

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.178 of 2009

Chandradeo Rai, son of Kishun Rai, resident of village-Dharaichak, P.S.-
Janipur, District-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 10-12-2018

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

2. Appellant, Chandradeo Rai has been found guilty for an offence punishable under Section 376/511 of the IPC and sentenced to undergo R.I. for five years as well as to pay fine appertaining to rupees one thousand in default thereof to undergo R.I. for three month, additionally, under Section 448 IPC and sentenced to undergo R.I. for six months, with a further direction to run the sentences concurrently by the Additional Sessions Judge, FTC-II, Patna vide judgment of conviction dated 29.01.2009 and order of sentence dated 04.02.2009 passed in connection with Sessions Trial No.454 of 2007/1256 of 2007.

3. Name withheld (PW.1), the victim filed written report on 20.09.2006 alleging inter-alia that in the of 19.06.2006 at



about 11:00 PM while she was going to sleep having lamp burning, all on a sudden her co-villager Chandradeo Rai made house trespass, put out lamp, and gagged her mouth and with an intention to commit rape, caught hold her breast. Anyhow she succeeded in raising alarm whereupon, the villagers began to rush. After perceiving the same, he managed to escape leaving her. So many persons have seen the accused running there from. Today, at morning hour villagers have called him and scolded whereupon, he began to abuse and further, threatened that in case of reporting, she will be given a good lesson.

4. After registration of Phulwari (Janipur) P.S. Case No. 600/2006, the matter was investigated upon, charge sheet was filed, followed with trial and concluded by way of recording of judgment of conviction and sentence against the appellant, 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 suggested that she was owing rupees five thousand and for that, appellant/accused was insisting upon and for that, he has been falsely implicated in this false and concocted case.



6. In order to substantiate its case, prosecution has examined altogether six Pws who are PW.1 the victim herself PW.2, Satish Prasad, PW.3-Jagdanand Prasad, PW.4-Raju Kumar, PW.5-Mantu Prasad, PW.6-Jai Prakash but documentary evidence has been exhibited on behalf prosecution. In likewise manner, neither oral nor documentary evidence has been adduced on behalf of defence.

7. From perusal of the record, it is evident that PW.2 to PW.5, all the independent witnesses have not supported the case of the prosecution. They completely denied commission of an occurrence and in likewise manner, any kind of statement having at their end before the police. So, the evidence of prosecution rest upon shoulder of PW.1, the victim as well as the I.O. PW.6.

8. PW.1 has stated that on the alleged date and time of occurrence while she was sleeping at her room, accused Chandradeo Rai came and put out the lamp, caught hold her hand and then, began to untie the sari in order to commit rape. She began to raise alarm whereupon Chandradeo Rai fled away. On the following day, there was panchayati wherein, the accused threatened her and also said that your husband will be murdered then thereafter, she filed written report before the police. Identified the accused. During cross-examination she has shown



the boundary of her house North-Ram Dhani, South-Kishun Rai, father of the appellant, East-Diya Rai, West-Munshi Rai. She has further disclosed that she along with her husband and three girls reside in the house. Then has stated that there is main door affixed at the outlet of the house but, on the alleged date, door opened. She has further stated that she had seen the accused coming inside her room in the light of the lamp. She had raised alarm but, till arrival of the persons, the accused had untied her sari. At that very time, she was feeding her child. Accused forcibly tried to grapple her. None arrived at her alarm at that very moment. Then there was push and pull. It took 10-15 months. She had not sustained injury nor mark over any part of her body only her daughter had sustained hurt over her head but, she had not shown her to doctor. In para-4 she has stated that accused caught hold her breast and molested her. The other parts of her body was not touched by him. She has further stated that her *Bhaisur* resides in the same house. Her attention has been drawn up under para-5 of her cross-examination regarding her previous statement on that very score. In para-6 she has stated that her husband is literate but she is unable to disclose who had scribe the application. She has further stated that her husband was not present as had gone along with daughter to his Maika. In para-7 she has shown ignorance over



disclosure of names of the persons who arrived after hearing alarm. Then has denied the suggestion that her husband had gone to jail and for getting him bailed out, she had borrowed money from the accused. When accused began to insist upon for the payment of money this false case has been instituted.

9. PW.6 is the investigating officer who has stated that after registration of the case, investigation was entrusted to him. He had recorded further statement of the informant, inspected the place of occurrence which happens to be the a of the house of the informant. The same happens to be conjoint with cattle shed. No incriminating article has been found. Recorded statement of other witnesses. After completing the investigation submitted charge sheet. Then his attention has been drawn towards statement of PW.2 to PW.5. During course of cross-examination, he has stated that he had seen any kind of document relating to panchayati. Then has denied the suggestion that at the instance of prosecutrix this false case has been investigated upon by him in collusive manner and he collusion with informant filed the charge sheet.

10. After going through the evidence available on the record, it is apparent that PW.2 to PW.5 have not supported the case of the prosecution in any way and on account thereof, apart from having been declared hostile at the end of the prosecution,



prosecution could not be able to gather anything even on that very score. Now the evidence of PW.1 prosecutrix is to be seen. From her evidence, it is evident that house was jointly occupied by her *Bhaisur*. Neither he nor any of his family members stood witness in this case. Apart from this, she had stated that there was door affixed at the main outlet which was usually closed in night but, on the fateful day, it was not closed, has not been found by the I.O. during course of inspection of the place. Apart from this, I.O. had not specifically spotted the specific room, presence of *Bhaisur*. I.O. had not shown Boundary of the P.O. Aforesaid activities suggest that I.O. had not visited the place of occurrence. In likewise manner, it also cast doubt over reliability of the prosecutrix presence of *Bhaisur* would not be a easy task for the appellant to attempt rape, that too, in a room of the house, jointly occupied.

11. Apart from this, though no document has been exhibited on behalf of prosecution but, from perusal of the format of the formal FIR, it is evident that written report was filed on 20.09.2006 while the PW.6, I.O. had stated that on 19.09.2006, after registration of the case investigation was entrusted to him and then thereafter, at 11:30 PM he visited the place and recorded further statement of the informant. It might be a mistake but, when



the same is taken together with the evidence of PW.1, prosecutrix, it speaks otherwise.

12. Accordingly, considering the evidence available on the record, the finding recorded by the learned lower court is not at all found justifiable whereupon, the same is set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liability. 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	AFR
CAV DATE	NA
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