

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.845 of 2023

Arising Out of PS. Case No.-9 Year-2021 Thana- MAHILA P.S. District- Bhojpur

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Anshu Kumari Daughter Of Ram Bachan Yadav @ Rambachchan Singh
Resident Of Village And Post Office - Dullamchak, P.S. - Chauri, District -
Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Umesh Singh, Son of Bindeshwari Singh Resident Of Village And Post
Office - Dullamchak, P.S. - Chauri, District - Bhojpur
3. Ramjee Singh @ Ramjee Yadav Son Of Masudan Singh @ Madhusudan
Singh Resident Of Village And Post Office - Dullamchak, P.S. - Chauri,
District - Bhojpur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr.Sanjeev Kumar, Advocate Mr. Raushan Raj, Advocate
For the Respondent/s	:	Mr.Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 13-08-2025

The present criminal appeal has been preferred under Section 372 of the Code of Criminal Procedure against the judgment of acquittal dated 10.07.2023 passed by the learned Additional District & Sessions Judge- VI-cum-Special Judge (POCSO), Bhojpur in POCSO Case No. 08/2021, arising out of Mahila P.S. Case No. 09 of 2021, whereby Respondent Nos. 2 and 3 have been acquitted from the charge of Sections 323, 342, 376D and 456/34 of the Indian Penal



Code and Section 6 of the POCSO Act.

2. Vide order dated 27.02.2025, Trial Court Records were called for, which were received on 18.03.2025.

3. The prosecution case, in brief, as per the F.I.R., is that on 28.05.2013 at 9:00 p.m., the informant was going to sleep; in the meantime, her next-door neighbour, Amit Kumar @ Chito, by jumping the boundary wall, entered her house then the informant asked from where did he come in the night. Upon this, he caught hold of her, slammed her on *Chauki* and committed rape on her. Just after that, Ashok Kumar, Vinod Kumar and Ramjee Yadav also committed rape on her. At the time of the alleged occurrence, she was alone at home, and only her younger sister, aged about 8 years, was with her. Parents of the informant had gone to her maternal uncle's home since her maternal grandmother (*Nani*) had died. Noticing her alone in the house and taking advantage of the situation, the accused committed rape on her. When in the morning, the informant told about the occurrence by phone call to her parents, they came to the village at about 1:00 p.m. The four accused persons along with their family members, put the informant and her parents in captivity for about 5-7 days and proposed to give her money and get her married.



They also made a written *Panchnama*. Then, on 24.01.2021, upon being released from the confinement of the accused persons, she raised alarm about her alleged rape and the subsequent occurrence. At that time, the informant with her father went to police station and she gave a written statement to the Thana Incharge, then he chased away the victim and her father and also abused them. Ramjee Yadav had already informed the Thana Incharge about the occurrence and asked him to not lodge the case. When the informant returned from the Police Station, then Umesh Singh, Raj Kumar Singh, Nandjee Singh, Ramjee Singh, Sunil Singh, Sanjay Singh and 5 to 6 other persons came with *lathi*, *danda* and rod and assaulted the informant, her parents and younger brother.

4. On the basis of the written statement of the informant, Mahila P.S. Case No. 09 of 2021 was instituted under Sections 323, 342, 376D and 456/34 of the I.P.C. and Section 6 of the POCSO Act and the investigation was taken up by the police. The police, after investigation, submitted charge-sheet against Respondent Nos. 2 and 3 and, accordingly, cognizance was taken and charges were framed against the accused persons, to which they pleaded not guilty and claimed to be tried.



5. During trial, the prosecution examined five witnesses, i.e., PW1 informant/victim; PW2 father of the informant; PW3 mother of the informant; PW4 Dr. Sajiya Badar and PW5 the Investigating Officer. The prosecution also produced certain documents which were marked as 'Exhibits' i.e., signature of the informant on the written report; the statement of the victim; medical report and the charge sheet. The defence also examined five witnesses viz. DW1 Ganga Dayal Singh @ Ganga Sadhu; DW2 Bhola Singh @ Gajendra Narayan Singh; DW3 Suresh Singh; DW4 Chinta Devi and DW5 Lal Pati Devi. After closure of evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, the learned trial court acquitted the accused persons.

