

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.888 of 2015

Arising Out of PS.Case No. -113 Year- 2010 Thana -GAYA MUFFSIL District- GAYA

Against the order and judgment dated 20th August, 2015, passed, in Sessions Trial No.35 of 2015/202 of 2011, arising out of Mufassil P.S. Case No.113/2010 (G.R. No.2404 of 2010), by Sri Dharmendra Kumar Jaiswal, 6th Additional Sessions Judge, Gaya

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Gaya Yadav, son of Sahdeo Yadav, resident of Village-Bara,
P.S.-Muffasil, District-Gaya

.... Appellant/s

Versus

1. The State of Bihar.
2. Raju Yadav, son of Dilip Yadav, resident of Village-Bara,
P.S.-Muffasil, District-Gaya.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kamal Kumar Sinha, Advocate

For the Respondent/s : Mr. A.K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA MISHRA)

Date: 05-11-2015

Heard Mr. Kamal Kumar Sinha, learned Counsel,
appearing on behalf of the appellant, and Mr. A. K. Sinha,
learned Additional Public Prosecutor, appearing on behalf of the
respondent.

2. The present appeal has been preferred against
the judgment and order, dated 20.08.2015, passed, in Sessions
Trial No. 35 of 2015/202 of 2011, arising out of Mufassil Police
Station Case No. 113 of 2010 (G. R. No. 2404 of 2010), by the
6th Additional Sessions Judge, Gaya, whereby and whereunder
accused Raju Yadav (respondent No. 2) has been acquitted of

the charges under Section 366 read with Section 34 and Section 376 (i) of the Indian Penal Code.

3. Mr. Sinha, learned Counsel, for the appellant, contends that though there was a clear-cut allegation against the accused persons of having taken the wife of the informant (PW 1), while she was going to her *Naihar* (i.e., parental house) from her *Sasural* (i.e., matrimonial house) on 10.07.2010 at 12 Noon and that there are sufficient incriminating materials for convicting the accused persons under Section 366 read with Section 34 of the Indian Penal Code, the learned trial Court, ignoring the evidence on record, has acquitted the accused persons, resulting in serious prejudice to the informant and the victim (i.e., the informant's wife).

4. The ground on which the judgment and order of acquittal have been assailed is that the learned trial Court has failed to consider the vital incriminating pieces of evidence available on the record of the case against the acquitted accused and, thus, completely ignoring the evidence on record, disbelieved the prosecution's case.

5. It is contended before us that though four witnesses, namely, PW 1 (Soni Devi, victim), PW 2 (Gaya Yadav, informant), PW 3 (Rajnath Singh, Investigating Officer) and PW 4 (Dr. Sandhya Prasad), were examined, no documentary evidence was ever adduced by the defence. It is also contended that PW 2 had categorically asserted that DW 3

(Pappu Yadav) had seen the occurrence. It is further contended that PW 2 (Gaya Yadav) has stated that when his wife returned 33 days after Kapil Yadav was arrested, he (PW 2) met his wife (PW 1) after two days and she narrated whole story to him.

6. Mr. Sinha, learned Counsel, for the appellant, contends that even the statement, under Section 164 of the Code of Criminal Procedure, made before the Magistrate, by the victim (PW 1), has been ignored, though she (PW 1) has categorically stated therein that while she (PW 1) was going to her *Naihar* from her *Sasural* in the afternoon, Raju Yadav, Kapil Yadav and Dilip Yadav came to her and asked her to come with them and, then, Dilip Yadav put something in handkerchief and kept that handkerchief on her nose, which caused her to become unconscious and, thereafter, she was taken by train to Delhi, where she was made to stay for almost a month and they committed sexual intercourse with her. It is also contended that only after the uncle of said Raju Yadav was arrested that Raju Yadav brought the victim (PW 1) to Patna and she was, then, taken to Mufassil Police Station, Gaya, where her statement, under Section 164 of the Code of Criminal Procedure, was recorded. Mr. Sinha, learned Counsel, further contends that the learned trial Court, without considering the evidence, which came on record, particularly, as given by PW 1 and PW 2, has committed apparent error in passing the order of acquittal of the accused persons and that

the same is based purely on conjectures and surmises.

