

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.766 of 2018

Arising Out of PS.Case No. -99 Year- 2016 Thana -BANKA District- BANKA

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Qayum Ansari @ Kaiyum Ansari S/o Late Maqbul Ansari R/o Vill.-
Singarpur, P.S.- Barahat District- Banka at present Vill.- Panchveer , P.S.-
Sahebpur Kamal District- Begusarai.

.... Appellant/s

Versus

1. The State of Bihar.
 2. Md. Majhar Hussain @ Majhar S/o Late Ismail Ansari,
 3. Md. Fajal Mahmood @ Fajlu S/o Late Ismail Ansari,
 4. Md. Murtaja @ Murtaja S/o Liyaqat Ansari @ Lurqi Miyan,
 5. Sahul Ansri S/o Noor Mohammad,
 6. Sajid Ansari @ Sajid S/o Tanjalli Ansari,
 7. Md. Kalim Ansari @ Kalim S/o Tikan Miyan,
 8. Md. Shah Alam @ Bablu S/o Fajal Mahmood,
 9. Md. Chhotu @ Md. Islam S/o Cundi Alauddin , All R/o Vill.- Singarpur,
 P.S.- Ghoraiya, District- Banka.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Om Prakash Singh
 For the State : Mr. Dilip Kumar Sinha
 For respondent nos.2 to 9 : Mr. Raju Giri

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

4 09-10-2018

1. Heard learned counsel for the appellant as well as learned Addl. Public Prosecutor for the State and learned counsel for respondent nos.2 to 9 on the point of admission as well as on I.A. no. 1849/2018.

2. I.A. no. 1849/2018 has been filed on behalf of the appellant under section 378(3) of the Cr.P.C seeking leave to file



this appeal. Appellant is father of the victim and, therefore, he has locus standi to pursue this appeal and accordingly, I .A. no. 1849/2018 is allowed and appellant is permitted to pursue this criminal appeal.

3. This criminal appeal has been preferred against the judgment of acquittal dated 19.5.2018 passed by the Addl. Sessions Judge II, Banka in Sessions trial no. 303/2006/ 17/2017 by which and whereunder learned trial court acquitted respondent nos.2 to 9 of the charges framed against them under sections 376D/34 and 366A/34 of the Indian Penal Code.

4. Banka (Barhat) P.S. case no. 99/2016 for the offences punishable under sections 363 and 364 of the Indian Penal Code was registered against the staff of Nath Nagar Ramanandi Anathalaya, Bhagalpur on the basis of written report given by the appellant on 20.2.2016. The appellant claims in his written report that on 2.2.2016 his daughter aged about 14 years had gone to market to purchase shampoo but she did not return. He made hectic search but could not succeed to trace her out. However, in the morning of 13.2.2016, he read news in paper and on the same day at about 8 a.m. he received a phone from Nath Nagar Ramanandi Anathalaya, Bhagalpur that one girl who was disclosing her name as Rani Khatoon gave mobile number



of the appellant. Having got the aforesaid information, he went to the said Nath Nagar Ramanandi Anathalaya, Bhagalpur but the staff of the aforesaid Nath Nagar Ramanandi Anathalaya, Bhagalpur refused to hand over the girl to him on the pretext of get recording statement of the aforesaid girl in court but till date of filing written report, the concerned staff did not hand over the girl to him and thereafter, he gave written report to the officer-in-charge of Barhat police station.

5. In course of investigation, statement of the victim was recorded under section 164 of the Cr.P.C on 24.2.2016 and the aforesaid statement was exhibited in course of trial as exhibit 6. However, after investigation, respondent nos.2 to 9 were charge sheeted and accordingly, they were put on trial before the learned trial court. In course of trial, victim as well as other witnesses were examined. The statements of respondent nos.2 to 9 were recorded under section 313 of the Cr.P.C and after perusing and scrutinizing the evidences available on record, the learned trial court acquitted respondent nos.2 to 9 finding several infirmities in the prosecution case.

