

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.37 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- JAMUI

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1. Champa Devi W/o Sri Mohan Das, R/o Village Magahi, P.S.- Laxmipur, Distt.- Jamui

.... Appellant/s

Versus

1. The State of Bihar
2. Choba Das
3. Prayag Das
4. Mukesh Das S/O- Sri Masudan Das
5. Masudan Das S/o Late Tulsi Das
6. Suneeta Devi W/o Choba Das, All R/o Village- Magahi, P.S.- Laxmipur, Distt.- Jamui

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Prakash Mahto, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 28-09-2016

By way of the present application preferred under sub-section (4) of Section 378 of the Code of Criminal Procedure (for short 'Cr.P.C.'), the petitioner seeks leave to appeal against the judgment and order dated 27th March, 2015 passed by the learned 4th Additional Sessions Judge, Jamui in Sessions Trial No. 311 of 2011/ Trial No. 378 of 2014 arising out of Complaint Case No. 520C of 2009, whereby and whereunder the opposite parties no.4, 5 and 6 have been acquitted of the charges under Sections 341, 323, 457, 380 and 376/511 of the Indian Penal Code (for short 'IPC') and the opposite parties no.2 and 3 have been acquitted of the charges under

Section 376/511 of the IPC.

2. The petitioner-complainant filed a complaint petition dated 19th May, 2009 in the court of Chief Judicial Magistrate, Jamui against the opposite parties no. 2 to 6 bearing Complaint Case No. 520C of 2009 alleging, inter alia, that on 13th May, 2009 at about 7.00 p.m. she was sitting inside her house and her daughter, son and sister-in-law (*Nanad*) were sitting outside the house of verandah. In the meantime, accused Choba Das and Prayag Das entered into her house with pistol and knife respectively in their hands. Accused Masoodan Das was standing outside the house in the lane (*Gali*). Accused Choba Das and Prayag Das threw the complainant on the ground and ravished her one by one on the point of pistol and threatened her not to file a case against them otherwise her husband and son would be killed. After they left the room, the complainant raised alarm on which her son, daughter and other witnesses came inside the room and saw the complainant in a naked position and she told them about commission of rape and threatening given by the accused persons. The witnesses went to the house of the accused persons to make complain. However, the accused persons chased them and entered into the house of the complainant, looted articles and damaged the properties. Accused Choba Das took away new Hercules bicycle worth Rs.3000/- and damaged roof of the house covered with



khapada. The complainant informed her husband, who lived in Kolkata, who advised her to approach the Mukhiya. She went to the Mukhiya and Up-Mukhiya and complained about the incident. They advised her either to go to the Police Station or the court. When the complainant proceeded to go to the Police Station, the accused persons surrounded the house of the complainant and continued watching for 4-5 days. When the husband of the complainant came, he was also chased by the accused persons and took shelter in another village. Lastly on 19th May, 2009 the complainant filed the complaint case.

3. After filing of the complaint case, the learned Chief Judicial Magistrate transferred the case to the court of Sub Divisional Judicial Magistrate, Jamui in exercise of power conferred under Section 192(1) of the CrPC for inquiry and disposal.

4. During inquiry, the complainant was examined on solemn affirmation. She has fully supported the case. Her statement was corroborated by three witnesses examined on her behalf. The learned Sub Divisional Judicial Magistrate, Jamui, finding prima facie case against the accused persons, took cognizance against accused Choba Das and Prayag Das for the offence under Section 376/511 of the IPC and against other accused persons, namely, Mukesh Das, Masudan Das, Sunita Devi and Funki Devi under

Sections 323, 341, 457 and 380 of the IPC and summoned them to face trial. The case was committed to the court of Sessions. On 24th November, 2014 a petition was filed on behalf of accused Kunti Devi @ Funki Devi that she died on 12th October, 2014 and in support of the same death certificate was also filed. After hearing the parties, the case against the said accused Kunti Devi @ Funki Devi was dropped.

5. The statements of the accused persons were recorded under Section 313 of the Cr.P.C. They denied the allegations and pleaded false implication.

6. In course of trial, altogether five witnesses were examined on behalf of the prosecution. They are P.W.1 Bijoy Das, P.W.2 Gunja Devi, P.W.3 Urmila Devi, P.W.4 Suresh Yadav and P.W.5 Champa Devi, the complainant herself.

