

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.610 of 2015

Arising Out of PS.Case No. -498 Year- 2011 Thana -COMPLAINT CASE District- JAMUI

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1. Akali Devi @ Panma Devi wife of Late Basudeo Turi, resident of village- Fatehpur Kasahna, P.S.- Chandan, District- Banka. At present residing at Village- Asahana, P.s.- Simultalla, District- Jamui

.... Appellant/s

Versus

1. The State of Bihar
2. Mukesh Kumar @ Kukesh Singh, son of Surya Narayan Singh, resident of village- Simultalla, P.S.- Simultalla, District-Jamui

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ganjendra Kumar Singh
For the Respondent/s : Mr. A.Sharma (APP)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

**HONOURABLE MR. JUSTICE CHAKRADHARI
SHARAN SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

- 2 20-08-2015 1. This appeal, under Proviso to Section 372 of the Code of Criminal Procedure, 1973, has been preferred by the appellant, who was the complainant of Case No. 498(C) of 2011, instituted in the Court of learned Chief Judicial Magistrate, Jamui, on 02.05.2011. She is aggrieved by the judgment of acquittal passed on 07.05.2015 in Sessions Trial No. 247 of 2012 (T.R. No. 374 of 2014) by the learned 4th Additional Sessions Judge, Jamui.
2. The appellant filed a complaint petition on 02.05.2011, alleging, inter alia, that one Rastriya Guni



Mission, Rajasthan, had authorized her to give medical treatment to the villagers by holding camps. She was said to have been given a certificate by the said Organization for the said purpose. Thereafter, she got an Institution registered styled "Gram Seva Sadan, Simultalla" of which she became the Secretary. One Sukhdeo Yadav (P.W.1) became the President of the Organization, whereas the accused respondent No.2 was made Treasurer. It is the complainant's case that she was resident of a village *under Banka District and under the said Guni Mission and with the said Organization*, she was serving people of Village Simultalla. Allegedly, respondent No.2 came in contact with her as he used to regularly take medicines from her under Guni Mission and despite her resistance, he established physical relationship with her taking advantage of the fact that she belonged to a different district and she was alone in Simultalla. It was her allegation that respondent No.2 used to assault her, committed rape on her several occasions, took her caste name at different places and, due to continued physical relationship, she became pregnant and while she was carrying pregnancy of four months, respondent No.2 started pressurizing her to terminate the



pregnancy, which she opposed. It was also her case that respondent No.2 assaulted her, whereafter she experienced pain in her abdomen and, thereafter, respondent No.2, with the help of a village doctor, got her pregnancy terminated. It was further alleged that respondent No.2 had taken away from the appellant silver chain worth Rs. 6,000/- and golden Chain worth Rs. 5,500/-. She gave specific instance of an occurrence, which had taken place on 29.04.2011, when the respondent allegedly entered into her room and attempted to commit rape, whereupon she protested and raised alarm. Some of the persons, who were named in the complaint petition as witnesses, responding to the alarm raised by her, came, but the respondent asked them not to interfere in such matters.

3. On the basis of the allegations as noted above, the said complaint case was instituted, leveling offences under Sections 452, 380, 313, 354, 504, 506, 448, 376 and 511 of the Indian Penal Code and Sections 3 & 4 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. The complaint case was transferred to the Court of learned Judicial Magistrate, 1st Class, Jamui under Section 192 (1) of the Code of Criminal Procedure for



enquiry and disposal. Learned Judicial Magistrate, 1st Class, Jamui, upon coming to a conclusion, upon enquiry that offences punishable under Sections 341,323,504,376 and 313 of the Indian Penal Code, were made out, summoned respondent No. 2 and, subsequently, the case was committed to the Court of Sessions for trial and disposal. This is to be noted that respondent No. 2 was charged for commission of offences under Sections 341,323,313,504 and 376 of the Indian Penal Code.

