

IN THE HIGH COURT OF JUDICATURE AT PATNA

Govt. Appeal (DB) No.3 of 2018

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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1. The State Of Bihar through the District Magistrate Muzaffarpur, having his office at Collectorate Compound, Muzaffarpur.

.... Appellant/s

Versus

1. Rajeev Kumar Ray, S/o Ramsurat Ray, resident of Village Pusa, Bharav, P.S. Pusa, District- Samstipur.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukeshwar Dayal

For the Respondent/s : Mr.

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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: 15-05-2018

I.A.No.1010 of 2018 has been filed for condonation of delay which is allowed on the ground mentioned in the aforesaid interlocutory application.

Accordingly, I.A.No.1010 of 2010 stands disposed of.

I.A. No.311 of 2018 stands allowed and, accordingly, disposed of.

Heard learned Additional Public Prosecutor appearing for the State on the point of admission and perused the record.

2. This Government Appeal has been preferred against the Judgment of acquittal dated 9.5.2017 passed by learned 8th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.351 of 2012 arising out of Sakara P.S.Case No.148 of 2011 by which and whereunder he acquitted the respondent of the charge framed against him under Section 376 of the Indian Penal Code giving him benefit of doubt.



3. Sakara P.S. Case No.148 of 2011 was lodged on the basis of the fard-e-beyan of the informant, Mangeeta Devi, who stated in her fard-e-beyan that in the night of 13.7.2011 she along with her daughter aged about 2 ½ years was sleeping on a cot but brother-in-law's son of one Jagdish Rai took away her daughter. She raised alarm which attracted the villagers who started searching her daughter but her daughter could not be traced out in the night and in the morning a boy informed that her daughter was lying in unconscious state on the ridge of of the field. She along with others went there and brought her daughter to a doctor and thereafter the present case was lodged. She claimed that the Sarbeta (brother-in-law's son of aforesaid Jagdish Rai committed rape on her daughter.

4. In course of trial witnesses were examined on behalf of the prosecution but not a single prosecution witness claimed to have seen the respondent taking away the victim girl and it appears from the perusal of the impugned Judgment that in course of trial prosecution brought evidence of enmity before the trial court and some witnesses claimed to have seen the respondent roaming near the house of the informant and except aforesaid two circumstances the prosecution could not succeed in connecting the respondent with the present occurrence.

5. Learned Additional Public Prosecutor submitted that in first information report the informant claimed that sarbeta of Jagdish Rai picked up the victim girl but the learned trial court while writing the prosecution case in the impugned judgment committed factual error by writing that it was Jagdish Rai who picked up the victim girl. Learned A.P.P. submitted that above two circumstances were sufficient to convict the respondent but the learned trial court committed error in acquitting the respondent.

6. We do not find force in the contention of the learned Additional



Public Prosecutor and in our view also the above two circumstances are not sufficient to fasten the appellant with the alleged crime. Therefore, we do not find any merit in this present Govt.Appeal. Accordingly, this Govt.Appeal stands dismissed at the admission stage itself.

(Hemant Kumar Srivastava, J)

AnilKrSinha/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
CAV DATE	
Uploading Date	20.06.2018
Transmission Date	20.06.2018

