

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.103 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- SITAMARHI

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Sohan Chaudhary, s/o Ram Shivalak Chaudhary, r/v-Bagahi, P.S. Runni Saidpur,
District-Sitamarhi.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. V.R.P. Singh.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

Date: 19-09-2018

By judgment dated 04.02.2009 passed by learned Additional Sessions Judge, F.T.C. VIth, Sitamarhi in S. Tr. No. 387 of 2007/96 of 2007, arising out of Runnisaidpur P.S. Case No. 195/2006, appellant, Sohan Chaudhary has been convicted for offence under Section 376/511 of the Indian Penal Code and by order dated 06.02.2009, he has been sentenced to undergo R.I. for four years with fine of Rs. 2000/-. In default of payment of fine, to further undergo R.I. for three months.

2. Heard the learned counsel for the appellant as well as the State.

3. The prosecution case, in brief, is that on 19.08.2006 at 10 A.M., the informant went to temple for worship and his wife Rita Devi, aged about 26 years, was bathing at hand-pipe in her *Angan*. In



the meantime, his neighbour Sohan Chaudhary (appellant) entered into his *Angan* and kept her forcibly in his lap and took her in the shed of Kailash Chaudhary and tried to commit rape upon her, but on alarm, Sohan Chaudhary did not succeed in doing so. Hearing the alarm, witnesses also came there. When the informant returned to his house, his wife narrated the entire story.

4. On the basis of aforesaid written report, Runnisaidpur P.S. Case No. 195/2006 was instituted for offence under Section 376/511 of the Indian Penal Code.

5. During trial, altogether eight witnesses have been examined on behalf of prosecution.

6. There is no eye-witness of the occurrence except victim Rita Devi (P.W. 4). She has stated in her cross-examination that the appellant forcibly took her in his lap while she was taking bath in her *Angan* at about 10 A.M. and pushed her down in the *Osara* of Kailash Chaudhary and attempted to commit illegal act. In her cross-examination in para 5, she has stated that she has not given any statement earlier before giving her evidence in the court. She has further stated in her cross-examination that she has given statement in court on the direction of her cousin mother-in-law, namely, Gayatri Devi.

7. The other witnesses examined on behalf of



prosecution, i.e. P.W. 1 (Chandra Bhushan Chaudhary), P.W. 2 (Gayatri Devi), P.W. 3 (Rupkala Devi), P.W. 5 (Shatrughan Chaudhary) and P.W. 7 (Ram Pavitra Chaudhary) are hearsay witnesses. They have learnt about the occurrence from Rita Kumari. P.W. 6 has turned hostile.

8. Husband of the victim, namely, Shatrughan Chaudhary has been examined as P.W. 5. He has stated in his evidence that he learnt about the occurrence from his wife.

9. I.O. has been examined as P.W. 8. He has stated in his evidence that witnesses, namely, Madhu Chaudhary, Vijay Chaudhary, Ajay Chaudhary, Ram Kumar Chaudhary have stated in their evidence that there is old land dispute between the parties since long and on account of that dispute false case has been lodged against the appellant.

10. This Court on the basis of evidence of the prosecution witnesses, specially the evidence of victim lady Rita Kumar (P.W.4), finds that the occurrence has taken place at 10A.M. in the *Angan* of the victim.

11. The victim has stated in her examination-in-chief that the appellant forcibly took her in his lap and pushed down in the verandah of Kailash Chaudhary and attempted to commit illegal act with her. There is no any evidence that anybody had seen the



appellant taking away the victim lady from her house.

12. On the other hand, all the other witnesses have simply stated in their evidence that they have learnt about the occurrence from victim Rita Kumar (P.W. 4). Some of the witnesses have also stated that they have seen the appellant running away but they are not eye-witness of the occurrence.

13. I.O. has stated in his evidence in para 8 that witnesses have stated that there is old land dispute between the parties on account of which instant case has been lodged.

14. The victim lady has stated in para 8 in her cross-examination that she has not given any statement prior to giving her evidence before the court.

15. I.O. has also been examined by the prosecution. In the cross-examination, I.O. has stated that he recorded the statement of victim lady but he has not stated what the victim had stated before him. The prosecution has also not taken any attention of the I.O. with regard to earlier statement given by the victim Rita Kumari during cross-examination.

16. Therefore, this Court on the basis of aforesaid evidence of prosecution finds that prosecution has failed to substantiate the charge levelled against appellant with cogent evidence.



17. The appellant is accordingly acquitted from the charge levelled against him.

18. The judgment of conviction dated 04.02.2009 and order of sentence dated 06.02.2009 passed by learned Additional Sessions Judge, FTC VIth, Sitamarhi is set aside.

19. This Criminal Appeal is allowed.

20. The appellant is on bail. He is discharged from liability of his bail bond.

(Sanjay Priya, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
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