

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.161 of 2016

Arising Out of PS. Case No.-272 Year-2006 Thana- TAJPUR District- Samastipur

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1. Bhola Rai S/o Yugeshwar Rai
 2. Raj Kishore Rai S/o Yugeshwar Rai
 3. Ram Naresh Rai S/o Yugeshwar Rai
 4. Santosh Rai S/o Rajeshwar Rai All residents of Village Anandpur Morwa
P.S. Tajpur, District - Samastipur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Bijay Bhushan Prasad, Advocate Ms. Rani Shashi Bharti, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 06-05-2026

Heard learned counsel appearing for the appellants
and learned Additional Public Prosecutors appearing for the
State.

2. This appeal has been filed challenging the
judgment of conviction and order of sentence dated 18.02.2016
passed by the learned Additional District and Sessions Judge
IIIrd, Samastipur in connection with Sessions Trial No. 585 of
2008 arising out of Tajpur P.S. Case No. 272 of 2006 whereby
and whereunder these four appellants have been convicted for
committing offence under Sections 354 and 323 of the Indian



Penal Code and Sections 4 and 5 of the Dain Act and have been sentenced to undergo simple imprisonment for one year under Section 354 of the Indian Penal Code, to undergo simple imprisonment for one year under Section 323 of the Indian Penal Code, to pay a fine of Rs. 1000/- each under Section 4 of the Dain Act and in case of default of fine, to further undergo simple imprisonment for three months and to pay a fine of Rs. 500/- each under Section 5 of the Dain Act and in case of default of payment of fine, appellants are directed to further undergo simple imprisonment for three months. All sentences have been directed to run concurrently.

3. The prosecution story, in brief, is that on 03.09.2006, informant was called for a *Panchayati* in the school and when she reached near the house of one Badlu Rai, in the meantime, all these accused-appellants apprehended her, disrobed her, assaulted her, abused her and called her *Dain* and snatched her jewellery and cash.

4. In this case, in order to bring home guilt of these accused-appellants, the prosecution has examined altogether six witnesses. P.W. 1, namely Santosh Kumar Rai, who supported the prosecution case. P.W. 2, namely Ramprasad Rai, who is



brother-in-law (*Dewar*) of the informant and has supported the prosecution case. P.W. 3, namely Asharfi Rai, who reached the place of occurrence after hearing *Hulla*. P.W. 4, namely Lalu Rai, who supported the prosecution case. P.W. 5, namely Indu Devi, is informant/victim of the present case. P.W. 6, namely Dr. Chitranjan Thakur, who is doctor who examined the informant but found the injuries simple in nature and has deposed that no conclusive evidence of rape was found.

5. On the other hand, the defence has also produced two witnesses, i.e., D.W. 1, namely Soragath Paswan and D.W. 2, namely Subodh Rai.

6. After hearing the parties, the learned trial court convicted these appellants and sentenced them, as indicated in the opening paragraph of this order.

7. Learned counsel appearing for the appellants assails the order of conviction and sentence on multiple grounds. He contends that in this case, the Investigating Officer has not been examined. Non-examination of the Investigating Officer has caused great prejudice to the defence of the these appellants as they were not able to contradict the evidence of the witnesses and the place and manner of occurrence could not be proved. It



is further contended that doctor has found the injuries, allegedly caused by these appellants, simple in nature and has not found any conclusive evidence of rape. Moreover, out of the four witnesses who were examined on behalf of the prosecution, P.W. 2 is brother-in-law of informant and P.W. 4 is distant relative of these appellants and both of them are highly interested witnesses and their testimony cannot be relied upon. It is further contended that P.W. 1 and P.W. 3 have deposed that they reached the place of occurrence after hearing the *Hulla* and thus, are hearsay witness. Therefore, the prosecution has failed to prove the case beyond reasonable doubts and the trial court has wrongfully convicted these appellants ignoring material contradictions and hence, the appellants are fit to be acquitted.

8. *Per contra*, learned Additional Public Prosecutor for the State submits that the evidence on record unmistakably points to the guilt of the appellants. The prosecution could prove that it was these appellants committed the occurrence. Charges against the appellants was proved by the prosecution witnesses beyond all reasonable doubt and, therefore, the learned Trial Court was fully justified in convicting the appellants under Sections 354 and 323 of the Indian Penal Code and Sections 4



and 5 of the Dain Act

9. On going through the rival submissions, evidences and upon perusal of the records, this Court finds that in this case, the Investigating Officer has not been examined, which has caused great prejudice to the defence as the defence could not get documentary evidence, explain the material discrepancies and contradict the witnesses. Moreover, there is no independent eye witness to the occurrence. P.W. 1 and P.W. 3 are hearsay witness and reached the place of occurrence after hearing *Hulla* and P.W. 2 and P.W. 6 are interested witnesses and their testimony cannot be relied upon.

10. It is settled law that in criminal cases, since life and liberty of the accused are involved, a strict standard of proof is required as to prove the guilt of the accused. It is not the preponderance of the probabilities that establishes the guilt of the accused. It is necessary that the evidence on record must prove it beyond reasonable doubt. A conviction cannot be based on the consideration that the prosecution story may be true. The accused can only be convicted if the court reaches the conclusion that the prosecution story must be proved. The burden of proving the guilt of the accused is upon the



prosecution. In this case, the prosecution has failed to prove the guilt of these appellants beyond reasonable doubt and thus, the appellants are entitled to be given the benefit of doubt.

11. Accordingly, the impugned judgment of conviction and order of sentence dated 18.02.2016 passed by the learned Additional District and Sessions Judge IIIrd, Samastipur in connection with Sessions Trial No. 585 of 2008 arising out of Tajpur P.S. Case No. 272 of 2006 are hereby set aside with respect to these appellants only.

12. In that view of the matter, appellants, above named, are discharged from the liability of their bail bonds in connection with this case.

13. Accordingly, this appeal stands allowed.

14. Interlocutory application/s, if any, also stands disposed off.

(Prabhat Kumar Singh, J)

shashank/-

AFR/NAFR	NAFR
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