

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.79 of 2024**

Arising Out of PS. Case No.-83 Year-2021 Thana- MAHKAR District- Gaya

1. Karu Singh @ Anish Kumar @ Aneesh Kumar S/O Sri Ram Kalesh Singh @ Ram Kalesh Sharma R/O Village- Naili, P.S- Mahkar, Distt.- Gaya.
2. Dhiraj Kumar S/O Navin Singh R/O Village- Naili, P.S- Mahkar, Distt.- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 163 of 2024

Arising Out of PS. Case No.-83 Year-2021 Thana- MAHKAR District- Gaya

Shashi Singh @ Shashi Ranjan S/O Ravindra Singh R/O Village- Naili, P.S- Mahkar, Distt.- Gaya.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 79 of 2024)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Ritwik Thakur, Advocate
Mrs. Vaishnavi Singh, Advocate.

For the State : Mr. Ajay Mishra, APP



For the Informant : Mr. Sambhav Gupta, Advocate.
(In CRIMINAL APPEAL (DB) No. 163 of 2024)
For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate.
For the State : Mr. Ajay Mishra, APP
For the Informant : Mr. Sambhav Gupta, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)
Date : 22-08-2024

Both the appeals have been taken up together as they have been preferred against the same impugned judgment of conviction and order of sentence dated 19.12.2023 and 21.12.2023 respectively, passed by learned Exclusive Special Judge, POCSO-cum-Additional Sessions Judge-VII, Gaya, in POCSO Case No. 17 of 2022 arising out of Mahkar P.S. Case No. 83 of 2021, whereby all three appellants have been found guilty for the offence punishable under Section 376-D of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for remainder of the natural life and to pay a fine of Rs.70,000/- each. In case of default to pay the fine, the appellants have been directed to undergo further simple imprisonment for one year and two months.

2. The prosecution case as emerging from the written



report of the victim/informant addressed to Officer-in-charge, Mahkar Police Station, Gaya is that the informant is 14 years old. On 16.10.2021 she had gone to see Durga Pooja. At 11:00 O'Clock in the night, appellant Shashi Singh called her by his mobile number 6203025364 on her mobile bearing number 8434869849 and stated to her that her mother is calling her at home. She started going her home. On way in the village, appellant Shashi Singh, Dhiraj Kumar and Karu Singh forcibly caught hold of her and lifted her and took her to the roof of +2 College where she was raped by them one by one. After the rape, appellant/Karu Singh asked the co-accused to kill and throw her. But appellant Dhiraj Kuamr and Karu Singh cautioned that they would get implicated in a murder case. Appellant/Dhiraj Kumar clicked her photographs. Seeing the passers-by, all three appellants left her and fled away. Hence, she was saved. On account of the occurrence, she had left her home for committing suicide but she was saved by one old man and one old lady.

3. On the basis of the written report of the informant, Mahkar P.S. Case No. 83 of 2021 was registered on 23.10.2021 against all three appellants for the offence punishable under Sections 376(3), 376(D) and 376(DA) of Indian Penal Code and



Section 6 of the POCSO Act.

4. After investigation, charge-sheet was submitted against all three appellants. Charge was framed against them under Sections 376(3), 376-D and 376-DA of the Indian Penal Code and Section 6 of the POCSO Act. The appellants, however, pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined the following eight witnesses:-

- (i) P.W.-1 - Father of the victim
- (ii) P.W.-2 - The victim herself
- (iii) P.W.-3 - Praveen Singh
- (iv) P.W.-4 - mother of the victim
- (v) P.W.-5 - Lal Babu, Principal of the School
- (vi) P.W.-6 - Dr. Shakuntala Nag
- (vii) P.W.-7 - Surendra Paswan, Investigating Officer
- (viii) P.W.-8 - Ajay Kumar, Assistant Director of F.S.L.

6. The prosecution also brought on record the following documentary evidence:

- (i) Ext.-P-1/P.W.2 - Written application of the victim/informant.
- (ii) Ext.-P-2/P.W.2 - Signature of the victim/informant on the statement of 164 Cr.PC.
- (iii) Ext.-P-3/P.W.4 - Signature of the mother of the victim on the seizure list
- (iv) Ext.-P-4/P.W.4 - Signature of the father of the victim on the seizure list
- (v) Ext.-P-5/P.W.4 - Signature of the victim on her statement under Section 161 Cr.PC.
- (vi) Ext.-P-6/P.W.4 - Signature of the father of the victim on the statement of the victim under Section 161 Cr.PC.
- (vii) Ext.-P-7/P.W.5 - Entry no. 117 of the admission register of the Middle School, Naili



(viii) Ext.-P-8/P.W.-5 - Certificate regarding date of birth of the victim issued from Middle School, Naili.

