

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.936 of 2023**

Arising Out of PS. Case No.-210 Year-2018 Thana- MADHUBANI TOWN District-
Madhubani

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HEMLATA DEVI WIFE OF KAILASH KUMAR @ KAILASH PRASAD SAH
RESIDENT OF MOHALLA - J.P. COLONY, WARD NO.20, P.S.
-MADHUBANI TOWN, DISTRICT - MADHUBANI

... ... Appellant/s

Versus

1. THE STATE OF BIHAR
2. PARASHURAM YADAV SON OF BHULAR YADAV RESIDENT OF
VILLAGE - BOKHA, P.S. - SAHARGHAT, DISTRICT – MADHUBANI
3. RAM BIND YADAV SON OF PARASHURAM YADAV RESIDENT OF
VILLAGE - BOKHA, P.S. - SAHARGHAT, DISTRICT - MADHUBANI

... ... Respondent/s

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Appearance :

For the Appellant	:	Mr. Ravi Ranjan, Advocate
For the State	:	Mr. Mukeshwar Dayal, APP
For the Respondent No. 2 & 3	:	Mr. Ajay Kumar Thakur, Advocate
		Mrs. Vaishnavi Singh, Advocate

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- *The Code of Criminal Procedure, 1973 – Section 372 – Appeal against acquittal – general principles – double presumption in favour of the accused – firstly, presumption of innocence that is available to the accused under the fundamental principles of criminal jurisprudence – secondly, the accused having secured his acquittal, presumption of his innocence is further reaffirmed and strengthened – further if, two reasonable conclusions are possible on the basis of the evidence on record, the appellant court should not disturb the finding of acquittal – appeal dismissed. (Criminal Appeal (DB) 550 of 2023 (Radhe Shyam Mahato @ Radheshwar Mahto Vs. State of Bihar and Another ; Chandrappa and Others Vs. State of Karnataka ; Nikhil Chandra Mondal Vs. State of West Bengal (2023) 6 SCC 605)*

(Para- 27 to 30)

- *age determination of the victim – photocopy of the mark sheet – the name of the person who had produced the document not on record - even though the document is exhibited the contents of the said documents are not automatically proved – held, prosecution failed to prove that the victim was minor at the time of occurrence by producing any document which is admissible in evidence -deposition of doctor – victim major on the date of occurrence.*
- *The Code of Criminal Procedure, 1973 – Statement Under Section 161 – Statement under Section 164 – victim never alleged any forcible act committed on her – voluntarily left her house – no one allured her – family member of the victim used to assault her and in anger she left her house – threat from the family to depose in their favor or she will be kicked out and sent to remand home – went to live with the accused on her own and married him – victim did not supported that case of the Informant – major contradictions and discrepancies in the deposition given by the prosecution witnesses and, on the contrary, victim herself has exonerated the accused.*
- *Held, no material available in the evidence led by the prosecution against the Private Respondent from which it can be established that they have committed alleged offences.*

(Para-25 – 27)

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For the Respondent No. 2 & 3 : Mr. Ajay Kumar Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)

Date : 02-05-2024

The present appeal has been filed under Section 372
Proviso of the Code of Criminal Procedure, 1973 (hereinafter
referred as the ‘Code’) challenging the judgment dated 15.05.2023
passed by learned Additional Sessions Judge-VI-cum-Special
Judge (POCSO), Madhubani in POCSO G.R. Case No. 51 of
2018, arising out of Town P.S. Case No. 210 of 2018, whereby the
concerned Trial Court has acquitted the Respondent Nos. 2 and 3



of the charges levelled against them for the offences punishable under Section 366(A)/34 of the I.P.C. and Section 8 of the POCSO Act.

2. Heard learned counsel Mr. Ravi Ranjan for the appellant, Mr. Mukhteshwar Dayal, learned A.P.P. for the Respondent-State and Mr. Ajay Kumar Thakur assisted by Mrs. Vaishnavi Singh, learned counsels for the Respondent Nos. 2 and 3 (original accused).

