

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.129 of 2021

Arising Out of PS. Case No.-63 Year-2010 Thana- SHIVSAGAR District- Rohtas

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X, C/o Hira Prasad, Resident of Village- Shahpur, P.S.- Sheo Sagar, District- Rohtas at Sasaram.

... .. Appellant

Versus

1. The State of Bihar
2. Ritesh Nat @ Ritesh Rai, Son of Ram Niwas Rai, Resident of Village- Shahpur, P.S.- Sheo Sagar, District- Rohtas at Sasaram.
3. Chintu Nat @ Chintu Rai, Son of Chandrama Nat, Resident of Village- Shahpur, P.S.- Sheo Sagar, District- Rohtas at Sasaram.

... .. Respondents

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Appearance :

For the Appellant/s : Mr. Dhanendra Chaubey, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl PP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE S. B. PD. SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 07-01-2025

I.A. No. 1 of 2021

This is an appeal preferred by the victim. In view of proviso to Section 372 Cr.PC, there would be no need to file an application seeking leave to file an appeal against acquittal by the victim.

2. This interlocutory application is, thus, misconceived and is rejected.

I.A. No. 2 of 2024

3. This interlocutory application has been filed seeking condonation of delay of 195 days in filing of the appeal. The

impugned judgment in this case has been passed on 18.03.2020. The appeal against the impugned judgment would have been preferred well within time by 17.06.2020 but due to pandemic Covid-19 situation, the appeal could not be preferred within the prescribed period of 90 days. In **Suo Moto Writ Petition (Civil) No. 03 of 2020**, the Hon'ble Supreme Court has directed that the period from 24.03.2020 to 15.03.2022 shall be excluded from counting the period of limitation.

4. In the aforesaid view of the matter, there would be no need to seek condonation of delay as the appeal is to be treated within time. It has been presented in the Registry on 28.01.2021.

5. Since the appeal is to be treated within time, I.A. No. 2 of 2024 stands disposed of.

6. Heard Mr. Dhanendra Chaubey, learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State.

7. This appeal has been preferred for setting aside the judgment of acquittal dated 18.03.2020 (hereinafter referred to as the 'impugned judgment') passed by learned Presiding Officer, Fast Track Court No. 2, Rohtas at Sasaram (hereinafter referred to as the 'learned trial court') in Sessions Trial No. 02 of 2011 arising out of Shiv Sagar P.S. Case No. 63 of 2010.

8. By the impugned judgment, the learned trial court has been pleased to acquit the Respondent Nos. 2 to 3 who were facing trial for the charges under Sections 366 and 376(D) of the Indian Penal Code (in short 'IPC') giving them benefit of doubt.

Brief Facts of the Case

9. The prosecution case is based on the fardebyan of the victim, namely, 'X' recorded by Sub-Inspector of Police Raghu Raj Ram of Shiv Sagar Police Station in the district of Rohtas on 09.03.2010 at 16:30 Hours at Shiv Sagar Police Station. In her fardebyan, the victim (hereinafter interchangeably referred to as the 'informant') has alleged that on 06.03.2010 at about 07:30-08:30 PM in the evening, she had gone to defecate towards east of her village where (1) Chintu Nat, (2) Ritesh Nat and (3) Shambhu Rai, all under some conspiracy came there and tied her hands with '*gamchha*' and tied her mouth with her '*odhni*'. They caught hold of her and took her to east side to a rice mill which is presently run by one Akhilesh Rai. Firstly, Ritesh committed wrong with her then Shambhu and thereafter Pintu. During the alleged incident, the victim alleges to have become unconscious many a times. The victim was kept at the said place for three days and they

committed rape upon her. On 08.03.2010 at about 12 O'clock, when the victim regained her consciousness and no one was present there, she escaped from the said place. The victim reached her house and told her mother that the lock of the '*dram*' was open and she escaped from there. She also told about the incident to her mother.

10. After completion of investigation, police submitted a chargesheet against the Respondents-accused but discharged one of the accused, namely, Shambhu Rai as no sufficient material could be collected against him to file a chargesheet. The chargesheet was filed under Sections 366A/376/34 IPC.

11. The learned Magistrate took cognizance of the offences vide order dated 26.06.2010 and upon finding that the offences are triable by the Court of Sessions committed the records to the Court of Sessions on 23.12.2010. Upon receipt of the records in the learned Sessions Court, the accused persons-respondents were explained the charges which they denied and claimed to be tried. Accordingly, charges were framed against them for the offences under Sections 366 and 376D IPC.

