

**“IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.30 of 2020**

Arising Out of PS. Case No.-97 Year-2011 Thana- CHACKMEHSI District- Samastipur

1. RAVI MAHTO Son of Prabhu Mahto Resident of Village - Gorai, P.S.- Chakmeshi, Distt.- Samastipur.
2. Shambhu Mahto Son of Late Mishri Mahto Resident of Village - Gorai, P.S.- Chakmeshi, Distt.- Samastipur.
3. Guddu Kumar Son of Swarth Mahto Resident of Village - Gorai, P.S.- Chakmeshi, Distt.- Samastipur.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. Vindhya Keshri Kumar, Sr. Advocate
		Mr. Neeraj Kumar, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH

SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 19-12-2022

We have heard Mr. Vindhya Keshri Kumar, learned Senior Counsel for the appellant assisted by Mr. Neeraj Kumar, learned Advocate and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

2. The name of the informant, who is said to be the victim of the occurrence has been concealed in the present judgment and order of this Court and has been referred to as the



informant (PW-6).

3. By the impugned judgment and order dated 05.12.2019/12.12.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act) Samastipur in Sessions Trial No. 79 of 2021 arising out of Chakmeshi P.S. Case No. 97 of 2011, the appellants have been convicted and sentenced as under:

Appellant Number	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
1.	Section 376(2) (g) of the IPC	Imprisonment for ten years	25000/-	S.I. for three months
	Section 3(1) (xii) of the SC/ST Act	R.I. for two years	4000/-	S.I. for one month
	Section 3(2)(v) of the SC/ST Act	Imprisonment for life	50,000/-	S.I. for six months
	Section 324 of the IPC	R.I. for three months	5000/-	S.I. for one month
2.	Section 376(2) (g) of the IPC	Imprisonment for ten years	25000/-	S.I. for three months
	Section 3(1) (xii) of the SC/ST Act	R.I. for two years	4000/-	S.I. for one month
	Section 3(2)(v) of the SC/ST Act	Imprisonment for life	50,000/-	S.I. for six months
	Section 324 of the IPC	R.I. for three months	5000/-	S.I. for one month



3.	Section 376(2) (g) of the IPC	Imprisonment for ten years	25000/-	S.I. for three months
	Section 3(1) (xii) of the SC/ST Act	R.I. for two years	4000/-	S.I. for one month
	Section 3(2)(v) of the SC/ST Act	Imprisonment for life	50,000/-	S.I. for six months
	Section 324 of the IPC	R.I. for three months	5000/-	S.I. for one month

4. The prosecution's case as narrated by the informant (PW-6), is that the appellant No. 1 is a co-villager, kept evil eyes on her for last 1-1½ years and would make consistent attempt to talk to her. He would call her on her mobile number 8051883120 through his mobile number 9934501534 but informant would not talk to him. On 27.10.2012 at 6:00 pm in the evening when it was getting dark, she had gone behind her house to ease herself where these three appellants were present, one of them being the appellant No. 1 himself. The appellant No. 1 is said to have lifted her in his lap and all of them gagged her mouth and forcibly taken her towards southern side of her house in her paddy field and toddy palm orchard. There the appellant No. 1 committed rape upon her. The other two appellants, during the course of commission of rape were holding her hands and legs and keeping her mouth



shut. The appellant No. 2 is said to have bitten the informant's right cheek. When somehow or the other she managed to scream, her grandmother (PW-1), younger sister (PW-2) and her younger brother (PW-3) rushed towards the said agricultural field whereafter all the appellants fled away from the place of occurrence. On reaching there, PW-1 clothed the informant. Based on a *fardbeyan* to the aforesaid effect recorded by the Police Officer of the concerned Police Station at 9:00 pm., the FIR came to be registered on the same day at 10:00 pm as Chakmeshi P.S. Case No. 97 of 2011, for the offence punishable under Section 376/34 of the Indian Penal Code and Section 3(1)(xii) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (in short "SC/ST Act").

