

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.966 of 2018

Arising Out of PS. Case No.-229 Year-2016 Thana- JAGDISHPUR District- Bhojpur

Julekha Khatoon @ Julekha Khatun, wife of Sabir Ansari alias Md. Sabir Ansari, resident of village-Bharsara (Kakila), Police Station-Jagdishpur, District-Bhojpur.

... .. Appellant.

Versus

1. The State of Bihar.
2. Sri Kant Sharma, son of Moti Sharma, resident of village-Bharsara, Police Station-Jagdispur, District-Bhojpur.

... .. Respondents.

Appearance :

For the Appellant	:	Mr. Sanjay Kumar, Advocate. Mr. Rahul Nath, Advocate.
For the State	:	Mr. Ashwini Kumar Sinha, A.P.P.

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

Date : 25-09-2018

Heard learned counsel appearing for the appellant as well as the learned Additional Public Prosecutor for the State on the point of admission as well as I.A. No.2399 of 2018, which has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure, praying therein for grant of leave to file this criminal appeal.

2. The appellant is the mother of the victim, so she has locus standi to file this criminal appeal and, accordingly, she is



permitted to file this criminal appeal.

3. In view of the aforesaid discussions, I.A. No.2399 of 2018 stands disposed of.

4. The appellant is aggrieved by the impugned Judgment dated 29.06.2018 passed by the learned 1st Additional Sessions Judge, Bhojpur at Ara, in POCSO Case No.32 of 2016, arising out of Jagdishpur P.S. Case No.229 of 2016, by which and whereunder he convicted the respondent no.2 for the offence punishable under Section 12 of POCSO Act and sentenced him to undergo one year imprisonment with fine of Rs.5000/-. However, the learned 1st Additional Sessions Judge, Bhojpur at Ara, acquitted the respondent no.2 from the charges framed against him for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

5. The grievance of the appellant is that the respondent no.2 ought to have been convicted for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act as there was sufficient materials, available on the record, to prove that the respondent no.2 had committed rape on the victim girl, who was minor at the time of the alleged occurrence.

6. Learned counsel appearing for the appellant submits



that the victim was examined before the learned trial court as Prosecution Witness No.3 and she has very, categorically, stated that the respondent no.2 came at her house and provided sweet to her. She further stated that she became unconscious after eating the sweet and, subsequently, when she regained her consciousness, she found herself in the hospital. He further submitted that the appellant is the mother of the victim and she was examined as P.W.2 before the learned trial court and in her deposition, she very clearly stated that on the alleged date of the occurrence, she noticed blood on the private part of her daughter and, thereafter, she rushed to the hospital of Dr. Varsha Mishra along with her daughter, where her daughter got treatment and, therefore, the aforesaid statement of P.W.2 clearly establishes that the victim was subjected to sexual assault but the learned trial court completely ignored the aforesaid fact and committed error in not convicting the respondent no.2 for the offences punishable under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act.

7. On the other hand, learned Additional Public Prosecutor supports the impugned Judgment, arguing that the learned trial court has discussed each and every evidence and passed a well thought Judgment and, therefore, there is no need



to interfere into the impugned Judgment.

8. Having heard the rival contentions of both the parties, we went through the record.

9. According to the prosecution case, the alleged occurrence took place on 06.07.2016 and the appellant lodged the present case on 14.09.2016. Furthermore, the victim has, nowhere, stated that she was subjected to sexual assault. The victim has only stated before the learned trial court that she ate sweet provided by the respondent no.2 and having ate the sweet, she became unconscious. So far as P.W.3 is concerned, no doubt, she claimed that she took the victim to Private Clinic, where her treatment was done but, in course of trial, the appellant did not produce even a single chit of paper to show that the victim was treated in a private hospital. Moreover, the doctor, who examined the victim on 14.09.2016, did not find any injury on any part of the body of the victim. Therefore, in our view, the learned trial court rightly concluded that the prosecution failed to prove the charges framed under Section 376 of the Indian Penal Code and Section 4 of the POCSO Act against the respondent no.2.

10. It is well settled principle of law that if on the basis of the evidence, two views are possible, then the view



favourable to the accused shall be taken into consideration and, therefore, even if on the basis of the evidence, available on the record, another view is possible, then also, this Court cannot take a different view from a view as taken by the learned trial court.

11. On the basis of the aforesaid discussions, we do not find any substance in this appeal and, accordingly, this appeal stands dismissed on the admission stage itself.

12. However, it is made clear that the observations made in this Judgment are only in respect of acquittal of the respondent no.2 and the respondent no.2 cannot take any benefit of the observations given in this Judgment, while challenging his Judgment of conviction and sentence.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
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