(ix) Ext.-P-9/P.W.-5 - Signature of the Principal of the Middle School, Naili on the photocopy of the extract of the admission register.

(x) Ext.-P-10/P.W.-6 - Medical examination report of the victim

(xi) Ext.-P-11/P.W.-7 - Formal first information report

(xii) Ext.-P-12/P.W.-7 - Registration of the first information report

(xiii) Ext.-P-13/P.W.-7 - Statement of victim recorded under Section 161 Cr.PC

(xiv) Ext.-P-14/P.W.-7 - Certificate of the victim with respect to her date of birth issued from the school

(xv) Ext.-P-15/P.W.-7 - Seizure list

(xvi) Ext.-P-16/P.W.-8 - Signature of Ajay Kumar, Assistant Director, F.S.L. on F.S.L. report.

(xvii) Ext.-P-17/P.W.-8 - Signature of the Director in-charge of F.S.L., namely, Himjay Kumar.

(xviii) Ext.-P-18/P.W.-8 - F.S.L. report

(xix) Ext.-P-19/P.W.-8 - Report in form No. IG of F.S.L report.

(xx) Ext.-X- Photocopy of the application for sending the seized articles to F.S.L.

7. After closure of the prosecution evidence, accused persons were examined under Section 313 Cr.PC confronting them with incriminating circumstances which came in the prosecution evidence, so as to afford them opportunity to explain those circumstances. During this examination, all the appellants claimed to be innocent and stated that the prosecution evidence is false. Appellant/Shashi Singh also claimed that his blood group is B(+). Appellant Dhiraj Kumar has also claimed that his blood group is B(+) which can be verified and he has



been falsely implicated on account of village politics. Appellant/Karu Singh @ Anish Kumar has also claimed that on the alleged date of occurrence he was not in the village as he had gone to his sasural Chainpura situated in the Nawada district. He has also claimed that the house of Krishna Singh is situated in the middle of the village and not at lonely place and the way going to +2 School from the house of Krishna Singh is surrounded by various houses. He has also claimed that his blood group is B(-).

8. The trial court after appreciating the evidence on record and considering the submissions of the parties, passed the impugned judgment and order finding that the victim was major on the date of occurrence and the prosecution was successful to prove the charge framed under Section 376(D) of the Indian Penal Code beyond all reasonable doubts. However, in view of the majority of the convict, the appellants were acquitted of the charges framed under Section 6 of the POCSO Act and Sections 376 (3) and 376(DA) of the Indian Penal Code.

9. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State as well as learned counsel for the informant.

10. Learned counsel for the appellants submits that



the appellants are innocent and have falsely been implicated in this case. He also submits that even as per evidence on record, the prosecution case is highly doubtful against the appellants. The first version of the prosecution case has been withheld by the Prosecution because regarding the alleged occurrence, not only *Sanha* was lodged with Mahkar Police Station, even First Information Report was registered at Banaras by the father of the victim. But copy of the *Sanha* and the FIR lodged at Banaras, are not brought on record. He also submits that the testimony of the victim as well as her parents are full of improvements, contradictions and discrepancies making the prosecution case highly doubtful. The prosecution case is also not supported by the medical and forensic evidence. Hence, the impugned judgment and order of sentence are not sustainable in the eye of law and are liable to be set aside.

11. However, learned Additional Public Prosecutor for the State and learned counsel for the informant defend the impugned judgment of conviction and order of sentence submitting that the appellants have been rightly convicted under Section 376(D) of the Indian Penal Code and appropriately sentenced. There is no illegality or infirmity in the impugned judgment and sentencing order.



12. At the outset, it is pertinent to mention, at the cost of the repetition, that the Trial Court has found the informant/victim major on the alleged date of occurrence and all the appellants have been accordingly acquitted of charge under Section 6 of the POCSO Act and Sections 376(3) and 376(DA) of Indian Penal Code and this finding of learned Trial Court has not been challenged. Hence, we are bound to treat the victim as a major on the date of the occurrence. Now, only question before us to decide is whether the prosecution has proved beyond reasonable doubts that the appellants are guilty of offence punishable under Section 376-D of the Indian Penal Code.

