

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.15 of 2016

Arising Out of PS.Case No. -64 Year- 2014 Thana – SC/ST Sadar District- BEGUSARAI

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The State of Bihar.

.... Appellant

Versus

Ranjeet Jha, Son of Babu Saheb Jha, resident of Mohalla - Chandni Chowk,
Bishnupur, District - Begusarai.

.... Respondent

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Appearance :

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

For the Respondent/s : Mr.

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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)**

Date: 24-06-2016

This appeal under Section 378 (1) read with Section 378 (3) of the Code of Criminal Procedure, 1973 has been filed on behalf of the State of Bihar assailing the judgment and order dated 22.12.2015 passed by learned Additional Sessions Judge 1st-cum-Special Judge, Begusarai in POSCO Case No. 01 of 2015, arising out of SC/ST Sadar, Begusarai P.S. Case No. 64 of 2014, whereby learned trial Court has recorded acquittal of the sole respondent, who stood charged for the offences under Section 376 of the Indian Penal Code and Sections 4 and 8 of Protection of Children From Sexual Offences Act, 2012 and Section 3 (1)(v) of the Scheduled Castes and

Scheduled Tribes (Prevention of Atrocities), Act, 1989.

2. The case of the prosecution is based on *fardbeyan* of the alleged victim, who claimed to be 09 years of age and student of Class-I. Her mother worked as a maid whereas her father was engaged in the business of toddy. The family belongs to a Scheduled Caste. According to her *fardbeyan*, at about 09 A.M. in the morning of 28.12.2014, she had gone out of her house to answer call of the nature when the atmosphere was covered with fog. While returning back, when she reached near the cattle-shed (Bathan) of the respondent, he forcibly took her to the room of the said pasturage, undressed her jeans pant and inserted his finger in her private part. She also alleged that the sole respondent attempted to commit rape on her after undressing himself whereupon she raised alarm. The respondent, thereafter, started fleeing away and at the same time, asked her not to tell any one about the incident. She further alleged that when she felt pain in the night, she started weeping and disclosed the occurrence to her mother. She also said that on 27.12.2014 also, the respondent had raped her by inserting finger in her private part. Based on the said *fardbeyan*, the First Information Report of SC/ST Sadar, Begusarai P.S. Case No. 64 of 2014 was registered for the offences under Section 376 of the Indian Penal Code and Sections 4 and 8 of

Protection of Children From Sexual Offences Act, 2015 and Section 3(2)(v) of and Section 3 (1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989

3. The Police submitted chargesheet under the aforesaid Sections of the Indian Penal Code, whereupon cognizance was taken and charge was framed. Since the respondent pleaded innocence, trial against him commenced.

4. At the trial, altogether 07 witnesses including the informant (P.W.2) were examined. Mother of the informant, Sunila Devi was examined as P.W.1. The Doctors of the Medical Board constituted to examine the victim, deposed at the trial as P.W.3 (Dr. Ram Pravesh Prasad), P.W.4 (Dr. Gopal Mishra) and P.W.6 (Dr. Shashi Prabha). The step-father of the victim was examined as P.W.5. The Investigating Officer was examined as P.W.7 and the Judicial Magistrate, who had recorded the statement of victim under Section 164 of the Code of Criminal Procedure was examined as P.W.8.

5. We have noticed from the impugned judgment and order under appeal, passed by learned trial Court that P.W.6 was a member of the Medical Board who had examined the victim, deposed in her examination-in-chief that she did not find any injury on the front or back of the body nor any injury on the private parts. The said

witness, *inter alia*, deposed that according to her report, there was no evidence of any sexual assault.

