

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.5676 of 2024

Arising Out of PS. Case No.-44 Year-2018 Thana- SAMASTIPUR COMPLAINT CASE
District- Samastipur

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Gunjan Devi W/o Sunil Das Resident of Village- Gangsara, Ward no- 13, PS-
Sarairanjan, District- Samastipur

... .. Appellant/s

Versus

1. The State of Bihar
2. Vijay Rai S/o Lakshman Rai @ Laxman Rai R/o vill - Gangsara, ward no. 13, P.s. - Sarairanjan, Distt.- Samastipur
3. Ajay Rai S/o Lakshman Rai @ Laxman Rai R/o vill - Gangsara, ward no. 13, P.s. - Sarairanjan, Distt.- Samastipur
4. Anil Rai S/o Lakshman Rai @ Laxman Rai R/o vill - Gangsara, ward no. 13, P.s. - Sarairanjan, Distt.- Samastipur
5. Lakshman Rai @ Laxman Rai S/o Late Jagdeo Rai R/o vill - Gangsara, ward no. 13, P.s. - Sarairanjan, Distt.- Samastipur

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Suraj Narayan Yadav, Advocate
For the Respondent/s : Mr.Ramchandra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 10-02-2025 Heard Mr. Suraj Narayan Yadav, learned counsel for

the appellant and Mr. Ramchandra Singh, learned APP

representing the State.

2. The present appeal has been preferred against:

*the judgment of acquittal dated 18.10.2024, passed in
T.R. No. 98 of 2024, R.N. 44 of 2018 arising out of
Complaint Case No. 44 of 2018, registered under
sections 376, 511, 341, 323, 504 and 506 of the Indian
Penal Code, Section 4 of the POCSO Act and Sections*



3(i) (x) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act but the learned Additional District and Sessions Judge-VI-cum Special Judge, POCSO Act, Samastipur has taken cognizance under sections 354, 341, 323, 504 and 506 of the Indian Penal Code, Section 8 of the POCSO Act and under sections 3(1)(2)(3)(w) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act against the accused persons namely Vijay Rai and Ajay Rai and further under sections 354, 341, 323, 504 and 500 of the Indian Penal Code and under sections 3(1)(r)(s)(w) of the Schedule Caste and Schedule Tribe (Prevention of Atrocities) Act against Anil Rai and Laxman Rai in which charges were framed under sections 354, 341, 323, 504 and 506 of Indian Penal Code passed by the learned Additional District and Sessions Judge VI cum Special Judge, POCSO Act, Samastipur, whereby and where under the respondent nos. 2 to 5 have been acquitted from the charges erroneously and the appellant has been noticed to file show cause in light of section 22 of the PCSO Act. Further the appellant has also moved



before this Hon'ble Court to convict the respondent nos. 2 to 5 with highest punishment for the grave offence committed by them in the interest of the justice and also to grant compensation to the victims as provided under the Act.

3. As per the complaint petition, the complainant's daughters went to attend nature's call, when it is the allegation that two brothers (respondent nos. 2 and 3) caught hold of them and dragged with the intention to commit rape. Both managed to escape, complained to the village Sarpanch, went to the respondents' home where the family members were abused.

4. Later, the allegation is that the accused persons armed variously came to the door and misbehaved. They also assaulted and left the place. This led to the complainant being registered in which the cognizance was taken under sections 354, 341, 323, 504 and 506 of the Indian Penal Code besides section 8 of the POCSO Act and section 3(1)(r)(s)(w) of the SC/ST (Prevention of Atrocities) Act the respondent nos. 2 and 3 besides sections 354, 341, 323, 504 and 506 of the IPC against respondent nos. 4 and 5.

5. The charge framed, the trial commenced, concluded and the learned Trial Court came to the conclusion that only to



settle land dispute, the provisions of POCSO Act was incorporated and the complainant has certainly misused the process of law. According to the learned Trial Court, there is nothing on record to show that the complainant ever went to the Police Station for the registration of the FIR, mandatory under provision of section 154(3) of the Cr.P.C.