5. The police upon completion of investigation submitted charge-sheet for commission of the offence punishable under Sections 376, 324 read with Section 34 of the Indian Penal Code and Section 3(1)(xii) of the SC/ ST Act, upon which cognizance was taken of the said offences by Chief Judicial Magistrate, Samastipur. It transpires from the records that during the course of investigation, the statement of the informant (PW-6) was recorded under Section 164 of the Cr.P.C., wherein she supported the prosecution's case as disclosed



by her in her *fardbeyan*.

6. The informant (PW-6) was 19 years of age and was already married as on the date of occurrence. The very next day on 28.10.2011, the informant (PW-6) was subjected to medical examination. The medical board constituted to examine her did not find any external sign of violence or injury around vulva and vagina. There was no foreign body or foreign hair found inside vagina. Spermatozoa was not found. The medical board recorded that it could not be opined whether rape had been committed or not. The saree, petticoat and blouse which the informant was wearing, were sent for FSL examination. A duplicate attested copy of FSL report (marked Exhibit-A as secondary evidence with objection) contains description of the articles sent and the result of examination of FSL report as under:-

“1. The red, brown, blue attached sitara sari marked ‘A’ bore reddish brown stains at places. It also grayish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light.

2. The red saya marked ‘B’ bore reddish brown stains at places. It also bore grayish white stains which were stiff to feel and which produced characteristic bluish



which fluorescence in ultra violet light.

3. The red, brown, blue attached sitara blouse marked 'C' bore reddish brown stain at one place. It also bore grayish stains which were neither stiff to feel nor did they produce any characteristic bluish white fluorescence in ultra violet light."

7. After the case was committed to the Court of Sessions for trial, charges for commission of the offences punishable under Sections 376(2)(g), 324/34 of the Indian Penal Code and Section 3(1)(x), 3(1)(xii) and 3(2)(v) of the SC/ST Act were framed, which were explained to the appellants who denied the charges and accordingly they were put to trial.

8. At the trial altogether ten witnesses were examined for the prosecution. Further the prosecution proved following documentary evidence also, at the trial:-

- (1) Exhibit 1/1- the signature of the informant on the fardbeyan
- (2) Exhibit 2- the signature of the informant on her statement recorded under Section 164 of the Cr.P.C.
- (3) Exhibit 3/1- the signature of the informant on the seizure memo
- (4) Exhibit 3/2- the signature of PW-3 on the seizure memo
- (5) Exhibit 4- the fardbeyan



- (6) Exhibit 5- the formal FIR
- (7) Exhibit 6- the seizure memo
- (8) Exhibit 7- the medical report
- (9) Exhibit-8- the statement of the informant (PW-6) recorded under Section 164 of the Cr.P.C.

9. After closure of the evidence of the prosecution, the trial court informed to the appellants the gist of the materials emerging against them based on the evidence of the prosecution and gave them an opportunity to explain the circumstances, in accordance with the requirement under Section 313 of the Cr.P.C., to which the appellants denied the circumstances.

10. The defence also got examined four witnesses.

11. After having analyzed the evidence adduced at the trial, the trial court by the impugned judgment has convicted them to undergo imprisonment with fine as noted above.

12. Mr. Vindhya Keshri Kumar, learned Senior Counsel appearing on behalf of the appellants has submitted at the very outset that the conviction of these appellants for the offence punishable under Section 3(2)(v) of the SC/ST Act is *per se* illegal, inasmuch as, there is no evidence laid by the prosecution at the trial that an offence of rape was committed on the informant 'because' the said person was a member of



Scheduled Caste.

13. In order to appreciate said submission made on behalf of the appellants, we need to take note of the provision under Section 3(2)(v) of the SC/ST Act as it existed prior to its amendment through Act 01 of 2016, which read as under:

"(2) Whoever, not being a member of a Scheduled Caste or Scheduled Tribe:-

(i) X X X

(ii) X X X

(iii) X X X

(iv) X X X

(v) commits any offence under the Indian Penal Code (45 of 1860) punishable with imprisonment for a term of ten years or more against a person or property on the ground that such person is a member of a Scheduled Caste or a Scheduled Tribe or such property belongs to such member.

