

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1039 of 2024

Arising Out of PS. Case No.-80 Year-2022 Thana- BARACHATTI District- Gaya

Ruhi Prween, Daughter of Late Mohammad Salim Miyan @ Salim Kuraishi,
Resident of Village- Bajarakar, P.O.- Sarma Bazar, P.S.- Barachatti, District-
Gaya, 824201, Bihar.

... .. Appellant

Versus

1. The State of Bihar
2. Mohammad Ashraf Quraishi @ Ashraf Quraishi, Son of Abbas Quraishi,
R/O Vill.- Bajarakar, P.S.- Barachatti, Dist.- Gaya-824201, Bihar.

... .. Respondents

Appearance :

For the Appellant	:	Ms. Surya Nilambari, Advocate
For the State	:	Mr. Parmeshwar Mehta, Addl PP
For the Resp No. 2	:	Mr. Aaruni Singh, Advocate
		Mr. Sandeep Kumar Gautam, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 29-01-2025

As prayed, learned counsel for the appellant is permitted to make correction with regard to Police Station Case Number in the first paragraph as well as in the prayer portion of the memo of appeal. Thereafter, the Office is directed to correct its record accordingly.

2. Heard Ms. Surya Nilambari, learned counsel for the appellant, Mr. Parmeshwar Mehta, learned Additional Public Prosecutor for the State and Ms. Aaruni Singh, learned counsel for the Respondent No. 2.



3. This appeal has been preferred for setting aside the judgment of acquittal dated 27.04.2024 (hereinafter referred to as the 'impugned judgment') whereby and whereunder the learned Additional District and Sessions Judge, Sherghati, Gaya (hereinafter referred to as the 'learned trial court') has been pleased to acquit Respondent No. 2 of the charges under Sections 376, 506 of the Indian Penal Code (in short 'IPC') and Sections 67 and 67A of the Information Technology Act, 2000 in Sessions Trial No. 539 of 2023/1297 of 2023 arising out of Barachatti P.S. Case No. 80 of 2022.

Prosecution Case

4. The prosecution case is based on the Complaint Case No. 61 of 2022 (Exhibit '3') submitted by the victim filed before the court of learned Additional Chief Judicial Magistrate, Sherghati, Gaya which on being referred to the concerned Police Station under Section 156(3) CrPC resulted into registration of formal FIR being Barachatti P.S. Case No. 80 of 2022 dated 03.02.2022. The formal FIR has been marked Exhibit '2'. In her complaint petition, the victim alleged that her co-villager, namely, Ashraf Quraishi (Respondent No. 2) had bad intentions over her. About one year ago, at about 07:00 PM when she was returning alone from the river situated at a distance from her house after



attending nature's call, the Respondent No. 2 caught her and raped her. One unknown person who came along with respondent no. 2 had videographed the same with his mobile. When the appellant-victim started crying, he assured that he will marry her. Thereafter, he used to threaten her to make her video viral and sometimes on the pretext of marriage, he continuously raped her. On 26.09.2021, he took her to a room at G.S. Marriage Hall in Shobh Bazar and raped her, thereafter, he was caught by the people. On 27.06.2021, with intention to defame her, a news was also published in the newspaper, namely, Gaya Bhaskar. The family of the Respondent No. 2 are threatening the complainant/victim of dire consequences. The complainant alleges that the accused has raped her several times and also threatened her to make her video viral. The local police station was also informed about this incident but no action was taken, then she submitted an application through post to the Senior Superintendent of Police, Gaya but all went in vain, then she filed the present complaint case.

5. After investigation, Police submitted a chargesheet against Respondent No. 2 vide Chargesheet No. 241 of 2022 dated 31.03.2022 under the aforementioned Sections. Cognizance was taken of the offences and the records were committed to the court of Sessions for trial whereafter charges were explained to the



accused (Respondent No. 2) who denied the charges and claimed to be tried.

6. On behalf of the prosecution, oral as well as documentary evidences were adduced, the details of which are being provided hereunder in tabular form:-

List of Prosecution Witnesses

PW-1	Nazni Pravin
PW-2	Jamila Khatoon
PW-3	Shabnam Pravin
PW-4	Victim
PW-5	Dr. Sushma Verma
PW-6	Faruq Azam Ansari

List of Exhibits:

Exhibit ‘1’	Medical Report
Exhibit ‘2’	Formal FIR
Exhibit ‘3’	Signature of the Station Officer on the complaint
Exhibit ‘4’	164 Statement with objection

Findings of the Learned Trial Court

7. After analysing all the evidences on the record, learned trial court found that in this case there is no independent witness other than the family members. Learned trial court found that the staff or owner of the said marriage hall has not been examined. Learned trial court found that the victim was unable to disclose date, month or year of the alleged occurrence. Learned



trial court found from the evidence of the victim and her family that she was caught doing illegal act and after one year she implicated respondent no. 2. There is no video on the record and the name of the person who made the said video is not known to the informant. Learned trial court found from the evidences of the witnesses that the victim and respondent no. 2 were in consensual relationship. Learned trial court has after taking into consideration all the facts and circumstances of the case, held that there is no evidence against the accused to prove his guilt under Sections 376, 506 IPC and Section 67 and 67A of the Information Technology Act, hence, he was acquitted of the charges giving him benefit of doubt.

