

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.244 of 2023**

Arising Out of PS. Case No.-15 Year-2006 Thana- BALRAMPUR District- Katihar

Satani Kumari @ Satani Devi D/O Dhorai Rai Resident Of Village - Sahpur,  
P.S.- Balrampur, Distt - Katihar

... .. Appellant/s

Versus

1. The State of Bihar
2. Heera Lal Rai, Son Of Motilal Rai Resident Of Village - Sahpur, P.S.-  
Balrampur, Distt - Katihar
3. Prabhash Rai, Son Of Bahadur Rai Resident Of Village - Sahpur, P.S.-  
Balrampur, Distt - Katihar

... .. Respondent/s

**Appearance :**

|                      |   |                              |
|----------------------|---|------------------------------|
| For the Appellant/s  | : | Mr.Md. Fahar Imran, Advocate |
|                      |   | Mr. Md. Musowir, Advocate    |
| For the Respondent/s | : | Mr. Parmeshwar Mehta, APP    |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE RAMESH CHAND**  
**MALVIYA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 01-08-2025**

The present criminal appeal has been preferred against the judgment of acquittal dated 19.12.2022 passed by Sri Neeraj Kumar-II, the learned Additional Sessions Judge-I, Katihar in S.T. No. 102/2009 (arising out of Balrampur P.S. Case No. 15/2006, CIS No. 758/2014), whereby the Respondent Nos. 2 and 3 have been acquitted by the learned Trial Court from the charge u/s 376 (g) of the I.P.C. and they are discharged from their respective liabilities.



2. The prosecution case in brief is that the victim was a minor girl of about 14 years and living with her parents, grandfather and other family members in her village. On 30.12.2005 at about 02:00 PM she was alone in her house, and her parents and siblings had gone to paddy field. The grandfather of the victim was basking under the sun. Suddenly both the accused persons, having pistol in their hands, entered into her house and overpowered her. The Respondent No. 1 pointed the pistol on her grandfather and asked him to keep mum. When she tried to raise alarm, Respondent No. 2 inserted pistol barrel in her mouth and threatened to kill her and her grandfather if she would make hue and cry. Thereafter, they pushed her down and committed rape on her.

3. For the above occurrence, a complaint was filed before the court. The complaint was sent to the concerned Police Station for registration of an FIR under Section 156(3) of the Cr.P.C. On the basis of above application, an FIR 15/2006 was instituted by Balrampur Police against the accused persons. After completion of the investigation, the IO has submitted the final report 35/2006 showing the case false.

4. The final report was accepted by the court, but the



protest petition filed by the complainant was converted into a complaint and a new complaint case 2551/2006 was instituted against the above-named accused persons. After inquiry, both the accused persons were summoned to face trial for offence U/s 376 IPC vide order dated 12.01.2008. The case was committed to the Court of Sessions vide order dated 02.04.2009. The case was transferred to this court by the Sessions Judge.

5. After hearing both sides and on the basis of the materials available on record, charge for offence u/s 376 (g) of IPC was framed, read over and explained to the accused persons in Hindi to which they plead not guilty and claimed to be tried.

6. During the trial, altogether 03 witnesses were examined by the Prosecution, viz. P.W. 1 Mother of the complainant; P.W. 2 Sister of the complainant; P.W. 3 the complainant. The prosecution also placed one documentary evidence before the trial court which was marked as Exhibit P-1 i.e., the FIR of Balrampur PS case no. 15/2006. The Defence did not examine any witness before the learned trial court, and presented four documentary evidence before the trial court, i.e., SDE no. 470/2005 which was marked with



objection as D-1, The C.C. of case no. 44 M /2006, which was marked as D-2, Charge sheet of Balrampur PS 15/2006 which was marked as D-3, C. C of FIR of Balrampur PS case 58/2005 which was marked as D-4. After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C, where they claimed to be innocent and said to make their statement of defence in writing. Thereupon arguments on behalf of both sides were made and trial concluded, recording the judgment of acquittal in favour of the accused.

7. The learned trial Court passing the impugned judgment considered the following facts in issue:

The non examination of important witnesses namely, father, brother, uncle, aunt, Mukhiya, Mangla Yadav, Dhanlal, Pannalal, Hemant Rai and other persons of locality who reached the place of occurrence after the incident, as per the evidence of the mother of the victim, i.e., PW-1. The non production of any incriminating evidence like, the semen stained clothes before the court. The victim was not examined by the doctor immediately after the alleged offense of rape, or even later on. The



learned trial court held that these facts in issue cumulatively tend to make the entire prosecution improbable and unbelievable from the standpoint of prudence of a common man.

