

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1965 of 2018

Arising Out of PS. Case No.-66 Year-2000 Thana- CHIRAIYA District- East Champaran

Ramesh Mishra Son of Late Girija Nandan Mishra, resident of Village- Haraj Bheriyahi, P.S.- Shikarganj, District- East Champaran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Umesh Chandra Verma, Adv.
For the Respondent/s : Smt. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

04-11-2019

During course of raising submission under I.A.

No.01/2019, reviving the prayer for bail under the garb of observation so made while rejecting the prayer for bail at an earlier occasion vide order dated 02.07.2018, learned counsel for the appellant has submitted that considering the evidence of so alleged victim (PW 8), it is a fit case wherein the finding so recorded by the learned lower court with regard to Section 376/511 IPC is not maintainable and, in likewise manner, the sentence having been inflicted therefor, RI for four years would also not be attracted. In the aforesaid background, the appeal be heard on merit in the background of period of custody of the appellant.

2. It has further been submitted that considering the evidence of the victim, PW-8, it is apparent that in worst



case, even accepting the same, it happens to be a case of outraging the modesty of a woman punishable under Section 354 IPC, though when the evidence of the other witnesses are taken together, it is apparent that there happens to be inconsistency which, in the background of period of custody since the date of judgment i.e., 15.05.2018, the sentence could be reduced to the period having been undergone.

3. Learned APP, while opposing the submission having been made on behalf of the appellant, has submitted that though, there happens to be inconsistency amongst the PWs on certain aspect but appearance of appellant in the dead night over the roof of victim and further putting his hand over the breast of the victim, speaks a lot, at least, with regard to intention which the appellant was carrying at the time of occurrence but, the victim had not alleged beyond that and so, the submission having made on behalf of learned counsel for the appellant could be considered.

4. Appellant, Ramesh Mishra has been found guilty for an offence punishable under Section 376/511 IPC and sentenced to undergo RI for four years, under Section 448 IPC and sentenced to undergo RI for one year, with a direction to run the sentences concurrently vide judgment of conviction dated



15.05.2018 and order of sentence dated 16.05.2018 passed by Presiding Officer, Fast Track Court-II, East Champaran, Motihari in Sessions Trial No. 232/2001/4027/2016 arising out of Chiraiya PS Case No. 66/2000.

5. Dhanai Raut filed a written report on 24.06.2000 disclosing therein that he happens to be driver under Government of Bihar, P.H.E.D Department and is presently posted at Patna. On 20.06.2000, while his married daughter, victim (PW 8) was sleeping over roof of the house, Ramesh Mishra, son of Late Girija Nandan Mishra, co-villager climbed over the same and then attempted to commit rape over which, his daughter shouted and had then caught hold of him. After hearing cry, other family members came and caught hold of Ramesh and assaulted him with fists and slaps. During midst thereof, Ramesh succeeded in his escape by overlapping his roof which happens to be contiguous to his roof. On hue and cry, large number of villagers assembled. On being informed, he came to his village on 22.06.2000. After his arrival, he came to know that Ramesh and his son, Suchit duly armed came at his Darwaza and threatened of dire consequences if they are going to take any action. A Panchayati was convened but, on account of disappearance of Ramesh, it could not be materialized.



6. After registration of Chiraiya PS Case No. 66/2000, investigation commenced and concluded by way of submissions of charge-sheet, whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

7. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, one DW-1 has also been examined.

8. In order to substantiate its case, prosecution has examined altogether 15 PWs out of whom PW-1, Sheoji Raut, PW-2, Om Prakash Raut, PW-3, Sanjay Kumar, PW-4, Shashi Devi, PW-5, Udai Kumar, PW-6, Hari Raut, PW-7, Urmila Devi, PW-8, Lalita Devi, PW-9, Chandradhar Singh, PW-10, Ram Naresh Shukla, PW-11, Rita Devi, PW-12, Dhanai Raut, PW-13, Ram Bharosh Thakur, PW-14, Shravan Baitha and PW-15, Rajdeo Raut as well as has also exhibited Ext-1, Written report, Ext-2, Panchnama, Ext-3, Formal FIR.