3. Learned counsel for the appellant/original informant would mainly submit that the informant is the mother of the victim who had given the written application to the concerned Police Authority wherein she has mainly alleged that she was residing at J.P. Colony, Madhubani with her family from where her minor girl was kidnapped by accused Binod Kumar on 23.11.2017 and, during investigation, her daughter was recovered and on the order of the Court, Police handed over her daughter to her. It is further alleged that on 06.06.2018, in her absence as she went for the treatment of her son at Darbhanga, accused Binod Kumar forcibly took away her minor daughter, aged around 16 years, on a Bolero car, which was standing in front of the house of informant and other co-accused namely Parshuram Yadav, Rambind Yadav along



with others sitting in the vehicle and they all, with common intention, kidnapped the minor daughter of the informant.

4. It is further submitted that after the registration of the F.I.R., the Investigating Officer carried out the investigation and, during the course of the investigation, he had recorded the statement of the witnesses and also collected the documentary evidence. Thereafter, he filed the charge-sheet against the present respondents as well as original accused No. 1 Binod Kumar for the offences punishable under Section 366(A)/34 of the I.P.C. and Section 4 of the POCSO Act. It is further submitted that, before the Trial Court, the prosecution had examined nine witnesses and also produced the documentary evidence and, after conclusion of the trial, the Trial Court convicted the original accused No. 1 Binod Kumar for the offences punishable under Section 376 of the I.P.C. and under Section 4 of the POCSO Act, however, the Trial Court has acquitted the present private respondents. The appellant/informant has, therefore, preferred the present appeal against the order of acquittal passed by the Trial Court against the private respondents herein. At this stage, it is also pointed out by the learned counsel that against the order of conviction original accused No. 1 Binod Kumar has preferred a Criminal Appeal and



this Court has admitted the said appeal and has released the accused/convict on bail.

5. Learned counsel for the appellant has assailed the judgment and order passed by the learned Trial Court by contending that though initially the victim did not support the case of the prosecution, after she was recalled on 16.12.2022, she has specifically stated in Para-17 that the present private respondents, in connivance with the original accused Binod Kumar, have abducted her. All the three accused are residing at Muzaffarpur and Binod Kumar had committed rape on her at Muzaffarpur. Learned counsel has further placed reliance upon Para-22 of her deposition and contended that the victim has specifically given the reason for not implicating the accused while she had deposed before the Court earlier. It is contended that she has specifically stated that under the pressure of Binod Kumar as well as Parashuram Yadav (Respondent No. 2 herein), she had given the deposition earlier i.e. in May, 2019. Learned counsel, therefore, urged that though the victim has initially not supported the case of the prosecution, in view of Para-17 & 22 of her deposition, the learned Trial Court ought to have convicted the present private respondents for the charges levelled against them. Learned counsel, therefore, urged that the impugned judgment and order be quashed and set aside.



6. Learned counsel for the appellant would thereafter refer the deposition given by PW-2 Kailash Kumar, who is the father of the victim, PW-3 Sita Ram Sah, who is the grandfather of the victim, PW-4 Hemlata Devi, who is the mother of the victim as well as informant of the case. After referring to the deposition of the said witnesses, learned counsel submits that all the aforesaid prosecution-witnesses have supported the case of the prosecution and specific allegations are levelled against the present private respondents in the deposition given by the said witnesses.

7. Learned counsel for the appellant thereafter referred deposition given by PW-7 Ashok Yadav, who was the father-in-law of the original accused No. 1 Binod Kumar. Learned counsel submits that the said witness has also supported the case of the prosecution and pointed out the character of the accused Binod Kumar. The said witness has stated that his daughter got married with Binod Kumar. However, the accused were giving torture to her. Learned counsel for the appellant thereafter referred the deposition given by PW-8 Shailendra Kumar Vidyakar and PW-9 Sachidanand Prasad. It is submitted that the aforesaid two witnesses are the Police witnesses and PW-8 had carried out the investigation and, during the course of investigation, he had recorded the statement of the witnesses and after collecting the



necessary material, including the photocopy of the mark-sheet of Matric Examination, filed the charge-sheet against the accused. Learned counsel, therefore, urged that the prosecution has proved the case against all the accused beyond reasonable doubt, despite which the Trial Court has acquitted the present private respondents.

