

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.443 of 2015**

Arising Out of PS.Case No. -39 Year- 2013 Thana -AJIMABAD District- BHOJPUR

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Ravi Kumar, Son of Ravindra Singh, resident of village- Baga, P.S.- Azimabad,
District- Bhojpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Uday Kumar-Advocate
Mr. Pramod Kumar Prasad Singh-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 29-03-2018

Appellant Ravi Kumar has been found guilty for an offence punishable under Section 354 of the I.P.C. for which there happens to be no separate sentence, under Section 8 of the POCSO Act whereunder directed to undergo R.I. for three years and six months as well as to pay fine appertaining to Rs.20,000/- and in default thereof, to undergo S.I. for three months, additionally, by the 1st Additional Sessions Judge-cum-Special Judge POCSO, Bhojpur at Ara vide judgment of conviction dated 29.06.2015 and order of sentence dated 02.07.2015 relating to POCSO Case No.10 of 2013 arising out of Azimabad P.S. Case No.39 of 2013.

2. PW-5 Madan Ravani filed written report putting an allegation that on 21.08.2013 at 1.30-2.00 p.m., his co-villager Ravi



Kumar aged about 19 years, son of Ravindra Prasad Singh along with his friend while passing through in front of his house was saying that he will kidnap his elder's daughter Priyanka Kumari. Today, at 1.30-2.00 p.m. his second daughter Priti Kumari aged about 13 years while was screening television sitting in her room, Ravi Kumar intruded inside the room and caught hold her hand with ulterior motive. On hue and cry raised by Priti Kumari, his son Amarjit Kumar, who was sleeping in another room woke up and protested on account thereof, Ravi Kumar had assaulted. On hue and cry, villagers came, intervened and rescued his son.

3. After registration of Azimabad P.S. Case No.39 of 2013, investigation commenced and concluded by way of submission of chargesheet, whereupon, 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. It has further been pleaded that the drainage of informant passes through the land of accused and as there happens to be no lavatory in the house of the informant on account thereof, the drainage was being used as lavatory and for that, both were on strained relationship and in the aforesaid background, got this case filed. Furthermore, in order to substantiate the same, five DWs



have been examined.

5. In order to substantiate its case, prosecution had examined altogether six PWs, who are PW-1, Priti Kumari, victim, PW-2, Priyanka Kumari, her elder sister, PW-3, Sushila Devi, mother, PW-4, Amardip Kumar, brother, PW-5, Madan Ravani, father and PW-6, Mukesh Kumar. Side by side, had also exhibited as Exhibit-1, written report, Exhibit-1/A, endorsement over the written report and Exhibit-2, formal F.I.R. Defence had also examined five DWs, who are DW-1, Anita Devi, mother of the appellant/ accused, DW-2, Ravindra Singh, father of the appellant/ accused, DW-3, Dilip Ram, DW-4, Ravindra Singh, co-villager and DW-5, Sunaina Devi, wife of DW-4, Ravindra Singh.

6. It has submitted on behalf of learned counsel for the appellant that proceeding ahead in mechanical way, the trial ultimately been concluded by the learned lower Court in recording verdict of guilt as well as inflicting sentence there for, which ought not to be. The first and foremost ground happens to be that from the evidence of PWs, it is an admitted fact that the house of appellant lies in the Northern boundary of the informant. It is also an admitted fact that drainage from the house of informant passes through the land of the appellant. It is also an admitted fact that there happens to be no lavatory available in the house of the informant. It is also an admitted



fact that both the parties are permanent resident of the village. There happens to be admitted fact that save and except offence as alleged on two consecutive dates, there was no allegation of ill-behaviour against the appellant. Furthermore, the prosecution witnesses have themselves admitted that appellant was residing at Delhi along with his parent and has come, probablizes defence version more accurate than whatever been alleged at the end of prosecution.

7. Furthermore, it has also been submitted that improbability of the case is itself evident from the evidences of the PWs wherefrom it is apparent that in usual course, PW-1, PW-2 were not visiting their house during Tiffin hour. Then in that circumstance, presence of PW-1 at her house during course of Tiffin hour and remained subsequently would have been substantiated conclusively and for that, in spite of the fact that there happens to be disclosure at the end of all the PWs that on hue and cry, the villagers arrived, but none of the independent witnesses has been examined and those who have been examined are father, mother, son and daughters. Because of the fact that they are hostile to the appellant since before. In the aforesaid background, their evidences are fit to be discarded.

