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**(1989) 09 PAT CK 0015**

**In the Patna High Court**

**Case No : Criminal Appeal No. 324 of 1988 (R)**

Muslim Mian @Muslm Ansari

APPELLANT

Vs

The State of Bihar

RESPONDENT

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**Date of Decision :** 19-09-1989

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 354, 376

**Citation :** (1989) 2 PLJR 87

**Hon'ble Judges :** N.S. Rao, J

**Bench :** Single Bench

**Advocate :** P.N. Saha, for the Appellant; K.K. Jhunjhunwala, Addl. P.P, for the Respondent

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## **Judgement**

N.S. Rao, J.—Muslim Mian @ Muslim Ansari of Village Karkari, District Gumla, the appellant, stands convicted u/s 376 of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years. Feeling aggrieved, he has preferred this appeal. The prosecution version, in brief, is that on 5-11-1981 at about 8 A.M. when Safeda Khatoon PW was washing clothes in the water of a rivulet at a distance of couple of furlongs from abadi of her village Karkari, the appellant had arrived there. He had started talking liberties with Safeda Khatoon PW but she had not responded. When the appellant had started touching her breasts, Safeda Khatoon PW had started raising hulla. However, as none was nearby, the appellant had fully utilised the situation by making Safeda Khatoon PW fall on the ground. She had foiled all his efforts in opening the string of her Shalwar. Thereupon, the appellant had torn the Shalwar from near its private parts of Safeda Khatoon PW and then committed rape upon her. As Safeda Khatoon PW had continued resisting even her stools had come out, resulting in the spoiling of her Shalwar at its seat. After committing the crime the appellant had fled away.

The prosecution version further proceeds that Safeda Khatoon PW has then returned to her house while weeping, and told all about the crime committed by

the appellant to her father Daud Ali PW, uncle Nezamuddin PW, Rojamat Mian PW and others. She was then brought to police station Sisai, where had lodged her F.I.R. (Ext.2) on the same day at about 12.30 P.M. The investigations were carried out and after completion of the same, the appellant was charge-sheeted.

2. Out of six witnesses examined by the prosecution the evidence of PW 6 is formal in nature. He had proved the signatures of the scribe in the F.I.R. (Ext. 2). Safeda Khatoon PW 1 is the prosecutrix, and she had narrated the occurrence to Nezamuddin, Rojamat Mian and Daud Ali, PWs 2 to 4 respectively. Dr. Chanda Devi PW 5 had conducted her medical examination on 6-11-1981 at 11.30 AM in Sadar Hospital, Gulma.

3. The appellant, in his examination, had denied the prosecution allegations and stated that he was innocent. He had examined Sobran Ali as his solitary witness. However, the evidence of this DW was not even touched upon by learned counsel for the appellant during the course of his arguments.

4. Learned counsel for the appellant and learned Addl. P.P. appearing on behalf of the State have been heard and records carefully gone through.

5. In cases involving sexual offences, the age and character of the prosecutrix are always of paramount importance. As regard character of Safeda Khatoon PW, what to say of proof, there was not even a suggestion that she is a girl of easy virtues. There is not even a whisper against her character. Then as regard the age of Safeda Khatoon P.W. she was definitely aged only about 13 years at the time of the alleged occurrence. During the course of medical examination, it was found that her auxiliary hair had not appeared and her public hair were only a few in number. She had started mansurating only about six months earlier. She was opined to be aged between 13 to 14 years. That evidence of the doctor had gone totally unchallenged.

6. The only submission made on behalf of the appellant is that as the medical evidence led in the case had not proved that rape was actually committed upon Safeda Khatoon PW, the conviction of the appellant u/s 376 of Indian Penal Code be set aside. There is merit in this submission. Dr. Chanda Devi PW had found hymen of Safeda Khatoon PW not ruptured. No spormatozoa were found on her vaginal swabs. Therefore, it was opined that no sign had appeared for showing that Safeda Khatoon PW was subjected to sexual intercourse. However, her evidence, duly corroborated by that of PWs 2 to 5, clearly proves that the appellant had used criminal force towards her, intending to outraged her modesty. That being so, the appellant deserves to be convicted only u/s 354 of Indian Penal Code. For reasons stated above, this appeal is partly accepted. The conviction and sentence of the appellant u/s 376 of Indian Penal Code are set aside, but he is held guilty, and accordingly, convicted u/s 354 of Indian Penal Code.

As regard sentence, the appellant has already undergone the ordeal of a protracted trial and then of this appeal. The occurrence had taken place as back

as in November 1981. However, the fact also cannot be lost sight of that he had outraged the modesty of a pious girl, aged about 13 years. Taking into consideration all facts and circumstances of the case, the appellant is sentenced to undergo rigorous imprisonment for one and half year u/s 354 of Indian Penal Code.