7. P.W.1 Bijoy Das is the son of the complainant. He has stated that all the accused persons had entered into his house. Accused Mukesh Das took away one bicycle of green colour, which was purchased by his father. Accused Choba Das took away Payal, Bala and Sikari made of silver, which were kept in the house. This witness has stated in his cross-examination that there are long standing litigations between the parties. Both sides filed cases against one another. This witness has also accepted that he along with his father had also gone to jail in the case filed by the accused persons.

He has further stated in his cross-examination that he had not seen the incident of rape committed upon his mother by the accused persons. His mother was not unconscious and he had talked with her for ten minutes after the occurrence.

8. P.W.2 Gunja Devi is the daughter of the complainant. She has stated in his evidence that accused Choba Das took away a black colour bicycle from her house. Accused Mukesh Das took away silver ornaments viz. locket, Bala, Jilebiya and Payal from her and no injury was caused to her. This witness has stated in her cross-examination that there was no enmity with the accused persons. She has stated that on alarm being raised, not a single villager had come at the place of occurrence. Her mother was senseless for about ten minutes. She has stated that she and her brother were taken to hospital for treatment but her mother was not taken to any hospital for treatment.

9. P.W.3 Urmila Devi has stated in her cross-examination that the accused persons had taken away one black colour bicycle and silver ornaments. She has further stated that when she along with other members of the family and one Suresh Yadav had gone to the house of the accused persons to make complain, they were beaten and chased by the accused persons. She has stated that after the occurrence of rape, she met with the complainant, who was sitting on

the cot wearing red colour sari. This witness has stated that she had not seen the accused persons holding any pistol or knife.

10. P.W.4 Suresh Yadav is an independent witness. He has not stated about theft in the house of the complainant. This witness has not supported the prosecution case. He has stated that he was sitting in his house and the younger daughter of the complainant had come to his house and said that there is scuffle and Choba Das is beating her mother on which he had gone to her house but he could not find any person in the house and nothing was going on.

11. P.W.5 Champa Devi is the complainant herself. She has stated in her cross-examination that all the accused persons had entered in her house and Choba Das took away the bicycle of her son which he had got in dowry and Mukesh Das took away silver ornaments of her daughter. This witness has stated that accused Choba Das and Prayag Das had committed rape upon her on the point of pistol and on alarm being raised, they fled away. She has stated that till her husband's arrival, she had not informed anyone in the village regarding the occurrence. This witness has also stated that she has five grand sons and three grand daughters. She has stated that she had not seen Masoodan Das outside the room and by relation he is her father-in-law. She has accepted that there was enmity between the parties from before. She has stated that during commission of rape

her clothes were not torn and she had not got any injury on her body. She has further stated in her cross-examination that accused Choba Das and Prayag Das had tried to commit rape upon her.

12. On appreciation of evidence, the trial court found that though all the witnesses were family members but there are material contradictions in their evidence. With regard to allegation of rape, the complainant has stated in her examination-in-chief that accused Choba Das and Prayag Das had committed rape upon her by removing her clothes but in her cross-examination she has stated that the accused persons had tried to commit rape upon her and there was no injury on her body. It further held that one of the independent witnesses examined in the case i.e. P.W.4 Suresh Yadav has not supported the prosecution version. On the point of the allegation regarding taking away of bicycle and silver ornaments, the evidence of the witnesses was found contradictory to each other. Hence, all the accused persons were acquitted of the charges leveled against them.

13. I have heard learned counsel for the petitioner and perused the record.

14. Admittedly, the complaint was filed in the court after six days of the occurrence. The trial court discussed the evidence



adduced by the complainant and other witnesses. On a careful scrutiny of the evidence led before the trial court, it would be evident that the witnesses are not consistent. They have contradicted each other on material points. The victim was never taken to any doctor and her medical examination was also not conducted. The complainant herself has not stood to the test of cross-examination and the allegations made in the complaint have not been fully corroborated by other witnesses examined during trial. The trial court has also noticed that there is admitted enmity between the parties and only interested witnesses have come forward to support the case. However, one of the independent witnesses examined during trial has admitted that when he arrived at the place of occurrence, he did not see any of the accused persons present there. Even the husband of the complainant has also not come to support the prosecution case.

15. Having noticed several inconsistencies in the evidence led before the trial court, if the trial court has acquitted the accused persons, no illegality can be found with the impugned order. I also find that the trial court has given clear, cogent and convincing reasons for recording the judgment of acquittal. The reasonings assigned are neither erroneous nor perverse.

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

application. Accordingly, the application preferred under Section 378(4) of the Cr.P.C. seeking leave to file appeal against the impugned judgment is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	