

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.735 of 2015

Arising Out of PS.Case No. -253 Year- 2012 Thana -AJAMNAGAR District- KATIHAR

1. Champa Kumari wife of Pappu Sharma, D/o Late Suresh Sharma, resident of village- Manjaria, P.S.- Ajam Nagar, District- Katihar

.... Appellant/s

Versus

1. The State of Bihar
2. Anit Sharma son of Santo Sharma
3. Santu Sharma
4. Mantu Sharma
5. Shri Sharma All sons of Chulhai Sharma
6. Tepa Sharma son of Mantu Sharma

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Subodh Kumar Jha, Advocate

For the Respondent/s : Mr. S. A. Ahmad, APP

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 21-01-2016

The Informant of Azam Nagar P.S. Case No. 253 of 2012 is the appellant in the present appeal under the proviso to Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code) and is aggrieved by the judgment and order, dated 06.06.2015, passed in Sessions Trial No. 172 of 2013, by learned Second Additional District and Sessions Judge, Katihar, whereby he has recorded acquittal of respondent No.2 of the offence punishable under Sections

376,323 and 506 of the Indian Penal Code.

2. For the occurrence said to have taken place on 23.09.2012, the appellant had filed a complaint case on 26.09.2012, which had given rise to CA No. 2773 of 2012 in the Court of learned Chief Judicial Magistrate, Katihar. The said complaint case was sent to Azamnagar Police Station under Section 156(3) of the Code for institution of the First Information Report and in pursuance thereto the said Azamnagar P.S. Case No. 253 of 2012, dated 10.12.2012, came to be registered. After completion of investigation, the police submitted *charge-sheet* against the respondent for commission of offence under Section 376 of the Indian Penal Code. Cognizance was taken of the offence by learned Chief Judicial Magistrate on 02.03.2013, whereafter the case was committed to the Court of Sessions for trial.

3. Charge was, thereafter, framed against respondent No.2 for the offence punishable under Section 376 of the Indian Penal Code and since he denied the charge, the trial against him commenced. Upon closing of the evidences of the prosecution, the statement of the respondent was recorded under Section 313 of the Code of Criminal Procedure, wherein he pleaded innocence.

4. At the trial, the prosecution examined altogether 11 witnesses including the appellant/informant, Champa Kumari (P.W.6).

5. Learned trial Court, upon scrutinizing and evaluating the evidence adduced at the trial, came to the conclusion that the prosecution could not establish the charge beyond all reasonable doubt and held, inter alia, that the evidence of the prosecutrix/appellant was not credible and it did not inspire confidence and, thus, by the judgment and order, under appeal, recorded acquittal of the respondent No.2. This is how the present appeal has been preferred by the informant/prosecutrix under the proviso to Section 372 of the Code of Criminal Procedure.

6. The case of the prosecution, as narrated by the prosecutrix in her complaint petition lodged on 26.09.2012, was that she was married nearly three years ago and she had been living at her parental house for the last two years. On the alleged date of occurrence, at about 8 P.M., she had gone with her neighbourers, namely, Chunchun Kumar and Tori Kumari, to answer the call of nature, nearly 300 yards away from her house. Allegedly, on the point of dagger and putting her under the fear of death, respondent No.2 took her to a lonely place



and raped her. The girls, who had accompanied the appellant, are said to have informed the family members of the appellant about the occurrence, who raised alarm and rushed towards the place of occurrence. It was alleged that the family members of the appellant saw the complainant weeping at the place of occurrence and all the family members of the complainant chased the respondent no.2, but he succeeded in fleeing away. It was alleged that the family members of the appellant discussed the occurrence with their co-villagers and, on their suggestions, though a *Panchyati* was convened, it did not serve any purpose. With these allegations, the complaint case was filed on 26.9.2012, which was made over to the Police under Section 156(3) of the Code of Criminal Procedure and, accordingly, the First Information Report was registered, on 10.12.2012, as has been noticed above.

