

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.361 of 2017

Arising Out of PS. Case No.-202 Year-2014 Thana- BARH District- Patna

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Sima Kumari, Daughter of Sri Ramashray Mahto, Resident of Village-
Kurmichak, P.S. -Ghoswari, District-Patna.

... .. Appellant/s

Versus

1. The State of Bihar
2. Dilraj Rushan @ Mithlesh Kumar, Son of Nand Kishore Prasad, Resident of
Village- Sildahi, P.S. Bhadaur, District-Patna.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Sri Satish Kumar Sinha
		Mr. Ashok Kumar Kashyap
For the Respondent/s	:	Sri Shivesh Chandra Mishra

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6 06-10-2017 Heard Sri Satish Kumar Sinha, learned counsel, assisted

by Sri Ashok Kumar Kashyap, learned counsel for the

appellant, Sri Shivesh Chandra Mishra, learned Additional

Public Prosecutor as well as learned counsel, who has appeared

on behalf of respondent no. 2.

The present Appeal has been preferred against judgment of
acquittal dated 23.12.2016 passed in Sessions Trial No. 187 of
2015 by learned Additional Sessions Judge -IV, Barh. By the
said judgment the learned trial judge after examining evidences
has acquitted the respondent no. 2 from charge under Section
376 and 420 of the Indian Penal Code, 1860 (hereinafter



referred to as "I.P.C."). The respondent no. 2 was tried for offence under Section 376 and 420 of the I.P.C. and by the impugned judgment the respondent no. 2 has been acquitted.

Short fact of the case is that initially the appellant filed a complaint vide Complaint Case No. 363(C) of 2014, which was referred to Police and thereafter, a police case vide Barh P.S. Case No. 202 of 2014 was registered on 04.06.2014 for offence under Section 420, 406, 120(B) , 376 of the I.P.C. against respondent no. 2 and other three accused persons. F.I.R. was registered against four accused persons including the respondent no. 2 and after investigation Police submitted charge -sheet. Only respondent no. 2 was put on trial. During trial on behalf of the prosecution at least two persons were examined as witness, who were not cited in the charge- sheet as witness.

The prosecution case in short is that the appellant had alleged that she was a student of Inter and was admitted in Government School, Agwanpur and she was also attending coaching class and residing as a tenant. It was alleged that the respondent no. 2 initially started to follow her and this was the reason that she was constrained to leave the room taken on rent. It was alleged that subsequently her elder sister Pinki



Kumari had taken a room in a rest house for the purposes of her examination and on 7.3.2014 while Pinki Kumari had gone for examination this respondent no. 2 entered into the room and forcibly committed rape on her. It was stated that she disclosed this fact to her sister. It was disclosed that the respondent no. 2 had assured that he will solemnize marriage with the appellant and thereafter, some development had taken place and on 15.03.2014 for shopping in respect of marriage the respondent no. 2 along with appellant had gone on a motorcycle for shopping and thereafter the respondent no. 2 returned along with the appellant to his parent's house and both appellant and respondent no. 2 stayed with the family of the respondent no. 2. It was alleged that in the same night i.e. on 15.03.2014 again the respondent no. 2 twice committed forcibly rape with the appellant and subsequently, on 05.04.2014 a Panchayati was held for the purposes of marriage, but subsequently he refused to abide with his condition for marriage and thereafter, the appellant filed a complaint on 23.05.2014 which was referred to the police and thereafter charge-sheet was submitted and respondent no. 2 was put on trial.

Learned counsel for the appellant has argued that despite the fact that there was specific oral evidence of the victim who



is the informant, her evidence was ignored and in a cryptic manner respondent no. 2 has been acquitted from charges, and as such, it has been argued that judgment of acquittal may be set aside.

Learned Additional Public Prosecutor as well as learned counsel for the respondent no. 2 has opposed the Appeal. By way of referring to the judgment impugned, learned counsel for respondent no. 2 has argued that it was completely a false story which was incorporated in the complaint petition and the respondent no. 2 was incorrectly made accused and prosecuted. By way of referring to the judgment impugned he submits that since the appellant wanted to forcibly marry with the respondent no. 2 and did not succeed, the respondent no. 2 was initially kidnapped by brother of the appellant and his father, and thereafter, brother of the respondent no. 2 had filed a complaint case vide Complaint Case No. 256 (C) of 2014 on 23.04.2014 for offence under section 364(A) of the I.P.C. He further submits that during examination the P.W. 5/ brother of the appellant has himself admitted that in the case of kidnapping which was lodged by the brother of the respondent no. 2 he along with his father had remained in jail.

Besides hearing learned counsel for the parties, we have



also perused the materials available on record including the judgment impugned. In the present case the learned trial judge has noticed apparent contradiction in the evidence as well as allegation was not supported by any medical evidence. In the case the doctor namely, Dr. Kiran who had examined the victim / appellant has been examined as P.W. 7. During medical examination the age of the victim / appellant was assessed between 18-20 years and no sign of rape was found on the person of the victim. Moreover, even for the time being if it is assumed that there was an allegation of rape against respondent no. 2, according to appellant herself firstly she was raped on 07.03.2014 and even then she did not prefer to lodge any complaint and she has admitted that after some time on 15.03.2014 she stayed in the house of respondent no. 2 where his parents were also there and in the night it was alleged that she was raped twice. Again no complaint was made, rather she stated that for marriage Panchayati was held. If during Panchayati respondent no. 2 had accepted to solemnize marriage, there was no reason for filing complaint by the brother of respondent no. 2 regarding allegation of kidnapping and commission of offence under Section 364(A) of the I.P.C. against brother of the appellant and his father and the fact that



brother of the appellant and father were made accused and detained has also been accepted by the brother of the appellant, who was examined as P.W. 5. Considering the fact that right from the very beginning there was contradiction in the accusation, the learned trial judge after examining the evidence in detail has rightly not held respondent no. 2 guilty and acquitted him. After examining the same we do not find any perversity in the judgment of acquittal requiring interference. We do not find any ground for interference. Accordingly, the petition i.e. I.A. No. 1134 of 2017 which has been filed for grant of leave to appeal under Section 378 (3) of Code of Criminal Procedure, 1973 stands dismissed. Consequently, the Appeal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

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