Submissions of the Appellant

8. Learned counsel for the appellant submits that the learned trial court failed to consider the submissions of the prosecution in the correct perspective and proceeded to pass the impugned judgment and order of acquittal. It is submitted that the learned trial court has committed gross error in acquitting the respondent no.2 on the ground that there are no eyewitness to the occurrence and only the informant/victim (PW-4) has informed other witnesses about the occurrence. It is submitted that victim (PW-4) has specifically deposed that the respondent no.2 has



forcibly raped her on several occasions in the past three and half years and threatened to make her illicit video viral. It is submitted that the learned trial court erred in disregarding the evidence of the informant/victim (PW-4) only because specific date of occurrence was not revealed though the victim has deposed that the first occurrence of rape was committed around three years before the depositions were recorded. Learned trial court has wrongly reached to a conclusion that the informant/victim was having a consensual relationship with respondent no.2. It is submitted that the learned trial court incorrectly applied the principles of law and acquitted the respondent no.2 ignoring the deposition and evidence of the prosecution witnesses.

Submissions of the State and the Respondent no. 2

9. Learned Additional Public Prosecutor for the State as well as the learned counsel representing respondent no.2 have defended the impugned judgment of acquittal of the learned trial court. It is submitted that there is no eyewitness to the occurrence and the witnesses examined on behalf of the prosecution have not given the date and time of the alleged occurrence. In fact, the informant was in consensual physical relationship with respondent no.2. It is further submitted that the alleged video of occurrence has not been brought on record by the prosecution rather during



trial it has come that the present case has been lodged by the victim because marriage between the victim and the accused could not be solemnized.

10. It is submitted that the learned trial court has rightly concluded that on the basis of the evidences on the record, the prosecution cannot be taken to have proved the guilt of the accused beyond all reasonable doubts.

Consideration

11. We have heard learned counsel for the appellant, learned counsel for the respondent no. 2 and learned Additional Public Prosecutor for the State as also perused the trial courts records.

12. The learned trial court having examined the entire evidences available on the record has concluded that in the present case, there is no eyewitness of the occurrence. It is the informant/victim who has informed the other witnesses about the occurrence. None of them has given the date and month of the occurrence and in fact, it is a case in which both the parties have established consensual physical relationship.

13. The learned trial court has found that the victim has stated about making of her video viral by an unknown person when the accused was committing rape on her at the first



occurrence but the said video has not been brought on the record. There is no evidence to prove that it is a case of rape. All the witnesses have stated that the present case has been lodged by the victim because marriage between the victim and the accused could not be solemnized.

14. The learned trial court has concluded that on the basis of the evidences on the record, the prosecution cannot be taken to have proved the guilt of the accused beyond all reasonable doubts.

15. We have once again gone through the entire evidence on the record. The very basis of registration of the first information report giving rise to the present case on 03.02.2022 at 08:30 A.M. is a complaint petition being Complaint Case No. 61 of 2022 filed by the prosecutrix-appellant in the court of learned Additional Chief Judicial Magistrate, Sherghati, Gaya. It is this complaint which was forwarded to S.H.O. Barachatti under Section 156 (3) of the Code of Criminal Procedure vide memo no. 30 dated 01.02.2024. A perusal of the complaint petition would show that the victim has herself stated that one year ago when she had gone to the bank of river which is at a distant place from her house to defecate at about 07:00 P.M. and was returning, then the accused Ashraf Quraishi (respondent no. 2) caught hold of her and



forcibly disrobed her of her prestige. He got a video prepared on mobile phone of an unknown person who was accompanying him. She has stated that when she became perturbed and was weeping then the accused promised her to marry and thereafter, threatened her to make her video viral and on the strength of his promise and threat, he continued to commit rape upon her.