7. On perusal of the judgment of acquittal, we notice that the learned trial Court carefully considered the evidence of prosecution's evidence, particularly, PW 1 (Soni Devi) and PW 2 (Gaya Yadav) and also the statement made by the alleged victim, under Section 164 of the Code of Criminal Procedure, which has been marked as Exhibit 1. The Investigating Officer of the case (PW 3) and Dr. Sandhya Prasad (PW 4) have also been examined and the reports of the medical examination of the victim, Soni Devi, have been marked as Exhibits 3 and 3/1. It appears that the occurrence was of 10.07.2010, but the *First Information Report*, in the present case, was lodged on 24.0.2010, i.e., after a lapse of 14 days, and no plausible explanation has been offered by the informant to explain the aforementioned delay.

8. PW 2 has also stated that whatever information he got regarding the occurrence was derived from his wife (PW 1) after 33 days of occurrence; but in his cross-examination, he could not explain from where he got knowledge of the occurrence of her wife having been abducted by the accused after 14 days, though the informant (PW 2) has stated that he had also filed a case after two days of the occurrence. The *First Information Report*, so filed, is not on record.

9. The deposition of PW 2, as noted by the learned trial Court, also seems not worthy of credence, as he



has stated that co-villager, Pappu Yadav (DW 3), has seen the occurrence; but said Pappu Yadav has not been examined on behalf of the prosecution. On the contrary, he has been examined by the defence, who has deposed that he had no knowledge about the informant's wife alleged abduction. Thus, the deposition of Pappu Yadav (DW 3) falsifies the prosecution's case.

10. Further-more, as observed by the learned trial Court, there is much contradiction in the story as spelt out by PW 2 and his wife (PW 1). In her statement, under Section 164 of the Code of Criminal Procedure, though the alleged victim has stated that the accused kept her confined in a room in Delhi for a continuous period of one month and that Kapil Yadav and Dilip Yadav sexually enjoyed her, she has not named Raju Yadav, accused-respondent No. 2, as having committed rape on her.

11. Another contradictory fact, which has emerged in the statements of PW 1 and PW 2, is regarding irrigation of land and altercation, which is alleged to have taken place between the accused persons and PW 2. Though PW 2, in his examination, has stated that there was dispute between them regarding irrigation of land, PW 1 (Soni Devi), in paragraph 14 of the cross-examination, admitted that there was no dispute between her husband (PW 2) and the accused persons on the point of irrigation of field.



12. A further fact, which has emerged, is that PW 1 is also said to have filed a complaint petition, dated 29.07.2010, in the Court of the learned Chief Judicial Magistrate, Patna, in which the statement of Soni Devi, on solemn affirmation, has been recorded by the learned Sub-Divisional Judicial Magistrate, Patna, on 05.08.2010. Though this document has not been exhibited by the defence, the signature of Soni Devi thereon is identical with the signature of Soni Devi on her statement under Section 164 of the Code of Criminal Procedure. The said signatures also tallied with her signature on deposition. Thus, the learned trial Court has observed that the story of Soni Devi that she was kept confined for a month at Delhi seems improbable in view of the fact that she had given a statement at Patna, on 05.08.2010, casting thus, a cloud on the prosecution's version.

13. The learned trial Court having, thus, sifted all the evidence, which emerged from the record, has come to the finding that in the face of such patent inconsistencies and contradictions in the prosecution's case and the evidence, which have emerged, the prosecution has failed to bring home the charges framed against the accused person beyond all reasonable doubt and, therefore, entitled the accused-appellant to acquittal.

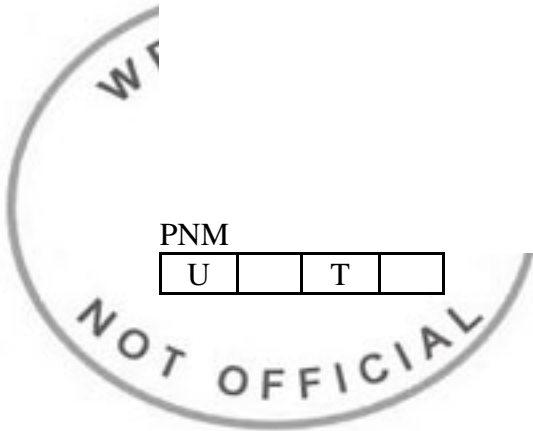
14. In view of the above discussions and findings, we find no infirmity in the impugned judgment and order of

acquittal. The appeal, thus, fails and is accordingly dismissed.

15. However, there shall be no order as to costs.

(I. A. Ansari, ACJ.)

(Anjana Mishra, J.)



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