Shall be punishable with imprisonment for term which shall not be less than one year but which may extend to the punishment provided for that offence."

(underscore for emphasis)



14. After substitution by Act 01 of 2016 the words “on the ground that..... to such member” now reads as under:-

*“Knowing that such person is
a member of a Scheduled Caste or a
Scheduled Tribe or such property
belongs to such member”*

15. It is not case of the prosecution at any stage that the offence was committed by accused persons ‘on the ground’ or ‘because’ the informant (PW-6) belonged to a scheduled caste. This is apparently the reason why the charge-sheet was not filed by the police alleging commission of offence punishable under Section 3(2)(v) of the SC/ST Act nor a charge was framed for commission of the offence punishable under the aforesaid Section. It has, therefore, been considered apt by this Court to hold at the outset that the conviction recorded by the learned trial court against these appellant for commission the offence punishable under Section 3(2)(v) of the SC/ST Act, is completely erroneous and unsustainable.

16. This conclusion takes us to examine the legality of the findings recorded by the learned trial court of conviction of the offences punishable under Sections 376(2)(g) of the Indian Penal Code and Section 3(1)(xii) of the SC/ST Act.



Before referring to the evidence adduced at the trial and the submissions advanced on behalf of the parties, we consider it desirable to reproduce Section 376 of the Indian Penal Code in its form as it existed on the date of occurrence i.e. 27.10.2011, which read as under:-

“376. Punishment for rape.-Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

(2) Whoever,-

(a) being a police officer commits rape-



(i) within the limits of the police station to which he is appointed; or

(ii) in the premises of any station house whether or not situated in the police station to which he is appointed; or

(iii) on a woman in his custody or in the custody of a police officer subordinate to him; or

(b) being a public servant, takes advantage of his official position and commits rape on a woman in his custody as such public servant or in the custody of a public servant subordinate⁴ to him; or

(c) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place of institution; or

(d) being on the management or on the staff of a hospital, takes advantage of his official position and commits rape on a woman in that hospital; or

(e) commits rape on a woman



knowing her to be pregnant; or

*(f) commits rape on a woman
when she is under twelve years of age;
or*

*(g) commits gang rape,
shall be punished with rigorous
imprisonment for a term which shall
not be less than ten years but which
may be for life and shall also be liable
to fine;*

*Provided that the court may, for
adequate and special reasons to be
mentioned in the judgment, impose a
sentence of imprisonment of either
description for a term of less than ten
years.*

*Explanation 1.—Where a woman is
raped by one or more in a group of
persons acting in furtherance of their
common intention, each of the persons
shall be deemed to have committed
gang rape within the meaning of this
sub-section.*

*Explanation 2.—“Women’s or
children’s institution” means an
institution, whether called an
orphanage or a home for neglected
woman or children or a widows’ home
or by any other name, which is
established and maintained for the*



reception and care of woman or children.

Explanation 3.—“Hospital” means the precincts of the hospital and includes the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.]”

17. Further Section 3(1)(xii) of the Act as the same existed on the date of occurrence read as under:-

“(xii) being in a position to dominate the will of a woman belonging to a Scheduled Caste or a Scheduled Tribe and uses that position to exploit her sexually to which she would not have otherwise agreed;

X X X X
Shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to five years and with fine.”

18. After having noticed the penal provisions as reproduced above, as they existed on the date of occurrence, we are proceeding to refer to and deal with the evidence adduced at the trial by the parties.



