

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.587 of 2022

Arising Out of PS. Case No.-69 Year-2021 Thana- NAVINAGAR District- Aurangabad

MAYA DEVI Wife of Santosh singh Resident of village - Panti, P.s.-
navinagar, District- Aurangabad.

... .. Appellant

Versus

1. The State of Bihar
2. Jashwant Singh Son of Ashok Singh Resident of village - Panti, P.s.-
navinagar, District- Aurangabad.
3. Ashok Singh Son of Satdeo singh Resident of village - Panti, P.s.- navinagar,
District- Aurangabad.
4. Sabita Devi Wife of Ashok singh Resident of village - Panti, P.s.- navinagar,
District- Aurangabad.

... .. Respondents

Appearance :

For the Appellant/s	:	Mr. Yugal Kishore, Advocate
		Ms. Rupa Kumari, Advocate
For the Respondent/s	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

- 3 30-01-2023 This is an appeal under the *proviso* to Section 372 of the Code of Criminal Procedure, 1973 (CrPC for short) assailing a judgment of acquittal dated 28.02.2022 recorded by the learned ADJ VI-cum-Special Exclusive Judge (POCSO), Aurangabad, Bihar in G.R.(POCSO) No. 20 of 2021 (CIS No. 20 of 2021), arising out of Navinagar P.S. Case No. 69 of 2021. By the said judgment, the learned court below has acquitted the



respondents No. 2, 3 and 4 of the charges punishable under Sections 376AB, 504, 506 read with Section 34 of the IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (POCSO Act for short).

The appellant is a victim within the meaning of Section 2(wa) of the CrPC, she being the mother of the child, who, according to the prosecution's case, was subjected to rape.

Though this appeal has been listed 'For Orders On Petitions' for considering the appellant's prayer for condonation of delay in filing the appeal, with the consent of learned counsel for the appellant and learned Additional Public Prosecutor, it has been heard on merits.

Re: I.A. No. 01 of 2022: -

This application has been filed for condonation of delay of 93 days occurred in filing the appeal.

After having considered the averments made in the application, we are satisfied that the appellant had sufficient cause for not preferring the appeal within the prescribed statutory period. Accordingly, in the interest of justice, the delay in preferring this appeal is hereby condoned.

I.A. No. 01 of 2022 stands allowed.

Cr. Appeal (DB) No. 587 of 2022: -



Assailing the impugned judgment, learned counsel appearing on behalf of the appellant has submitted that the trial court has committed a gross error of law by ignoring the evidence of the victim. He has submitted that the prosecution was able to prove its case beyond all reasonable doubts with the evidence of the victim ('X') and her mother (PW-1). He has also submitted that the trial court has given undue weightage to the evidence of PW-5 for recording acquittal of the victim.

We have carefully perused the impugned judgment and order of the trial court. No ground has been taken in the memo of appeal that the evidence of witnesses have been wrongly recorded in the impugned judgment. In such view of the matter, we have considered the evidence of the witnesses, as recorded in the impugned order of acquittal, for addressing the challenge put by the appellant to the impugned judgment.

From perusal of the impugned judgment of the trial court, we notice that the trial court has recorded manifest contradictions in the evidence of 'X' and the informant (PW-2). In the First Information Report, it was alleged that 'X' had complained to the informant, at 07:45 P.M. on 25.03.2021, that she was sexually assaulted by respondent No. 2 in his flour mill. Thereafter, when the informant had gone to respondents No. 3



and 4, father and mother of respondent No.2, to complain about the criminal conduct of respondent No.2, they had abused her and had prevented her from lodging the criminal case. The victim ('X'), who was examined as PW-1, at the trial, deposed that when she was sexually assaulted by respondent No. 2 in his flour mill, her mother (PW-2) had knocked the door of said flour mill. This manifest contradiction in the evidence of two important witnesses creates reasonable doubt about the prosecution's case. An aunt of 'X' was examined as PW-5, who did not fully support the prosecution's case. Further, 'X' was examined by the doctor on the very next day, i.e., on 26.03.2021. The medical report does not support the prosecution's case in any manner. From the evidence, adduced at the trial, as discussed in the impugned judgment, we find that there was no evidence of penetrative sexual assault.

On close reading of the impugned judgment of acquittal, we are of the opinion that the view taken by the trial court, while acquitting the respondents Nos. 2 to 4, is a reasonably possible view. We do not find any reason to take a different view than what has been taken by the trial court, which had the added advantage of watching the witnesses and their demeanor during the course of trial.



Accordingly, we do not find any merit in this appeal,
which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

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