

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.368 of 2015

Arising Out of P.S. Case No. -117 Year- 2011 Thana -Muzaffarpur Town District- Muzaffarpur

=====

Rajesh Mahato, Son of Late Arjun Mahato, resident of Mohalla-Akharaghat Jheel Nagar, P.S. Town, District – Muzaffarpur.

.... **Appellant/s**

Versus

The State of Bihar

.... **Respondent/s**

=====

Appearance:

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

For the Respondent/s : Mr. S.A. Ahmad, APP.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 31-07-2018

As the learned counsel for the appellant failed to appear on account thereof, Mr. Arun Kumar Tripathi, learned advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Rajesh Mahato has been found guilty for an offence punishable under Section 376/511 of the IPC and sentenced to undergo R.I. for seven years as well as to pay fine appertaining to rupees five thousand in default thereof, to undergo R.I. for six months, additionally vide judgment of conviction dated 16.05.2014 and order of sentence dated 25.05.2014 passed by Second Additional Sessions Judge, Muzaffarpur in Sessions Trial no.519/2011.

3. Succinctly the case of the prosecution as is evident from the fardbeyan of Mukul Mahato (PW.6) recorded on 01.03.2011 at 02:45 PM before the police officials of Town P.S. is that on the same day at about 01:00 PM his daughter (name withheld) aged about four years had gone to ease herself at the bank of Burhi



Gandak north to her house but, did not return. Perceiving delay, he proceeded in search during course thereof, his neighbour Nilu Kumari wife of Arun Mandal disclosed that Rajesh Mahato has taken away the victim in his lap towards his house whereupon he along with his wife Meena Devi gone to house of Rajesh. His door was shut. He pressed whereupon, door opened. Just coming inside the room, they have seen victim lying naked from her backside while Rajesh Mahato was over her in naked condition and was attempting to commit rape. They raised alarm attracting the mohalla people who apprehended the Rajesh. At that very moment his daughter was restless, began to weep. There was bleeding from her nose. He lifted her. The enraged mohalla people began to assault Rajesh during midst thereof, police came whereupon, accused was handed over.

4. Town P.S. Case No.117/2011 was registered under Section 376 IPC whereupon, investigation commenced and after concluding the same charge sheet was submitted which happens to be the basis of trial meeting with the ultimate result, subject matter of instant appeal.

5. 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 all the events has been managed by cousin brother-in-law (Bahnoi) of the appellant namely Balram Patel who wants to forcibly evict the accused/appellant from his house which has been constructed over the government land wherein, his kith and kin stood as a witness. However, nothing has been adduced in defence.

6. In order to substantiate its case, prosecution had



examined altogether eight PWs who are PW.1-Dinesh Mahto, PW.2-Baby Devi, PW.3-Janak Nandani Devi, PW.4-Nilu Devi, PW.5-Umesh Mahto, PW.6-Mukul Mahto, PW.7-Kumari Vibha Rani, PW.8-Dr. Shobha Rami Singh as well as had also exhibited Ext.1-Fardbeyan, Ext.2-Formal FIR, Ext.3 Series-Injury/supplementary injury report relating to the victim. As disclosed, nothing has been adduced in defence.

7. While assailing the judgment of conviction and sentence it has been submitted at the end of learned amicus curiae that while recording finding of the guilt, learned lower court had not appreciated the evidence in its right perspective and so suffers from conjecture and surmises. Furthermore, it has been submitted that the mother of the alleged victim has not been examined. There happens to be no explanation at the end of the prosecution and in likewise manner, irrespective of the fact that victim has been shown to be aged about four years, at least would have been produced before the learned lower court in order to ascertain authenticity in the prosecution version.

8. Then it has been submitted that from the evidence of the witnesses presence of Balram Mahto is found duly established. Some of the witnesses have disclosed that he resides along with the appellant while some had deposed having his house adjacent to the house of the appellant. From the evidence, as suggested he happens to be instrumental as well as, there happens to be probability in getting the appellant removed from that place and for that, as has been admitted by the witnesses, being kith and kin of the aforesaid Balram Mahto, deposed falsely.