8. On the other hand, learned Additional Public Prosecutor controverting the submission having made on behalf of appellant has submitted that the occurrence has not been denied as



PW-1, victim, was not at all tested on that very score. So, it will tantamount to an admission. That being so, the judgment of conviction and sentence recorded by the learned lower Court need not require interference.

9. Before coming to adjudicate upon the main thrust, the admitted fact is to be properly considered and for that, PW-2 under Para-3 had disclosed that the house of Anita Devi lies North to her house. The sewage of her house flows towards her house. PW-3 at Para-20 had stated that house of Ravi Kumar lies adjacent to her house. Flow of sewage of her house happens to be towards the house of Ravi. She had further stated that since before the occurrence, they were not on cordial relationship. PW-4 at Para-9, PW-5 at Para-14 have admitted the same. The I.O. (PW-6) during course of inspection of the P.O. had found presence of appellant/ accused at the Northern boundary of the P.O. The witnesses also admitted that there happens to be no lavatory. As is evident from PW-4 under Para-9 wherein he had stated that lavatory is not at his house, which the PW-5 also affirmed as is evident from Para-14 with an explanation that even at day time, the female members go outside. DW-1 to DW-5 have been produced in Court to substantiate the same and further, on account of flowing of excreta, the family of the accused objected and for that, an altercation took place in the background of which, this case has been



filed.

10. In order to adjudicate, first of all evidence of PW-1, victim, is to be taken on priority basis. She had deposed that on 22.08.2013 in between 1.30-2.00 p.m. while she was screening television in a room, Ravi Kumar made house trespass, caught hold her hand and tried to commit sin with her, whereupon she raised alarm attracting his brother Amarjit Kumar (PW-4), who was sleeping in another room with whom, Ravi Kumar indulged in scuffle. On hue and cry, villagers came, intervened and then thereafter, accused left the scene. The motive for occurrence has been shown as while his sister Priyanka Kumari (PW-2) was sitting in a room on 21.08.2013, at that very time, Ravi Kumar and his friend Bablu were passing through seeing her sister, they spoken that she will be kidnapped. She had further stated that her statement was recorded by the police. Identified the accused. During cross-examination at Para-2, she has stated that she used to go to school at 9.00 a.m. and come back at 3.00 p.m. Even on the date of occurrence, she had gone to school and returned back at 3.00 p.m. Then, there happens to be cross-examination relating to her sister. Then had stated that on the alleged date and time of occurrence, she had gone to school prior to her sister. She had returned back at 1.30 p.m. Her sister came after dispute was over. The other paragraphs are not significant on that very score. In



Para-6, she had stated that Anita Devi lives at Delhi, Ravindra Singh also lives at Delhi, Ravi used to live at Delhi. Then had said that she is not sure whether at that very time, Ravindra, Anita and Ravi were at Delhi. Then had stated that the village is not electrified. Bulb is being lighted through battery.

11. PW-2 admittedly at Para-14 had stated that at the time of occurrence, she was not at the Place of occurrence and so, her status happens to be that of hearsay so far occurrence is concerned. But her evidence appears to be relevant over motive wherein she had stated that on 22.08.2013, while she was sitting at her Verandah (Osara), Ravi Kumar was passing through in front of her darwaza after seeing her, had disclosed that he will kidnap. At that very time, Bablu was also along with Ravi. She had further stated that Ravi used to utter, whenever passed through her house. On this score, Para-5 of her cross-examination looks pertinent wherein she had stated that no quarrel was with Amarjit rather it was on 22.08.2013 had occurred over the verandah (Osara) where television was being screened.

12. PW-3 is the mother, who had deposed that on 22.08.2013 at about 1.30-2.00 p.m. Ravi Kumar was taking away her daughter, who was screening television in a room while her daughter was being taken away, she raised alarm whereupon her son, who was sleeping in an adjacent room, rushed. Her son was assaulted by Ravi.



Then thereafter, villagers arrived, intervened and got her rescued. In Para-2, she had further stated that one day prior to the occurrence while her elder daughter (PW-2) was screening television, Ravi Kumar and Bablu told her to see them, whereupon her daughter had not said anything. In the aforesaid background, this occurrence has been committed. During cross-examination at Para-10, she had stated that her both daughters used to go to school at 9.10 a.m., her elder daughter returns back at 3.00 p.m. while her younger daughter at 2.30 or 3.00 p.m. In Para-11, she had stated that on the alleged date, her daughter came at Tiffin hour and then, had not gone to school. Elder daughter came at 3.00 p.m. Then, at Para-28, she had given topography of her house as just after entering inside through darwaza, one room happens to be East-West while another room is North-South. In Para-29, she had stated that she has got landed property at two places, one where they reside and second away from that place, which is being used as cow-shed. She had further stated that no one could see inside of her house from outside. At Para-24, she had stated that her son Amarjit had quarreled with Ravindra Ramani in a Gali relating to her daughter.

