

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.963 of 2017

Arising Out of PS. Case No.-125 Year-2011 Thana- DAUDPUR District- Saran

Nitu Bishwas @ Nitu Singh, D/o Late Nirapad Bishwas, R/o village & P.S.- Navodeep, District – Nadia , State – West Bengal. At present R/o village- Dumduma, P.S.- Daudpur, District – Saran at Chapra, Bihar

... .. Appellant/s

Versus

1. The State Of Bihar
2. Lal Kishore Singh @ Lal Krishna Singh, S/o Satya Narayan Singh, R/o village -Soniya, P.S.- Daudpur, District -Saran at Chapra

... .. Respondent/s

Appearance :

For the Appellant/s	:	Sri Amit Narayan
For the Respondent/s	:	Sri Abhay Kumar
		Sri Vindhyachal Singh
		Sri Satya Prakash

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

7 13-12-2017 Heard Sri Amit Narayan , learned counsel for the appellant , Sri Abhay Kumar, learned Additional Public Prosecutor as well as Sri Vindhyachal Singh, learned counsel, assisted by Sri Satya Prakash, learned counsel for respondent no. 2.

The present Appeal has been preferred under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) along with a petition for grant of leave filed under Section 378(3) of the Cr.P.C. vide I.A. No. 1831 of 2017 against the judgment of acquittal dated 20.02.2017 passed in



Session Trial No. 112 of 2014 arising out of Daudpur P.S. Case No. 125 of 2011 . By the judgment dated 20.02.2017 Sri Anjani Kumar Singh, learned Additional Sessions Judge -VI, Saran at Chapra (hereinafter referred to as the “trial judge”) has acquitted respondent no. 2 i.e. the sole accused from charge under Section 376, 493 and 323 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) .

Short fact of the case is that the appellant initially in the year 2009 filed a complaint case vide Complaint Case No. 3578 (C) of 2009 for offence under Section 376 and other penal provisions of the I.P.C. against respondent no. 2 primarily alleging therein that by persuading the appellant for solemnizing marriage, she was sexually exploited by respondent no. 2. The said complaint was referred to the Police for registration and investigation of the case under section 156(3) of the Cr.P.C. and thereafter, an F.I.R. vide Daudpur P.S. Case No. 125 of 2011 was registered for offence under Section 376, 493 and 323 of the I.P.C. After registering F.I.R., Police investigated the case and during investigation accusation was found not true, and as such, final report was submitted by the Police before the Magistrate Court. In the meanwhile, a protest petition was filed on behalf of the appellant and thereafter, the case proceeded



and finally charges were framed and respondent no. 2 was put on trial. Since he denied the charges and claimed to be tried, the prosecution to establish its case examined altogether two witnesses, one is the appellant the so-called victim herself and another was a formal witness, who had only proved the protest petition before the court below. Since the prosecution had not established its case beyond all reasonable doubt, the learned trial judge has passed order of acquittal extending benefit of doubt. The learned trial judge in its judgment has noticed that even on the date of first alleged sexual intercourse, the appellant was major, besides other plausible materials available on record.

Sri Amit Narayan, learned counsel for the appellant has argued that the learned trial judge has completely failed to appreciate that when she (appellant) noticed that Police was going to favour the accused person, she filed a protest petition and in the protest petition she had also prayed for getting D.N.A. test done in respect of the issue, which according to the appellant, has taken due to relationship in between the appellant and respondent no. 2. He tried to justify the reason for delay in filing the complaint petition. He submits that for the first time on 26.01.2004 relationship in between appellant and



respondent no. 2 developed and due to the said relation she was blessed with a male child in the month of October, 2004 and she requested for solemnizing marriage and after refusal she went to the Police Station but Police did not entertain. It has been argued that there is specific case that due to relationship in between the appellant and respondent no. 2 the appellant was blessed with a male child, and as such, after getting D.N.A. test done, it would have been established that offence was committed by respondent no. 2, however, in the case neither any D.N.A. test was conducted nor the learned trial judge has appreciated the evidence of the appellant and ignoring all those things, in illegal manner, has passed order of acquittal.

Besides hearing learned counsel for the parties, we have perused the materials available on record. After going through the materials available on record particularly the impugned judgment, which has been passed discussing each and every aspect, *prima facie* the court is of the opinion that the learned trial judge has committed no error in passing the judgment of acquittal. Learned trial judge has noticed that the birth of a child itself was sufficient that every thing was done with consent. Moreover, this court is of the opinion that if it was alleged that



for first time in the month of January , 2004 the appellant was raped, there was no reason for her to wait for about five years and after expiry of five years, for the first time a complaint case was filed, which was referred to the Police for investigation and during statutory investigation also accusation was found un-true and final report was submitted and even thereafter, though a protest petition was filed and case proceeded on the basis of protest petition, save and except appellant, no plausible evidence was brought on record before the court below. The court is satisfied that it was a consent relationship making application of no penal provision and as such, we are satisfied that the learned trial judge has committed no error in passing the order of acquittal. Accordingly , leave petition i.e. I.A. No. 1831 of 2017 stands dismissed. Consequently, the Appeal against acquittal too is dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

U		T	
---	--	---	--