9. Furthermore, it has also been submitted that from the evidence of the witnesses it is crystal clear that none had claimed to have wear the cloth to the victim nor, during course of her examination PW.8 had found any kind of injury over her person. Had there been any effort at the end of the appellant more particularly over a kid aged about four years then, in that circumstance, violence by way of injury would have found suggesting the misdeeds of appellant. That being so, the finding recorded by the learned lower court happens to be unsustainable in the eye of law whereupon, is fit to be set aside. The objective finding of the Investigating Officer regarding the P.O. also negativates the allegation. It has also been submitted that appellant was liable for medical test as provided under Section 53A of the Cr.P.C. which is found not at all complied with, hence the story as propounded, is fit to be disbelieved.

10. On the other hand, the learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that after going through the judgment impugned it is manifest that the learned lower court had minutely gone through the evidences having adduced on behalf of prosecution and after proper scrutinizing thereof, came to the conclusion. So, did not require interference.

11. Allegation has been attributed against the appellant to have attempted upon to ravish the victim, aged about four years after lifting her from the place where she had gone to ease herself, to his house. Furthermore, there also happens to be disclosure that appellant was caught hold red-handed at the spot (his house) and,



after arrival of the police was handed over. During course of his statement under Section 313 of the Cr.P.C., it is apparent that he had admitted to be apprehended on the alleged date but, explained as on account of animosity. Therefore, to that extent there happens to be an admission at the end of the appellant. Coming to remaining part, as per fardbeyan Nilu was the person who had disclosed to the informant regarding lifting, carrying of the victim by the appellant in his lap towards his house. Aforesaid Nilu happens to be PW.4. During her examination-in-chief she had stated that on the alleged date and time of occurrence while she was at the bank of river, she had seen as soon as victim got up after carry Rajesh Kumar lifted her in his lap and took her towards his house. After sometime her parents came in search of and inquired from her whereupon, she disclosed that victim has been lifted away by Rajesh towards his house. Then thereafter, parents of the victim proceeded towards the house of the Rajesh followed by them. When they came at the house of Rajesh found his door shut. Door was pushed and then all of them gone inside the room where they saw Rajesh in naked condition. Victim was also naked. He was trying to ravish her. Just after seeing them Rajesh gave a blow over the victim whereupon, blood began to ooze out from her nose. Victim began to cry. They along with others apprehended Rajesh, whereupon Rajesh was assaulted. Victim was taken to hospital. Identified the accused. It has further been disclosed at her end that Rajesh happens to be accustomed in such kind of activity. At an earlier occasion also he had indulged but, got rescued himself in such kind of activity. During cross-examination at para-3 she had stated that the informant happens to be her maternal uncle but, in distant



relationship. She had further stated that when she had seen the victim for the first time, she was in frock, pant. In para-4, she had disclosed the boundary of the house of the accused and further, it happens to be a hut constructed over a government land having single room. His sister resides by the side of his house. In para-5 she had detailed the physical feature of the room having a chowki. She had further stated that she is the person who had disclosed to the parents of the victim regarding Rajesh having lifted the victim and carried towards his house. In para-6 she had stated that she had seen blood coming out from the nose of the victim. Then had denied the suggestion that no such type of occurrence had ever taken place rather, informant being her maternal uncle on account thereof, she has deposed falsely.

12. PW.6 is the informant/father of the victim. He had deposed that on the alleged date and time of occurrence, his daughter (victim) had gone towards bank of the river to ease herself. Age of the victim happens to be four years. When she did not return for a considerable time, then thereafter they gone towards river to search her out and during course thereof, Nilu Devi had disclosed that she had seen Rajesh Mahto taking away the victim in his lap. They all have gone to the house of Rajesh Mahto and gone inside the room after removing the door, They found the victim naked. They have also seen Rajesh to be naked. He was over the victim and was trying to rape. Victim was restless. Blood was coming out from her nose. All of them caught hold Rajesh. There was swelling over the vagina of the victim. Police arrived. They handed over Rajesh to the police. Recorded his fardbeyan. Victim was taken to Sadar hospital



