

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.907 of 2016**

Arising Out of PS.Case No. -96 Year- 2013 Thana -MAKER District- SARAN

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1. Bindu Devi W/o Om Prakash Singh resident of village - Dadanpur, P.S. Maker, District - Saran at Chapra. .... Appellant

Versus

1. The State of Bihar.  
2. Raj Kishore Singh Son of Late Subedar Singh resident of village - Dadanpur, P.S. Maker, District - Saran at Chapra.

.... Respondents

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**Appearance :**

For the Appellant/s : Mr. Akhileshwar Prasad Singh, Sr. Adv.  
Mr. Ajay Kumar Sharma

For the Respondent/s : Mr. Sri Ajay Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH**

**and**

**HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA**

ORAL ORDER

**(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)**

4      24-11-2016              Heard Sri Akhileshwar Prasad Singh, learned Senior Counsel in support of this appeal which is against that part of the judgment of the trial court dated 12<sup>th</sup> day of July, 2016 passed in POCSO Case No. 74 of 2014 by Ist Additional Sessions Judge, Saran at Chapra in which the accused persons while being convicted under Section 9 (h) (n) of Protection of Children from Sexual Offences Act, 2012 has been acquitted of charge of Section 376 IPC.

We have gone through the evidence of the victim girl, PW 3, wherein she makes no reference to any act that would constitute, even remotely, an offence under Section 376 of the

Indian Penal Code. That being the evidence, the trial court committed no mistake in acquitting a person of charge of Section 376 IPC.

Sri Akhileshwar Prasad Singh submits that medical evidence, in respect of PW 3, shows ruptured hymen, all we can say is the hymen can rupture for many a reason. In absence of allegation by PW 3, in this regard, collateral evidence cannot bring about a conviction. He then, submits that the punishment under Section 9 (h) of Protection of Children from Sexual Offences Act, 2012 is not adequate. All we can say is in terms of Section 372 of Code of Criminal Procedure and proviso thereof or otherwise an appeal would lie upon acquittal or punishment in a lesser offence and not lesser punishment.

We find no merit in this appeal. It is accordingly, dismissed.

**(Navaniti Prasad Singh, J)**

**(Jitendra Mohan Sharma, J)**

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