

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.236 of 2019

Arising Out of PS. Case No.-23 Year-2018 Thana- GAIGHAT District- Muzaffarpur

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Noor Mohammad Ansari @ Nur Mohammad Vill.- Boari Dih, P.S.- Gaighat,
Dist.- Muzaffarpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 4762 of 2018

Arising Out of PS. Case No.-23 Year-2018 Thana- GAIGHAT District- Muzaffarpur

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Parvej Ansari Son of Noor Mohammad Ansari, resident of Village- Boari Dih,
P.S. Gaighat, District- Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 236 of 2019)

For the Appellant/s : Mr. Arun Kumar

For the Respondent/s : Mr. Sri Binod Bihari Singh

(In CRIMINAL APPEAL (SJ) No. 4762 of 2018)

For the Appellant/s : Mr. Arun Kumar

For the Respondent/s : Smt. Abha Singh

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL ORDER

6 12-11-2024

Ref:- Cr. Appeal (SJ) No. 236 of 2019

Heard the learned counsel for the appellant and the
learned Special PP for the State.

2. This appeal has been directed against the judgment
and order dated 12.12.2018 passed by the learned Additional
District & Sessions Judge 1st cum Special Judge, POCSO Act,



Muzaffarpur in Tr. No. 23 of 2018 (Gaighat P.S. Case No. 23 of 2018) for an offence under Sections 376 & 511 of the Indian Penal Code and sentenced to undergo R.I. for 5 years and also imposed a fine of Rs. 10,000/- (Ten Thousand) and in default of payment of fine, further undergo 5 months R.I. and he has further been convicted U/s 8 of the POCSO Act and sentenced to undergo R.I. for 3 years and also to pay a fine of Rs. 10,000/- and in default of payment of fine to under R.I. for 6 months.

3. As per the prosecution case, on 29.01.2018 at about 7 PM, the complainant sent her daughter to the grocery shop to bring some articles and when the daughter of the complainant was returning home from the grocery shop, the appellant (Noor Mohammad Ansari) was standing at his door on the way. He called the daughter of the complainant and took her to his *dalan* and stuffed a cloth in her mouth and tried to commit rape with the daughter of the complainant. After some time, when the complainant searched for her daughter, a man told her that Noor Mohammad Ansari (Appellant) had taken her daughter there. When the complainant went there, she saw that the appellant was lying down with her daughter and had stuffed a cloth in her mouth and had opened the cloth. Complainant caught the appellant red-handed and started beating him. The appellant



pushed the complainant and ran away. Complainant removed the cloth from her daughter's mouth and brought her home. When she went to the house of the appellant to complain, his son Pravez Ansari threatened complainant.

4. On the basis of the written report, Gaighat P.S. Case No. 23 of 2018 was instituted under Sections 376/511, 504, 506/34 of the Indian Penal Code and Section 8 of the POCSO Act and investigation was taken up and a charge sheet was submitted under Sections 376/511, 504, 506/34 of the Indian Penal Code and Section 8 of the POCSO Act. On 10.05.2018 charge was framed under Section 376/511 and Section 504, 506/34 of the Indian Penal Code and Section 8 of the POCSO Act against the appellant and charge under Sections 504, 506/34 was framed against Parvej Ansari.

5. In support of the prosecution case, six witnesses were examined on behalf of prosecution namely P.W. 1 (Ram Pravej Thakur); the husband of the informant, P.W. 2 (Renu Devi); the informant, P.W-3 (the Victim), P.W-4 (Ram Naresh Singh); I.O. of the case, P.W-5 (Israfil Ansari) and P.W-6 (Ram Vikash Ram) who has been declared hostile and the the learned Trial Court from the evidence on record and the statement recorded under Section 164 of the Cr.P.C. has convicted this



appellant as well as his son Parvej Ansari.

6. P.W-3 (the Victim) is the 9 years old girl and in her statement she has said that she went to the grocery shop of Lal Babu to buy *Pakodas* and was coming while eating them and when she reached near the *dalan* of the appellant, the appellant called her and after pressing her mouth, the appellant tied her mouth and took her to his *dalan* and also tied her hands and legs from behind. The mother of the victim came there, she got her daughter freed from the appellant and started beating the appellant who fled away. Thereafter, the appellant and his son threatened the family of the victim that they should not file any case. She has supported the prosecution case in cross-examination. Nothing important has been elicited by the defence.

7. P.W-1 is the father of the victim who is hearsay witness. P.W-2 is the complainant who is the mother of the victim and she has also supported the prosecution case as given in the F.I.R. and she has said that when she went inside the *dalan* of the appellant, she found that the appellant had tied the hands and legs of her daughter and was lying over her daughter and was trying to commit rape with her daughter. She got her daughter freed from the appellant and took her away. The



defence has not been able to elicit anything in her cross-examination. P.W-4 is the I.O. of the case. P.W-5 & 6 have become hostile.

8. Learned counsel for the appellant has submitted that the appellant has falsely been implicated in this case due to dispute over Rs. 10,000/-(Ten Thousand).

9. From the evidence of the victim and the informant, so far as the appellant is concerned, it is proved beyond the reasonable doubts and there is nothing to doubt the prosecution case. The witnesses are consistent and there is no reason why the witnesses will falsely implicate the appellant.

10. The victim is a nine-year-old girl and it does not appear plausible that parents of a nine-year-old girl will use her to falsely implicate the appellant over some petty monetary dispute.

11. In view of the discussions above, this appeal is dismissed. The appellant is directed to be taken into custody to serve the remaining sentence if he does not surrender within four weeks.

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Heard the learned counsel for the appellant and the



learned Special PP for the State.

2. This appeal has been filed against the judgment and order dated 12.12.2018 passed by the Additional District & Sessions Judge 1st cum Special Judge POCSO Act, Muzaffarpur in Tr. No. 23 of 2018 (Gaighat P.S. Case No. 23 of 2018) by which he has convicted the appellant for the offences under Sections 504 and 506 of the Indian Penal Code and sentenced him to undergo R.I. for one year in each section.

3. It has been submitted by the learned counsel for the appellant that he doesn't want to press this application on merits. He limits his arguments only on the quantum of sentence.

4. It is further submitted that the appellant is not a habitual offender and this is the first offence committed by him and he prays for a lenient view.

5. I have considered the submission of the parties.

6. In the facts of the case, this Court does not interfere in the conviction of the appellant which is upheld but the sentence to undergo rigorous imprisonment for one year under Sections 504 and 506 of the Indian Penal Code is modified to a fine of Rs. 5,000/-(Five Thousand) under each section. In default of payment of fine, the appellant will undergo a simple



imprisonment of three months.

7. Accordingly, this appeal stands partly allowed.

(Sandeep Kumar, J)

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