

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.934 of 2018

Arising Out of PS. Case No.-13 Year-2009 Thana- NALANDA District- Nalanda

{Against the Judgment of acquittal dated 28.05.2018 passed by the learned
Fast Track Court-I, Nalanda, Biharsharif, in Sessions Trial No.274 of 2010}.

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Pinki Devi, wife of Rupesh Kumar alias Munna Singh alias Munna Rajput
alias Rupesh Kumar Singh, daughter of Upendra Singh, at present residence
of village-Sakraurha, Police Station and District-Nalanda.

... .. Appellant.

Versus

1. The State of Bihar.
2. Ram Adhar Singh, son of Late Hari Ballabh Singh.
3. Prema Devi, wife of Ram Adhar Singh.
4. Rupesh Kumar Singh alias Munna Rajput alias Munna Singh, son of Sri
Ram Adhar Singh.
5. Rakesh Kumar Singh alias Rakesh Kumar, son of Ram Adhar Singh.
All resident of village-Anandgolwa, Police Station-Mohiuddin Nagar,
District-Samastipur.

... .. Respondents.

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Appearance :

For the Appellant	:	Mr. Satya Narain Prasad, Advocate. Mr. Anil Singh, Advocate.
For the State	:	Mr. Abhimanyu Sharma, A.P.P.

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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 : 06-12-2018

Heard learned counsel for the appellant as well as the
learned Additional Public Prosecutor for the State on I.A.
No.2293 of 2018 as well as on the point of admission.

2. I.A. No.2293 of 2018 has been filed under



Section 378(3) of the Code of Criminal Procedure on behalf of the appellant for grant of leave to file this appeal.

Taking note of this fact that the applicant of the aforesaid Interlocutory Application No.2293 of 2018 is the informant and the victim of the present case, therefore, she is permitted to file and pursue this appeal.

In the aforesaid manner, I.A. No.2293 of 2018 stands disposed of.

3. This criminal appeal has been filed against the Judgment of acquittal dated 28.05.2018 passed by the learned Fast Track Court-I, Nalanda, Bihar Sharif, in Sessions Trial No.274 of 2010, by which and whereunder he acquitted the respondent nos.2 to 5 from the charges framed against them for the offences punishable under Sections 341/34, 323/34, 498A/34, 313/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

4. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal, referring paragraph-12 of the impugned Judgment and submitted that in paragraph-12 of the impugned Judgment, the learned trial court noted down that the defence admitted the miscarriage of the victim but, even then, the learned trial court acquitted the



respondent nos.2 to 5 from the charge framed under Section 313 of the Indian Penal Code in want of documentary/medical evidence. Learned counsel submitted that the appellant is a hapless lady and she was ousted from her matrimonial home due to non fulfillment of the illegal demand. He further submitted that the appellant was subjected to cruelty and torture by the respondent nos.2 to 5 and the aforesaid facts clearly establish, not only by the testimony of the victim but also the testimony of the father of the victim. He submitted that in the cases of matrimonial dispute, the family members of the parties are only the witnesses of the occurrence and, therefore, even if the stranger to the family of the parties have not been examined, then also, it cannot be said that the prosecution could not succeed to prove its case beyond all shadows of reasonable doubts.

5. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment of acquittal and submitted that the learned trial court has well discussed the evidences adduced during the course of the trial. He further submits that the learned trial court doubted the charge of Section 313 of the Indian Penal Code on the ground that the prosecution could not succeed to produce any document to show that after



miscarriage, the appellant got treatment and, therefore, only on oral evidence, it is difficult to convict the aforesaid respondent nos.2 to 5 for the offence punishable under Section 313 of the Indian Penal Code.

6. Having heard the above stated contentions of the parties, we went through the impugned Judgment and, in our view, this appeal can be disposed of on the admission stage itself.

7. Nalanda P.S. Case No. 13 of 2009 was registered under Sections 341, 323, 313, 498A/34 of the Indian Penal Code and Sections 3 /4 of the Dowry Prohibition Act against the respondent nos.2 to 5 on the basis of the fardbeyan of appellant, who in her fardbeyan stated that her marriage was solemnized with Rupesh Kumar alias Munna on 31.05.2004 but when she went to her-in-laws' house, her in-laws including her husband demanded Rupees one lac and motorcycle and when the aforesaid demand was not fulfilled, she was subjected to cruelty and torture. However, she became pregnant and gave birth to a female child but when her-in-laws got information about the birth of female child, they again pressurized the appellant and her family members to fulfill their demand. She further stated that on 12.10.2008, she along with her father went to her in-



laws' house and on the pressure of villagers, she was allowed to reside at her matrimonial home but on 22.01.2009, she was badly assaulted by her parents-in-law and in that course, her mother-in-law climbed on her abdomen and pressed, as a result of which bleeding started and, subsequently, having got information in respect of the aforesaid occurrence, her parents came there and took her to her maternal place, where she got treatment and, after that, lodged the present case.

8. After investigation, the respondent nos.2 to 5 were charge-sheeted and, accordingly, they were put on trial.

9. The respondent nos.2 to 5 were charged for the offences punishable under Sections 341/34, 323/34, 498A/34 and 313/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act.

10. In course of trial, the prosecution examined, altogether, seven prosecution witnesses. The defence also got examined some witnesses. However, the learned trial court having perused the evidences, available on the record, acquitted the respondent nos. 2 to 5 on the ground that the prosecution witnesses made contradictory statements and no document to show the miscarriage of appellant was produced in course of trial and the aforesaid fact creates doubt about the genuineness



of the prosecution story.

11. Admittedly, the prosecution failed to produce any document to show that the appellant got treatment of miscarriage and except the oral statement of appellant as well as her father, there was nothing before the learned trial court to form an opinion that the appellant was subjected to miscarriage and the aforesaid lacuna of the prosecution case created doubt about the genuineness of the prosecution story and, in our view, the learned trial court rightly held that in want of documentary evidence, it cannot be said that the appellant was subjected to miscarriage, particularly, in the circumstance, when the appellant in her fardbeyan admitted that she got treatment for her miscarriage. Furthermore, we find that the learned trial court has discussed the statements of the prosecution witnesses and noticed several contradictions in their statements.

12. No doubt, at paragraph 12 of the impugned Judgment, the learned trial court has mentioned that the respondent nos.2 to 5 had taken defence, raising question regarding the character and behavior of the appellant and they also claimed that the appellant had illicit relation with her brother-in-law and she became pregnant due to the aforesaid illicit relation and, subsequently, got terminated her pregnancy



but mere admitting the aforesaid fact, it cannot be said that the prosecution succeeded to prove this fact that it were the respondent nos.2 to 5, who got terminated the pregnancy of the appellant. Moreover, it is well settled principle of law that the prosecution has to stand on its own leg and it cannot take the benefit of the defence case and further, it is an admitted case that the defence has right to take several pleas and defence and, therefore, even if in the present case, the respondent nos.2 to 5 had taken defence that the miscarriage of appellant was caused, then also, the prosecution could not take the benefit of the above stated defence.

13. Therefore, we do not find any ground to interfere into the impugned Judgment of acquittal and, in our view, this appeal should dismiss on admission stages itself.

14. In view of the aforesaid discussions, this criminal appeal stands dismissed on the admission stages itself.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

**Pradeep
Srivastava/-**

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2018.
Transmission Date	19.12.2018.