19. The informant (PW-6) in her testimony, at the trial, deposed that on 09.10.2011 one Dilip Mahto had threatened her of serious consequences as she had declined to talk to him. The name of said Dilip Mahto was not disclosed by her, either in her *fardbeyan*, or in her statement recorded under Section 164 of the Cr.P.C.. While supporting the narration of occurrence as was disclosed by her in her *fardbeyan*, she deposed that one of the three accused persons had lifted her whereas the others had gagged her mouth. She was thereafter, taken to the agricultural field of one Rajendra Mahto bearing turmeric and paddy crops, where she was raped and assaulted. When she raised an alarm upon removing with force the hand of the accused from her mouth, her grandmother (PW-1), sister (PW-2) and brother (PW-3) rushed towards her. The moment they (PWs. 1, 2 and 3) came, the appellants fled away. She explained the incident subsequently to her father who informed the police on phone whereafter the SHO of the Police Station recorded her *fardbeyan*. She also deposed that she had handed over the clothes, which she was wearing, to the police which were seized and a seizure list was prepared. She proved her signature put on the production-cum-seizure list. She denied of any kind of relationship or love affair with the appellant No. 1,



responding to a suggestion made on behalf of the defence to her during her cross-examination. She identified the appellants, who were present in the Court.

20. The PW-1 in her testimony, while supporting the prosecution's case, deposed that PW-2, her another granddaughter had told her that some boys were forcibly taking the informant somewhere, whereafter, she (PW-1), PW-2 and PW-3 went to the field having paddy and turmeric crops. They found the informant lying nude in the field. They helped her wear her clothes. In the meanwhile the miscreants fled away. On being asked, the informant told PW-1 about the occurrence. She denied the suggestion of any previous dispute arising out of grazing of crops of the accused persons by their cattle and unlawful harvesting of the crops by them. She further deposed that it was not complete dark rather sunlight was there at the time of the occurrence.

21. The PW-2 described the place of occurrence as agricultural field of Rajendra Mahto having turmeric crop. She deposed that she had gone there upon hearing the screaming of the informant (PW-6). She had seen all the three appellants fleeing from the agricultural field. In her cross-examination PW-2 disclosed that when she reached the said agricultural field she



found the informant lying and these appellants fleeing away. She denied the suggestion of the defence that these appellants were falsely implicated because of their opposition to the prosecution side damaging the crops.

22. PW-3 also supported the prosecution's case. He deposed that he had told PW-1 that someone was screaming.

23. PW-4 is a hearsay witness, who deposed that when he returned in the night on the date of occurrence he learnt that the informant had been raped by these appellants.

24. Father of the informant was examined as PW-5 at the trial. He testified that he had gone to drink toddy and when he was drinking toddy his son PW-3 came there and told him to accompany him, as the informant had been abducted by some persons. When he returned to his house, he found PW-1 and PW-2 weeping. On inquiry from the informant (PW-6) he learnt about the entire occurrence.

25. PW-7 and PW-8 came to be declared hostile at the instance of the prosecution as they did not support the prosecution's case.

26. PW-9, the Investigation Officer of the case deposed that he was informed telephonically about the occurrence, whereafter, he had reached the house of the



informant at 9:00 pm. Thereafter, he had visited the place of occurrence. First place of occurrence was under a mango tree on the southern side of the house of the informant where informant had gone to ease herself. East of the said place was the informant's land. The second place of occurrence was nearly 100 yards southeastwards the paddy field of Ramraj Mahto. Third place of occurrence was nearly 250 yards southward the turmeric field of the Rajendra Mahto. In the turmeric field of Rajendra Mahto, the commission of rape was alleged.

27. DW-1, Rajeshwar Singh, in his deposition testified that at about 4:00 pm, the parents of appellant No. 1 had captured 5-6 she-goats and were complaining that the she-goats were of the informant, who had grazed their paddy crop. Thereafter, there was quarrel between the informant's family and the family members of the appellant No. 1. PW-5 and PW-1 were trying to take the she-goats back whereas the parents of the appellant No. 1 not inclined to release them. This led to a serious altercation between them. The husband of *Mukhiya* of the village and the *Sarpanch*, thereafter intervened and got the she-goats handed over to the informant. Six-Seven days thereafter, the criminal case was got instituted.

