

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.368 of 2020

Arising Out of PS. Case No.-44 Year-2009 Thana- MUFFASIL District- West Champaran

Sanju Kumari @ Sanju Devi, aged about 25 years, female, Wife of Binod Yadav, D/O- Harishankar Yadav, R/o Village - Barwat Parsain, P.S.- Muffasil, District- West Champaran, at present R/O- Mathlohiyah, P.S. - Harsidhi, District- East Champaran.

... .. Appellant

Versus

1. The State of Bihar
2. Jitendra Yadav @ Jiut Yadav @ Chhotelal Kumar, aged about 26 years, S/o Nish Narayan Yadav
3. Guddu Kumar, aged about 25 years, S/o Bhikhari Patel @ Bhikhari Prasad
4. Sanjay Kushwaha @ Sanjay Kumar Kushwaha, aged about 25 years, S/o Ramayan Kushwaha @ Ramayan Prasad Kushwaha
5. Bhola Kushwaha @ Bhola Kumar, aged about 26 years, son of Mahanth Kushwaha @ Mahanth Mahto, all four are R/o Barawat Pasarain, P.S.- Bettiah Muffasil, District- West Champaran.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Bimlesh Kumar Pandey, Advocate
For the State	:	Mr. Sujit Kumar Singh, A.P.P.
For the Respondent	:	
Nos.2 to 5	:	Mr. Bashishtha Narayan Mishra, Advocate Mr. Avinash Raj, Advocate

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and
HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

9 18-07-2023 Heard learned counsels for the parties at the stage of admission itself.

2. This appeal under Section 372 of the Code of Criminal Procedure, 1973 has been filed by the informant of Muffasil P.S.



case No.44 of 2009 against the judgment of acquittal dated 23.12.2019 passed by Shri Arun Kumar (First), Additional District & Sessions Judge IX, West Champaran, Bettiah in Sessions Trial No.894 of 2013, whereby and whereunder the learned trial Court has acquitted the respondent Nos.2 to 5 from the charges levelled under Sections 376 and 511/34 of the Indian Penal Code (referred to 'I.P.C.').

3. In the present criminal appeal, by order dated 19.09.2022, notices were issued to respondent Nos.2 to 5 under both processes and the lower court record was called for from the learned Court below.

4. In pursuance of the aforesaid order dated 19.09.2022, notices were issued to the respondent Nos.2 to 5 under both processes in time and Mr. Bashishtha Narayan Mishra and Mr. Avinash Raj, Advocates are appearing on behalf of the respondent Nos.2 to 5. The lower court record has already been received from the learned trial Court.

5. The prosecution's case in brief is that on 16.02.2009, the informant's daughter namely Sanju Kumari went to attend the call of nature outside the house, in the meantime, the accused persons namely Guddu Kumar, Jitendra Yadav, Bholu Kushwaha and Sanjay Kushwaha, who were hiding in the



bushes, came out and pressed the mouth of the victim and took her to a secluded place and were trying to commit rape upon her, but in the meantime, the informant reached the place of occurrence upon hearing cry of her daughter. Thereupon, all the accused persons ran away. The informant did not lodge the case due to societal shame. The accused persons also started to give death threats to the informant in case if he lodged any case.

6. On the basis of written report of the informant, Muffasil P.S. case No.44 of 2009 was registered under Sections 376 and 511/34 of I.P.C. and the police after investigation submitted charge sheet against the accused persons/respondent Nos.2 to 5 under the aforesaid Sections. Thereafter cognizance was taken by the learned Jurisdictional Magistrate and then the case was committed to the Court of Sessions. Charges were framed against the respondent Nos.2 to 5 on which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined as many as four witnesses, namely, Gauri Shankar Yadav (P.W.1), Chandrakali Devi (P.W.2), Hari Shankar Yadav (P.W.3) and Sanju Kumari (P.W.4). The prosecution has not produced any oral or documentary evidence in support of its case. The defence has produced one Exhibit i.e. Ext.A (copy of F.I.R. of Bettiah



Muffasil P.S. case No.89 of 2009). Thereafter the statements of the respondents were recorded under Section 313 of the Cr.P.C. and after conclusion of the trial, the learned trial Court acquitted the respondent Nos.2 to 5.

8. Being aggrieved by the impugned judgment of acquittal dated 23.12.2019, the instant appeal has been filed by the informant.

9. While assailing the impugned judgment, the learned counsel for the appellant submitted that the trial court has not appreciated the evidence on record in correct perspective. It has been submitted that merely because there was a pre-existing enmity between the parties, the learned trial Court has disbelieved the prosecution case, holding that the case was lodged with a view to save skin from the case lodged by father of Jitendra Yadav (respondent no.2). As such, the impugned judgment is fit to be set aside.

10. On the other hand, learned counsels for the respondent Nos.2 to 5 and the State have submitted that there is no error in appreciation of fact or law by the trial Court. It has been contended that there is severe inconsistency and contradiction in the testimony of the witnesses. Furthermore, not subjecting the victim to medical examination also casts doubts



on the genuineness of the allegations. As such, there is no infirmity in the finding of the learned trial Court.

11. After hearing the arguments advanced by the learned counsels for both the parties and upon thorough examination of the materials available on the record, the following issues arise for consideration in the present appeal:

(I) Whether vital contradiction in the testimony of the prosecution witnesses is fatal for the case of the prosecution?

(II) Whether there is any substantive medical finding to support the allegations against the respondents?