6. The reasons have been assigned from para-20 onwards which read as follows:

20. Firstly, the evidence of victim No. 1 and victim No. 2 are relevant because they are the prime witnesses of the case. According to the complaint case both Vijay Rai and Ajay Rai has attempted to rape upon the victim. The Victim No. 1 has stated as P.W. 1 the date of occurrence 01.06.2023 and subsequently she further stated date of occurrence 01.07.2023 it is totally against the complaint petition in which date of occurrence has been stated 20.03.2018, in



cross-examination at para-6 she has denied that for the land demarcation case was filed on the petition of victim No. 1, in para-8 she further stated that injury has been caused but no such injury report has been submitted, in para-9 she stated that the police has not received their FIR but no such proof has been submitted and she admitted that during enquiry evidence she has stated that Laxman Rai has demolished her wall.

21. The victim No 2 has been examined as PW 3 she has also stated that all the accused has attempted rape upon both the sisters and they have fled away after biting teeth but this type of statement has not been given by P.W. 1 the other victim and alleged the eye witness of the occurrence. In para-6 she stated



that there was no injury on her body, in para-7 she admitted that all the accused has demolished her wall, in para-7 she further stated that the treatment of her parents has been taken place at the hospital but no such document has been kept.

22. The rest two witnesses, PW 2 is the father of the victim his attention has been drawn, in para-5 of the cross-examination towards his earlier statement during enquiry witness that he has not stated there that his daughter has given tooth bite, in para-7 he further denied the fact that the land in which he has constructed he is not belongs to Sita Ram Singh but belong to Nathuni Das, in para-8 he further stated that Sita Ram Das has obtained sale deed from Nathuni Das and he also admitted that in the same Khata and



Plot. Sita Ram Singh has also sole land to the accused persons, in para-9 he further stated that in his land he has constructed the house and in the land of the accused he has constructed the shop he denied the dispute of measurement of the land with the accused but in para-10 he admitted the dispute with the accused of section 107 Cr.PC and also admitted that it is dispute of share in the land and also dispute for opening the window, in para-12 he denied the fact that he has not presented any application of Sarpanch but this statement of the witness is falsified Ext. No. C1. Ext No C1/1 and Ext. No C1/2 these are documents presented by the defence in which the defence side has shows that already dispute is pending with the complainant of the accused side,



on behalf of the defence other exhibits Ext No. A. Ext. No A/1, Ext and Ext. No. B has been filed on the point of prevailing land dispute of the accused party with the complainant.

23. Further in para-13 he denied the fact that his elder, daughter has not filed any application in the police station he also denied in para-14 15 and 16 regarding the pendency of the case of section 107 Cr.P.C. and that on 09.04.2018 his wife has given application the court of SDO against the accused, in para-19 he stated that at the bank of the river number of persons has gone to attend the nature's call it means many persons was present there by the evidence of this witness itself so commission of any offence by the accused persons is doubtful



because none of the independent witness has come to support the prosecution case on this point, he denied in para-20 that he has not received Rs. 15000/- from the State Government for construction of the toilet, in para 22 he stated that there was no injury present over the body of the victim in para-24 he stated that at his door 50 persons was present but none of them has been examined, in para-25 he stated that his medical treatment was done but no injury report has been produced by the complainant.

24 PW 4 is another interested witness who is the mother of the victims, in para-3 she admitted that she has filed petition before SDO, in para-5 she stated that she has not heard the application given to the police, in para-6 she further denied



the fact that she had dispute of opening the window with the accused, in para-7 she denied the fact that non FIR No. 81/18 was filed for the dispute of opening the window, in para-8 she also denied the case M.R Case No 135/19 filed by her daughter, in para-9 she admitted that petition filed by her in the police station was false in para-10 her attention has been drawn towards her earlier statement during enquiry evidence it is against her this statement, in para 16 she denied the fact that she has not received Rs 20,000/- from the Government in construction of the toilet, in para 18 she denied that she cannot examined Sarpanch, in para-19 she stated that she has got no injury but her treatment was done by the doctor, in para-21 she



admitted the fact that the house which was constructed by them its window was opening towards the main of the accused for which this false case has been instituted.