9. Admittedly, written report has been filed by the informant, PW-12 after four days of the alleged occurrence and in the aforesaid written report there happens to be no disclosure with regard to presence of other family members over the roof and, in likewise manner, presence of son of appellant



armed with pistol and, escaping of the accused on that very score. It is needless to say that FIR should not be an encyclopedia containing minute to minute detail but, having the written report filed four days after the occurrence, should have confined the relevant information much less over presence of family members along with victim over the roof and so, the evidence of the victim only appears to be of primacy.

10. Victim is PW-8. She has stated that on the alleged date and time of occurrence, it was 11:00 PM, she was sleeping over her roof. Her sister Rita and four brothers were also sleeping over the roof. They all are younger to her. Ramesh came from his roof to her roof and then, slept by her side. Then thereafter, he put his hand over her breast, as a result of which, she woke up. She caught hold of him. He indulged in grappling. She shouted, whereupon, all the brothers and sister woke up. All began to assault him. Her aunt and mother also arrived from ground floor. During midst thereof, Ramesh had gone to his own roof. His father, who resides at Patna, was informed. Identified the accused in the dock. During cross-examination at para-4, she has stated that there happens to be gap of 1 to 1 ½” (feet) in between roof of Ramesh and that of her. Then she disclosed the boundary. At para-8, she has disclosed that she was not in



talking terms with Ramesh. Ramesh had not indulged in lecherous activity before the incident nor he had talked indecently with her. At para-11, she has stated that Ramesh had put his hand over her body while she was asleep. At para-12, she has stated that she had not instructed her mother to accompany to police station which lies at the distance of 1 and 1 ½ Kosh from her house. At para-13, she has stated that Ramesh remained over her roof for half an hour. During midst thereof, he was assaulted. There was swelling over his mouth. At para-14, she has stated that then thereafter, she got down and then, slept. On the following morning, she had not gone to the Darwaza of Ramesh to complain. And then she denied the suggestion that her father instituted this false case out of enmity.

11. PW-11 is Rita Devi, sister of the victim who has disclosed that on the alleged date and time of occurrence she was sleeping over roof of her house along with her brothers, Sanjay, Uday, Vijay and Sonu and sister, the victim. At that very moment, Ramesh came over her roof and attempted to commit wrong with the victim. Victim caught hold of Ramesh and then began to assault. She along with her brothers also assaulted. Her mother and aunt came from ground floor. During midst thereof, Ramesh managed to escape. Identified the accused. During



cross-examination at para-3, she has stated that after the occurrence, all of them got down from the roof. At that very time, her mother was at the ground floor, her aunt was also there. They have not woken up them. At para-4, she has stated that when they shouted, then thereafter, her mother and aunt woke up. Villagers have also assembled. But she is unable to disclose their names. They have not disclosed regarding the occurrence to them. At para-5, she has stated that at night as well as at morning hour, people have assembled at the Darwaza of Ramesh. Police also came. In presence of police, statement of victim was recorded. In para-6, she has stated that victim was assaulted by her mother. There were ample sign of hurt over her body. Victim became unconscious out of assault. In para-8, she has stated that earlier her uncle was engaged under Ramesh but, about eight months ago, he had left whereupon, there was dispute amongst them.

12. PW-12 is the informant. During examination-in-chief, has stated that in the night of 20/06/2000 at about 11:00 PM, Ramesh came over his roof where his daughters victim and Rita Devi, sons, Sanjay, Uday, Vijay and Sonu were sleeping. Ramesh tried to commit rape over the victim whereupon, he was apprehended and brutally assaulted.



Anyhow, Ramesh managed to escape. He was at Patna where Surendra came to inform him. He arrived on 22.06.2000 and then, he was apprised with the occurrence by his daughter and wife, whereupon, he convened a Panchayati but the same could not materialized as, Ramesh managed to escape. Then thereafter, he had filed written report which happens to be in the pen of Chandraketu Singh (Exhibited). Identified the accused. During cross-examination at para-8, he has stated that his land as well as that of accused lies contiguous to each other. There was measurement and during course thereof, some land of accused was found amalgamated with his land whereupon, the same has been given to the accused but, again controverted the same by saying that his land has been grabbed by the accused which he, uptil now, has not released.

