

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.38 of 2015

Arising Out of Complaint Case No. -756 Year- 2002 Thana -null District- BHAGALPUR

Sabo Devi, wife of Shakhichand Yadav, resident of Shahjangi, Navtoliya, P.S.- Jagdishpur, District- Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar
2. Tetar Yadav, son of Late Pairu Yadav
3. Anant Yadav, son of Metar Yadav
4. Anandi Yadav, son of Tetar Yadav

.... Respondent/s

Appearance :

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

For the Respondent/s : Mr. S.A. mad, Addl.P.P.

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 'CrPC'), the petitioner seeks leave to appeal against the judgment dated 24th September, 2015 passed by the learned 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 939 of 2015 arising out of Complaint Case No. 756 of 2002, whereby and whereunder the opposite party no. 2 Tetar Yadav has been acquitted of the charges under Sections 376, 511, 325 and 457 of the Indian Penal Code (for short 'IPC') and the opposite parties no.3 and 4 have been acquitted of the charges under Sections 380 and 457 of the IPC.

2. The petitioner-complainant filed a complaint petition on



3rd July, 2002 in the court of Chief Judicial Magistrate, Bhagalpur for an occurrence dated 25th June, 2002 against the opposite parties no. 2 to 4 bearing Complaint Case No. 756 of 2002 alleging, inter alia, that while the complainant Smt. Sabo Devi was sleeping on the verandah of her house and her two sons, namely Sarvan Kumar and Tinku Kumar were sleeping at Bathan with Bhukhan Yadav, at about 12 O'clock in the night accused Tetar Yadav entered into her house and tried to commit rape upon her. She awoke and pushed Tetar Yadav with her hands and legs. When she tried to raise alarm, Tetar Yadav assaulted her with rod as a result of which her left hand was injured and her index finger was fractured. On the alarm being raised, her two sons as well as 2-4 villagers reached there. It is further alleged that accused Anant Kumar and Anandi Kumar came there, abused and threatened her. They also scattered the articles of the house and took away two boxes containing clothes and cash, which caused loss of Rs.8000/-. It is further alleged that on the next day the complainant went to the police station along with her husband from where she was sent to hospital by the police officer, where she was medically treated. It is further alleged that the police did not record her statement. It is further alleged that the motive for the occurrence was to dispossess the complainant from the land of her paternal home.

3. After filing of the complaint petition, 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 376, 511, 325 and 457 of the IPC and committed the case to the court of Sessions. After commitment, the case was transferred to the court of 1st Additional Sessions Judge, Bhagalpur for trial and disposal.

4. After appearance, the accused persons denied all the charges leveled against them. They pleaded that there are long standing land dispute between the parties and several criminal case are also pending against them and in order to harass the accused persons, the present complaint case has been filed. The accused persons pleaded not guilty and claimed to be tried. Hence, the trial commenced.

5. In course of trial, altogether six witnesses were examined on behalf of the prosecution. They are P.W.1 Sarban Kumar, P.W.2 Tinku Kumar, P.W.3 Sakhichand Yadav, P.W.4 Bhukhan Yadav, P.W.5 the complainant and P.W.6 Dr. Dilip Kumar Singh, who had medically examined the complainant. Certain documents were also exhibited on behalf of the prosecution.

6. The defence has also examined three witnesses. D.W.1 is Surat Yadav, D.W.2 is Uchit Yadav and D.W.3 is Sunit Yadav. The defence has also exhibited some documents in support of its case.

7. P.W.1 Sarban Kumar is the son of the complainant. He has stated in his cross-examination that his grand father has two daughters, one is the wife of the accused Tetar Yadav and the other is his mother. He has stated that not a single villager had come at the place of occurrence. He has also stated that he or his brother and maternal uncle did not try to catch hold of the accused.

8. P.W.2 Tinku Kumar is the other son of the complainant. He has not stated anything against the other two accused, namely, Annat Yadav and Anandi Yadav. This witness has admitted that the accused Tetar Yadav is his step *mausa*. He has stated that his mother was examined by the doctor on the same day.

9. P.W.3 Sakhichand Yadav is the husband of the complainant. He is not an eye witness to the occurrence. He has stated in his cross-examination that land dispute is going on between the parties and title appeal is pending in the court.

10. P.W.4 Bhukhan Yadav is the brother-in-law of the husband of the complainant. He has stated in his cross-examination that the accused had already fled away before he reached the place of occurrence. He has further stated that the accused Tetar Yadav is aged about 60-70 years.

11. P.W.5 is the complainant Sabo Devi. She has supported her case in her examination-in-chief. In her cross-examination, she

has stated that the wife of the accused Tetar Yadav is her step sister. She has stated that she had not told the doctor of Mayaganj hospital that she had gone to the police station. She has stated that she came to the court on the next day of her medical treatment.

12. P.W.6 Dr. Dilip Kumar Singh had examined the complainant. He has stated that he had examined the complainant on 3rd July, 2002. However, he again stated that he examined the complainant on 29th June, 2002 vide E.O.P.D. 1450 and Police information no.952 dated 29th June, 2002.

13. After considering the evidence adduced on behalf of the parties and after hearing the parties, the trial court came to the conclusion that the prosecution has not been able to prove the charges leveled against the accused persons. The trial court has given its findings in paragraph 17 of the impugned judgment, which reads as under :

“17. The alleged date of occurrence mentioned in the complaint is 25.6.2002. The complaint is filed on 3.7.2002 after six days of the alleged date of occurrence and such long delay has not been explained. There are several litigations among the accused persons and the complainant. The accused Tetar Yadav is own step brother-in-law of the complainant. The doctor has stated that he examined the complainant vide police information no.952 dated 29.6.2002 but the information has not been brought upon the record and that was the first information. So, considering the entire facts and materials available on record and



testimonies of the witnesses and there is long delay in filing the complaint case. There is vital contradictions in the testimonies of the prosecution witnesses. So, I came to the conclusion that the prosecution has not been able to prove its case against the accused persons beyond all reasonable doubts. Hence, all the aforesaid accused persons are acquitted of the charges as leveled against them giving benefit of doubts. They are also discharged from the liabilities of their respective bail bonds.”

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

15. It would be evident from perusal of the record that the complaint was filed after eight days of the alleged occurrence. The doctor examined during trial has also stated in his evidence that he examined the victim after eight days of the occurrence. The other witnesses examined during trial have not supported the case of the complainant in material particular. Their evidence is neither consistent nor reliable. Having appreciated the evidence of the witnesses, the trial court has rightly acquitted the accused, who were admittedly having long standing enmity with the complainant. I find that the trial court has appreciated the evidence led before it correctly both on facts and law. The reasonings assigned by the trial court for recording the judgment of acquittal 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, being devoid of any merit, is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	