

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.614 of 2015

Arising Out of PS.Case No. -501 Year- 2008 Thana -SHEKHPURA District- SEKHPURA

1. Ruby Devi D/o Sri Rajo Paswan, resident of village- Dharampur,
P.O.- Hathiyawan, P.S. and District- Sheikhpura

.... Appellant/s

Versus

1. The State of Bihar
2. Shri Mahendra Chaudhary son of Virendra Chaudhary, resident of
Mohalla- Tarchha, P.O. and P.S.- Sheikhpura, District- Sheikhpura

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Arun Kumar
& Mr. Ram Vinay Pd. Singh, Advocates
For the Respondent/s : Mr. Aditya Narayan Sinha, APP

CORAM: HONOURABLE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 25-08-2015

1. The appellant, in the present appeal under proviso to Section 372 of the Code of Criminal Procedure, 1973, was the informant of Sheikhpura P.S. Case No. 501 of 2008 (G.R. No. 1157/2008). She has challenged judgment and order, dated 08.04.2015, passed by learned Additional Sessions Judge, Sheikhpura in S.T. No. 407 of 2010, whereunder respondent No.2 herein, who was put on trial on the charges punishable under Sections 341 and 376 read with Section 511

of the Indian Penal Code stands acquitted. The S.T.No. 407 of 2010 had arisen out of Sheikhpura P.S. Case No. 501 of 2008 (G.R. No. 1157 of 2008), which was instituted by the appellant, as noted above.

2. We have heard Mr. Arun Kumar, learned counsel, appearing for the appellant, and Mr. Aditya Narayan Sinha, learned Additional Public Prosecutor, appearing on behalf of the State, respondent No.1.

3. The First Information Report, giving rise to Sheikhpura P.S. Case No. 501 of 2008, was registered on the basis of a written complaint, lodged by the informant, asserting therein, *inter alia*, that on 29.12.2008, at about 6.30 P.M., while she was returning from the market for her residence and was nearly 100 yards ahead of a road crossing at bye-pass road, respondent No.2 and one unknown person caught hold of her, dragged her to nearby bush and respondent No.2 attempted to commit rape on her, but, upon alarm having been raised by her, they fled away. She claims to have narrated the occurrence to her father on returning to her house. It being night, she could not go to the Police Station to register First Information Report. The First Information Report was registered on the following day, i.e., on 30.12.2008 at 1 P.M.

4. Respondent No.2 was put on trial, upon submission of charge-sheet by the police, cognizance of the case and its commitment to the Court of Sessions. He was charged for the offences punishable under Sections 341 and 376 read with Section 511 of the Indian Penal Code.

5. At the trial, four witnesses including P.W.2 (the informant), P.W.3 (mother of the informant) and P.W.4 (Investigating Officer) were examined. P.W.1, (Dharmendra Kumar), too, gave his evidence, who, however, did not identify respondent No.2.

6. We find from the impugned order that the informant, P.W.2, in her evidence, has stated that the accused persons attempted to commit rape on her by pulling her saree on the point of a pistol. She has claimed, in her evidence, that the road from where, she was taken towards bush by the accused persons was quite busy and that she had narrated the occurrence to her mother and husband also. The mother of the informant (P.W.3), in her evidence, at the trial, stated specifically, giving detailed description, that the informant, at the time of occurrence was wearing a suit, which had got torn in the course of occurrence, and that she had gone to the Police Station in the same suit. The Investigating Officer, in his

evidence, stated that he had not found any canal or boring at the place of occurrence as was stated by P.W.3.

7. Learned trial Court found material contradictions between the evidence of P.W.2 (Informant) and P.W.3 (mother of the informant) as regards the dress, which the informant was claimed to have been wearing at the time of occurrence. He also found contradiction between the statement of P.W.2, recorded under Section 164 of the Code of Criminal Procedure on 09.01.2009, where she had stated that two persons, armed with knife, had caught her hand and had taken her away to the bush, whereas Mahindra Chaudhary was armed with pistol.

8. Finding material contradictions between the evidence of P.W.1 and P.W.3, learned trial Court arrived at the conclusion that it was not safe to rely upon the sole uncorroborated testimony of the informant.

9. On perusing the impugned judgment, we find that on the basis of evidence available before the learned trial Court, the trial Court arrived at a conclusion, which cannot be said to be not a possible view, which could have been taken on the basis of such evidence.

10. We are further of the opinion that no offence at all is made out under Section 376 of the Indian Penal Code of which

the respondent No.2 was charged. We find from the judgment under appeal that learned trial Court rightly arrived at the conclusion that there being scope of reasonable suspicion as regards the manner of occurrence, benefit of doubt was required to be given.

11. We do not find any illegality in the impugned judgment of learned trial Court warranting interference in exercise of appellate jurisdiction under proviso to Section 372 of the Code of Criminal Procedure.

12. We do not find any merit in this appeal. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

ArunKumar/-

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