4. At the trial, four witnesses were examined including the appellant as P.W.4. The defence examined one witness.

5. Learned trial Court, after analyzing the evidence of the prosecution witnesses, recorded the judgment of acquittal mainly on the ground of material contradictions in the evidence of the witnesses to the extent it related to the charges punishable under Sections 504, 376 and 323 of the Indian Penal Code. As regards the charge of commission of offence punishable under Section 341 of the Indian Penal Code, learned trial Court held that no offence under the said provision was made out on the basis of evidence on record. As regards charge under Section 313 of

the Indian Penal Code, learned trial Court found that there was no corroborative evidence to support the allegation that any miscarriage of pregnancy, as alleged, was caused as neither the doctor, who is said to have assisted termination of pregnancy, was named and examined nor any other witness supported the allegation of miscarriage without the consent of the appellant.

6. Upon perusal of the judgment under appeal, we find from the evidence of P.W.4, the appellant, that she admitted that there was physical relationship between her and respondent No. 2 for last eight years, but she claims that out of fear, she did not disclose this fact to others. She stated, at the trial, that on the alleged date of occurrence, i.e., on 29.04.2011, the appellant entered into her room and while he was trying to commit rape on her, she protested and raised alarm whereupon Sukhdeo Yadav (P.W.1), Mahendra Basi (P.W.2) and one Md. Sanaullah Ansari came and when they objected, respondent No. 2 fled away. Mahendra Baski (P.W.2), on the other hand, deposed that on alarm having been raised by the appellant, he and P.W.1 (Sukhdeo Yadav), who were sitting in the ground floor, went upstairs and found respondent No. 2 abusing and



attempting to commit rape upon the appellant. P.W. 1 (Sukhdeo Yadav), on the other hand, in his deposition at the trial, has stated that upon hearing the cry for help of the appellant, he, Mahendra Baski (P.W.2) and Sansul Haque went upstairs. This is to be noted that in their depositions, neither P.W.2 nor P.W.4 have stated that Sansul Haque had gone upstairs and he (Sansul Haque) had seen the offence committed by respondent No.2 on 29.04.2011. One Md. Sanaullah Ansari was examined as P.W.3, who stated that he had gone, along with P.W.1 (Sukhdeo Yadav) and P.W.2 (Mahendra Baski) after having heard the sound upstairs. He claims that he found respondent No.2 using abusive language against the appellant. This is to be noted that Sansul Haque was not examined at the trial.

7. From the judgment, we find that though the appellant alleged, in her complaint, that respondent No.2 had helped her getting the pregnancy terminated, with the assistance of a doctor, she, in her cross-examination, failed to even give the name of the doctor, who had got the pregnancy terminated.

8. Grounds taken in the present petition of appeal preferred by the appellant, in our opinion, are not at all good



grounds sufficient for interfering with the judgment of the trial Court. The appellant, in the petition under appeal, has taken the ground that the learned trial Court failed to consider that prior to establishing sexual relationship with the appellant, respondent No. 2 had ill-motive and he committed fraud with her. This ground is not at all sustainable on the basis of prosecution's case as narrated by the appellant and the evidence adduced in course of trial. The prosecution has completely failed to prove a case beyond all reasonable doubt that any fraud was played by respondent No.2 or any misrepresentation given by him to the appellant. We find from the judgment of the learned trial Court that there were vital contradiction in the statement of the witnesses on the basis of which the learned trial Court has held that the charges against the respondent could not be proved beyond all reasonable doubt.

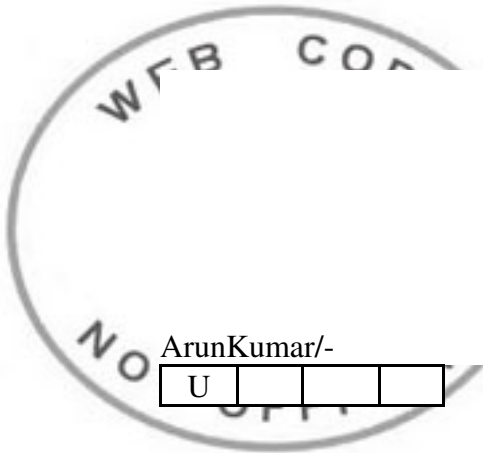
9. The judgment of the learned trial Court cannot be said to be so perverse, as to warrant interference by this Court. The view, taken by the learned trial Court, cannot be said to be such, which could not have possibly been taken on the basis of the evidence adduced at the trial.

10. We do not, therefore, find any merit in the

present appeal and the same is, accordingly, dismissed.

(I.A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)



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