

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.6 of 2016

Arising Out of Complaint Case No. -104 Year- 2004 Thana -null District- GAYA

=====

1. Ashama Khatoon d/o Yunus Khan Resident of Mohalla- Koili Pokhar Civil Line,
P.S.- Rampur, District- Gaya

.... Appellant/s

Versus

1. The State of Bihar
2. Numaan Khan, Constable No. 512 father's name not known
3. Ehraar Khan Constable No. 958 father's name not known
4. Shabra Khatoon Wife's name not known All resident of Koily Pokhar Near
Mosqui, P.S.- Rampur, District- Gaya

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Vinod Kumar, Adv.

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

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-09-2016

By way of the present application preferred under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks leave to appeal against the judgment and order dated 7th August, 2015 passed by the learned Judicial Magistrate 1st Class, Gaya in C.P. Case No. 104 of 2004/ T.R. No. 6041 of 2015, whereby and whereunder opposite parties No.2 to 4 have been acquitted of the charges for the offences punishable under Sections 323, 380 and 384 of the Indian Penal Code.

2. The petitioner-complainant filed a complaint petition



before the learned Chief Judicial Magistrate, Gaya on 31st January, 2004 alleging, inter alia, that the complainant is a widow and on 6th January, 2004 when she was not at her home, all the three accused persons came together and stolen 40 kg iron rods and one hand-pump from her house worth Rs.7,000/-. The matter was reported in the local Police Station but the police did not take any action. It is further stated that again on 25th January, 2004 at about 8.00 a.m. the accused persons entered into the house of the complainant. The accused no.1 Numaan Khan demanded Rs.15,000/- as extortion and accused no.2 Ehraar Khan said that if the said amount is not given to them, they would grab a part of the land. On alarm being raised, the accused persons took out knife and threatened her to kill and pointed the knife at the neck of her brother. They took the signature of the complainant on a blank paper. Accused Shabra Khatoon pulled the hair of the complainant. When the villagers assembled there, the accused persons fled away taking four *kadahi*, two spades and two iron bucket and damaged a wall. When the complainant went to Police Station to lodge FIR, the police refused to lodge the case and hence the present complaint.

3. The complaint case was made over to the court of Judicial Magistrate 1st Class, Gaya for enquiry and disposal.
4. The complainant was examined on solemn affirmation.

The learned Magistrate finding a prima facie case to be made out took cognizance of the offence against the accused persons under Sections 323, 380 and 384 of the IPC and summoned them to face trial.

5. After appearance of the accused persons appeared, evidence was led before charge and charges were framed against them under Sections 323, 380 and 384 of the IPC.

6. The defence denied the whole occurrence and pleaded innocence and claimed to be tried.

7. During trial, the complainant examined two witnesses only. They are C.W.1 Md. Asraf and C.W.2 Ashama Khatoon, the complainant herself. She also produced some documentary evidences. The defence did not produce any oral evidence but has produced documentary evidence.

8. C.W.1 Md. Asraf is the brother of the complainant. He has supported the case of the complainant in his examination-in-chief. In his cross-examination, he has accepted that accused nos.1 and 2 are committee member of the mosque.

9. C.W.2 Ashama Khatoon is the complainant herself. She has stated in her cross-examination that the accused are not interested in the land of the complainant but they are only interested in extorting money from her.

10. After appreciating the evidence adduced on behalf of the



complainant, the trial Magistrate has acquitted the accused on the ground that the complainant has failed to prove her case beyond shadow of reasonable doubt. For arriving at the above conclusion, the learned Magistrate has recorded in the judgment that there is admitted land dispute between the parties and evidence is to the effect that the civil suit is going on between them. The complainant has examined only one witness in support of her case, who is her brother, and no independent witness has come forward to support the complainant's case. The learned Magistrate has further held that though the informant has admitted that two of the main accused were constables and were living in Police Line and a complaint against them was made by her but no document in support of the above contention was filed during trial. The trial Magistrate has further held that the complainant and her brother are not consistent in their deposition on material point.

11. Having heard learned counsel for the petitioner and perused the record, this Court is of the opinion that the judgment of the trial Magistrate is neither erroneous nor perverse. The learned Magistrate has given clear, cogent and convincing reasons for arriving at the conclusion that the complainant has failed to prove her case.

12. In that view of the matter, I see no merit in this

application. Accordingly, the application preferred under Section 378(4) of the Code of Criminal Procedure seeking leave to appeal against the impugned judgment of acquittal is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	----
Uploading Date	29-09-2016
Transmission Date	29-09-2016