

**IN THE HIGH COURT OF JUDICATURE AT PATNA****Criminal Appeal (SJ) No.151 of 2018**

Arising Out of PS.Case No. -182 Year- 2013 Thana -SHASTRINAGAR District- PATNA

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**Kameshwar Paswan**, S/o Late Dularchand Paswan, resident of Bhola Paswan, Shashtri Bhawan, Ashiyana, Digha Road, P.S. Shastri Nagar, District Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

**Appearance :**

For the Appellant/s : Mr. Tilak Sao-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: 01-05-2018**

Appellant Kameshwar Paswan has been found guilty for an offence punishable under Section 376/ 511 of the I.P.C. and sentenced to undergo R.I. for five years vide judgment of conviction and order of sentence dated 15.12.2017 passed by the Presiding Officer, Fast Track Court No.1<sup>st</sup>, Patna in Sessions Trial No.148 of 2014/ 146 of 2017.

2. Informant (PW-2), Kaushalya Devi filed written report alleging inter alia that on 26.05.2013, informant's daughter (victim) aged about five years had reached at the roof of the house to feed leaf to her she-goat. All of a sudden, informant's daughter cried, informant rushed at the roof of the house and saw his neighbour Kameshwar Paswan in drunken condition tried to rape upon her daughter seeing whom, appellant tried to escape there from, but she along with others apprehended the appellant and locked in a room, but



appellant tried to escape through a window of the room, but at the same time, police came and apprehended the appellant.

3. After registration of Shashtri Nagar P.S. Case No.182 of 2013, investigation was taken up and after concluding the same, chargesheet was submitted facilitating the trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 Cr.P.C. is that of complete denial. However, neither oral nor documentary evidence has been adduced.

5. Learned counsel for the appellant has submitted that PW-1 and PW-2 have not supported the case of the prosecution though they were not declared hostile. PW-4, who happens to be uncle of the victim and PW-5, father of the victim, have not stated that they had seen any kind of injury over the person of victim, who happens to be minor aged about five years, nor they have disclosed that victim had said anything to them. However, fairly concedes that so far informant, mother of the victim, is concerned, she was not at all cross-examined on the factum of occurrence as she had claimed that when she reached at the roof after hearing cry of the victim and had seen the appellant attempting upon the victim to commit rape being in inebriated condition.

6. Furthermore, it has been submitted that in the aforesaid background, considering the custody since 27.05.2013,



appellant be directed to be released from the custody modifying the sentence as period already undergone.

7. On the other hand, learned Additional Public Prosecutor has submitted that considering the period of the detention in consonance with the sentence whatever been inflicted by the learned lower Court, appellant might have been released. However, considering the submission made on behalf of appellant in the background of deficiency persisting, having cropped up due to lapses at the end of appellant itself, failed to cross-examine the Upendra Kumar (PW-3) on the factum of occurrence, the sentence may be modified as period already undergone.

8. Considering the rival submission as well as going through the judgment impugned, maintaining the conviction recorded by the learned lower Court, the sentence is modified as period already undergone.

9. In terms thereof, instant appeal is disposed of. Appellant, who is under custody, be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Vikash/-

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