6. Learned counsel appearing for the appellant submits that the victim was examined as prosecution witness no.2 and she supported the prosecution case stating that she was



kidnapped by respondent nos.2 to 9 and gang-raped by them. However, learned trial court having found several contradictions and improvements in the statement of the victim, disbelieved the statement of victim (PW2) and passed the judgment of acquittal.

7. Learned counsel for the appellant, further, submits that, as a matter of fact, respondent nos.2 to 9 are very influential persons and local police is in collusion with respondent nos.2 to 9. He points out that appellant filed criminal writ before this court challenging investigation of the police and on the direction of this court, local police submitted charge sheet against respondent nos.2 to 9. He, further, submits that it is well settled principle of law that conviction under section 376 of the IPC can be based on solitary statement of the victim, if statement of the victim inspires confidence to the court and in the present case, there was nothing on record to disbelieve the statement of the victim but even then learned trial court passed the judgment of acquittal which is not in accordance with law.

8. On the other hand, learned counsel for respondent nos.2 to 9 refutes the above stated submissions arguing that admittedly, appellant lodged Banka (Barhat) P.S. case no. 99/2016 on 20.2.2016 but he did not mention names of respondent nos.2 to 9 in his written report, though respondent



nos.2 to 9 are co-villagers of the appellant. He, further, submits that it is admitted case of the prosecution that the appellant met the victim on 13.2.2016 and got opportunity to talk with the victim and the aforesaid fact has been admitted by the victim in her deposition. Learned counsel for respondent nos.2 to 9, further, submits that had the victim disclosed the manner of the occurrence as well as names of respondent nos.2 to 9 to the informant, the informant would have certainly disclosed the manner of occurrence as well as names of respondent nos.2 to 9 in his written report but it is surprising enough that the appellant did not disclose the names of respondent nos.2 to 9 in his written report. He, further, submits that it is also admitted position that the statement of PW2 was recorded under section 164 of the Cr.P.C on 24.2.2016 but in her statement recorded under section 164 of the Cr.P.C, she has, nowhere, stated about story of rape, however, when she was examined in course of trial, she developed her story and, specifically, stated that she was gang raped by respondent nos.2 to 9. He, further, submits that the trial court has noted down several contradictions in the testimonies of the prosecution witnesses while passing the impugned judgment of acquittal and, therefore, there is no need to interfere with the impugned judgment of acquittal.



9. Learned Addl. Public Prosecutor seconded the submissions of learned counsel for respondent nos.2 to 9.

10. Having heard the rival contentions of parties, we went through the record. The perusal of lower court record goes to show that the informant (appellant) did not disclose names of respondent nos.2 to 9 in his written report. The informant (appellant) admitted in his written report that he visited Nath Nagar Ramanandi Anathalaya on 13.2.2016. PW2 has admitted in her deposition that she got opportunity to talk with the appellant on 13.2.2016 while she was detained in Nath Nagar Ramanandi Anathalaya. Therefore, it is obvious that the informant came to know about the alleged occurrence as well as names of respondent nos.2 to 9 on 13.2.2016 but even then, he did not disclose names of respondent nos.2 to 9 in his written report. Furthermore, it is admitted position that statement of PW2 was recorded under section 164 of the Cr.P.C on 24.2.2016 but she has, nowhere, stated about story of gang rape. The perusal of the impugned judgment goes to show that there was enmity between the appellant and respondent nos.2 to 9 and the learned trial court found several infirmities in the prosecution case and taking note of above stated infirmities as well as improvements in the prosecution case, learned trial court refused



to believe upon the deposition of PW2. Therefore, in our view, learned counsel for respondent nos.2 to 9 rightly submitted that there is no need to interfere with the impugned judgment of acquittal. The perusal of the impugned judgment further goes to show that the trial court has well discussed the evidence and passed reasoned judgment of acquittal. Therefore, in the aforesaid circumstances, in our view, this appeal is liable to be dismissed on admission stage itself. Accordingly, this criminal appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

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