13. PW-4 had stated that on 22.08.2013 at about 1.30-2.00 p.m., his younger sister (victim) was watching television in a room where Ravi Kumar came and began to show obscene behaviour



with her sister by way of catching her and tried to commit wrong with her, whereupon his sister raised alarm. He was sleeping in an adjacent room, woke up, rushed in rescue and during course thereof, Ravi Kumar began to assault, villagers came, intervened and rescued. He had further stated that on 21.08.2013, Ravi Kumar had said that he will kidnap Priyanka (PW-2). During cross-examination at Para-6, there happens to be specific disclosure that both the sisters go to school in the morning in between 8.00-9.00 a.m. and then, returned back near about 3.00 p.m. In Para-7, he had stated that he had not quarreled with the accused in Gali any earlier time.

14. PW-5 is the informant, who had stated that on 22.08.2013 at 1.30 p.m. to 1.45 p.m. while he was away, his daughter (victim) was watching television at her house where Ravi Kumar came, caught hold her hand and attempted to commit wrong. His son Amarjit, who was sleeping in an adjacent room, came on alarm made by her, whereupon Ravi Kumar assaulted his son. Villagers assembled and rescued. Then shown the motive. During cross-examination at Para-8, there happens to be cross-examination over routine of the victim as well as her sister with regard to going to school and coming there from. In Para-10, he had further stated that on the alleged date of occurrence, both the daughters have gone to school, but younger daughter came back at the Tiffin hour and then thereafter, she had not



gone to school. At that very time, he was working at his field. Then at Para-11, he had said that he is unable to disclose the names of the villagers, who had assembled. At Para-12, he had further stated that whatever been disclosed by her daughters on that very basis, he came to know regarding the occurrence.

15. PW-6 the I.O., who had stated that after registration of the case, he was entrusted with the investigation, exhibited the relevant documents. He inspected the place of occurrence which happens to be house of informant having western front. There happens to be wooden door affixed at the entrance. Just after entering through the darwaza, there happens to be one room, which has been shown to be the place of occurrence. Then had shown the boundary of the house as East-Sushil Rawani, North-accused/ appellant and South-Rajdev Mahto. Accused was arrested from the house. During cross-examination, he had stated at Para-5 that he had not met nor recorded statement of the persons having in boundary of the P.O.

16. When the evidence of the witnesses have minutely been gone through, it is apparent that PW-6, the I.O., during course of inspection of the P.O., though identified a room allegedly disclosed to be place of occurrence, but had not disclosed that television set was there. In likewise manner, because of the fact that prosecution witnesses themselves admitted that the village was not electrified and



so, they used battery for the same, but I.O. had not found. Therefore, screening of television by the PW-1 and during course thereof, commission of the occurrence as alleged, has become doubtful. In addition thereto, when the evidences have been properly thrashed, there happens to be one set of evidence suggesting that while victim was watching television, accused came, caught hold her hand and tried to do sin with her while PW-3, mother had said that Ravi Kumar came, caught hold the victim, dragged her, whereupon she raised alarm attracting Amajit (PW-4). That means to say, there happens to be discrepancies even to the extent of manner of occurrence as suggested by the prosecution. Apart from this, as per evidence of PW-2, elder sister of the victim (PW-1), the television happens to be in verandah (Osara). So, prosecution would have divulged that there was two T.V. Set or one only which was being shifted place to place. Moreover, there happens to be adverse finding of the I.O., as he had not found television either at Verandah or in the room. In likewise manner, also not found bed or chair to sit. Victim used to go to school at 9.00 a.m. and returned back at 3.00 p.m., on the fateful day, she came, but did not go to school, was an unusual event. Then in that circumstance, whether the same came to the knowledge of the accused that victim has come and is present in a room, screening the television, more particularly in the background of the disclosure made by the PW-3, mother, that from outside, no one could see inside.



When these discrepancies is taken together with the admitted fact that there happens to be no lavatory in the house of the informant and the sewage of the house of the prosecution flows through the land of the appellant and for that, there happens to be specific disclosure though denied that excreta were being flown in the sewage, which was protested, appears to be more probable.

17. Consequent thereupon, judgment of conviction and sentence recorded by the learned lower Court would not survive. Accordingly, same is set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J)

Vikash/-

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