8. Learned counsel would thereafter contend that by producing the documentary evidence in the form of photocopy of the mark-sheet of the Matric Examination, the prosecution has proved that the victim was minor on the date of occurrence and, therefore, the Trial Court, relying upon the said document, has convicted one of the accused i.e. Binod Kumar. However, the Trial Court has acquitted the present private respondents. Learned counsel, therefore, urged that the impugned judgment and order be quashed and set aside.

9. On the other hand, learned counsel Mr. Ajay Kumar Thakur appearing for the private respondents has opposed the present appeal. Learned counsel would submit that the prosecution has failed to prove the age of the victim by leading cogent evidence and only the photocopy of the mark-sheet of the Matric Examination was placed on record by the prosecution. Learned counsel, at this stage, has referred the deposition given by PW-6



Dr. Rama Jha. The said Doctor has specifically given the opinion on the basis of the radiological finding that the age of the victim is about 19 years. Learned counsel, therefore, contended that from the medical evidence produced before the Court, it is clear that the victim was major on the date of occurrence.

10. At this stage, learned counsel Mr. Thakur would refer the statement of the victim recorded by the concerned Magistrate under Section 164 of the Code. It is pointed out from the said statement that the victim has specifically stated that she had voluntarily left her house and gone with Binod Kumar and no one has allured her. The family members used to assault her and due to anger she left the house. They gave the threatening that if she would not depose in their favour, she will be kicked out and sent to remand home. Further question was asked by the Court wherein she has specifically stated that she went to live with Binod Kumar with whom she had married. Learned counsel Mr. Thakur, therefore, submits that the victim, while giving the statement under Section 164 of the Code, did not implicate the present private respondents as well as the original accused No. 1. At this stage, it is also pointed out from the record that the victim, while giving the statement under Section 161 of the Code before the Police, also did not implicate the accused.



11. At this stage, learned counsel for the private respondents has referred the deposition given by PW-1 i.e. the victim herself. After referring to the said statement, learned counsel submits that the victim did not support the story put forward by the prosecution and she had not alleged anything against the present private respondents or even original accused No. 1 Binod Kumar. At this stage, it is contended that her deposition was recorded by the Court on 01.05.2019 and she was recalled after a period of three years and, at that time, while giving the deposition on 16.12.2022, she had levelled allegations against the present private respondents and also stated that under the influence of Binod Kumar and Parashuram Yadav, she had earlier given the deposition. However, the said can be termed as an afterthought and tutoring of the said witness. It is further submitted that the victim had exonerated the accused while giving her statement under Section 161 before the Police as well as under Section 164 of the Code before the Magistrate and, while giving the deposition before the Court and, therefore, the Trial Court has rightly believed her version and passed the order in favour of the present private respondents. Learned counsel, therefore, urged that the Trial Court has not committed any error which requires any interference in the present appeal.



12. Learned counsel would thereafter contend that the scope of interference in the acquittal appeal is in a very narrow compass. Learned counsel has referred the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa & Ors. Vs. State of Karnataka**, reported in **(2007) 4 SCC 415**. Learned counsel, therefore, urged that this Court may not entertain the present appeal as the Trial Court has not committed any error while acquitting the present private respondents.

13. At this stage, learned counsel for the appellant has contended that no objection was raised on behalf of the defence at the time of marking the Exhibit-10 which is the photocopy of the mark-sheet of the Matric Examination. Countering the said contention, learned counsel Mr. Thakur once again contended that the photocopy is not admissible in evidence. Learned counsel for the appellant also contended that the application for recall was given by the defence and, therefore, there is no question of tutoring of the said witness.