12. On behalf of the prosecution, altogether 3 witnesses were examined. PW-1 is the father of the victim, PW-2 is her mother and PW-3 is the victim herself. The prosecution has proved

only the signature of the victim on her fardebyan and the signature of PW-1 which have been marked as Exhibit ‘1’ and Exhibit ‘1/1’ respectively.

13. On behalf of the defence, no oral evidence has been led but the defence has brought on record the following documentary evidences:-

Exhibit ‘A’	The formal FIR of Shiv Sagar P.S. Case No. 179 of 2018
Exhibit ‘A/1’	The written application of the said case number
Exhibit ‘A/2’	The formal FIR of Shiv Sagar P.S. Case No. 371 of 2017
Exhibit ‘A/3’	The written application of the said case number
Exhibit ‘A/4’	The formal FIR of Shiv Sagar P.S. Case No. 21 of 2002
Exhibit ‘A/5’	The fardebyan and the chargesheet which have been filed in the said case.

Findings of the Learned Trial Court

14. At the outset, the learned trial court has found that on perusal of the exhibits brought on record on behalf of the defence, it is evident that both the parties are engaged in litigation since the year 2002. The learned trial court has held that both the parties have pending civil as well as criminal cases against each other prior to the date of occurrence.

15. The learned trial court has dealt with the prosecution evidences as well as the defence evidences on the record. In this

case, the evidence of the Investigating Officer (I.O.) and the Medical Officer has not been recorded. The learned trial court has held that the story narrated by the victim (PW-3) seems to be suspicious. The alleged occurrence took place on 06.03.2010 at about 08:00 PM, the victim claims that she was taken to the premises of a mini rice mill which is situated at a distance of 5 kilometers where she was subjected to rape but there was no material on the record to prove that when she was forcibly taken away to the premises of the rice mill, the victim had resisted and/or any injury was caused to her in the said occurrence. The learned trial court did not find any material on the record to prove that the victim was subjected to rape.

16. This Court further finds that the learned trial court having gone into the evidence of the victim (PW-3) found that she was married in the year 2009 and her 'gauna' had taken place in the year 2012. She had also taken benefit of the Government's scheme which is allowed to a married lady. The prosecution did not lead any evidence to even prima-facie demonstrate that the victim was aged about 15-16 years at the time of marriage. The trial court having found that the victim had taken benefit of the Government of Bihar's scheme of *Kanya Vivah Yojna* in the year 2009, would have been eligible to receive such benefit only when

she would have completed 18 years of age at the time of marriage, therefore, in the year 2009, she would have been at least aged 18 years. The trial court has also drawn an adverse inference from the conduct of the victim referring to her fardebyan in which she has disclosed her age as 15-16 years whereas she had taken benefit of the *Kanya Vivah Yojna* from the Government in the year 2009 showing herself eligible being aged 18 years. The inference shows that the victim can change her statement at any stage for her own benefit.

17. Learned trial court has further found that according to PW-2, five accused persons had committed rape on the victim whereas PW-1 has stated that three persons had committed rape on PW-3. The victim returned home on her own after three days of the occurrence and had narrated the entire story to her mother. Information with regard to the occurrence was given at the Shiv Sagar Police Station at about 12:00 Noon after return of the victim but on perusal of the fardebyan of the victim, it would appear that the same was recorded on 09.03.2010 at 04:30 PM. From this evidence, the learned trial court has come to a conclusion that the fardebyan has been recorded after much deliberations and discussions among the prosecution witnesses and this seems to have been influenced by the prior enmity between the parties. The

victim did not remember even the date and the day of the occurrence.

18. Having appreciated the entire evidences on the record, the learned trial court found that the prosecution was not able to prove the guilt of the accused persons beyond all reasonable doubts and in the kind of the evidence where the parties are having prior enmity, it would not be appropriate to convict the accused persons on the vague testimony of the victim.

Submissions on behalf of the Appellant

19. Mr. Dhanendra Chaubey, learned counsel for the appellant has assailed the impugned judgment on the ground that the learned trial court has not properly appreciated the evidences of the prosecution witnesses, particularly that of the victim (PW-3) who has supported her case. It is submitted that even though the Doctor and the I.O. have not been examined in this case, it would not cause any serious prejudice to the accused persons and the prosecution case would not fail because of the non-examination of the Doctor and the I.O.

