

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.47761 of 2014

Arising Out of PS.Case No. -222 Year- 2013 Thana -SHERGHATI District- GAYA

Kamaldeo Yadav

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dharendra Kumar Sinha

For the Opposite Party/s : Mr. Binod Kumar (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 09-04-2015

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

An innocent girl while was engaged in her domestic
affair, at about 8.00 p.m. perceiving alone, petitioner along with
one Bhola Yadav made house trespass, caught hold her, dragged
her, assaulted her, unrobed her and then raped. In the written
report, there happens to be absence of specific allegation regarding
rape committed by the petitioner, but during course of statement
under Section 164 of Cr.P.C., as is evident from Para-47 of the
case diary, it is apparent that she had alleged against petitioner
also.

Learned counsel for the petitioner stressed over
medical report wherein no definite opinion has been given with
regard to rape in absence of spermatozoa dead or alive as well as

referring Para-64 of the case diary wherein so many persons were examined by the I.O., who had admitted, so far occurrence is concerned, however shown false implication of petitioner along with Bachchu Yadav and in likewise manner, also referred Para-71 wherein I.O. had on his own recorded with regard to inter se relationship amongst Bachchu and petitioner as well as prosecution party and further having their activity at social front.

The requirement in terms of Section 375 of the I.P.C. is not the presence of dead or alive spermatozoa. Only penetration is sufficient to constitute an offence of rape.

On account thereof, prayer of the petitioner for the present is rejected. If so advised, may renew his prayer after examination of informant.

(Aditya Kumar Trivedi, J)

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