14. Learned counsel for the appellant/informant has referred Paragraphs-13, 14 & 15 of the Memo of the Appeal. It is submitted that, as per the decision referred in the said paragraphs, evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration. It is further submitted



that the medical evidence cannot throw overboard and otherwise cogent trustworthy evidence of the prosecutrix.

14.1. It is pertinent to note that learned counsel for the appellant has though referred the aforesaid paragraphs from the Memo of Appeal, he has not brought the decisions which are referred in the said paragraphs nor he has referred the relevant paragraphs of the aforesaid decisions which are referred in the Memo of Appeal and, in absence of the same, general submissions are made.

15. Learned A.P.P. has submitted that no error is committed by the Trial Court while passing the impugned order. However, this Court may pass appropriate order in the facts and circumstances of the present case. Learned A.P.P. has further submitted that till today the State has not preferred any appeal against the order of acquittal passed by the Trial Court against the present respondents.

16. We have considered the submissions canvassed by the learned counsels appearing for the parties. We have also perused the copy of the deposition of the prosecution witnesses and the other material provided by the learned counsel for the appellant. From the evidence led by the prosecution before the Trial Court, it would emerge that PW-4, who is the mother of the



victim, has given a written complaint to the concerned Police Authority wherein she has made allegation against one Binod Kumar as well as the present private respondents. The allegation was levelled against the private respondents that they, in connivance with the accused Binod Kumar, forcibly took away the daughter of the informant, who was aged about 16 years, in a Bolero Car which was standing in front of the house of the informant. On the basis of the said information given by the informant, the F.I.R. was initially lodged under Section 366(A)/34 of the I.P.C. After the investigation was over, the investigating agency filed the charge-sheet under the aforesaid provision as well as under Section 376 of I.P.C. and Section 4 of the POCSO Act and charge was also framed against the accused. It is pertinent to note that main allegations are levelled by the informant against Binod Kumar (original accused No. 1). The present respondent No. 2 is the father of Binod Kumar and respondent No. 3 is the brother of Binod Kumar. Thus, it appears that the informant has implicated the family members of Binod Kumar in the occurrence in question. PW-1 (victim) has stated in her deposition that she went to Muzaffarpur at her own will. She did not go with anyone. There she met with Binod Kumar and started living with him. She lived there for 8 months. During this period, they made physical



relationship. Further, she revealed that she established physical relationship with Binod Kumar at her own will.

16.1. Thus, from the aforesaid deposition given by the victim, it is clear that she had not supported the case of the prosecution and she had voluntarily left her house. However, it is pertinent to note here that, after a period of three years, she was recalled, i.e. on 16.12.2022. She had further deposed before the Court that Binod Kumar, Parashuram Yadav and Rambind Yadav had kidnapped her and taken her to Muzaffarpur. All the three accused are residing in Muzaffarpur and at Muzaffarpur, Binod Kumar had committed rape on her. She had further stated that the earlier deposition given by her was under the pressure of Binod Kumar and Parashuram Yadav.

17. PW-2 is the father of the victim. He has stated in his deposition that the date of birth of his daughter is 22.04.2001 and, on the date of occurrence, his daughter was minor. His wife Hemlata Devi had earlier filed a case against the accused regarding the kidnapping of his daughter. In that case also, his daughter's statement was recorded under Section 164 in the Court.

17.1. In his cross-examination he has stated that he was not aware that his daughter had said in her statement in the Court that she will go with the accused Binod Kumar. Further he states



that it is not the case that his daughter loves Binod Kumar and has married him and he is not pressurizing his daughter to change her statement. It is also not the case that his daughter still considers Binod Kumar as her husband and wants to live with him.

18. PW-3 Sita Ram Sah is the grandfather of the victim. He has stated that Binod Kumar came to his house and forcefully dragged the victim outside where a Bolero car was parked in which 5-6 persons were already there. Later, with the intention of doing bad deeds with her granddaughter, they ran away with the Bolero Car. The persons in the car were Parashuram Yadav, Ram Bind Yadav, Jichi Devi, Abhiram Yadav and others.