Submissions on behalf of the State

20. On the other hand, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State has defended the impugned judgment. Learned Additional Public Prosecutor would

submit that in this case, the trial court has thoroughly examined the evidences available on the record. There is no denial of the fact that the parties were at loggerheads since the year 2002 and they were having civil as well as criminal litigation, further, in this case, the conduct of the prosecution in lodging the FIR after three days is required to be examined keeping in view that the evidence of the prosecution witnesses suffer from material contradictions, inconsistencies and the evidence of the victim cannot be put in the category of a sterling witness.

21. It is submitted that while delay in lodging of the FIR alone may not be sufficient to throw away the prosecution case but in this case, it is not mere a delay of 3 days but even the quality of the evidences available on the record would create doubt over the authenticity of the prosecution case. In such circumstance, the learned trial court has not committed any error in acquitting the accused persons.

Consideration

22. We have heard Mr. Dhanendra Chaubey, learned counsel for the appellant and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor for the State and perused the trial court's records. The materials appearing from the record clearly show that the occurrence in which the victim (PW-3) was allegedly

forcibly taken away to a place on 06.03.2010 in between 07:30-08:30 PM while she had gone alone to the eastern side of her village to defecate, even as she did not return home, neither PW-1 nor PW-2 who are the uncle and the mother respectively of the victim lodged any '*sanha*' with the police. The victim returned home on her own after three days and thereafter the present FIR has been lodged. The learned trial court has rightly recorded that the information with regard to the occurrence was received in the Shiv Sagar Police Station at 12 Noon but the fardebyan of the victim was recorded after four and half hours i.e. at 04:30 PM. The learned trial court has, therefore, rightly noticed that the prosecution parties being inimical to the defence were involved in deliberations and discussions prior to lodging of the first information report.

23. We have also found from the formal FIR that the FIR was sent to the learned Jurisdictional Magistrate only on 11.03.2010 i.e. after two days of the registration of the FIR.

24. In this case, though the victim claimed in her fardebyan that she was 15-16 years old but the materials on the record clearly demonstrate that she was married in the year 2009 and having declared herself eligible to get the benefit of the State Government's scheme of *Kanya Vivah Yojna*, she had received the

benefit. Thus, we find no error in the finding of the learned trial court that the victim has changed her statement with regard to her age while lodging the fardebyan and this would definitely raise a doubt over the veracity of her statement.

25. The learned trial court has recorded that the victim was allegedly taken to a distance of 5 kilometers in a rice mill where she was subjected to rape but the victim has admitted her photograph with one of the accused, namely, Chintu who was also studying in the same school in intermediate class. The learned trial court has also noticed material discrepancies which were in the nature of contradiction in the statement of the victim and we are of the view that the learned trial court has rightly appreciated the evidences on the record.

26. The I.O. and the Doctor of the case have not been examined and this, in our considered opinion, would cause serious prejudice to the defence inasmuch as neither the place of occurrence has been proved in this case nor the matters connected to the place of occurrence could be demonstrated before the learned trial court. There is no independent witness of the occurrence, delay in lodging of the FIR, in the circumstances, would prove fatal to the prosecution case.

27. We are also reminded of the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara and Others Vs. State of Karnataka** reported in (2023) 9 SCC 581 wherein the principles governing an appeal against acquittal have been enumerated in paragraph '8'. We quote paragraph '8' of the judgment in the case of **H.D. Sundara (supra)** as under:-

“8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment¹ rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short “CrPC”). The principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378CrPC can be summarised as follows:

“8.1. The acquittal of the accused further strengthens the presumption of innocence;

8.2. The appellate court, while hearing an appeal against acquittal, is entitled to reappraise the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappraising the evidence, is required to consider whether the view taken by the trial court is a possible view which could have been taken on the basis of the evidence on record;

¹ *State of Karnataka v. H.K. Mariyappa*, 2010 SCC OnLine Kar 5591

8.4. If the view taken is a possible view, the appellate court cannot overturn the order of acquittal on the ground that another view was also possible; and

8.5. The appellate court can interfere with the order of acquittal only if it comes to a finding that the only conclusion which can be recorded on the basis of the evidence on record was that the guilt of the accused was proved beyond a reasonable doubt and no other conclusion was possible.”

28. Having examined and re-appreciated the entire materials on the record, keeping in view what have been discussed hereinabove and the judgment of the Hon’ble Supreme Court in the case of **H.D. Sundara (supra)**, we find no reason to interfere with the impugned judgment.

29. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(S. B. Pd. Singh, J)

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CAV DATE	
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