

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.177 of 2018

Arising Out of PS.Case No. -58 Year- 2014 Thana -RAUTRA District- KATIHAR

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Khusbun Nisha Khatoon D/o Sk. Badruddin R/o Shaik Tola Binodpur, P.S.-
Rautara, District- Katihar.

.... Appellant

Versus

1. The State of Bihar
2. Md. Nazrul S/o Sk. Rehman
3. Md. Sazrul S/o Sk. Rehman
4. Md. Aftab S/o Sk. Rehman,
5. Sk. Rehman S/o Late Sk. Thithar,
6. Md. Nazim S/o Late Sk. Tahir,
Respondent No.2 to 6 are the R/o Village- Sk. Tola, Binodpur, P.S.-
Rautara, District- Katihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajit Kumar Singh
For the Respondent/s : Mr. Ashwani Kumar Sinha

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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)

2 06-07-2018 Heard learned counsel for appellant as well as

learned Additional Public Prosecutor for State on the point of

admission and, in our view, this appeal can be disposed of, on

admission stage itself.

2. The appellant has challenged the impugned
judgment dated 30.11.2017 passed by learned Additional Sessions
Judge, 1st -cum-Special-Judge, Katihar in G.R. No. 2595 of 2014
by which and whereunder, he acquitted the respondent nos. 2 to 6



of the charges framed against them for the offences punishable under Sections 376, 313, 323, 504, 506, 120(B) of the Indian Penal Code and section 4 of POCSO Act.

3. The appellant is informant in above stated G.R. No. 2595 of 2014 and she submitted a written report on 20.08.2014 to S.H.O, Rautara Police station, claiming therein that three months prior to submission of written report, while she was going to the field to give meal to her father and reached near bamboo clump of Hazi Yusuf, the respondent no. 2 dragged her in the bamboo clump and committed rape on her and after committing rape, threatened her not to disclose the occurrence to her family members, otherwise they would be murdered along with her. The respondent no. 2 also assured her to solemnize marriage. She further claimed that on the false pretext of marriage, respondent no. 2 continued sexual relationship with her, as a result whereof she became pregnant. The respondent no. 2 came to know about her pregnancy and provided her some medicines which were consumed by her, as a result whereof excess bleeding and pain started. The appellant informed her parents on 17.08.2014 and, thereafter, she was taken to clinic of Dr. Ranjana Jha for better treatment. She further claimed that her parents went to the house of respondent no. 2 to make complaint but remaining respondents



assaulted and abused them and also threatened them to set their house on fire. A panchayat was conveyed to settle the dispute but the respondent no. 2 to 6 refused to obey the command of the panchayati, as a result whereof, the appellant brought the above stated case.

4. On the basis of written report of appellant Rautara P. S. Case No. 58 of 2014 under Section 376, 313, 323, 504, 506/34 of the Indian Penal Code and under Section 12 of POCSO Act was registered and after investigation charge-sheet was submitted against the respondent no. 2 to 6 for the above stated offences.

5. The respondent no. 2 to 6 were put on trial after cognizance and, accordingly, the respondent no. 2 was charged for the offences punishable under Sections 376, 313 of the Indian Penal Code and section 4 of POCSO Act whereas remaining respondents were charged for the offences punishable under Sections 323, 504, 506, 120B of the Indian Penal Code.

6. To prove charges, altogether, nine prosecution witnesses were examined including appellant and apart from this, several documents were got exhibited including school register. The statements of respondent no. 2 to 6 were recorded under section 313 of the Cr. P. C in which they denied the prosecution



story and also got examined defence witnesses.

7. Learned court below after analyzing and scrutinizing the evidences available on record, doubted the genuineness of school register Exhibit- 6 and came to the conclusion that the aforesaid Exhibit- 6 was a forged document. The learned trial court also came to the conclusion that the appellant was major at the time of alleged occurrence and there were several contradictions in the deposition of prosecution witnesses.

8. Learned counsel appearing for the appellant submits that the learned court below committed error in holding that the appellant was major at the time of alleged occurrence because Exhibit- 6 proves that the appellant was minor at the time of alleged occurrence and, therefore, even if, it assumed that the appellant was a consenting party, then also, the respondent no. 2 could not escape from the clutches of section 376 of the Indian Penal Code as well as section 4 of POSCO Act. He further submitted that the learned court below failed to take notice of specific evidence of appellant, who very clearly stated in her deposition that she was sexually exploited by respondent no. 2 on pretext of false promise of marriage.

9. On the other hand, learned Additional Public



Prosecutor supports the impugned judgment submitting that the learned trial court has passed the well discussed judgment and there is no ground to interfere into the impugned judgment.

10. Having heard the contentions of both the parties, we went through the impugned judgment. We find that the learned court below discussed the evidences available on record in proper manner and doubted the genuineness of Exhibit- 6 on the ground that there were several discrepancies in Exhibit- 6. The learned trial court noticed that Exhibit- 6 bears signature of father of appellant but when father of appellant was examined as PW-5, he put his thumb impression on his deposition and the aforesaid fact created doubt in the mind of court below about the genuineness of Exhibit-6. The learned trial court also noticed that Exhibit- 6 does not contain T.C. number whereas the Head Master who was examined as PW-9 admitted that the admission register issued in respect of other students bears T.C. number. In our view, the learned trial court rightly doubted the genuineness of Exhibit- 6. Furthermore, we find that the doctor found the victim aged about 18 to 19 years. Admittedly, the victim was examined on 31.08.2014 whereas occurrence is said to be in the year 2014 and, therefore, the aforesaid facts goes to show that the victim was major at the time of occurrence and in our view, there is no need



to interfere into the findings given by the trial court in respect of assessment of age of the victim.

11. Furthermore, we find that the learned trial court noticed several discrepancies which occurred in the evidence of the prosecution witnesses and moreover, the learned trial court also noticed that the appellant being major was a consenting party. Therefore, in our opinion, the learned trial court has rightly passed the impugned judgment of acquittal and there is no need to disturb the finding of learned court below.

12. On the basis of aforesaid discussions, this Criminal Appeal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

N.K/-

(Rajendra Kumar Mishra, J)

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