13. Coming to the prosecution evidence, we find that **victim** has been examined as **P.W.-2**. From perusal of the written report of the victim and her examination-in-chief, we find that there are material improvements and contradictions in her testimony before the Trial Court. Besides reiterating her statement as made in her written report, she has deposed that after commission of the rape, she fled away. She hid herself in the garden of the middle school and the accused persons followed her upto her home. From the school garden, she went back to the place of *Durga Puja* and at 2-3 O'Clock when the



people started going back home, she also went back to her home along with them and sat besides her mother in her room. But she did not disclose anything to her mother and on the pretext of studies, she left her home at 6 O'clock in the next morning with intent to commit suicide and when she reached Bela Station, she met one old man and one old lady who dissuaded her from committing suicide and asked her to accompany them to their home and they took her in their four wheeler vehicle to their home where she stayed for a night. Next day, on her asking, they left her at Chandauli Bus stand wherefrom she went to Banaras by bus and she stayed for 2-3 hours at bus stand till it became morning and she went into police custody and she stated to the police that she was missing. Hence, Police took her to children home. Her parents were informed by the police. Hence, her parents and 2-4 co-villagers came there to take her. On inquiry, she told everything to them about the occurrence. She was taken to her home by her parents and thereafter, she went to Mahkar Police Station, but Mahkar Police Station did not take the case and advised her to go to Mahila Police Station. Even, at Mahila Police Station, she was told that Sahab had not come and she was advised to come on next day. Even the next day, by 2 or 3 O'clock, the concerned



Officer had not come. Then she went to CWC. Hence, case was registered in the police station. The written report was prepared by his brother Ankit Kumar. In her examination-in-chief, she has also testified that her jeans, T-shirt and blazer was seized and same was taken by police after one month.

14. In her **cross-examination**, P.W.-2 (victim) has made contradictory statements saying that after the occurrence, she had gone to temple which is situated at less than one kilometer from her home and she stayed there for one and half hours, whereas in her examination-in-chief, she has deposed that after commission of the rape, she had gone back to the place of *Durga Puja*.

15. In her cross-examination she has further deposed that after lodging of the case, the accused persons were threatening her. Hence, she went to Delhi. In Delhi, her parents had lodged a case against Mohit Kumar in Mundika Police Station. Subsequently, she was recovered from *Durga Sthan* of village-Sinhma, Ward no.1 of District- Begusarai.

16. In her cross-examination, she has further made contradictory statement that from Gaya, she had gone to Chandauli by train and she was taken to Banaras by the police. She was confronted with her previously recorded statement



under Section 164 Cr.PC wherein she had stated that at Bela Station, she met one old man and old lady who took her to Mugalsarai wherefrom she went to Banaras by bus where one man called police and the police took her to children home. But during her cross-examination, she has denied that she had made such statements.

17. The victim has denied the suggestion that she and her parents are habituated to lodge false cases under the POCSO Act to get money from the Government. She has also deposed that in the Mundika Police Station, she had gone voluntarily and there was no question of getting money.

18. As such, we find that the prosecutrix is not consistent and reliable. Her testimony makes the prosecution case highly doubtful.

19. Father of the victim has been examined as **P.W.-**

1. He is not an eye-witness to the occurrence. In his **examination-in-chief**, he has deposed that in the night of occurrence, when her daughter did not come her home till late, he started searching her and he was informed by few persons that she was taken towards school. Then he along with others moved towards the school and after hearing the sound of their arrival, the accused persons fled away and he found her



daughter in torn clothes. He was informed by her daughter that three accused who are appellants herein had committed rape upon her. We find that such testimony of the father of the victim is not in consonance with that of the victim. The victim/informant has stated in her testimony that after the occurrence, she went back to the place of *Durga Puja*. She has also not deposed that after the occurrence, she had met her father, mother and some co-villagers.

20. In his **cross-examination**, he has deposed that in the night, he had gone to search his daughter at about 1-2 A.M. At that time, he was accompanied by his wife only and not by any co-villager. Next day, the informant/victim left her home for coaching on bicycle and she was away from home for six days. The name of the old man and old lady are not disclosed by her daughter till date. When he had received his daughter from the child line at Banaras, he had got a copy of the F.I.R. He has also deposed that he had filed F.I.R. at Banaras also and a copy of the same would be filed. He has also deposed that on 25.05.2022 he had lodged a case in Mundika Police Station, Delhi against Mohit Kumar in regard to kidnapping of his daughter (victim of this case) and after investigation, police had recovered her from Begusarai. He has further deposed that total



three cases had been lodged. He has further deposed that on the day of occurrence, he had suspicion against Dippu and his mother Sharda regarding the occurrence. He had no doubt against others.

