

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2166 of 2018

Arising Out of PS.Case No. -296 Year- 2015 Thana -GARAUL District- VAISHALI(HAJIPUR)

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Nilu Devi, W/o Sant Lal Singh, resident of Village- Hidayatpur Chak Haji, P.S.-
Goraul (Katahara O.P.), District- Vaishali.

.... Appellant

Versus

1. The State of Bihar.
2. Ram Babu Singh, son of Late Rajendra Singh.
3. Sangita Devi, W/o Ram Babu Singh, Both resident of Village- Hidayatpur Chak
Haji, P.S.- Goraul (Katahara O.P.), District- Vaishali.

.... Respondents

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Appearance :

For the Appellant/s : Ms. Y. Madhavi, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-10-2018

Heard learned counsel for the appellant and learned
counsel for the State.

2. This appeal under proviso to Section 372 of the
Code of Criminal Procedure has been filed by the informant of
Goraul P.S. Case No. 296 of 2015 against the judgment dated
07.04.2018 passed by the learned 1st Additional Judge, Vaishali at
Hajipur whereby he has acquitted the accused persons from the
charges levelled under Sections 376/120B of the Indian Penal Code



and Sections 4, 6 and 17 of the Protection of Children from Sexual Offences Act (for short 'POCSO Act').

3. The prosecution case, in short, as per the First Information Report (for short 'FIR') was that when the daughter of the informant had gone to her field, she was informed by a co-villager that her daughter aged about 16 years had jumped into the well and with the help of villagers she was taken out of the well. On enquiry from her, she told that at about 11:00 a.m. respondent no.3 Sangita Devi (PW 3), wife of respondent Ram Babu Singh had called her from her house and took her to her own house. As soon as she reached to the house of Sangita Devi her husband Ram Babu Singh closed the door from inside and ravished her. When the victim raised alarm respondent no. 3 told that she should allow respondent no.2 to have sex with her. After some time, respondent no.2 Ram Babu Singh came up from the house and said to his wife to send the victim back to her home. Thereafter, respondent no. 3 Sangita Devi came inside and threatened the victim not to divulge anything to others else she would be killed. Thereafter, the victim came out from the house of the respondents no.2 and 3 and jumped into the well.

4. On the basis of said written report, the police registered Goraul P.S. Case No. 296 of 2015 under Sections



376/120B of the Indian Penal Code and Section 4 and 6 of the POCSO Act.

5. After completing investigation, the police submitted charge-sheet against respondents no. 2 and 3.

6. After going through the materials collected in course of investigation and the police report, the court below took cognizance of the offence and after compliance of the provisions of Section 207 of the Code of Criminal Procedure, framed charges against respondents no. 2 and 3.

7. In course of trial, altogether eight witnesses were examined on behalf of prosecution. After closure of the prosecution evidence, the defence also examined one witness in order to prove innocence of the accused persons. After holding the trial and hearing the arguments, the trial court vide impugned judgment dated 17.04.2018 acquitted both the accused persons for the charges punishable under Section 376/120B and Sections 4, 6, 10 and 17 of the POCSO Act.

8. Being aggrieved by the impugned judgment dated 17.04.2018, the instant appeal has been filed by the informant, who is mother of the alleged victim.

9. While assailing the impugned judgment, learned counsel for the appellant submitted that the trial court has not



appreciated the evidences on record in correct perspective. She submitted that merely because there was a pre-existing enmity between the parties, the trial court has disbelieved the prosecution case. She contended that the court below has not taken note of the fact that enmity is a weapon which cuts both the ways and in view of the pre-existing enmity, the accused persons could have committed such offence in order to humiliate the victim and her family members and to take revenge. She contended that the trial court has also failed to appreciate the fact that the victim had jumped into the well after rape and the witness, who rescued her, had fully supported the prosecution case.

10. On the other hand, learned counsel appearing for the State submitted that there is no error in appreciation of fact or law by the trial court. He contended that the medical evidence totally negated the prosecution version. That apart, the prosecution witness themselves admitted that there was previous enmity. He further contended that the court below has also taken note of the fact that it was highly improbable that a lady would have facilitated offence of rape against another lady by her husband in her own presence.

11. I have heard learned counsel for the parties and carefully perused the record.



12. It is true that the persecution witnesses including the victim have supported the prosecution case in course of trial. However, the trial court taking note of the fact that the victim was found to be aged between 17-20 years by the doctor (P.W. 6), who examined her on the date of alleged occurrence of offence itself within few hours after the incident had taken place. However, she categorically deposed that no external or internal injury found on her person. She also admitted that there was no injury on the private parts of the alleged victim. She opined that hymen was ruptured and there was no evidence of recent sexual activity. The court below had also taken note of the fact that the witnesses examined in course of prosecution were mostly interested and related witnesses. There was admitted previous enmity and several cases of civil and criminal nature were pending between the parties. The trial court has also considered the material contradictions and inconsistencies of the evidence of the interested witnesses and thereafter came to the conclusion that the prosecution had not been able to prove its case beyond reasonable doubts.

13. While going to the aforesaid findings, the trial court also appreciated the fact that it was highly improbable that a lady would allow her own husband to rape another lady in her own presence.



14. In the opinion of this Court, the trial court has taken a plausible view based on the evidence available on the record. The view taken by the trial court cannot be held to be bad or perverse. Under such circumstance, no case for interference with the impugned judgment is made out.

15. Accordingly, the appeal against the judgment of acquittal is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/SkSuman.

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	06.11.2018
Transmission Date	06.11.2018

