

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No 470 of 2016

Arising Out of PS.Case No. -369 Year- 2014 Thana -BARHARIA District- SIWAN

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Jagrani Devi, Wife of Bhim Sah, Resident of Village+P.O.+P.S.-Hasanpura
District-Siwan

.... Appellant/s

Versus

1. The State of Bihar
2. Laddu Sah, Son of Prashuram Sah Resident of Village- Badharia, P.S.- Badharia,
District- Siwan

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Ranjeet Kumar &
Ms Ranjeeta Singh, Advocates

For the State : Mr G P Jaiswal, APP

For Respondent No 2 : M/s Subodh Kr Jha & Sarveshwar Tiwary, Advocates

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE MR JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 08-12-2016

Pursuant to our order dated 29.11.2016, the private respondent, who was the acquitted accused, has appeared before the trial Court and has been released on bail. Pursuant to our aforesaid order, complete lower Court records have been received. We have heard the learned counsel for the appellant who is the informant being the mother of the victim-infant. She is aggrieved by the judgment and order of acquittal passed on 28th of July, 2015 by the Additional Sessions Judge I –cum- Special Judge (Protection of Children from



Sexual Offences Act, 2012) (for brevity, *POCSO Act*), Siwan in trial No 22 of 2015 (*POCSO Act*). The private respondent was the sole accused tried in the said case for an alleged offence under Section 376 of Indian Penal Code, read with Sections 6/8 of *POCSO Act*. It appears that on 26.08.2014, the informant alleged that her four years old daughter (*P for confidentiality and brevity*) and her sons, who were 9 and 6 years of age, were playing when the accused came and picked up the girl and took her to his house on the top floor and raped her. She came weeping and informed this to her mother, the informant, who immediately took her to the Barharia Police Station (for brevity *PS*) and lodged Barharia PS Case No 369 of 2014. The accused was immediately arrested on that very day. It may be noticed that he remained in custody upto the date when judgment of acquittal was recorded by the trial Court. Police, upon investigation, submitted charge sheet. The matter was then taken up by the Special Court and charges, having been framed, the trial started. We have gone through the order sheet of the trial Court and the records of the trial Court.

2 Learned counsel for the appellant submits that the order sheet would show that on 26.03.2015, charges were framed and summons were issued to non-Government witnesses. He points out that it is on 09.07.2015, summons were issued to the Investigating Officer (for brevity, *IO*) and the doctor. On 16.07.2015, the Court



recorded that if the witnesses are not produced, the accused, being in continuous custody, further adjournments would not be granted. On 22.07.2015, the evidence was closed after examining four prosecution witnesses and on 28.07.2015, the judgment and order of acquittal was delivered. There is no quarrel with these facts.

3 Learned counsel for the private respondent, the accused points out that one must not refer to the order sheet alone for the records would show that right from the beginning, the Special Additional Public Prosecutor (for brevity, *Special APP*) had been filing applications undertaking to produce the official witnesses that is the IO and the doctor who allegedly conducted physical examination of the victim infant. He submits that once the Special APP undertook to produce the witness for the prosecution, it is not for the Court to take steps to enforce their attendance. They were official witnesses. He then submits that it is wrong to suggest, as being sought to be done by the appellant, that the appellant and the appellant's husband or, for that matter, the victim were never served with summons or processes for appearing in the Court as witness. The records show otherwise. He further submits that the appellant feigns ignorance to the proceedings but is unable to explain as to how four prosecution witnesses, who are close relatives of the informant and the victim child and who are charge sheet witnesses and they stay in the



immediate neighbourhood of the informant, were able to come and depose yet the appellant did not know. He further, with reference to the order sheet, points out that on each date, Court reminded the prosecution that the accused is in custody and the matter cannot be delayed. Still in spite of summons being served, upon execution being evaded, there was no appearance. He submits that in such a situation to pick faults with the trial Court, is not justified. The prosecution cannot be permitted prolonged litigation at the cost of accused being kept in custody.

4 Having heard both the sides, in presence of the counsel, we have gone through the order sheet and the records of the case. We find that the submissions on behalf of appellant are correct, though not wholly correct inasmuch as though the order sheet does not record service of summons or service of warrants, the records do show that summons were issued, report of service of summons are on record showing that the witnesses refused to accept the summons and left the house. Records further show that warrants were duly served on the witnesses still they did not turn up for deposing in the Court. Thus, the learned counsel for the appellant factually is not correct in submitting that the informant was unaware of the trial and was not noticed that she was required to depose in the Court as eye witness. These statements are falsified on examination of the records. If that



be the situation then can the Court be blamed for acquitting the accused, however, serious the alleged crime may be. We feel that it is not the duty of the Court to ensure that witnesses come and depose. It is the duty of the prosecution to produce the witnesses. The Court can only assist the prosecution if assistance is so desired. The Court did issue summons and warrants. The Special APP undertook to produce the IO and the doctor who were local witnesses. None turned up. The accused was in continuous custody. Was the Court obliged to keep adjourning the matter waiting for the witnesses to turn up? We think not. If it is the duty of the Court to ensure justice is done, it is equally the duty of the prosecution to conduct the prosecution responsibly. It is equally the duty of the witnesses and more so of the informant to ensure participation in the case as witness, for, it is they who seek justice.

5 The plea that the informant was unaware of the Court proceedings stands falsified as noted above from the records but inspite of this, her close relations that is her cousin brother, her nephew, her sister and cousin sister turn up as prosecution witnesses being charge sheet witnesses, she remains uninformed. That is surprising. It is another matter that all four of them have been declared hostile inasmuch as they do not support the prosecution case. The Court has noticed that even though it is alleged that the blood-



stained soiled underwear of the child were seized by the police, the records reveal that no such things were ever sent for forensic examination nor were the same produced by the prosecution.

6 In such a situation, in our considered opinion, if the trial Court acquitted the accused, it cannot be said that it was a miscarriage of justice which requires interference.

7 We, thus, find no merit in this appeal. It is, accordingly, dismissed.

8 The private respondent is discharged from his liability of bail bonds.

9 Let the lower Court records be returned forthwith.

(Navaniti Prasad Singh, J)

M.E.H./-AFR

(Jitendra Mohan Sharma, J)

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