

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1070 of 2023**

**In
CRIMINAL APPEAL (SJ) No.1076 of 2023**

Arising Out of PS. Case No.-99 Year-2020 Thana- MAHILA P.S. District- Bhojpur

Shikha Kumari (Female) Aged about 28 years, D/o Shiv Kumar Singh R/o vill -Masadh, P.s. - Udwantnagar, Distt.- Bhojpur, Presently residing at Chandawa Mod, P.s. - Ara, Nawada, Distt. - Bhojpur

... .. Appellant/s

Versus

1. The State of Bihar
2. Amrendra Singh Son of Tadpu Singh R/o vill - Karhaiya, P.S. - Gahmar, Distt. - Gajipur, Uttar Pradesh
3. Tadpu Singh Son of Ram Gahan Singh R/o vill - Karhaiya, P.S. - Gahmar, Distt. - Gajipur, Uttar Pradesh

... .. Respondent/s

Appearance:

For the Appellant/s	:	Ms. Vaishnavi Singh, Advocate
	:	Mr. Ritwik Thakur, Advocate
	:	Mr. Pravin Kumar, Advocate
For the Respondent/s	:	Mr. Mukeshwar Dayal, APP

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
and**

**HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 01-08-2025

The present appeal has been filed under Section 372 of the Code of Criminal Procedure, 1973 (hereinafter referred as the 'Code') against the judgment and order dated 09.01.2023 passed by Additional Sessions Judge-VII, Bhojpur at Ara in Sessions Trial Case No. 311 of 2021 arising out of Mahila P.S.Case N. 99 of 2020, whereby and where under the accused Amarendra Singh and Tadpu Singh were acquitted of



the charges framed under Section 376 IPC and Sections 3 & 4 of the Dowry Prohibition Act.

2. The prosecution case, in brief, as stated in the FIR by the informant, namely, Shikha Kumari, is that the informant's family was having good friendship with the family of Nachak Singh and during the said friendship, the informant was introduced with a person, namely, Amarendra Singh. The informant had regular talking terms with Amarendra Singh through mobile and during the said conversation Amarendra Singh assured to marry her without any dowry. The family of both the parties were agreed for the said marriage. Amarendra Singh was posted in the Indian Navy at Delhi and he called the informant to Delhi on the pretext of marriage, Accordingly, on 17.10.2020 the informant went to Delhi, where Amarendra Singh took the informant to his room and told her to be refreshed and when she came back, Amarendra Singh started pressurizing her to have sexual intercourse and Amarendra Singh forcibly made sexual relation about 5-6 times on that day with the informant, against her will. Amarendra Singh has given false assurance of marriage to informant and asked her not to tell about the incident to anyone else. On next day, the informant was dropped at his friend's house by Amarendra



Singh and on being called by the informant, she was sent back home via railway. The informant stated the whole incident to her relatives. The informant's family told the entire incident to the father of Amarendra Singh, namely, Tadpu Singh and after hearing the whole incident, he told the informant's family that if they will give Rs.20/- lakhs and a four-wheeler to him then he will marry his son with the informant. The informant's relatives expressed their inability to give dowry, then Amarendra Singh's father refused for the marriage and threatened informant's relative to do whatever they want.

3. On the basis of the application of informant before the S.P. Bhojpar at Ara, it was forwarded to SHO, Mahila police station for FIR and accordingly, it was registered as Mahila P.S. Case No.99 of 2020 on 20.12.2020 under section 376 of the IPC and under section 3 and 4 of Dowry Prohibition Act against the accused persons namely Amrendra Singh and Tadpu Singh. After investigation, charge-sheet no. 14 of 2021 has been submitted by investigating officer of this case No.14 of 2021 dated 31.03.2021 against both accused persons under Section 376 of the IPC and section 3/4 of Dowry Prohibition Act.

4. The Learned C.J.M Ara took cognizance



against both the accused persons under Section 376 of the IPC and Section 3 and 4 of Dowry Prohibition Act vide order dated 05.06.2021. After compliance, the case was committed to the Court of Sessions vide order dated 15.11.2021 against both accused persons. Thereafter, this case was registered as Session Trial Case No.311 of 2019.

5. During the trial, the prosecution examined altogether six witnesses viz. PW1 Aman Kumar Singh, PW2 Anita Devi, PW3 Shikha Kumari (informant), PW4 Dr. Vijayata Prasad, PW5 Kanchan Kumari (SHO), PW6 Ranjana Sinha (IO). The prosecution has also produced certain exhibits (Ext. 01 signature of informant upon typed application Ext.1/2 Signature of the victim's upon the statement made under section 164 of the Code, Ext. 02 Signature of PW-4 upon medical report of the victim and Ext.03 Signature of IO upon the chargesheet.). After closure of prosecution evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of trial, learned Trial Court has acquitted the accused persons.

6. Learned counsel for the appellant submitted that the impugned judgment of acquittal is not sustainable in the eye of law or on facts. Learned Trial Court has not applied its



judicial mind and erroneously passed the judgment of acquittal. He further submitted that the prosecution has produced 6 witnesses as well as documentary evidence in support of its case. They all supported the case whereas no evidence for the defense was produced on behalf of the accused persons. He further, submitted that prosecution had produced the sufficient evidence for conviction of accused persons of damaging the prestige of an unmarried lady by way of cheating, misbehaving, and committing rape by Amrendra Singh/Respondent No. 2, but the learned Trial Court did not consider the aforesaid material adduced.