8. The learned counsel for the appellant has submitted that the impugned judgment is bad in law, and that the learned court below wrongly acquitted the opposite while the witnesses have fully supported the prosecution case. The learned counsel for the appellants further submitted that the learned court below has failed to consider that victim has supported the prosecution case during trial, and In light of this the acquittal of the respondents is fit to be set aside.

9. The learned counsel for the respondents submitted that the learned trial court has dealt with the evidence on record, and therefore, no case is made out for interference in the present appeal.

10. After hearing the arguments advanced by the learned counsel appearing for both the parties and upon examining the material available on the record, the following issues arise for consideration before the Court: -

(I) Whether the medical examination of the victim was done by a doctor?



(II) Whether all the relevant witnesses were examined before the learned trial court, and whether the prosecution has produced all such materials as exhibited in course of trial?

11. With reference to the Issue No (I), it is found that the victim was not medically examined by a registered medical practitioner. The victim was neither medically examined nor any cloth has been examined where any incriminating substance has been found. As per the Trial Court record, the victim was not examined by the doctor at any stage either immediately after the alleged offence, or even in course of inquiry. The Medical Examination becomes really important in cases of rape as it is one of the most important evidence to establish the crime. It acts as corroborative evidence for the prosecution's case. There is nothing on record to establish the alleged occurrence. The report of such medical examination of the victim either corroborates or contradicts the prosecution version of the case.

Thus, this issue is decided in negative in present case.

12. With reference to issue no. (II), the material



evidence and witnesses in this present case were not examined, as per the observations made by the learned trial court. The father, brother and the persons of the locality who were in the vicinity were not presented before the trial court by the prosecution. There was non-examination of the material witnesses, i.e., the father, brother and others who were present in the vicinity. PW-1 (mother of the prosecutrix) and PW-2 (sister of the prosecutrix) who were examined were not present in the house at the time of the commission of the crime. It is evident from the undisputed facts of the case that the father, brother, uncle and aunt were not produced as witness. The uncle and aunt lived in the neighbourhood of the victim's house, and were in the vicinity at the time of commission of the crime. They were not produced as a witness and were not examined before the trial court. The material evidence such as the pistol used by the accused, and any piece of cloth with incriminating substance such as semen or blood were not presented by the prosecution before the learned trial court. Thus, it is clear that some of the relevant witnesses were not examined by the court, and no material evidence were exhibited before the court. Due to withholding the best evidence, an adverse inference would be drawn.



Accordingly, this issue is decided in negative.

13. The learned trial court had also taken other grounds for acquittal of the accused persons, which were that there was previous enmity between the parties and a property dispute is going on and criminal case is pending against the victim family member which has been instituted by the appellant side which has been mentioned in Paragraph No. 50 of the Judgment of the learned trial court, and is produced as Defence Exhibit D1, D2 and D4.

14. Therefore, there is every possibility of false implication in such background of litigation among both the parties. Taking into consideration, the withholding of relevant witnesses, and also, the material exhibits in course of trial the possibility of false implication cannot be ruled out. It is settled principle of law of evidence that best evidence is to be produced before the court, and if it is not possible, there must be a plausible explanation for the same.

15. In the present case there are instances of non-production of relevant witnesses, i.e., the neighbours and others who were said to have been present at relevant time and further non-production of such relevant materials, as exhibits, thus an adverse inference would be drawn in respect



of veracity of prosecution case, and the learned trial court has rightly held that the prosecution has not proved the case beyond shadow of reasonable doubt.

16. In criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the Court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh & Ors. v. The State*** reported in ***1952 SCR 193***, paragraph 13, held as under:

*“..the High court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”*



17. In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph no. 75, the Hon'ble Supreme Court re- iterated the said view and observed as under:

*“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.”*

18. 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.

19. In the opinion of this Court, the trial Court has taken a correct view based on the evidence available on the



record. The view taken by the trial Court cannot be held to be bad or perverse. Therefore, the Judgement of the learned trial court requires no interference.

20. In view of the above, the present criminal appeal preferred against judgment of acquittal dated 19.12.2022 passed by Sri Neeraj Kumar-II, the learned Additional Sessions Judge-I, Katihar in S.T. No. 102/2009 (Arising out of Balrampur P.S. Case No. 15/2006, CIS No. 758/2014) is dismissed at the admission stage itself.

**(Sudhir Singh, J)**

**( Ramesh Chand Malviya, J)**

Sujit/-

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|-------------------|------------|
| AFR/NAFR          | NAFR       |
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