

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.711 of 2015

Arising Out of PS.Case No. -81 Year- 2008 Thana -AWADPUR District- KATIHAR

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1. Meena Praveen Daughter of Md. Hakimuddin resident of village
- Bariaul, Police Station - Abadpur, District - Katihar

.... Appellant

Versus

1. The State of Bihar
2. Asgar Ali Son of Salimuddin resident of village - Bariaul, Police
Station - Abadpur, District - Katihar

.... Respondents

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Appearance :

For the Appellant : Mr. Bimal Kumar, Advocate

For respondent No. 2 : Mr. Ajit Singh, Advocate

For the State : Mr. A. Sharma, A.P.P.

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

AND

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN

SINGH

JUDGMENT AND ORDER

ORAL

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 27-01-2016

The appellant herein has filed this application, under
Section 372 of the Code of Criminal Procedure, against the
acquittal of respondent No. 2 herein by judgment and order,
dated 30.05.2015, passed, in Sessions Trial No. 252 of 2012,
by learned Additional Sessions Judge IV, Katihar.

2. The case of the prosecution is, in brief, as
follows:

(i) On 07.07.2008, at about 10:00 AM, when the
informant (hereinafter referred to as **M.P.**) was alone in her
house, accused Asgar Ali came there and asked the informant



to have sex with him and when the informant resisted, then, the accused, threatened to kill her on the point of knife, and compelled her to remain silent and committed rape on her causing bleeding injury on the informant's private parts, which stained her undergarments. When the informant's mother came home, the informant narrated to **her** the entire occurrence. The informant's mother, in turn, reported the occurrence to the informant's father. Thereafter, the informant's parents informed accused Salimuddin, father of accused Asgar Ali, about the occurrence. Accused Salimuddin, assured to get his son, accused Asgar Ali, married with the informant; but, later on, the parents of accused Asgar Ali started demanding a dowry of Rs. 70,000/- and when this demand could not be satisfied, the accused refused to marry the informant.

(ii) With the above allegations, the informant filed a complaint, on 15.07.2008, in the Court of the learned Chief Judicial Magistrate, Katihar, which became the basis for registration of Abadpur Police Station Case No. 81 of 2008 under Sections 452/341/ 323/504/376/34 of the Indian Penal Code against accused Asgar Ali, Anwarul, Salimuddin and Unno Khatoon.

(iii) On completion of investigation, a *charge sheet* was laid, under Section 376 of the Indian Penal Code, against

the accused Asgar Ali alone.

3. At the trial, when a charge, under Section 376 of the Indian Penal Code, was framed against the accused, he pleaded not guilty thereto.

4. In support of their case, prosecution examined as many as 7 witnesses. Accused was, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in his examination aforementioned, the accused denied that he had committed the offence, which was alleged to have been committed by him, the case of the defence being that of denial.

5. The learned trial Court, having reached the conclusion that the case, as against the accused, had not been proved beyond reasonable doubt, acquitted him under benefit of doubt.

6. Being aggrieved by the judgment and order, dated 30.05.2015, acquitting thereunder respondent No. 2 herein (i.e., the accused), the informant, as appellant, has, as indicated above, preferred this appeal.

7. We have heard Mr. Bimal Kumar, learned Counsel for the appellant, and Mr. Ajit Singh, learned Counsel appearing on behalf of respondent No. 2. We have also heard Mr. A. Sharma, learned Additional Public Prosecution, for the State.



8. It has been submitted by Mr. Bimal Kumar, learned Counsel, for the appellant, that the finding, reached by the learned trial Court, leading to the acquittal of the accused-respondent No. 2, is perverse inasmuch as the learned trial Court has not, according to Mr. Kumar, correctly appreciated the evidence available on record. On the other hand, it is the submission of Mr. Ajit Singh, learned Counsel, appearing on behalf of the accused-respondent No. 2, and Mr. A. Sharma, learned Additional Public Prosecutor, appearing for the State, that the learned trial Court has assigned good and sufficient reasons for coming to the conclusion that the charge against the accused-respondent No. 2 could not be proved and, therefore, warranted acquittal of respondent No. 2.

9. In her evidence, the informant (PW 7) has deposed that on 07.07.2008, at about 8:00 AM, when she was alone at her house, accused Asgar Ali came to her house and, by threatening her, on the point of knife, subjected her to rape and, at the instance of her parents, when a *panchayat* (i.e., sitting of elders for settlement of dispute) was held, the parents of the accused refused to get their son, accused Asgar Ali, married with the informant. This apart, all the accused, according to the evidence of the informant, came to the house of the informant and assaulted her parents.