6. The learned trial court acquitted the accused on the ground that the prosecution failed to prove the case beyond the shadow of reasonable doubt. There was a delay of approximately 6 days in lodging the FIR, which has not been satisfactorily explained by the prosecution. For the offence charged under the POCSO Act, the prosecution was unable to prove before the learned trial court that the age of the victim was below 18 years. The learned trial court further held that



the important evidence, i.e., the bedding on which the rape was committed, was not presented before the court, and as such the alleged occurrence could not be proved. The learned trial court also held that the younger sister of the victim, who was present with her at the time of the alleged commission of the offence, was not examined before the court, and as such a material witness had not been examined before the court.

7. For the offences charged under Sections 323 and 456 of the IPC, the learned trial court observed that there is a contradiction regarding the deposition of the prosecution witnesses before the learned trial court, and as such the prosecution completely failed to prove the guilt of the accused under these Sections.

8. Learned counsel for the appellant has submitted that the learned trial court has miserably failed to appreciate the evidence of the victim/informant and the explanation of delay in lodging the FIR. The victim and her family members were kept in confinement for about 5-7 days from the alleged date of occurrence, but this fact has also not been taken into account by the learned trial court. He further submitted that proper explanation given by the prosecution for the delay of seven days in the medical examination of the victim was also



not taken into account by the learned trial court.

9. On the other hand, the learned counsel for the respondents contended that the learned trial court rightly acquitted the accused/Respondent Nos. 2 and 3 after proper consideration of the evidence, and, therefore, the order of the learned trial court requires no interference.

10. We have heard learned counsel for the appellant and the respondents and have also gone through the records of the case.

11. The sole question that requires consideration by this Court is whether the impugned judgment of acquittal requires any interference by this Court.

12. The FIR in the present case has been instituted after delay of about six days from the incident, as the alleged occurrence took place in the night of 18.01.2021 and the FIR was filed on 25.01.2021. This delay has not been explained satisfactorily by the prosecution before the learned trial court. We are of the view, if the delay has not been explained satisfactorily, then the accused is entitled for the benefit of doubt in those cases.

13. P.W. 4, who is the doctor, has been examined before the learned trial court. The doctor opined, in her



deposition that the age of the victim girl was 18-20 years, and otherwise has not been proved by the prosecution during the trial. Thus, the offence under POCSO Act cannot be made out, as the victim was above the age of 18 years. The doctor further opined that there was no evidence of recent intercourse with the victim, and there was no sign of sexual assault found on the person of the victim. There was no sign of any injury either on the whole body or on the private parts of the victim. After taking the medical evidence on record into consideration, we are of the view that no sexual offence has been committed upon the victim.

14. We find that the younger sister of the victim, who was alleged to be present at the time of occurrence, has not been examined before the learned trial court. The non-examination of a material witness during trial has prejudiced the case of the prosecution. The non-production of blood stained bedding and the cloth as the evidence, also cast a serious prejudice to this case. It is further found that neither any material evidence has been presented nor any independent witness has been examined before the learned trial court to show that offence of wrongful confinement was committed upon the victim and her family members under Section 342 of



the IPC.

15. We find that the findings recorded by the learned trial court do not suffer from any illegality and perversity. In a criminal case, it is incumbent upon the prosecution to prove the guilt of the accused beyond shadow of a reasonable doubt. Wherever any doubt is cast upon the case of the prosecution, the accused is entitled to the benefit of doubt.

16. In a criminal appeal against acquittal, what the Appellate Court has to examine is whether the finding of the learned court below is perverse or *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 in the case of ***Mrinal Das vs. State of Tripura*** reported in ***(2011) 9 SCC 479***, paragraphs 13 & 14 of which read as under:

"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....."

17. In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in paragraph 75, the



Hon'ble Supreme Court reiterated the said view and observed as under:

“75. 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 view of the above, we do not find any illegality or perversity in the findings recorded by the trial court.

20. Accordingly, the present appeal is dismissed.

21. Mr. Sanjeev Kumar, learned counsel for the



appellant has argued very well and assisted the Court with his
full sincerity.

(Sudhir Singh, J)

(Alok Kumar Pandey, J)

Sujit/-

AFR/NAFR	NAFR
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