25. Considering the entire evidence of the prosecution and the evidence of D.W 1 and exhibit filed by the defence side it is clear that between the parties the land dispute is prevailing to settle this land dispute this false case has been filed, therefore, there are many discrepancies are present in the evidence of the witnesses and none of the independent witness has come to support the prosecution case, the complainant has not gone to the police station for registration of the FIR the mandatory of provisions of section 154(3) Cr.P.C. has not complied, the age of the victim has



*also not been proved in light of decision **Sunil Vs State of Harayana (AIR 2010 SC 392), therefore, the prosecution has miserably failed to prove that the case beyond the shadow of reasonable doubt, therefore, the accused persons namely 1. Ajay Rai, 2. Anil Rai, 3. Vijay Rai, 4. Laxman Rai are acquitted from the charge of section 354, 341, 323, 504 of the IPC, they are on ball, therefore, their bailors are discharge from the liability of their bail bonds.***

26. From the perusal of entire case record and evidence adduced by the complainant it is quite clear that to settle land dispute the complainant has proceeded in POCSO Court and the provisions of POCBO Act which has been enacted for the pious



*purpose to punish the culprit of sexual assault who have committed these offences with the minor victims either boy or girl but the complainant has misused the process of law, it is apparent from the plethora of documentary evidence submitted by the defence before the court that the accused has been falsely implicated in this case under the back-drop of land dispute, therefore, the complainant namely Mother of the victims **Rio/village Gangsara Ward No. 13, P.S. Sarairanjan District-Samastipur** is required to file her show cause why the false complaint has been presented in the court in light of section 22 of the POCSO Act, otherwise the court shall proceed according to law for passing the appropriate order for*



*punishment provided u/s 22 of the
POCSO Act, 2012.*

***Dictated and corrected by me and
pronounced in the open court as on
18 October 2024.***

7. Aggrieved, the present appeal.

8. Learned counsel for the appellant submits that though there is land dispute, the fact remains that the two brothers tried to commit rape and this fact has been ignored by the learned Trial Court. The other family members also thereafter assaulted but now the accused persons stand acquitted.

9. Learned APP, Mr. Ramchandra Singh on the other hand opposes the prayer submitting that there is complete discrepancies in the statement of the P.Ws. It is his submission that though according to them, fifty persons were assembled after the occurrence, not a single eye-witness has been examined and all the witnesses are interested family members, this include the parents as also the two victims.

10. It is his further submission that though the treatment by a Doctor stands incorporated, no injury report/treatment was ever produced before the Court concerned.



He lastly submits that it has been admitted by the complainant that there is land dispute pending between them. He submits that only to settle the scores, the present case and in that background, the Court rightly passed the order which needs no interference.

11. Having gone through the facts of the case and materials on record as also submissions of the parties, this Court is in complete in conformity with the submissions put forward by the learned APP. When there are such material discrepancies, injury report is not on record, admitted land dispute has been incorporated, facts have been elaborated by the court concerned as recorded in the order above, in that background, the conclusion arrived at by the learned Trial Court needs no interference.

12. The appeal stands dismissed.

13. Learned counsel for the appellant, at this stage submits that beside acquitting the appellants, for making false complaint, the complainant has been noticed under section 22 of the POCSO Act. They being poor, be exonerated from the said notice and/or grant relief.

14 Section 22 of the POCSO Act is incorporated as under:



22. Punishment for false complaint or false information. (1) *Any person, who makes false complaint or provides false information against any person, in respect of an offence committed under sections 3, 5, 7 and section 9, solely with the intention to humiliate, extort or threaten or defame him, shall be punished with imprisonment for a term which may extend to six months or with fine or with both.*

(2) Where a false complaint has been made or false information has been provided by a child, no punishment shall be imposed on such child.

(3) Whoever, not being a child, makes a false complaint or provides false information against a child, knowing it to be false, thereby victimizing such child in any of the offences under this Act, shall be punished with



*imprisonment, whe may extend to one
year or with fine or with both.*

15. Though this Court is also of the opinion that a false narrative was presented by the appellant herein in which the learned Trial Court rightly issued notice under section 22 of the POCSO Act, taking sympathetic consideration on the submissions of the learned counsel for the appellant, the complaint is the year 2018, lots of water has flown down the ganges since then, the matter has been decided after six years in the year 2024, the accused have been acquitted, the appellant belongs to lower strata of the society, in that background, it would be appropriate that the file is finally closed.

16. As such, the notice issued to the complainant under section 22 of the POCSO Act be deemed closed.

(Rajiv Roy, J)

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