(III) Whether there is any other substantial evidence to hold that the finding of the learned trial court is perverse?

12. With reference to issue no. I, it is found that there is severe inconsistency in the testimony of the prosecution witnesses as regards the manner of occurrence. None of the prosecution witnesses (save and except PW 4 i.e. victim) are eye witnesses to the occurrence. Furthermore, we are of the view that the testimony of the victim does not inspire confidence of this Court and therefore, it cannot form the sole basis of conviction. In criminal law, loose, contradictory, and uncorroborated statements cannot be relied upon, much less



than forming the basis of conviction. The statement of witnesses must be free from blemish and devoid of any ambiguity, uncertainty and loopholes.

Accordingly, the issue no. I is answered in the affirmative.

13. With reference to issue no. II, it is found that the victim has not been subjected to medical examination by any Doctor in order to support the contention of the prosecution regarding the attempt to commission of rape and dragging of the victim. There is absence of any material on record to substantiate the contentions of the prosecution. It is trite principle of our criminal jurisprudence that guilt of the accused persons should be proved beyond all reasonable doubts. In the case of ***Santosh @ Bhure versus State (G.N.C.T) of Delhi, Criminal Appeal No. 575 of 2011***, where in para no. 86, three Judge Bench of the Hon'ble Supreme Court has observed that:

“We have no hesitation in holding that the prosecution has failed to prove a chain of incriminating circumstances as to conclusively point out that in all human probability it was the two accused or any one of them, and no one else, who had committed the murder... .. In a nutshell, it is a case where the prosecution failed to



elevate its case from the realm of "may be true" to the plane of "must be true" as is indispensably required for conviction on a criminal charge."

Accordingly, the issue no. II is answered in the negative.

14. With reference to issue no. III, it is found that there are severe lacunas in the case of the prosecution. It is apparent from perusal of the record that the incident is said to have taken place on 16.02.2009 at 07:00 pm. But the prosecution has failed to bring on record any material to prove the source of identification of the miscreants in the dark and in an open public space. Also, it has been admitted by the prosecution that there exists old enmity between the parties and an F.I.R. had earlier been lodged by the father of Jitendra Yadav (respondent no.2) against the informant and others. We have also taken into consideration the fact that this present case has been lodged after substantial delay, which gives rooms for concoction, fabrication and impurification of the truest version of the incident. Furthermore, not subjecting the victim to medical examination also casts dark clouds of suspicion about the allegations made against the respondents.

In light of the discussions made above, we find that there



is absence of any material to hold that the finding of the learned trial Court is perverse.

Accordingly, the issue no. III is decided in the negative.

15. While deciding an appeal against acquittal in a criminal case, the primary task with which the appellate Court is entrusted is to find out whether the findings in the impugned judgment are perverse, illegal, irrational and against the principles of natural justice. Once the appellate Court comes to the conclusion that the grounds on which the judgment is based are not perverse, the scope of appeal against acquittal is limited, considering the fact that the presumption of innocence which is available with an accused, gets further strengthened by the finding of a Court. In the case of ***Mrinal Das versus State of Tripura***, reported in ***(2011) 9 SCC 479***, it has been observed that:

“13. It is clear that in an appeal against acquittal in the absence of perversity in the judgment and order, interference by this Court exercising its extraordinary jurisdiction, is not warranted. However, if the appeal is heard by an appellate court, it being the final court of fact, is fully competent to reappreciate, reconsider



and review the evidence and take its own decision. In other words, the law does not prescribe any limitation, restriction or condition on exercise of such power and the appellate court is free to arrive at its own conclusion keeping in mind that acquittal provides for presumption in favour of the accused. The presumption of innocence is available to the person and in criminal jurisprudence every person is presumed to be innocent unless he is proved guilty by the competent court. If two reasonable views are possible on the basis of the evidence on record, the appellate court should not disturb the findings of acquittal.

14. There is no limitation on the part of the appellate court to review the evidence upon which the order of acquittal is found and to come to its own conclusion. The appellate court can also review the conclusion arrived at by the trial court with respect to both facts and law. While dealing with the appeal against acquittal preferred by the State, it is the duty of the appellate court to marshal the entire evidence on record and only by giving cogent and adequate reasons set aside the judgment of acquittal. An order of



acquittal is to be interfered with only when there are “compelling and substantial reasons” for doing so. If the order is “clearly unreasonable”, it is a compelling reason for interference. ...
...”

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450***, it has been observed in para no. 75 that:

“The trial court has the advantage of watching the demeanour of the witnesses who have given evidence, therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

Thus, an order of acquittal is to be interfered with only for compelling and substantial reasons. In case if the order is clearly unreasonable, it is a compelling reason for interference. But where there is no perversity in the finding of the impugned judgment of acquittal, the appellate Court must not take a different view only because another view is possible. It is because the trial Court has the privilege of seeing the



demeanour of witnesses and, therefore, its decision must not be upset in absence of strong and compelling grounds.

16. In light of the discussions made above, we are of the considered opinion that the trial Court has taken a plausible view based on the evidence available on the record. The view taken by the trial Court cannot be held to be perverse. Under such circumstance, no case for interference with the impugned judgment is made out.

17. Accordingly, the appeal against the judgment of acquittal dated 23.12.2019 passed by Shri Arun Kumar (First), Additional District & Sessions Judge IX, West Champaran, Bettiah in Sessions Trial No.894 of 2013 is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

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