10. However, in her own evidence, the informant, at



another place, has deposed that it was accused Asgar Ali, who had called the *panchayat*, and, then, solemnized his marriage with her at the instance of Dukha Maulvi and, in this regard, *Kajinama* (i.e., deed of marriage) was executed. This deed of marriage has been proved as Exhibit-6. Similarly, at one place, the informant has deposed that she had given her statement to the police; but at another place, she has deposed that she had not gone to the Police Station, which is 7-8 kms. away from her home.

11. PW 4, mother of the informant, has deposed that four-and-half years ago, accused had, at about 10:00 AM, committed rape on her daughter (i.e., the informant) at her house and when her daughter (PW 7) disclosed the occurrence to her (PW 4), she, in turn, informed her husband and, then, she (PW 4) along with her husband, went to the house of the accused, but the parents of the accused refused to let their son, Asgar Ali, marry the informant (PW 7). In her cross-examination, she has deposed that after 6-7 days of the occurrence, the case was lodged.

12. As far as PW 5's evidence that the accused had committed rape on the prosecutrix is nothing, but hearsay. It is further in the evidence of PW 5 that though a *panchayat* was held, wherein the father of the accused agreed to marry his son, Asgar Ali, with the prosecutrix, but accused Asgar Ali



had not married and still living with his parents; whereas the evidence of prosecutrix, as indicated above, is, at one place, that her marriage was solemnized with accused Asgar Ali. As the materials on record surface, it is evident that the evidence given by the prosecutrix is not only inconsistent, but contrary to her own evidence and, therefore, cannot be regarded to inspire confidence.

13. Coming to the evidence of the doctor (PW 1), we notice that according to her, she did not find any injury on the private parts of the prosecutrix. The injury report shows that the hymen had an old torn and there was no spermatozoa present in her private parts. This apart, it is her evidence that prosecutrix had been used to sexual intercourse for a long time. The evidence, so given, shakes the evidence of the prosecutrix that she was subjected to rape. In this regard, it is necessary to note that the blood stained undergarments were not produced before the police and were, therefore, not seized. There is also nothing in the evidence on record as to why there was delay in lodging of the complaint, which led to the registration of the *First Information Report*.

14. A combined reading of the prosecutrix (PW 7) and her mother (PW 4) shows that while, according to the prosecutrix, the occurrence took place at about 08:00 AM, her mother's evidence showed that the occurrence took place at

10:00 AM. This apart, the mother of the prosecutrix has, nowhere, deposed that her daughter was subjected to rape and there were blood stains in her daughter's undergarments or wearing apparels.

15. While it is the case of the prosecution that the accused never married the prosecutrix, Exhibit-7 is an affidavit, which shows that the accused, Asgar Ali, had married the prosecutrix on a *meher* of Rs. 97,000/- and assured to maintain his wife (i.e., prosecutrix).

16. The evidence, so adduced, demolishes the prosecutrix's case that she was subjected to rape by the accused and that a *panchayat* was held, but the accused refused to marry with her inasmuch as Exhibit-7 shows that she was married to the accused and the accused gave an undertaking that he would maintain her.

17. Coupled with the above, it is not the prosecutrix's evidence that on being threatened on the point of knife, she meekly succumbed to the ill deeds of the accused; rather, her evidence is that she did shout for help; but, admittedly, no one came and there is no evidence given by the prosecutrix to show that any of the neighbours of the prosecutrix had heard her cry for help. If the *panchayat* was called, there ought to be witnesses, who could have deposed as to whether the accused, Asgar Ali, had agreed to marry the

prosecutrix or not.

18. The mother of the prosecutrix, at one place, has deposed that her husband came to the house on the day her daughter was subjected to rape, but, at another place, this witness has deposed that her husband lived separately.

19. In such circumstances, as indicated above, the view, taken by the learned trial Court recording acquittal of the respondent No. 2, cannot be said to be not a reasonably possible view requiring interference by this Court in exercise of its appellate jurisdiction under the proviso to Section 372 of the Code.

20. It is well settled that acquittal by trial Court strengthens the presumption of innocence of an accused. The appellate court in an appeal against acquittal is required to interfere only if the evidence adduced at the trial conclusively prove and definitely indicate commission of offence by the accused persons. We have not been shown any evidence on record by learned counsel appearing on behalf of the appellant so clinching on the basis of which it can be said that conviction of respondent No. 2 could be the only possible conclusion and no other view was possible. It is well established that no interference is required by the appellate court in an appeal against acquittal on the ground that a view other than the view taken by the trial court may also be a reasonably

possible view.

21. This appeal does not merit admission and is accordingly dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

Prabhakar
Anand/-

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