

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.411 of 2023

Arising Out of PS. Case No.-45 Year-2014 Thana- CHARPOKHARI District- Bhojpur

XXX, C/o [REDACTED], Resident of Village -
Kusummohi, P.S.- Charpokhari, District - Bhojpur.

... .. Appellant/s

Versus

1. The State of Bihar
2. Lalu Yadav @ Jay Shankar Singh, Son of Rameshwar Yadav, Resident of village - Kumshi, P.S.- Charpokhari, District - Bhojpur.
3. Satya Narayan Singh, Son of Ghodhan Yadav, Resident of village - Majiyawan, P.S.- Charpokhari, District - Bhojpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Ms. Priya, Advocate Mr. Prabhat Kumar Singh, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
For the R-2 & R-3	:	Mr. Md. Ataul Haque, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and

HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 20-11-2025

Heard learned counsel for the appellant, learned counsel for the respondent nos. 2 and 3 and learned Additional Public Prosecutor for the State as also perused the learned trial court records.

2. The present appeal has been preferred for setting aside the judgment of acquittal passed on 15.02.2023 (hereinafter referred to as the 'impugned judgment') by the learned Additional Sessions Judge-VIIth court, Bhojpur, Ara (hereinafter referred to as the 'learned trial court') in Sessions Trial No.72 of 2015 in connection with Charpokhari P.S. Case No.45 of 2014.



3. Learned counsel for the appellant has mainly contended before this Court that the learned trial court seems to have based its finding without proper appreciation of the prosecution evidence. It is submitted that PW-1 and PW-5 are the victims of this case, they are reliable and credible witnesses, hence, their testimonies could not have been discarded by the learned trial court.

4. It appears from the records that the present case giving rise to Charpokhari P.S. Case No.45 of 2014 was lodged on the basis of a written complaint submitted by the informant after about 15 days of the occurrence. In her complaint petition filed before the learned Chief Judicial Magistrate, Bhojpur, Ara registered as Complaint Case No.375C/2014, the complainant alleged that on 30.01.2014 at about 11.00 PM when she along with her sister (PW-5) were sleeping in their shop which has only a bamboo's door, both the accused persons broke open the door and the lock, pulled the *rajai* after which both the sisters woke up and saw in the torch light that both the accused persons were in drunken condition and they were naked. They allegedly caught both the sisters and before both the sisters could have understood anything, their clothes were torn, they were made naked and slammed down whereafter both the accused persons put



themselves on the victims and wanted to commit rape but on understanding the situation both the sisters raised *hulla*, they were threatened but other persons also raised *hulla* whereafter the accused persons fled away and their prestige could be saved. Their mother and *bua* came whom the victims told the story. The complainant alleged that she had gone to the police station on 31.01.2014 and told the occurrence to *Darogaji*, he came and verified it but later on the said *Darogaji* did not lodge any case whereafter he was transferred. She alleged that the new *Daroga* told her to go to the court whereafter she filed the complaint case. The signature of the complainant (PW-5) has been exhibited and marked Exhibit-1.

5. It appears that the said complaint petition was forwarded to the Mahila police station for registration of a case and submission of the final form. The FIR has, however, been lodged with Charpokhari police station on 02.03.2014. It is evident from the complaint petition that it was prepared on 22.02.2014 i.e. after about 23 days of the occurrence. The complaint petition was also not supported by any affidavit.

6. After investigation, police submitted a charge-sheet under Sections 376, 511 and 448 of the Indian Penal Code against the accused persons. Cognizance of the offences was taken on



24.06.2015 and finding that the case would be triable by a court of Session, the records were committed to the court of learned District and Sessions Judge on 10.03.2015 whereafter the records were sent to the learned Additional Sessions Judge-VIIth court, Bhojpur, Ara on 17.02.2020.

7. The accused persons were explained the charges which they denied and claimed to be tried.

8. On behalf of the prosecution as many as five witnesses were examined. PW-1 and PW-5 are the two sisters whereas PW-2 is the mother of the victims and PW-3 is the father of the victims. PW-4 Tulsi Singh who happened to be an independent witness has not supported the prosecution case and has been declared hostile. The father of the victims has stated that at the time of occurrence, he had gone in his relationship and returned only on the next day of the occurrence whereafter he had come to know that Lalu and Satyanarayan both had broke open the door of the shop when the two sisters were sleeping and had attempted to outrage their modesty. He was, thus, not present in the village on the date of the occurrence.