6.i. He further submitted that the learned Trial Court failed to consider the evidences of the victim who has narrated the entire story and the demand of dowry for marriage. The accused persons did not adduce any evidence in support of their defence and the Trial Court acquitted the accused persons without applying the judicial mind as the prosecution case was supported by credible and sufficient material.

7. 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 in the case of ***Surajpal Singh & Ors. Versus The State*** reported in ***1952 SCR 193***, paragraph 13 of which reads 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."

8. In the case of ***Ghurey Lal versus 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:

"The trial Court has the advantage of watching the demeanor 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."



9. On meticulous examination of all evidences mentioned in the impugned judgement, it is evident to note that the FIR has been instituted against the accused persons after two months of the alleged occurrence and no reasonable justification has been provided for the said delay. Moreover, all the witnesses of this case are interested witnesses and they have stated their respective testimony with their interest. There is no any independent witness examined by the prosecution in the case. From perusal of the statement of the victim, the place of occurrence in this case is Delhi and according to the provisions of Section 177 of the Code, every offence shall be ordinarily inquired into and tried by a Court within whose local jurisdiction it was committed so the inquiry and trial should have been committed at the place where the offence took place. In the present case, the victim has not initiated the proceeding against the accused at the place of occurrence which itself creates the doubt with respect to the occurrence of the alleged incident. Also the place of occurrence has not been examined by the IO. PW 1 and PW 2 were not present at the place of occurrence hence they are not the eye witnesses of the alleged occurrence, so their testimony is not reliable and relevant as law in this point is very clear that the oral evidence must be given by



the person who himself has seen the incidence, same has been provided under Section 60 of the Indian Evidence Act. Section 60 of the I.E.A read as follow:-

“60. Oral evidence must be direct.

Oral evidence must, in all cases, whatever, be direct; that is to say, -

If it refers to a fact which could be seen, it must be the evidence of a witness who says he saw it;

If it refers to a fact which could be heard, it must be the evidence of a witness who says he heard it;

If it refers to a fact which could be perceived by any sense or in any other manner, it must be the evidence of a witness who says he perceived it by that sense or in that manner;

If it refers to an opinion or to the grounds on which that opinion is held, it must be the evidence of the person who holds that opinion on those grounds

Provided that the opinions of experts expressed in any treatise commonly offered for sale, and the grounds on which such opinions are held, may be proved by the production of such treatises if the author is dead or cannot be found, or has become incapable of giving evidence, or cannot be called as a witness without an amount of delay or expense which the Court regards as unreasonable.

Provided also that, if oral evidence refers to the existence or condition of any material thing other than a document, the Court



may, if it thinks fit, require the production of such material thing for its inspection.”

10. Further, nothing was found in the medical examination, as PW 4 the doctor who examined the alleged victim of this case submitted the medical report of the alleged victim, the medical certificate was marked as Ext.-02. The doctor has stated that it is difficult to say whether the alleged victim was raped or not because the alleged incident took place two months ago. The statement of this witness as well as on perusal of the medical report of alleged victim it is clear that it is under the cloud that whether the alleged victim of the case has been raped or not. Moreover victim in her statement recorded under section 164 of the Code, has not stated that she was forcibly subjected to commission of rape but in the FIR and during the trial she has stated regarding the force being applied for the alleged offence. PW 3 in paragraph 18 of her deposition, has stated that the cloth worn at the time of rape was not shown to the police because that cloth was left in Amarendra Singh's room itself this automatically created doubts on the story of the victim as it is not excepted that she would return from accused' room leaving her clothes over there. There is a material inconsistency in the statement of the victim. Hence, the alleged allegation itself appears to be doubtful.



11. Thus, on the basis of the evidence based on record, it is held that the charges against the accused persons is not proved beyond shadow of all reasonable doubt and the necessary elements mentioned in the charged sections are lacking to hold the accused guilty under the charged sections. In the totality of the circumstances which are appearing from the evidences on the record, we are of the considered opinion that the learned Trial Court has not committed any error in appreciation of the evidences.

12. We are dealing with an appeal against acquittal and shall keep in mind the principles governing the cases of appeal against acquittal. The principles have been reiterated by the Hon'ble Supreme Court in catena of decisions and one of them is the case of H.D. Sundara and Others vs. State of Karnataka reported in (2023) 9 SCC 581. Paragraph "8" whereof is recorded here-under for a ready reference:-

"8. In this appeal, we are called upon to consider the legality and validity of the impugned judgment State of Karnataka v. H.K. Mariyapp, 2010 SCC OnLine Kar 5591 rendered by the High Court while deciding an appeal against acquittal under Section 378 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C"). The



principles which govern the exercise of appellate jurisdiction while dealing with an appeal against acquittal under Section 378 Cr.P.C can be summarized 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 re appreciate the oral and documentary evidence;

8.3. The appellate court, while deciding an appeal against acquittal, after re appreciating 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;

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."



13. It is a case of acquittal in which the presumption of innocence of the accused is, in fact, affirmed by the learned trial Court. In fact, this Court is of the opinion that the prosecution has failed before the learned trial Court to prove the charges levelled against the respondent as opined by the learned trial Court. In ultimate analysis of the entire materials and record, we find no reason to interfere with the judgement of the learned trial court.

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

(Sudhir Singh, J)

(Ramesh Chand Malviya, J)

Harshita/-

AFR/NAFR	NAFR
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