21. The evidence of this witness also does not inspire our confidence, as he has given statements in contradiction to that of his daughter. He has also not brought on record the first version of the police case he had lodged at Banaras. Though he has claimed that in the night of the occurrence, (16-17 October) during the course of search, his daughter had disclosed that the appellants had committed rape upon her, he did not lodge any case in this regard immediately thereafter and instead, informatory petition was lodged by him on 20.10.2022.

22. Mother of the victim has been examined as **PW-4**. She is also not an eye witness to the occurrence. In her **examination-in-chief**, she has not stated anything regarding searching of her daughter in the night of the occurrence along with her husband. As such, there is no consistency between the statement of the father of the victim (P.W.-1) and the present witness who is mother of the victim. As per testimony of PW-1 (father of the victim), at 1-2 O' clock in the night, he along with his wife i.e. the present witness had come out from their house



to search their daughter when she did not come back from the *Durga Puja* programme till late. But, there is no such statement by this witness.

23. In her **cross-examination**, P.W.-4 has deposed that her daughter had already lodged a criminal case at Banaras, as her daughter had stated to her. On 20.10.2021, at 10-11 O'clock in the night, she had got information from Banaras that her daughter had been recovered. She has also deposed that on 17.10.2021, she had given missing information to Mahkar Police Station regarding her daughter, in which suspicion was raised against one Raushan Kumar. Hence, it is also important to note that as per the deposition of PW-1 (father of the victim) when he and the present witness were searching their daughter in the night, they met their daughter near the school where she was allegedly subjected to ravishment, her daughter had informed them that the appellants had committed rape upon her. But despite such information received from her daughter in the night of 16-17, F.I.R. was not lodged by the parents to the Police. Instead, this missing information was lodged by the mother. The number of informatory petition was 387/2021 but this informatory petition is also not brought on record by the prosecution. She has further deposed that in the village, the



rumour was doing round that it is Raushan Kumar who enticed her daughter away.

24. P.W.-5 is Principal of Middle School, Naili. But there is no challenge to the finding of the Trial Court regarding the age of the victim. Hence, there is no requirement to discuss the evidence of this witness.

25. The Prosecution case does not get support from **P.W.-6 Dr. Shakuntala Nag** also who had conducted medico-legal examination of the informant/prosecutrix on 23.10.2021. She had found no mark of violence and struggle on the body of the prosecutrix. She also found no signs or symptoms of present sexual intercourse, nor did she get any other abnormal finding. In her **cross-examination**, she has also deposed that in a gang rape bruising or laceration of external genital is a must, but there was no such injury on the private part of the prosecutrix. She also found no spermatozoa either dead or alive. She has also not found libia manora red.

26. P.W.-7, Surendra Paswan is Investigating Officer of the case. He had seized blue *Janghiya*, blue Jeans Pant, grey full T-shirt and black blazer belonging to the victim and the same were sent to FSL, Patna, for forensic examination. He has also deposed that in *Sanha* bearing no. 387 dated 20.10.2021,



as lodged by the mother of the victim, nothing was stated about the present occurrence.

27. P.W.-8, Ajay Kumar, is an Assistant Director at FSL, Patna. As per the forensic examination, human blood of group B was found on *Janghiya* of the victim. However, no human blood could be detected on other clothes seized from the victim. The semen was also not detected in any of the clothes seized from the victim.

28. In view of the aforesaid facts and circumstances, we find that the prosecution has failed to prove the charge under Section 376(D) of the Indian Penal Code against the appellants beyond all reasonable doubts.

29. Hence, the impugned judgment of conviction and the order of sentence are not sustainable in the eye of law. Accordingly, they are set aside.

30. The Appeals stand allowed.

31. Appellant Shashi Singh @ Shashi Ranjan is on bail. He is discharged of his liability under his bail bond.

32. Since the appellants Karu Singh @ Anish Kumar @ Aneesh Kumar and Dhiraj Kumar are in custody, they are directed to be released forthwith, if they are not required to be detained or wanted in any other case.



33. Let a copy of this judgment be dispatched to the Superintendent of the concerned jail forthwith for compliance and record.

34. The records of the case be returned to the Trial Court forthwith.

35. Interlocutory application/s, if any, also stand disposed of accordingly.

(Jitendra Kumar, J.)

I agree.

(Ashutosh Kumar, J.)

S.Ali/ravishankar/
Shoaib

AFR/NAFR	AFR
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