9. The learned trial court has noticed that PW-1, PW-5 as also their mother (PW-2) are wholly inconsistent to the extent of making contradictory statements with regard to their presence in



the shop in the night and the manner of occurrence. A finding has been recorded in paragraph '10' of the impugned judgment of the learned trial court that both the sisters have made two different statements. PW-2 has stated that when she reached the shop, 10-15 persons were already present there. PW-2 has not stated that the clothes of the victims were found torn. Even as it is stated that 10-15 persons were already present at the shop, no independent person has come to support the prosecution case. PW-2 has stated that when she reached at the place of occurrence her daughter was coming outside the shop. It is also submitted that in the evidence of PW-2, it has come that she was sleeping in her house and it was a dark night. She had got awakened on hearing *hulla* whereafter she had gone to the door of the shop.

10. The learned trial court has disbelieved the prosecution witnesses and the learned trial court held that the charges levelled against the accused persons were suspicious and the prosecution had failed to prove the same beyond all reasonable doubts. The learned trial court has acquitted respondent nos.2 and 3 in absence of any evidence giving them benefit of doubt.

11. Learned counsel for the appellant has assailed the impugned judgment of acquittal on the ground that the learned trial court has not properly examined and analysed the evidence of the



prosecution witnesses particularly that of PW-1 and PW-5. It is submitted that the finding of the learned trial court that both the sisters PW-1 and PW-5 have made contradictory statements is not a correct finding. It is also submitted that trivial contradictions in the statements of the prosecution witnesses cannot be taken as a ground for acquittal of the accused.

12. Learned Additional Public Prosecutor for the State as well as learned counsel for the respondent nos.2 and 3 have defended the judgment of the learned trial court. It is submitted that on perusal of the evidence of the prosecution witnesses particularly PW-1, PW-2 and PW-3, it would appear that the complaint case was lodged as a tool to take possession of the house of Ram Dayal. Satyanarayan, one of the accused, is son of said Ram Dayal and on the date of occurrence the *sharadh* ceremony of the wife of Ram Dayal was being performed. It is submitted that, in this case, the investigating officer has not been examined and as such the actual place of occurrence has also not been duly proved. The independent witness, namely, Tulsi Singh (PW-4) has not supported the prosecution case.

13. Having heard learned counsel for the appellant, learned Additional Public Prosecutor for the State as also on perusal of the records, we find that the learned trial court has duly



discussed the evidences adduced on behalf of the prosecution. We have also gone through the same and find that PW-1 and PW-5 are not at all consistent and cohesive in giving the manner of occurrence. It has also been found that while the mother of the victims is said to be sleeping in her house, the victims claim that they were sleeping in the shop. The learned trial court has rightly noticed in paragraph '10' of its judgment that PW-5 has stated that she was sleeping in the shop every night, PW-1 has not stated so and she has stated that only on the date of occurrence, she was sleeping in the shop. While PW-1 has stated that they were sleeping on a *chowki*, PW-5 has stated that they were sleeping on a *khatia*. Other material discrepancies in the statement of the prosecution witnesses have been discussed in the trial court judgment and we have found that the trial court has not committed any fault in appreciation of the evidences on the record. The delay of 23 days in filing of the complaint petition in the court of learned C.J.M., non-production of the investigating officer and there being no independent witness to support the occurrence of breaking open of the door of the shop by the accused persons even as 10-15 persons are said to have assembled there when PW-2 reached would prove fatal to the prosecution case.



14. We are dealing with a case of appeal against acquittal. The principles governing the consideration of an appeal against acquittal have been laid down by the Hon'ble Supreme Court and reiterated in the various judicial pronouncements. We quote paragraph '8' from the judgment of the Hon'ble Supreme Court in the case of **H.D. Sundara vs. State of Karnataka (2023) 9 SCC 581** :-

“ 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 378 CrPC 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 reappreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after reappreciating 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.”

15. We find no merit in this appeal. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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