

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1506 of 2017

Arising Out of PS. Case No.-268 Year-2012 Thana- DUMRAUN District- Buxar

Shanti Kumari, daughter of Badri Nath Gound, Resident of Village- Nandan,
P.S.- Dumraon, District- Buxar.

... .. Appellant

Versus

1. The State of Bihar.
 2. Hare Ram Chaudhary, Son of Simandra Chaudhary,
 3. Jitendra Chaudhary, Son of Bhikhari Chaudhary,
 4. Arun Chaudhary, Son of Simandra Chaudhary,
- Respondent no.2,3,4, are resident of Village- Nandan, P.S.- Dumraon,
District- Buxar.

... .. Respondents

Appearance :

For the Appellant/s : Mr. Anil Kumar Roy, Adv.
For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2 10-01-2018 Heard Sri Anil Kumar Roy, learned counsel for the

appellant and Sri Dilip Kumar Sinha, learned Addl. Public

Prosecutor.

2. The present appeal has been filed by the informant
against the Judgment of acquittal of respondent nos.2 to 4. By
the Judgment dated 12.10.2017 passed in Sessions Trial No.55
of 2013 arising out of Dumraon P.S. Case No.268 of 2012, Sri
Ashok Kumar Pandey, learned Addl. District & Sessions Judge-
I, Buxar has acquitted private respondent nos. 2 to 4 from the
charge under Sections 376/34, 376/120(B) of the Indian Penal



Code and Section 3(i)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act.

3. The present appeal has been filed along with a petition i.e. I.A.No.2770 of 2017 under Section 378(3) of the Code of Criminal Procedure for grant of leave.

4. Learned counsel for the appellant submits that the learned trial Judge has incorrectly passed the Judgment of acquittal in respect of respondent nos.2 to 4. He submits that it was specific case that private respondents were standing near the door and while the victim/informant after being raped by other two accused persons, namely, (i) Kamlesh Choudhary and (ii) Saroj Choudhary came out of the room, she noticed three private respondents standing there and they were laughing and whispering that they will disclose the fact to others. It was also alleged that one of the private respondent, namely, Arun Choudhary tried to catch the appellant with a view to commit rape, but there was some scuffle and she anyhow fled from that place. In the said scuffle, part of broken golden chain of respondent Arun Choudhary was taken by the victim, which she had handed over to her mother and she disclosed the fact to her mother. Learned counsel for the appellant submits that two accused persons, namely, Kamlesh Choudhary and Saroj



Choudhary, who had committed rape on her, during trial they claimed juvenility and, thereafter, their case was referred to Juvenile Justice Board and they were tried separately and subsequently, they were held guilty. He submits that there is specific case against three private respondents, but the learned trial Judge has incorrectly passed the Judgment of their acquittal, which requires interference.

5. Sri Dilip Kumar Sinha, learned Addl. Public Prosecutor, by way of referring to paragraph-18 of the impugned Judgment, submits that the learned trial Judge has passed the Judgment of acquittal assigning detailed reason, which requires no interference.

6. Besides hearing learned counsel for the parties, we have also perused the material available on record, particularly the impugned Judgment. On going through the same, it is evident that it was not case of the victim/informant that three private respondents had committed rape on her or they were member of gang rape. It is evident that the informant was kidnapped by two accused persons, namely, Kamlesh Choudhary and Saroj Choudhary and, thereafter, she was raped inside a room by two accused persons, who had subsequently claimed juvenility and their case was separated. In the prosecution case, there was no



element showing involvement of private respondents in commission of rape or being a member of gang rape. Only material against the private respondents was that near the door, they were standing and it was alleged that scuffle had taken place with respondent Arun Choudhary and in that scuffle a golden chain, which Arun Choudhary was wearing, was broken and part of said chain was kept in the hand of the victim. Though it was claimed that said chain was handed over to the mother of the informant and her mother had handed over to the Investigating Officer, during investigation or trial no material was brought on record to show as to whether any seizure list was prepared or not? The learned trial Judge has also noticed that there is no allegation showing even commission of offence under Section 354 of the Indian Penal Code, what to talk about the application of Section 376 of the Indian Penal Code. It would be appropriate to refer to paragraph-18 of the impugned Judgment, wherein the learned trial Judge has assigned the reason for extending the benefit of doubt to the private respondents for passing the order of acquittal, which is as follows:

***“18. In this case accused persons are facing trial
Us 376/34 & 376/120(B) of the I.P.C & 3(i)(xii) of
SC/ST Act. The allegation against the accused***



persons is that they were standing outside the house in which the victim of the case namely Shanti Kumari was raped by Kamlesh Choudhary. The informant has stated that after the occurrence when she came out of the house she saw that these accused persons were standing there and were laughing and were saying that they will narrate the incident to the villagers. They also tried to catch the victim for committing rape, but the victim anyhow managed to escape and in scuffle the chain of Arun Choudhary came in her hand. The victim is the sole eye witness of this case and other witnesses who have come to depose before the court have come to know about the occurrence through the victim. According to the victim there was scuffle between victim these accused persons but there is no narration of the incident as to what happened in the scuffle. She has simply stated that these accused persons were also standing to commit rape with her. It is well established that even a demon cannot know the intention of any person. Intention is gathered from the act. The victim has seen these accused persons for the first time when she came out of the house after completion of the offence, there is no evidence on record to show that these accused persons were present at the house of Sumendra Choudhary prior to the occurrence, only allegation against these accused persons is that they were laughing and were trying to catch the victim for committing rape. Virtually these accused persons have neither aided nor abated the main assailants.



These accused persons were not in the story when the victim was brought to the house of Sumendra Choudhary. The appearance of these accused persons come in the figure after the completion of offence by the main assailant. The allegation that these accused persons tried to catch her seems to be improbable as according to the victim only two accused persons has caught her and brought her to the place of occurrence where she was raped had these accused persons the intention to commit rape, then she would not have been able to escape from two accused persons. From the evidence of the prosecution it is also clear that none of these accused has touched the victim. Only evidence is that there was scuffle between the accused persons and the victim and in that scuffle the chain of the accused Arun Choudhary came in the hands of victim. Surprisings that chain has not been given to the police by the victim. No seizure list has been prepared of that chain. If at all there was any scuffle and there is no description as to whether any of the accused persons has touched any body part of the victim. In that view of the matter even section 354 of the I.P.C. is not attracted. The allegation that accused persons were standing to commit rape gets force if prosecution is able to prove the intention of the accused persons. Intention has to be gathered from the acts. None of the accused persons have even assaulted the victim nor has touched any body part, neither has torned her cloth. The only evidence of scuffle was the chain which



according to the victim has come in her hands during scuffle. None production of the chain and not making of seizure list of that chain falsify/ creates doubts on the story of scuffle also. Other witnesses have not seen the accused persons on the spot rather they were told by the victim, so from the version of the victim herself it is not clear that these accused persons have committed any offence what to say of Section 376 of I.P.C.”

7. On going through the aforesaid reason, the Court is satisfied that the learned trial Judge has not committed any apparent error in passing the order of acquittal in favour of private respondents extending the benefit of doubt.

8. Accordingly, there is no ground to grant leave to appeal and, as such, leave petition i.e. I.A. No.2770 of 2017 filed under Section 378(3) of the Code of Criminal Procedure stands dismissed. Consequently, the appeal against acquittal of respondent nos.2 to 4 too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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