18.1. In his cross-examination, he has stated that he does not remember that the statement of his granddaughter was recorded under Section 184 of the Code in both the kidnapping case. After the statement of Section 164, he collected his granddaughter from the Court and took her to his home. He was not aware that in both the statements under Section 164, his granddaughter had told about marrying Binod Kumar, falling in love with him, going with him herself and the accused not kidnapping her.

19. PW-4 Hemlata Devi is the informant of the case and mother of the victim. She has stated that a Bolero Car was parked



just 15 steps ahead of her house in which 6-7 people were riding including Rambind Yadav, Binod Yadav, Parashuram Yadav, Jichi Devi and others and Binod Yadav dragged her daughter from the house and made her sit in the car. When they made noise, they drove away.

19.1. In her cross-examination, she has stated that she does not believe the statement given by her daughter in Court.

20. PW-5 Ganesh Prasad has stated in his deposition that when he was at his house, he saw from the window that some boy was dragging the victim by the hand. The victim was screaming. So he came out of the house and followed her. He saw that at some distance from the house, a four wheeler car was parked in which the victim was forced to sit and then the car started running. Some other people were sitting in the car. By the time he reached there, four people took her in the car and drove away. After that, it was revealed that Binod Yadav, Parsshuram Yadav, Ram Bind and others had kidnapped the girl and driven away.

21. PW-6 Dr. Rama Jha is the Medical Officer who was posted at Sadar Hospital, Madhubani. The said witness had examined the victim on 27.06.2018. The said witness has stated in her deposition as under:-

“Height- 5ft. 1 inch, weight- 40g, teeth- 14/14, secondary sexual character well developed. No external or



internal injury present over her body or private part. Hymen ruptured old one. LMP-10-06-2018.

Pathological examination of vaginal swab has done by Dr. P. Mishram, M.O. Sadar Hospital, Madhubani. According to pathological reports show- no spermatozoa found in vaginal smear. WBC-0 to 1 HPF, RBC- Nil, E-Cells- 2 to 3 HPF, other nothing.

For the age determination report given by same medical board X-ray done by Sadar Hospital, Madhubani.

X-ray finding shows:-

1. X-ray of both wrist AP view shows in complete fusion of epiphysis of lower end of radius ulna.
2. X-ray of both elbow AP view shows complete fusion of epiphysis of olicarane.
3. X-ray pelvis AP view shows complete fusion of epiphysis of iliac crest.

Opinion about age by Medical Board- According to physical and radiological finding the age of the victim is about 19 years.

Conclusion of Medical Board-

According to physical and pathological examination no medical evidence of rape found at the time of examination. The age of the victim is about 19 years.

M/I- A black mole on the left side of the neck.”

22. PW-7 Ashok Yadav has stated that he had married his daughter with Binod Kumar. Binod used to harass his daughter to collect his wealth by marrying his other daughter. After marriage, he came to know that Binod was having illicit relationship with 4-5 girls. He stated that Binod Kumar's family supported him in his wrong deeds.



23. PW-8 Shailendra Kumar Vidyakar is the Investigating Officer who has stated that he visited the place of occurrence which is the south-facing house of the informant. The statement of the victim was recorded under Section 161 of the Code. Thereafter, the statement of the victim was recorded under Section 164 of the Code. He further stated that, after the investigation, he submitted charge-sheet No. 434/18 under Section 366(A)/34 I.P.C. and 12 of POCSO Act.

24. PW-9 Sachidanand Prasad is also the Investigating Officer of the case. He has stated that he submitted supplementary charge-sheet against the accused Binod Kumar under Section 366(A)/34 of I.P.C. and 12 of POCSO Act.

24.1. In his cross-examination, he has stated that he investigated only against the accused Binod Kumar. He further stated that he has not recorded the statement of any witness because investigation was already complete on every point.