13. PW-1 is Vijay Raut, brother of victim and during examination-in-chief, he has corroborated the same. During cross-examination at para-6, he has stated that son-in-law of Ramesh was present at the house of Ramesh but he is unable to say whether he happens to be an Advocate or not. At para-7, he has stated that after arrival of his father, the matter was reported to the villagers.

14. PW-2 is another brother who, in course of



examination-in-chief has reiterated the same version. During cross-examination at para-6, he has stated that people have assembled at his Darwaza. None of them had gone to the Darwaza of accused, Ramesh. None of them, tried to inform the police.

15. PW-3 is the cousin brother who during course of examination-in-chief has reiterated the same version. During cross-examination at para-4, he has stated that they all have jointly apprehended, Ramesh. He was unarmed. Only mother and aunt came from the ground floor. After escape of Ramesh, they got down. All the persons having their houses in the boundaries have seen the occurrence but, none of them came.

16. PW-4 is the aunt of the victim. During examination-in-chief has reiterated the same. During cross-examination at para-2, she has stated that they were on visiting terms. She never faced such kind of activity at the end of the accused. At para-4, she has stated that when she had gone to the roof, she had found the victim and others having apprehended the accused and were assaulting. Then thereafter, he escaped.

17. PW-5 is the own brother who also narrated the prosecution version. During cross-examination at para-4, he



has stated that he had seen the accused over his roof at about 9:00 PM. Then thereafter, at 11:30 PM, they had seen the accused at his roof. None of the villagers has come over his roof. None of the villagers came at his Darwaza in the morning.

18. PW-6 is the brother of informant (uncle of victim). During examination-in-chief, he has reiterated the version but during cross-examination at para-5, he has stated that he had instituted a case against Ramesh for wages. Then at para-6, he has stated that he had stated before the police that he came to know that Ramesh had gone over roof and then, put his hand over the body of the victim. At para-7, he has admitted that there happens to be dispute in between his family as well as Pandit.

19. PW-7 is the mother of the victim. During examination-in-chief she has reiterated the version. During cross-examination at para-3, she has stated that she had not seen any kind of injury over the person of the victim. In para-4, she has stated that when she had gone over the roof, she had seen all the persons having apprehended the accused. Then has stated that after arrival of her husband, Panchayati was convened and then case was instituted.

20. PW-9 is a hearsay witness who has simply



stated that on a disclosure made by mother of the victim, he came to know regarding occurrence.

21. PW-10 has not supported the case of the prosecution and so, was declared hostile. PW-13 and PW-14 are formal in nature who have proved Panchnama. PW-15 is a hostile witness. DW-1 has been examined over the land dispute having amongst the parties.

22. From the evidence as discussed hereinabove, it is evident that save and except PW-8, the victim, none has deposed with regard to activity having at the end of Ramesh, appellant. However, they are consistent that on a shout raised by the victim, they woke up, apprehended the accused and assaulted. From the evidence of PW-11, it is evident that victim was also assaulted by her mother but, there happens to be no suggestion at the end of appellant that his presence over roof was consensual and further, the victim was major. Now, coming to the evidence of the victim, it is evident that she has stated only with regard to putting hand over her breast and nothing more. She has not deposed with regard to any kind of other activity having at the end of accused, Ramesh in order to commit rape. So, theme of attempt is found lacking.

23. That being so, presence of Ramesh over the



roof, justifies applicability of Section 342 IPC in consonance therewith, the sentence. However, so far Section 376/511 IPC is concerned, considering the evidence available on the record much-less that of PW-8, it is transformed to Section 354 IPC and further, considering the period of custody since the date of judgment i.e., 15.05.2018 couple with the fact that the occurrence is of the year 2000 did justify the submission having at the end of learned counsel for the appellant that sentence be reduced as already undergone.

24. Accordingly, is ordered so. In terms thereof, the instant appeal is partly allowed. Appellant is under custody, he is directed to be set at liberty forthwith, if not wanted in any other case.

25. I.A. No. 01/2019 stands disposed of accordingly.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07/11/2019
Transmission Date	07/11/2019

