

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1822 of 2018**

Arising Out of PS. Case No.-21 Year-2016 Thana- BAJPATTI District- Sitamarhi

Pappu Sah, S/o Sri Manjhi Sah, R/o Vill.- Madhuban Bazar, P.S.- Bajpatti,
District- Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Amrit Abhijat-Advocate Mr. Manoj Kumar Gupta-Advocate Mr. Ghanshyam Prasad-Advocate
For the Respondent/s	:	Mr. Shyed Ashfaque Ahmad-A.P.P.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT**

24-07-2019

Appellant Pappu Sah has been sentenced to undergo R.I. for five years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo R.I. for one year for an offence punishable under Section 354 of the I.P.C., sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.5,000/- and in default thereof, to undergo R.I. for six months for an offence punishable under Section 354A of the I.P.C. vide judgment of conviction dated 25.04.2018 and order of sentence dated 26.04.2018 passed by the 2nd Additional Sessions Judge, Sitamarhi in Sessions Trial No.332 of 2016 arising out of Bajpatti P. S. Case No.21 of 2016.

2. Informant Kaushaliya Devi (PW-3) filed written report on 11.02.2016 divulging the fact that in the



preceding night while she along with her handicapped daughter (name withheld PW-4) was sleeping in her house, found her missing in the dead of night, whereupon began to search, but could not be traced out. After one and half hour, she came weeping and on query, she disclosed that after gagging her mouth, Pappu Sah took her away and then, committed rape.

3. After registration of Bajpatti P. S. Case No.21 of 2016, investigation commenced and after concluding the same, chargesheet has been submitted followed with trial, meeting with the 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 of the Cr.P.C. is that of complete denial. Furthermore, it has also been pleaded that at an earlier occasion, on account of fixing of tent, there was an altercation and in the aforesaid background, this case has been registered.

5. In order to substantiate its case, prosecution has examined altogether seven PWs, who are PW-1, Sri Prasad, PW-2, Raju Kumar, PW-3, Kaushilya Devi, PW-4, victim, PW-5, Sunil Kumar, PW-6, Umashankar Manjhi and PW-7, Dr. Sudha Jha as well as has also exhibited the document as Exhibit-1, endorsement on written petition, Exhibit-2, formal F.I.R. and



Exhibit-3, medical report. As stated above, nothing has been adduced on behalf of defence.

6. The learned counsel for the appellant has confined his submission only on the question of sentence. To substantiate the same, it has been submitted that while perceiving the prosecution case and for that, appellant has been convicted for an offence punishable under Section 354 and 354A of the I.P.C., the initial version of the prosecution has been disbelieved on the basis of the evidence having at the end of the victim herself. In the aforesaid background and further, considering the evidence of PW-3, Para-7 whereunder there happens to be an admission that appellant/ accused Pappu Sah works at tent house. He had erected tent adjacent to her house before the occurrence and during course thereof, encroached upon her land and for that, an altercation took place. The aforesaid admission in consonance with the evidence of the victim (PW-4) attracts interference of the Court in reducing the sentence in consonance with the period so inflicted by the learned lower Court. Furthermore, in order to justify such submission, it has also been submitted that the appellant happens to be a young chap having a life and from the judgment impugned, it is evident that he has got no criminal antecedent.



Furthermore, it has also been submitted that in the background of admission at the end of the informant in consonance with the evidence of the victim, the otherwise eventualities could not ruled out. In the aforesaid background, it has been submitted that appellant being under custody since 15.02.2016, whereupon it is a fit case wherein even maintaining the conviction, sentence could be modified as period already undergone.

7. The learned Additional Public Prosecutor though challenged the submission, but considering absence of criminal antecedent and appellant being aged about 23 years did justify the prayer having at the end of the appellant.

8. The basic feature of criminal jurisprudence much less regarding sentencing policy is:-

A) The sentence should be inflicted in consonance with the nature of the offence.

B) Wherever there happens to be prospect based upon nature, age, absence of criminal antecedent, an undertaking, the convicts should be given opportunity to reform himself.

True it is, that the initial version of rape did not find favour at the end of the victim herself and consequent thereupon, the conviction has been modified under the lessor offence being under Section 354, 354A of the I.P.C.



Furthermore, it is also evident from perusal of the L. C. record that there happens to be no criminal antecedent. Further, there happens to be no adverse material against the appellant. So, giving considerable thought to the submission as well as situation, more particularly in the background of evidence of PW-3, Para-7, the prayer of the appellant is found duly appreciable, whereupon maintaining the conviction, the sentence under Section 354 of the I.P.C. is reduced to period already undergone and so far Section 354A is concerned, being under custody since 15.02.2016, already saturated the period of three years, erasing the finding with default clause. In terms thereof, instant appeal is dismissed.

9. Accordingly, appellant is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	30.07.2019
Transmission Date	30.07.2019

