

12. PW.4 is the Investigating Officer and from his evidence, it is evident that after registration of the case, he took up investigation, visited the place of occurrence (detailed under para-6) examined the witnesses and then thereafter, submitted charge sheet. During cross-examination at para-14 he had admitted that counter case has been instituted at the end of the appellant which was lodged by his wife and after completing the investigation, he submitted charge sheet.

13. That being so, the learned lower court had rightly inferred on no offence under Section 376/511 of the IPC are made out. At the other end, Section 354 of the IPC was absolutely found satisfied. The version of defence is found untenable as, though time of occurrence has been shown prior to the time of instant occurrence, but its institution happens to be after the occurrence. Moreover, injury over person of appellant is found duly explained. In the aforesaid background, the defence would have cross-examined the others, much less PW.1 as well as PW.3 to the extent of manner of occurrence, as well as weapon being used during course of occurrence. Therefore, there happens to be no impediment in inferring that prosecution has succeeded in proving its case at least attracting Section 354 IPC. So far question of sentence is concerned, it is evident from the evidence of



PW.3, para-18 that appellant had not indulged in such kind of activity at an earlier occasion, on account thereof, sentence so inflicted by the learned lower court needs reconsideration whereupon, is reduced to undergo R.I. for one year as well as fine of rupees one thousand in default thereof, to undergo S.I. for one month, additionally.

14. With the modification of sentence, instant appeal is found devoid of merit and is, accordingly dismissed. Appellant is on bail, hence his bail bond is hereby cancelled, directing him to surrender before the learned lower court to serve out the remaining part of sentence failing which, the learned lower court will be at liberty to proceed against the appellant in accordance with law. The period having undergone during trial will be set off in terms of Section 428 Cr.P.C.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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