6. Mother of the victim who was examined as P.W.1 deposed that when the respondent was about to commit rape, the victim raised alarm, came back to the house and narrated the entire occurrence to her. This deposition is apparently contrary to the statement of the informant in the *fardbeyan*, where she (the informant) had said that in the night when she was weeping, her mother P.W.1, enquired about as to why was she weeping whereafter she had narrated the entire story. P.W.1 in her statement, in paragraph 2, said that the *fardbeyan* was recorded, relying on the version of one Suresh Choudhary, who was also running a toddy shop. She also deposed that said Suresh was not examined by the Police nor as a prosecution witness at the trial. It also transpires that P.W.1, in paragraph 3 of her deposition narrated altogether a different story, according to which, she had gone for work at 06.00 A.M. in the morning and returned at 09.00 A.M. She and her daughter (victim) had taken breakfast separately. Thereafter, she had slept and when she woke up at 04.00 P.M., she found her daughter (victim) to be still sleeping. The victim after having got up at 05.00 P.M. engaged herself in playing at the verandah of the house and she did not talk to her. There is nothing in



her deposition that the victim was sleeping with her and had narrated the story of rape, as alleged in the First Information Report. On the contrary, she said in her evidence that she and the victim had slept in separate rooms, in the night. P.W.5, the step-father of the victim said that the house of the mother of the victim had asbestos roof and is fitted with electricity. According to him, there is lavatory, bathroom and hand-pump in the house. He appears to have deposed that victim did not have any occasion to go to the cattle-shed of the respondent, at any point of time.

7. In cross-examination, it appears that the victim deposed that neither she nor her mother used to go to the house of the respondent.

8. Learned trial Court considering the entire evidence adduced at the trial concluded that there were so many pitfalls in the case of the prosecution and held that the charge against the respondent could not be said to have been proved beyond all reasonable doubts and acquitted him accordingly.

9. Aggrieved by the said judgment of acquittal, the present appeal has been preferred by the State of Bihar. We have heard Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State of Bihar in support of the appeal and we have perused the

material on record. It is not the case of the State of Bihar that the depositions of witnesses have been wrongly described in the judgment under appeal.

10. It has been submitted on behalf of the State of Bihar that the trial Court wrongly recorded acquittal on the basis of insignificant contradictions in the statement of the victim recorded under Section 164 of the Code of Criminal Procedure. He has submitted that the sole evidence of the victim at the trial was adequate for holding the respondent guilty of the offence and that her deposition has been corroborated by the other materials/evidence on record. It transpires from the records that the informant alleged in the *fardbeyan* that occurrence had taken place in the cattle-shed, whereas in her statement under Section 164 of the Code of Criminal Procedure, she alleged that the occurrence had taken place in the agricultural land. We have noticed that this contradiction cannot be said to be immaterial rather material, with respect to the place of occurrence. Similar is the situation with regard to alleged narration of the occurrence to her mother, by the victim. According to the First Information Report, the victim had narrated the story to her mother whereas, according to her statement under Section 164 of the Code of Criminal Procedure, her mother was somewhere near the place of



occurrence, who had taken the victim from the place of occurrence to her home. We have further noticed that the victim in her deposition said that a Police Officer had taken thumb impression on two papers and thereafter, he had told the victim to go back home and that he would be preparing the case. She also deposed that she did not know about anything written on those papers. In such circumstance, if the trial Court has doubted the correctness of the *fardbeyan* itself, the same cannot be said to be unjustified.

11. Considering entire materials on record in its entirety including the fact that neither the medical report supports the prosecution version nor the deposition of mother of the victim corroborates case of the prosecution, as narrated in the First Information Report, acquittal of the respondent cannot be said to be wholly unjustified. Even the victim has not been consistent in her statement, in the *fardbeyan*, statement under Section 164 of the Code of Criminal Procedure and her deposition at the trial.

12. It is settled principle that judgment of acquittal in favour of an accused reinforces the legal presumption of his innocence under criminal law. Unless it is shown that the view taken by the trial Court, while recording acquittal of an accused could not have been a reasonably possible view on the basis of evidence and other material

on record, this Court in appellate jurisdiction would refrain from interfering with such judgment/order of acquittal. We do not find it to be a fit case requiring our interference in exercise of appellate jurisdiction under Section 378 (1) read with Section 378(3) of the Code of Criminal Procedure, 1973. The view taken by learned trial Court cannot be said to be not a reasonably possible view.

13. Considering the above view, the appeal does not merit admission and is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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