

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.957 of 2018

Arising Out of PS. Case No.-146 Year-2014 Thana- JALALGARH District- Purnia

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{Against the Judgment of acquittal dated 02.07.2018 passed by the learned Sessions Judge, Purnea, in Sessions Trial No.45 of 2016}.

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Nirmala Devi, wife of Sri Bhim Kumar, resident of village-Kathaili, P.S. Jalalgarh, District-Purnia (Informant).

... .. Appellant.

Versus

1. The State of Bihar.
 2. Ashok Bishwas, son of Vivekanand Bishwas.
 3. Sunita Devi, wife of Ashok Bishwas.
- Both respondent nos.2 and 3 (accused) residents of village-Kathaili, P.S. Jalalgarh, District-Purnia.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. N.K. Agrawal, Senior Advocate. Mr. Diwakar Upadhyaya, Advocate. Miss. Preety Kunwar, Advocate.
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.
For the Respondent Nos.2 & 3	:	Mr. Ashok Kumar, Advocate. Mr. Ram Prawesh Kumar, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 30-11-2018

Heard learned counsel for the appellant, learned counsel for the respondent nos.2 and 3 as well as the learned Additional Public Prosecutor for the State on I.A. No.2362 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure, as well as on the point of admission.



2. I.A. No.2362 of 2018 has been filed on behalf of the appellant, seeking permission to file this criminal appeal.

The appellant happens to be the victim of the present case and, therefore, she has right to file this criminal appeal against the Judgment of acquittal.

Accordingly, the appellant is permitted to pursue this criminal appeal and, accordingly, I.A. No.2362 of 2018 stands disposed of.

3. This criminal appeal has been preferred against the Judgment of acquittal dated 02.07.2018 passed by the learned Sessions Judge, Purnea, in Sessions Trial No.45 of 2016, by which and whereunder he acquitted the respondent nos.2 and 3 of the charges framed against them for the offences punishable under Sections 341, 323/34, 307/34, 379/34, 504/34 and 354-A of the Indian Penal Code.

4. The impugned Judgment goes to show that on the point of so-called assault, five witnesses including the appellant were examined by the prosecution in course of trial but except the appellant (P.W.5), none of the prosecution witnesses were found to be eye witnesses of the alleged occurrence by the learned trial court. Furthermore, the impugned Judgment goes to show that the learned trial court disbelieved the claim of the



appellant (P.W.5) on the ground that she lodged the case after three days of the alleged occurrence, particularly, in the circumstance, when she had opportunity to lodge the case immediately after the alleged occurrence and the appellant did not give any explanation of delay of institution of the present case.

5. Learned counsel appearing for the appellant challenged the impugned Judgment of acquittal, arguing that the learned trial court failed to take note of this fact that the appellant sustained injury and the aforesaid injury was well proved by the doctor and the learned trial court committed error in rejecting the prosecution case only on the ground of delay. He submits that the appellant is an illiterate lady and she could not understand the pros and cons of the delay and, therefore, she did not give any explanation regarding the delay of institution of the present case but we are not, at all, convinced with the aforesaid contention of the learned counsel appearing for the appellant because the learned trial court has dealt with the aforesaid issue in paragraph-37 of the impugned Judgment and, specifically, mentioned that the appellant got treatment at Jalalgarh just after the alleged occurrence but she did not take any pain to lodge the case, particularly, in the circumstance,



when the police station was situated at Jalalgarh. Therefore, we do agree with the finding given by the learned trial court regarding the delay of institution of the present case.

6. Admittedly, no explanation regarding the aforesaid delay has been given by the prosecution and, moreover, we find that the learned trial court has discussed all the evidences and passed a well thought Judgment, which does not contain any perversity.

7. Therefore, in the aforesaid circumstance, we do not think it proper to interfere into the findings given by the learned trial court.

8. Accordingly, this criminal appeal stands dismissed on the admission stage itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.12.2018.
Transmission Date	04.12.2018.