16. The prosecutrix has further alleged that in course of this, on 26.06.2021, the accused came to the marriage hall situated at Shobh Bazar and committed rape on her and during this occurrence, he was apprehended but thereafter, the occurrence was reported in newspaper on 27.06.2021 in Dainik (Gaya Bhashkar). She has alleged that it was the accused who got the news published in the newspaper. She alleged that the family members of the accused were regularly threatening her, therefore, her life is in danger. She alleged that the accused continuously committed rape on her and he was threatening her to make her video viral. This information she had given to the local police station and on 14.01.2022, she sent an information to the Senior Superintendent of Police, Gaya by registered post but that did not yield any result, therefore, she was filing the complaint case.

17. The prosecutrix has been examined as PW-4. In her evidence, she has materially improved upon her earlier version.



She has stated in her examination-in-chief that the accused has lastly called her in G.S. marriage hall situated in Shobh Bazar under threat that if she would not come then he would make the video viral. He committed rape on her in the marriage hall where police came and took her and the accused both to the police station. In paragraph '2' of her examination-in-chief, she has further stated that police kept her in the police station for one night and told her that they are registering her case and are sending the accused to jail in connection with the said case but later on, she came to know that the case was not registered and the accused has been sent to jail in another case. It is evident from the statements made in her examination-in-chief that she does not claim to have made any complaint to the local police station or to the Superintendent of Police, Gaya of the occurrence. In her cross-examination, this witness has stated that two years after the occurrence, she has filed the case in the Court. She has stated that five months after the accused went to jail, she lodged the case. She could not say the date, day, month and year of the first occurrence of rape with her. She could not say about the boy who had made video of the occurrence. She has stated that she does not identify the said boy. She has stated that the video was made viral but she has not seen the video, no one from the village had told her that he



had seen the video. In fact, in course of submission, learned counsel for the prosecutrix-appellant has submitted that even if there is no evidence on the record of making of the video, that part of the statement of the prosecutrix may be kept aside but for that reason alone, her whole evidence cannot be disbelieved. We will examine this aspect of the matter but one thing which is evident to this Court from the materials on record with regard to the making of video that if this part of the evidence of the prosecutrix cannot be accepted, the prosecutrix cannot be put in the category of a sterling witness. Whether she would come in the category of neither wholly reliable nor wholly unreliable witness, will be a matter to be considered by this Court keeping in view the entire evidence on the record.

18. On perusal of the evidence of the prosecutrix (PW-4), it would appear that in paragraph '8' of her cross-examination, she has stated that the marriage hall from where police had caught her, there was no other girl. She was suggested by defence that she was going to marriage hall regularly and was involved in the illegal act in the marriage hall which she denied. She was also suggested that police had caught her when she was involved in doing that illegal act. The prosecutrix though denied this suggestion but has accepted that police had arrested her and



brought her to police station. She has stated that in fact, when the accused was committing rape on her in the marriage hall, police had reached there. In paragraph '16' of her deposition, the prosecutrix has specifically stated that because Ashraf Quraishi had not performed marriage with her, therefore, she had lodged this case.

19. On going through the entire evidence of the prosecutrix (PW-4), we find that she was adult at the time of the first occurrence and had been in regular physical relationship with the accused for about two years prior to lodging of the case. Her case that she was being subjected to rape regularly by issuing threat to her that her video would be made viral, would not inspire confidence of this Court. It is evident that the story that a video was made by an unknown person who was accompanying the accused at the time of first occurrence and then she was being threatened on the strength of the said video is apparently a mere pretext to bring her case within the meaning of rape as envisaged under Section 375 IPC. Her statement that she has lodged the case five months after the accused went to jail would show that she was caught by police in the marriage hall being engaged in physical relationship with the accused and the news broke out in the newspaper on the next date i.e. 27.06.2021, on the said date, she



did not lodge any case alleging rape upon her by the accused but after five months of the arrest of the accused in connection with another case and when the accused did not agree to solemnize marriage with her, she chose to file a complaint case.

20. The prosecutrix (PW-4) is the only witness in this case whose testimony is required to be examined carefully as she would be the star witness of the prosecution.

21. So far as the other witnesses such as PW-1, PW-2 and PW-3 are concerned, who are sister, mother and again sister of the victim respectively are concerned, they are not eye witnesses to the occurrence and they have deposed on the basis of what they were informed by the victim. In paragraph '3' of her deposition, PW-1 has stated that she came to know about the occurrence after one year because her sister told her about the occurrence after one year when the accused refused to marry her. She has stated in paragraph '10' of her deposition that she had not seen that any video was made viral relating to the relationship between her sister and the accused. She has stated that she was not present when the accused called on her sister over telephone and asked her to come. Her sister had not told her or any other member of the family while going to the place where she was called by the accused. In paragraph '14' of her deposition, PW-1 stated that she and her



sister desire that Ashraf should marry her sister and it is because he did not agree to marry, therefore, the present case has been lodged.