25. We have re-appreciated the entire evidence led by the prosecution. At this stage, we would like to observe that, on the basis of the photocopy of the mark-sheet of Matric Examination, the prosecution has tried to contend that, on the date of occurrence, the victim was minor and she was aged about 17 years and 1 month. In the photocopy of the mark-sheet, the date of birth of the



victim was shown as 22.04.2001. It is pertinent to note that the name of the person who had produced the said document is not coming out from the record. The informant or the father of the victim have not produced the said document while giving deposition before the Court. PW-8 has, though referred in his examination-in-chief that the said photocopy of the mark-sheet was given by the father of the victim to him at the time of investigation, however, the said witness has also not produced the said document while giving the deposition before the Court. However, fact remains that the said document is marked as Exhibit-10. It is the contention of the learned counsel for the appellant that while giving the exhibit, the defence has not raised any objection and, therefore, it is not open for the defence to contend, at this stage, that this document cannot be looked into. We are of the view that the said contention is totally misconceived. Even though the document is exhibited, the contents of the said documents are not automatically proved. At this stage, we would like to refer the deposition given by PW-6 (Doctor) who had examined the victim. On the basis of physical as well as radiological finding, the Medical Board which had examined the victim opined that the age of the victim is about 19 years. In Paragraph-6 & 7 of the deposition, the Doctor has specifically



stated about the age of the victim being 19 years. During the cross-examination, in Para-10, the said Doctor has once again reiterated that, at the time of Medical examination, the victim was major. Thus, we are of the view that the prosecution has failed to prove that the victim was minor at the time of occurrence by producing any document which is admissible in evidence. Even from the deposition given by the Doctor, it is clear that the victim was major on the date of the occurrence.

26. Now, at this stage, we would like to refer the deposition given by PW-8 (Investigating Officer) who has carried out the investigation. The said witness has specifically admitted in Para-12 of the cross-examination that, while giving statement under Section 161 and 164 of the Code, the victim had never alleged that any forcible act was committed on her. In Paragraph-13 of the cross-examination, the said witness has specifically admitted that, in the Medical Certificate given by the Doctor, the victim was shown as major. It is further revealed from the Medical Certificate that the allegation of rape is not supported by the Medical Certificate. We have also perused the statement of the victim recorded under Section 164 of the Code before the Magistrate. In the said statement, the victim has specifically stated that she had voluntarily left her house and gone with Binod



Kumar. No one has allured her. The family members used to assault her and due to anger she left the house. They gave the threatening that if she will not depose in their favour she will be kicked out and she will be sent to remand home. Further question was asked by the Court wherein she has specifically stated that she went to live with Binod Kumar with whom she had married.

26.1. At this stage, we would once again like to refer the deposition given by PW-1 (victim). In Paragraph-13, she has specifically stated that, while giving the statement under Section 164 of the Code, she had never shown her willingness to go with her parents. Her statement was read over to her and thereafter she had signed the said statement given under Section 164 of the Code. The said statement was also exhibited. Thus, from the statement of the victim recorded under Sections 161 and 164 of the Code as well as the deposition given before the Court, it is crystal clear that she has not supported the case of the informant. Learned counsel for the appellant has heavily placed reliance upon Paragraph-17 & 22 of the deposition of the victim which was recorded after a period of three years at the time when she was recalled. However, even from the said statement also, a reasonable doubt is raised, with regard to the theory put forward by the prosecution at the belated stage through the victim.



27. At this stage, we would like to observe that the learned counsel for the appellant has merely referred the averments made in the Memo of the Appeal in which there is a reference of some of the decisions rendered by the Hon'ble Supreme Court. However, as observed hereinabove, the copy of the said decisions are not provided. Further, the said decisions are also not referred by the learned counsel and merely the averments made in the Memo of the Appeal are referred. However, in the facts of the present case, reliance upon the aforesaid decision of the Hon'ble Supreme Court is misplaced. We cannot dispute the proposition of law that the medical evidence cannot throw overboard and otherwise cogent and trustworthy evidence of the prosecutrix.