28. DW-2, Hirday Mahto happened to be the



husband of the *Sarpanch*, who deposed that he after having been informed by his wife he had reached the house of Prabhu Mahto where he had found that Prabhu Mahto had captured few she-goats of the informant and there was altercation going on between Prabhu Mahto, the informant (PW-6), her father (PW-5) and her grandmother (PW-1) on the point of release of the she-goats. Prabhu Mahto was complaining that the she-goats had grazed his paddy crops. After his intervention the she-goats were returned but tension prevailed between the two families.

29. DW-3, Arjun Paswan happened to be the husband of the *Mukhiya* of the panchayat. He also supported the case of the defence as noted above that the dispute had arisen between the two parties because of grazing of crops by the she-goats of the informant.

30. Mr. Vindhya Keshri Kumar, learned Senior Counsel appearing on behalf of the appellants has submitted that the prosecution's case suffers from palpable fundamental infirmities and the finding of conviction recorded by the trial court based on inconsistent, contradictory and inadequate evidence, is wholly unsustainable. Referring to the *fardbeyan* of the informant and her evidence recorded at the trial as well as the evidence of other prosecution's witnesses, he has submitted



that a doubt is created about the place of occurrence itself. Drawing the Court's attention to the *fardbeyan* of the informant, he has submitted that according to the *fardbeyan*, the place of occurrence is a paddy field of the informant in which there was(were) toddy palm tree(s) where the rape was committed on her. In the evidence, however, the prosecution's witnesses have given a different place of occurrence i.e. agricultural field of Ramraj Mahto or Rajendra Mahto having turmeric crops. He has further submitted that according to the deposition of the informant she had screamed when the rape was being committed on her and on hearing her screaming her grandmother (PW-1), her sister (PW-2) and her brother (PW-3) had rushed to the place of occurrence. Contrary to her deposition, PW-1 in her evidence deposed that PW-2 had already informed her (PW-1) that three persons were forcibly taking the informant to some place. PW-1 did not depose that she had heard PW-6 screaming, rather she had learnt from PW-3 that the informant (PW-6) was being taken away. PW-5 in his evidence at the trial deposed that his son (PW-3) had come to the toddy shop, where he was consuming toddy, and had told him that some persons had taken away the informant. He has accordingly submitted that there are material contradictions in



the evidence of the witnesses and the prosecution has miserably failed to establish its case beyond all reasonable doubts. He has further argued that considering the patent contradictions in the evidence of the prosecution's witnesses and the evidence of the defence witnesses to the effect that there was a dispute between two families over grazing of paddy crop by the she-goats of the informant coupled with absence of corroboration of the occurrence of rape in the medical evidence, conviction of these appellants of the offences as aforesaid recorded by the trial court is wholly erroneous and unsustainable. He has further submitted that detection of semen mixed blood on the petticoat (*saya*) of the informant as reported by the FSL is not a conclusive proof that the semen was of appellant No.1, which is the prosecution's case. He has submitted that failure on the part of the prosecution to connect that the semen found in the blood stained petticoat of the informant was of the appellant is fatal to the case of the prosecution and for this reason also the conviction recorded by the trial court is unsustainable.

31. Learned Additional Public Prosecutor representing the State has submitted that the evidence of the prosecutrix which is consistent, trustworthy and adequate evidence for holding the appellants guilty of the offence even



sans corroboration by medical evidence. He has further submitted that in the present case the evidence of the prosecutrix (PW-6) stands corroborated by her family members including her father (PW-5), her grandmother (PW-1), her sister (PW-2) and her brother (PW-3). The prosecution's evidence is further strengthened by the report of the Forensic Science Laboratory, which has disclosed detection of human semen mixed bloodstains on the petticoat of the prosecutrix. He submits that in the cases of such nature, minor contradictions may occur in the oral testimony of the prosecution's witnesses which has rightly been ignored by the trial court while recording conviction of these appellants.

32. We have carefully perused the impugned judgment and order of the trial court and have examined the records of the trial court. We have given our thoughtful careful consideration to the rival submissions made on behalf of the parties, as noted above.