for treatment. Identified the accused. During cross-examination at para-2 he had stated that Nilu Devi is not directly related to him. Her house lies nearby to his house which lies 15-20 steps away from the house of the accused. Then had disclosed the boundary of the house of the accused as East-house of Ram Sakal Mandal, West-Bridge, North-Road, South-Rameshwar Mahto. In para-4 he had stated that his daughter had gone to meet nature's call at about 01:00 PM. In para-5 he had disclosed that when she did not return within 15-20 minute then thereafter, they gone in search of her. He had not seen blood spot over her dress. There was bleeding from her nostril. In para-6 he had stated that there happens to be two rooms in the house of Rajesh. There was one chowki kept in one room. In para-7 he had disclosed that he happens to be a cook. He denied the suggestion that accused Rajesh was working under him. Then had denied the suggestion that as Rajesh demanded his due amount on account thereof, he has been falsely implicated.

13. PW.7 is the Investigating Officer. She had deposed that on the alleged date she was posted at town police station. After getting information, she along with other police personal gone to the P.O. where recorded fardbeyan of Mukul Mahto (exhibited) in presence of his wife Meena Devi as well as Nilu Devi. She had found one Rajesh Mahto having been apprehended by large number of person who was handed over to her. Then thereafter, she refered the Rajesh as well as the victim to hospital along with other police personnel. She returned back to P.S. where case was registered. Investigation was entrusted to her. Accordingly, she took further statement of the informant, statement of witnesses Meena Devi, Nilu



Devi, Dinesh Mahto. Inspected the place of occurrence which happens to be the house of the accused having boundary East-thatched house of Sanjay Mahto, West-Bridge, North-thatched house of Raushan Mahto, South-Hanuman Mandir. It is a hut having two rooms. One room is occupied by cousin sister of the accused while the room lying at northern side is being occupied by the accused having a folding cot like chowki. Recorded statement of other witnesses procured injury report from the Sadar Hospital of the victim as well as the accused. Accused was forwarded to custody. Because of the fact that victim was aged about four years on account thereof her statement was not taken. After concluding the investigation submitted charge sheet. During course of cross-examination at para-6 she had stated that she had visited the place of occurrence twice. In para-7 she had stated that victim was incompetent in her understanding so her statement was not recorded. Then had denied the suggestion that her investigation happens to be faulty.

14. PW.8 is the doctor who had examined the victim on 01.03.2011 and had found scar mark on left hand below elbow. She had found bleeding from nose. On vaginal examination she had not found scar mark on private part nor there was bleeding. Vaginal swab was taken and sent for pathological examination having absence of spermatozoa. During cross-examination she had further stated that she had not found swelling on the private part of the victim.

15. The remaining witnesses namely PW.1-Dinesh Mahto, PW.2-Baby Devi, PW.3-Janak Nandani Devi, PW.5-Umesh Mahto



have categorically supported the case of the prosecution and even during course of cross-examination, evidence of none of them have been demolished save and except, from the evidence of PW.3 at para-4, it is evident that one Balram Patel has been identified to be cousin brother-in-law of the accused who at para-5 of her cross-examination admitted to be the son-in-law of her sister. Although, with regard to previous statement of PW.1 at para-3 her attention has been drawn up but, that had gone fruitless as, the same was not at all confronted to the Investigating Officer, Pw.7.

16. Giving anxious consideration to the evidences available on the record, it is evident that prosecution has succeeded in proving its case beyond all reasonable doubt whereupon, this appeal is found sans of merit and is accordingly dismissed. Appellant is on bail. His bail bond is hereby cancelled directing him to surrender before the learned lower court within fortnight to serve out remaining part of sentence failing which, the learned lower court will be at liberty to proceed against him in accordance with law. First and last page of judgment be handed over to the learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	03.08.2018
Transmission Date	03.08.2018