27.1. In the present case, as discussed hereinabove, the victim herself has exonerated all the accused including original accused No. 1 Binod Kumar while giving her statement under Sections 161 & 164 of the Code before the learned Magistrate. Even while giving the deposition before the Court, in examination-in-chief as well as in cross-examination which was recorded in May 2019, she did not implicate the present private respondents including the original accused No. 1 Binod Kumar. As observed hereinabove, after a period of 3 years, when the victim was



recalled in Para-17 & 22 upon which the heavy reliance is placed by the learned counsel for the appellant, for the first time, she has stated that the accused have abducted her and original accused No. 1 Binod Kumar committed rape on her at Muzaffarpur. We are of the view that the said deposition of the victim at the time of recall cannot be termed as trustworthy. She cannot be relied upon and, therefore, when the medical evidence in the present case support the first version of the victim which was given by her before the Police as well as before the learned Magistrate under Section 164 of the Code was the correct version and the medical evidence also supports the said version. We are, therefore, of the view that the aforesaid decision would not render any assistance to the learned counsel for the appellant.

27.2. We also cannot dispute the proposition of law that minor contradiction and insignificant discrepancy in the statement of the victim should not be a ground for throwing out an otherwise reliable evidence. However, in the facts of the present case, there are major contradictions and discrepancies in the deposition given by the prosecution witnesses and, on the contrary, victim herself has exonerated the accused while giving her statement under Sections 161 & 164 of the Code and even before the Court. Thus, the reliance placed by the learned counsel on the decision rendered



in the case of **State of Punjab Vs. Gurmit Singh**, reported in **(1996) 2 SCC 384** is also misconcieved.

28. In view of the aforesaid facts and circumstances of the present case, we are of the view that there is no material available in the evidence led by the prosecution against the present private respondents from which it can be established that the present private respondents have committed the alleged offences. We have also gone through the reasoning recorded by the Trial Court while acquitting the present private respondents and we are of the view that the Trial Court has not committed any error while passing the impugned judgment and order of acquittal in favour of the private respondents.

29. At this stage, we would also like to refer the order dated 10th January, 2024 passed by this Court in **Criminal Appeal (DB) No. 550 of 2023 (Radhe Shyam Mahato @ Radheshwar Mahto Vs. State of Bihar & Anr.)**. This Court, in the said case, considered the guidelines/principles laid down by the Hon'ble Supreme Court while considering the acquittal appeal. The Division Bench of this Court in Paragraph-21 has referred the decision rendered by the Hon'ble Supreme Court in the case of **Chandrappa & Ors. Vs. State of Karnataka (supra)** and more particularly **Para-42** of the said decision. This Court has also



considered another decision rendered by the Hon'ble Supreme Court in the case of **Nikhil Chandra Mondal Vs. State of West Bengal, reported in (2023) 6 SCC 605** and this Court in the aforesaid case has observed in **Para-21 & 22** as under:-

“21. The scope of interference in an appeal against acquittal is very well crystallised. Unless such a finding is found to be perverse or illegal/impossible, it is not permissible for the appellate court to interfere with the same.

22. Recently, a three-Judge Bench of this Court in Rajesh Prasad v. State of Bihar [Rajesh Prasad v. State of Bihar, (2022) 3 SCC 471 : (2022) 2 SCC (Cri) 31] has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

30. From the aforesaid decisions rendered by the Hon'ble Supreme Court as well as by this Court, it can be said that there is double presumption in favour of the accused while the order of acquittal has been recorded by the Trial Court. Firstly, the presumption of innocence that is available to the accused under the



fundamental principles of criminal jurisprudence is that every person shall be presumed to be innocent, unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, presumption of his innocence is further re-affirmed and strengthened by the Court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the Trial Court.

31. Keeping in view the aforesaid law laid down by the Hon’ble Supreme Court and this Court, if the facts of the present case, as discussed hereinabove, are examined, we are of the view that in the present acquittal appeal filed by the informant/accused, against the order of acquittal of private respondents, no interference is required.

32. Accordingly, the present appeal is dismissed.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Sachin/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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