

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.4 of 2016

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHEPURA

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Anjani Devi W/o Umesh Sah resident of Mohalla- Alam Nagar, Dakshin Tola, P.S.-
Alam Nagar, District- Madhepura

.... Appellant

Versus

1. The State of Bihar
2. Fulo Yadav S/o Late Brahmdeo Yadav resident of Mohalla- Alam Nagar,
Dakshin Tola, P.S.- Alam Nagar, District- Madhepura

.... Respondents

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Appearance:

For the Appellant/s : Mr. Krishna Prasad Singh, Senior Advocate

For the Respondent/s: Mr. Bipin Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 09-03-2016

I. A. No. 194 of 2016 in S.L.A. No. 4 of 2016.

By way of the present application preferred under Section 5 of the Limitation Act, the petitioner seeks condonation of 45 days delay caused in filing the application under Section 378 (4) of the Code of Criminal Procedure.

It has been contended by the learned counsel for the petitioner that the impugned judgment passed by the learned Magistrate was pronounced on 19th August 2015 and the appellant received certified copy of the judgment on 31st August 2015, but immediately after receiving the copy of the judgment, he fell ill and was advised complete bed rest by the doctor and, therefore, he could not file the application seeking leave to appeal within the period prescribed

under law.

Regard being had to the pleadings made and the argument advanced at the Bar, the delay caused in filing the application is hereby condoned.

Interlocutory Application stands disposed of.

S.L.A. No. 4 of 2016

Heard Mr. Krishna Prasad Singh, learned senior counsel for the petitioner.

By way of the present application preferred under sub-section (4) of Section 378 of the Code of Criminal Procedure, the petitioner seeks leave to appeal against the judgment order dated 19.08.2015 passed by the learned Sub-Divisional Judicial Magistrate, Udakishunganj in Complaint Case No. 1122/2007 whereby and whereunder the Opposite Party No. 2 Fulo Yadav has been acquitted of the charge under Section 354 of the Indian Penal Code.

The prosecution story, in brief, is that on 28.11.2007, the petitioner lodged a complaint in the court of Chief Judicial Magistrate, Madhepura alleging therein that on 26.11.2007, when she had gone to attend the call of nature behind her house, the opposite party no. 2 Fulo Yadav knocked her down and after removing clothes, tried to rape her, but on alarm having been raised, her husband Umesh Sah, son Niranjan Kumar and one Janak Paswan and the residents of the locality came there, whereafter the accused Fulo Yadav fled away. It is further alleged that the complainant with her husband went to the police station to institute an F.I.R but the police failed to register F.I.R. Hence, the complaint case was filed.

After examining the complainant on solemn affirmation under section 200 of Code of Criminal Procedure and recording statements of some other witnesses under Section 202 of the Code of Criminal Procedure, the

opposite party no. 2 was summoned under section 204 of CrPC to face trial for the offence punishable under section 354 of the Indian Penal Code. The accused Fulo Yadav denied the charge. Hence, after framing of charge under section 304 of the Indian Penal Code against the accused, the trial commenced.

It would be evident from the impugned judgment that only the complainant, her husband Umesh Sah and her son Neeranjana Kumar were examined in support of the prosecution during trial.

It has been contended by the learned counsel for the appellant that though the witnesses examined during trial fully corroborated the prosecution case during trial, the learned Magistrate erroneously acquitted the accused Fulo Yadav.

I have heard learned senior counsel appearing for the petitioner and perused the materials available on record.

It would be evident from the impugned judgment that the trial court gave the accused benefit of doubt due to the fact that there was admitted land dispute between the parties and several cases were pending in different courts between them. The trial court on appreciation of evidence has come to a finding that the complainant had tried to mislead the court about pendency of the litigation between the parties. It has also given a finding on appreciation of evidence that it cannot be denied that in order to put pressure upon the accused due to ongoing land dispute between the parties, a false case could have been instituted. It has further held that apart from the husband and the son of the complainant, no independent witness was examined during trial. It has held that there is material contradiction in the evidence adduced by the complainant and the two witnesses examined on her behalf. It has also held that though the complainant has stated in her evidence that when the accused had attempted to

commit rape upon her, she has sustained injury on her body for which she was examined by Dr. Shivnandan Thakur, but neither the doctor was examined during trial nor any document in support of the injuries were produced during trial.

In my considered opinion, the findings given by the trial court is plausible one. They are neither unreasonable nor perverse. The learned Magistrate has given clear cogent and convincing reasons for acquitting the accused.

In that view of the matter, I do not find it a fit case for grant of leave to appeal. Accordingly, the Application is, hereby, dismissed.

(Ashwani Kumar Singh, J.)

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