

IN THE HIGH COURT OF JUDICATURE AT PATNA

SLA No.39 of 2015

Arising Out of Complaint Case No. -1393 Year- 1999 Thana -null District- ARARIA

=====

1. Laxmi Devi W/o Biresh Bahardar R/o Village- Rampur,tola Budheshwar P.S & District Araria.

.... Appellant/s

Versus

1. The State of Bihar
2. Sriprasad Singh s/o Bodhan Singh
3. Buchani Devi W/o Late Laxman Singh Both resident of Village- Rampur Mohanpur,P.S. & District Araria.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Mukesh Kumar Rana, Adv.

For the Respondent/s : Mr. Z. Hoda, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-09-2016

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 10th October, 2015 passed by the learned 1st Additional Sessions Judge, Araria in Criminal Appeal No. 53 of 2007 arising out of Complaint Case No. 1393 of 1999 (Tr. No. 1780 of 2007), whereby and whereunder the opposite parties no. 2 and 3 have been acquitted of the charges under Sections 323, 354 and 379 of the Indian Penal Code (for short 'IPC') reverting the judgment dated 3rd April, 2007 passed by the learned Judicial Magistrate 1st Class, Araria, whereby the learned Magistrate had been pleased to convict the opposite parties under the aforesaid Sections of the IPC.

2. The petitioner-complainant filed a complaint petition



before the learned Chief Judicial Magistrate, Araria alleging, inter alia, that on 3rd September, 1999 at about 8.00 p.m. when she was going to Kirana shop situated near her dwelling house, all the three accused persons assaulted her by means of fist and slaps and disrobed her. Accused Laxman Singh snatched her golden ear ring worth Rs.3000/-. After hearing alarm, her husband came there to save her. The accused persons assaulted him also and accused Sriprasad Singh snatched Rs.700/- from his pocket.

3. The learned Chief Judicial Magistrate, Araria transferred the complaint petition to the court of Judicial Magistrate 1st Class, Araria in exercise of power conferred under Section 192 of the CrPC.

4. The complainant was examined on solemn affirmation. After inquiry, the learned Magistrate found prima facie case against all the three accused and summoned them to face trial.

5. After appearance of the accused persons, evidence was led before charge and charges were framed against them under Sections 323, 354 and 379 of the IPC.

6. The defence denied the whole occurrence and claimed that the accused persons are innocent.

7. During trial, the complainant examined three witnesses. They are P.W.1 Devanand Bahadoor, P.W.2 Biresh Singh and P.W.3 Laxmi Devi, the complainant. The defence has also examined one witness D.W.1 Md. Rahman, who identified the text and signature of

the lawyer on the counter complaint case No. 1378C of 1999 as Ext.-

A.

8. On the basis of the evidence led by the complainant's witnesses, the trial court concluded that the prosecution has been able to prove the charge under Section 323 of the IPC only against accused Buchni Devi but the charges under Sections 323, 354 and 379 of the IPC have been proved against accused Laxman Singh and Sriprasad Singh beyond shadow of all reasonable doubts. Therefore, the trial court vide judgment dated 3rd April, 2007 held them guilty and convicted them accordingly. Accused Buchni Devi was sentenced to undergo simple imprisonment for six months under Section 323 of the IPC. Accused Laxman Singh and Sriprasad Singh were sentenced to undergo simple imprisonment for six months under Section 354 of the IPC and two years under Section 379 of the IPC. All the sentences were directed to run concurrently. It was also held that the sentences are subject to provision of appeal.

9. Being aggrieved by the said order of conviction and sentence, the accused persons preferred appeal before the learned Sessions Judge, Araria, vide Criminal Appeal No. 53 of 2007. It is to be noted here that during pendency of the appeal, one of the accused Laxman Singh died, and hence, the appeal abated as against him.

10. After hearing the parties and taking into consideration the evidence led by the prosecution witnesses, the learned appellate

court found various contradictions in the evidence of the prosecution witnesses. The appellate court found that P.W.1 Devanand Bahadur has stated in his cross-examination that when he reached the place of occurrence, 10-15 persons were present there and he saw the complainant and her husband senseless but no injury was found on their person. He has further stated that they were treated by Dr.Akhilesh at Rampur Chowk. Thus, the appellate court came to the conclusion that this witness was not present when the occurrence had taken place.

11. P.W.2 Biresh Singh is the husband of the complainant. He has stated in his cross-examination that his wife was not examined by the doctor. He also accepted that 10-15 persons were present at the place of occurrence at the time of occurrence. The appellate court found vital contradictions in the evidence of P.W.1 and P.W.2.

12. The appellate court discussed the evidence of P.W.3 the complainant in paragraph 10 of the impugned judgment. This witness has stated in her cross-examination that about 25 persons were present at the time of occurrence. She has further stated that after half an hour of occurrence, her husband had arrived.

13. The appellate court has given its findings in paragraphs 11 and 13 of the impugned judgment, which run as under :-

“11. From perusal of entire evidence of prosecution witnesses, it appears that there is no consistent evidence on the point of Time of occurrence. The witnesses who are examined by



the complainant in this case they are relative, no other independent eye witnesses have been examined, though accordingly to complainant there at so many people were present at the time of occurrence, according to PW-1 and 2, they reached at about 7.00 pm, as per PW-1 he saw that complainant Laxmi devi and her husband were lying in senseless, according to PW2 he reached there on alarm at 7.00 pm and saw that accused persons were assaulting to his wife, he tried to save her but they were assaulted to him, but as per PW3 Laxmi devi she was going at 8.00 pm for purchase some household articles at that time accused persons assaulted her, and her husband came after half hour to her assault, it shows that the complainant witnesses were not present at the time of occurrence at about 8.00 pm rather they were present at about 7.00 pm. There is no consistent evidence on record on the point of time and manner of occurrence, neither any independent witness is examined on behalf of the complainant. PW-1 is the uncle and PW-2 is husband of complainant (PW-3). There is no other evidence on record on behalf of complainant. According to PW-1 he went at the place of occurrence at 7.00 pm and saw that complainant and her husband were lying senseless though this occurrence was took place at about 8.00 pm (as per complainant case) but this witness saw the occurrence prior one hour before of the occurrence and PW2 was also reached there prior to one hour before of this occurrence, so their evidence are not reliable at all and creates suspect on the validity of that occurrence.

13. From considering the entire evidence of Complainant witnesses it appears that there is much contradictions in between witness regarding the manner and time of occurrence and there is no any eye independent witness of this case the evidence of prosecution witnesses are not consistent. And as per appellants, the Complainant Laxmi Devi filed this case only to pressurize and save her for the case of complainant Buchani Devi and her witnesses as

mentioned in complaint case no. 1378/99, which was filed by the Buchani devi (Accused of this case).”

14. On the basis of the aforesaid findings, the appellate court held that the judgment of conviction and order of sentence passed by the trial court cannot be sustained and it allowed the appeal filed by the accused persons.

15. I have heard learned counsel for the petitioner and perused the materials available on record.

16. I find that the appellate court has rightly come to the conclusion and acquitted the accused. The reasonings assigned by the appellate court for acquittal of the accused are cogent and convincing.

17. In that view of the matter, I do not see any merit in this application. Accordingly, the application preferred under Section 378(4) of the Code of Criminal Procedure seeking leave to appeal against the impugned order is rejected.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	29-09-2016
Transmission Date	29-09-2016