33. It can be easily discerned from the case of the prosecution as disclosed in the *fardbeyan* by the informant that according to her the occurrence had taken place in the paddy field of the informant, southwestwards her house. According to her, it was only after she shouted/screamed when the occurrence



was taking place that her grandmother (PW-1), her brother (PW-3) and sister (PW-2) rushed to the said paddy field. In the meanwhile, these appellants had fled away. The place of occurrence as described in the evidence of the witnesses at the trial is different from the place of occurrence as was described by the informant in her *fardbeyan*. Further, according to PW-1, she was told by PW-2 that some persons were taking the prosecutrix to some palce. It is not her evidence that she had rushed to the place of occurrence after she had heard the prosecutrix screaming. PW-3 in his deposition has narrated a different story to the effect that he heard someone screaming whereafter he told PW-1 that someone was screaming then they started searching for the prosecutrix upon which they found the prosecutrix lying naked in the turmeric field of Rajendra Mahto. He had seen these appellants fleeing away from there. The evidence of father of the prosecutrix (PW-5) assumes significance in the aforesaid background. He deposed that when he was consuming toddy in the village, PW-3 had come to him to tell him that someone had taken the prosecutrix away. Analyzing the evidence of these four prosecution's witnesses viz. PWs. 1, 2, 3 and 5, we notice that according to PW-1, she was told by PW-2 that some boys were taking the prosecutrix



away. According to her evidence, thus, it was within the knowledge of PW-2 that prosecutrix was being taken away whereafter she had gone to the place of occurrence with PW-2 and PW-3, where she found the prosecutrix naked and weeping. Narration of PW-3 is substantially different. He is said to have told PW-1 that there was someone screaming whereafter they had gone to the place of occurrence and found the prosecutrix lying in the agricultural field of Rajendra Mahto. These major contradictions substantial in nature in the evidence of the prosecution's witnesses, cannot be ignored completely while considering the proof of the charge against the appellants for commission of offence punishable under Section 376(2)(g) of the Indian Penal Code.

34. It is true if the evidence of a victim of sexual assault is unblemished, trustworthy, consistent and of stellar quality the conviction can be recorded based on sole evidence of such witness. We do not find, however, such circumstance in the present case. On the one hand, in her first version in the *fardbeyan* the prosecutrix alleged that it was the appellant No. 1 who kept evil eyes on her for last 1-1/2 years and he was unhappy with the prosecutrix for not responding to his telephonic calls, in her deposition at the trial she named one



Dilip Mahto, who had threatened her on 09.10.2011 i.e. 18 days before the date of occurrence that she would have to face the consequences because she had declined to talk to him. It can be deduced from her deposition that the prosecutrix developed a new case at the trial of commission of rape upon her by appellant No. 1 with the aid of appellants No. 2 and 3 as result of vengeance at the instance of said Dilip Mahto. Considering such evidence of the prosecutrix and conflicting evidence of prosecution's witnesses 1, 2, 3 and 5, in our opinion, conviction of these appellant cannot be justified, based on the sole evidence of the prosecutrix.

35. The next question arises as to whether the prosecution has been able to establish its case based on scientific evidence to corroborate the evidence of the prosecutrix to establish beyond all reasonable doubts the charge of commission of rape by these appellants. To consider this question we need to appreciate the medical evidence first in the background of the prosecution's case disclosed in the *fardbeyan* and in the oral evidence of the prosecution's witnesses. It is the consistent case of the prosecution that the rape was committed upon the informant in an agricultural field. PW-2, who according to her evidence had rushed to the said place of



occurrence had seen the informant (PW-6) lying in the field. The manner of occurrence said to have been committed by these appellants in the paddy crop field has been described by the informant according to which while her body was held by the appellants No. 2 and 3, appellant No. 1 had raped on her. In the medical examination held on 28.10.2011 i.e. on the very next day of the occurrence, no external sign of injury or violence was found all over the body of the prosecutrix by the medical board of three doctors constituted to examine the informant. It is unlikely that there would be no external injury or sign of violence over the body of the informant (PW-6) after commission of rape on her in the paddy field, in the manner described by the informant. The medical evidence, thus, does not fully support the prosecution's case of the manner of occurrence. It is trite that the prosecution's case of commission of rape may not be brushed aside, based solely on the opinion of medical board to the effect that it could not be said whether rape had been committed or not. At the same time, this Court cannot ignore the finding of the medical board of absence of any external sign of injury or violence all over the body coupled with the fact that no foreign body or foreign hair was found in the vagina of the informant. The only scientific evidence,