7. We find from the record that the appellant was examined as P.W.6. Altogether 11 witnesses were examined in support of the charge against respondent No.2. The doctor was examined as P. W.4, who had examined the appellant on 27.12.2012. She found no injury on any part of body of appellant including private parts. She has deposed that she did not find any sign of physical violence on the body of the

appellant. In her cross-examination, she further deposed that the appellant was used to sexual intercourse.

8. We further find that the said Chunchun Kumari and Tori Kumari, who are said to have accompanied the appellant when she had gone to answer the call of nature and in whose presence respondent No.2 had taken the appellant away at the point of dagger, were not examined by the prosecution. P.W.7 did not support the case of the prosecution and he was, therefore, declared hostile at the instance of the prosecution. We further find that the Investigating Officer was examined as P. W.10. The learned trial Court found that the description of the place of occurrence given by the appellant and one given by the Investigating Officer did not tally and the prosecution, therefore, failed to establish the place of occurrence.

9. P.Ws. 1, 2, 9 and 11 are closely related to the appellant. P.W. 1 is the brother of the appellant, whereas P.W.2 is her mother. From the evidence of P.W.1, we find that he did not depose that he was told by the appellant that respondent No.2 had committed rape on the point of dagger. We find that the witnesses have said that they learnt about the occurrence from said Chunchun Kumari and Tori Kumari, who

had accompanied the appellant. The said Chunchun Kumari and Tori Kumari have not been examined.

10. Mr. Subodh Kumar Jha, learned Counsel appearing on behalf of the appellant, has argued that statement of the prosecutrix, i.e., appellant herein, was sufficient to establish the charge of rape against respondent No.2. He has further submitted that several witnesses, in their depositions, supported the case of the prosecution. According to him, learned trial Court has committed grave error in recording acquittal of respondent No.2 in the facts and circumstances of the case.

11. Before we proceed to consider the submissions advanced on behalf of the appellant in the present appeal against acquittal, it has to be kept in mind that there is legal presumption of innocence in favour of an accused unless it is proved beyond all reasonable doubt that it is he, who has committed the offence. The learned trial Court, conducting trial of an offence, has the advantage of seeing the witnesses, watching their demeanor and appreciating and scrutinizing truthfulness/reliability of evidence of the witnesses. Recording acquittal by learned trial Court further strengthens the said legal presumption of innocence in favour of an accused. It is,



therefore, advised that in an appeal against acquittal, the appellate Court should interfere with judgment and order under appeal only when the said judgment and order of acquittal suffer from perversity or if it is found that the view, taken by the trial Court, acquitting an accused, in the background of evidence available on record, cannot be said to be a reasonably possible view.

12. From the impugned judgment and order, we find that weaknesses of the evidence of prosecution are much more eloquent than their reliability. We do not find any explanation as to why Chunchun Kumari and Tori Kumari, who are said to be crucial witnesses and eye-witness of the occurrence, have not been examined by the prosecution. Non-examination of these witnesses raises reasonable suspicion over the veracity of the case of the prosecution. We further notice that the prosecution failed to establish the place of occurrence inasmuch as the description, as given by the Investigating Officer, has been found to be substantially and materially different from one given by the appellant.

13. Learned trial Court has rightly concluded that evidence of P.W.8 was not reliable, who deposed that Chunchun Kumari and Tori Kumari had told him about

commission of rape by respondent No.2, whereafter he had gone to the place of occurrence, in view of the fact that the appellant (P.W.6) did not depose that P.W.8 had turned up at the place of occurrence after commission of the offence.

14. Having discussed thus, we do not find any reason to take a different view than what has been taken by the learned trial Court, which, in our opinion, is a reasonably possible view and does not, therefore, warrant any interference in the present appeal against acquittal.

15. This appeal is, accordingly, dismissed.

(I. A. Ansari, ACJ)

(Chakradhari Sharan Singh, J)

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