22. Mother of the victim has been examined as PW-2. She has also deposed on the basis of the information which she derived from the victim. In paragraph '4' of her deposition, she has disclosed the age of her four elder daughters but did not make any statement as to the age of the victim. In her statement before police under Section 161 CrPC, the prosecutrix has disclosed her age as 23 years. She has stated that she cannot say the date, month and year of the occurrence. She had got information about the occurrence from her daughter. She has also stated that she had not seen Ashraf Quraishi committing any wrong act with her daughter. She has stated that when she went to the house of Ashraf and asked as to why he committed the wrong, Ashraf told her that he had committed wrong and he would marry her daughter. She has admitted in paragraph '15' that latrine/bathroom has been constructed in her house within one year and in the hotel when raid was conducted by police, her daughter was caught.

23. PW-3 is another sister of the victim who has also deposed on the same line. In her examination-in-chief, she has stated that when her sister told her about the rape committed on her by Ashraf Quraishi, she had gone to the house of Ashraf who told that he would marry her sister but now he was not ready to marry her. In



paragraph '4' of her deposition, she has stated that her sister was caught by police in the hotel and when she was caught in the marriage hall/hotel, her sister has lodged this case. She has stated that in the police station, Mukhiya had got her sister set free. In the police station, she, her sister, her mother and Mukhiya had gone and there the Officer-in-Charge of the police station had got something written but what where written there is not known to her. She has stated that one year after lodging of the case, Ashraf Quraishi was arrested.

24. This Court finds from the evidence of PW-1, PW-2 and PW-3 that according to them, they were told about the commission of rape upon the victim after one year of the occurrence and then there are evidences on the record that the victim/prosecutrix had gone to the marriage hall without informing any of the members of her family. She was also caught by police in the marriage hall/ hotel and was taken to the Police Station from where she was set at free. What is evident from the deposition of PW-1, PW-2 and PW-3 is that though they said that the complainant was arrested by police, these witnesses have not stated that the victim was arrested by police in the raid along with accused Ashraf. In her complaint, the complainant has stated that the accused was caught by people at the time of occurrence which took place on 26.09.2021, but there is no evidence on this fact.



25. On this point when this Court goes through the evidence of the I.O. (PW-6), it is noticed that at the instance of the prosecutrix, he had gone to the marriage hall but he did not examine the hotel owner or any other staff of the hotel. He has nowhere stated in his deposition that the accused was also arrested with the prosecutrix in the raid conducted in the hotel. He was not a member of the raiding party. The I.O. has stated that the accused Ashraf was arrested in connection with Barachatti P.S. Case No. 561 of 2021 which was related to an occurrence of assault. I.O. has stated that the accused Ashraf was in jail since 26.09.2021 whereas this case was registered on 03.02.2022 and in the complaint petition, it is not written that from which date, the occurrence started.

26. This Court therefore finds that on several aspects, the prosecution has failed to lead any evidence. When was the prosecutrix arrested from the marriage hall has not been proved. It is also not proved that she was together with the accused in the marriage hall when the police conducted a raid there. Defense has suggested that she was involved in immoral act and she was in trade of illegal acts.

27. In the case of **Rai Sandeep v. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**, the Hon'ble Supreme Court has laid



down the tests which are required to be done in cases where the prosecution case rests upon the sole testimony of a prosecutrix. There is no quarrel with the proposition that conviction may take place on the sole testimony of the prosecutrix but in that case, the prosecutrix must fall in the category of a sterling witness. The relevant paragraph of the judgment is being reproduced hereunder for a ready reference :-

“22.....the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it”

28. We find from the materials on the record that in the present case, the prosecutrix cannot be put in the category of a sterling witness. We have already noticed the material improvements made by her in course of evidence and how the story which she developed saying that she was put to threat for making her video viral has miserably failed to pass the quality test in absence of a



reliable piece of evidence. She cannot be taken as a wholly reliable witness, therefore, it would not be safe to convict the accused on the basis of her testimony.

29. In the totality of the materials available on the record and the circumstances appearing therefrom, we are of the view that the learned trial court has not committed any error in appreciation of the evidences available on the record. This Court is conscious of the catena of judgments of the Hon'ble Supreme Court in which the principles governing an appeal against acquittal have been laid down and reiterated. One of them is the judgment in case of **H.D. Sundara and Others versus State of Karnataka** reported in **(2023) 9 SCC 581**. Paragraph '8' of the said judgment is being reproduced hereunder for a ready reference:-

“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 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.”

30. In result, this appeal has failed. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Ramesh Chand Malviya, J)

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