

Malti Devi Vs The State of Bihar, Khurshid Mian @ Phucho Mian and Chhuniah Begam @ Khaliza Khatoon

Court: Patna High Court

Date of Decision: Feb. 19, 2002

Acts Referred: Penal Code, 1860 (IPC) – Section 323, 379

Citation: (2002) 2 PLJR 295

Hon'ble Judges: B.N.P. Singh, J

Bench: Single Bench

Advocate: Atul Chandra, for the Appellant; B.P. Gupta, for the Respondent

Final Decision: Dismissed

Judgement

B.N.P. Singh, J.

The Respondent Nos. 2 and 3 were prosecuted for offences punishable under Sections 323 and 379 of the Indian Penal

Code (IPC) on accusation that on 22.5.1987 they plucked 200 mangoes from the tree of Appellant Malti Devi and on resistance, assaulted her

and also her daughter. After the judicial process was set in motion on filing of a petition of complaint in the Court of Chief Judicial Magistrate,

Munger, in the eventual trial, the prosecution examined altogether four witnesses including Malti Devi, on whose behest, the prosecution was

launched against these Respondents and others, and the trial court on consideration of evidences placed on record, while negating the assertion

raised on behalf of the State, acquitted the Respondents of the charges leveled against them.

2. The findings recorded by the trial court have been assailed in this appeal by the aggrieved complainant. After this appeal was admitted, notices

were also issued to the Respondent Nos. 2 and 3 to answer the charges. It is sought to be urged on behalf of the Appellant that the witnesses

examined at trial had lent assurance to the prosecution allegation, details of which have been made in the petition of complaint about the

Respondents having assaulted Malti Devi and her daughter, pursuant to which they also removed 200 mangoes from the tree. Contentions are

raised that though one of the grounds on which the Respondents were acquitted of the charges was non-examination of independent witnesses by

the State but a petition was filed in the trial court about some of those witnesses having been gained over by the defense and hence, it is urged that

there was no occasion for their examination. Learned Counsel for the State resisted the contentions raised on behalf of the Appellant and urged

that the findings recorded by the trial court did not merit interference.

3. It seems that while acquitting the Respondents of the charges, the Court below took into consideration the incoherent statements of the

witnesses about the place of occurrence, non-examination of independent witnesses and also non-examination of the doctor. It seems that though

the complainant alleged to have been examined by the doctor, for the reasons best known to the State, the doctor was not brought in the witness

box. P.W. 1 who was examined at trial, was not tendered for cross-examination and rightly the trial court did not take into consideration, the

evidence of this witness. The basic concept about reversing the judgment of acquittal has been crystallized in catena of decisions of the Court that

unless the judgment appears to be extremely perverse, no interference is warranted. The prosecution was launched against the Respondent Nos. 2

and 3 in the year 1987 and the order of acquittal was recorded in the year 1991 and on consideration of the findings recorded by the court below

and also efflux of time since then, I find that it is not a case in which the judgment of the trial court can be said to be perverse requiring interference

by this Court and this appeal is accordingly dismissed.