secondary in nature which was produced by the prosecution at the trial to corroborate the charge of rape was a copy of FSL report, which disclosed detection of semen mixed blood on the petticoat (*saya*) of the informant. The informant had produced those clothes to the police. No investigation was apparently carried to connect the appellant No. 1 with the semen detected in the bloodstains which the petticoat bore. Detection of semen mixed bloodstains on the petticoat of the informant, in the facts and circumstances noted above cannot be said to be corroborating evidence to connect the appellants with the charge of rape. This is more so for the reason that the informant (PW-6) was a married woman.

36. In the view of the discussions hereinabove, we are of the considered opinion that the prosecution failed to establish beyond all reasonable doubt that any sexual assault was committed on the informant by there appellants based on the evidence of the prosecutrix and other prosecution's witnesses read with the medical evidence. There is no evidence, even remotely to prove that the semen found mixed in the bloodstains on the petticoat of the informant was of the appellant No. 1.

37. For the reasons noted above, we are of the



considered opinion that the prosecution failed to establish beyond all reasonable doubt commission of rape by appellant No. 1 with the aid of appellants No. 2 and 3 on the informant (PW-6). We have already noted that the evidence of the informant (PW-6) is not fully trustworthy, in view of the circumstances which have already been discussed hereinabove in the present judgment.

38. We cannot lose sight of yet another significant aspect of the matter. The occurrence is said to taken place in the village at a place located near residential houses. No witness other than PW-2 (sister of the informant) and PW-3 (brother of the informant) have deposed at the trial that they had heard the sound of the informant screaming. In the said wake the evidence of the defence witnesses cannot be completely ignored who had in their evidence have deposed that certain dispute had arisen between two families over grazing of the paddy crops by the she-goats of the informant and because of the said dispute the appellants came to be falsely implicated.

39. Considering entire facts and circumstances, evidence of the prosecution's witnesses and the witnesses for the defence as well as the medical evidence, in our opinion, the conviction of these appellants for the offence punishable under



Section 376(2)(g) of the Indian Penal Code is unsustainable. They deserve to be given benefit of doubt in the absence of unwavering and concrete proof.

40. The appellants' conviction for the offences punishable under Section 3(1)(xii) of the SC/ST Act is dependent upon their conviction for the offence punishable under Section 376(2)(g) of the Indian Penal Code. Since, we are of the view that the conviction of the appellants by the impugned judgment of the trial court of the offence punishable under Section 376(2)(g) of the Indian Penal Code cannot be sustained by giving them benefit of doubt, their conviction for the offence punishable under Section 3(1)(xii) becomes meaningless and redundant.

41. Resultantly, the conviction of the appellants for commission of the offence punishable under Section 376(2)(g) of the IPC and Section 3(1)(xii) of the SC/ST Act recorded by the trial court by the impugned judgment dated 05.12.2019, is hereby set aside as unsustainable. We have already noticed in our discussions hereinabove that the appellants' conviction for the offence punishable under Section 3(2)(v) of the SC/ST Act is patently erroneous.

42. Accordingly the impugned judgment and order



dated 05.12.2019/12.12.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST Act) Samastipur in Sessions Trial No. 79 of 2021 arising out of Chakmeshi P.S. Case No. 97 of 2011 is hereby set aside.

43. The appellants stand acquitted of the charges for the commission of the offences punishable under Sections 376(2)(g) and 324 read with Section 34 of the Indian Penal Code and Sections 3(1)(xii) and 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

44. The appellants are in custody. Let them be released forthwith if not required in any other case.

(Chakradhari Sharan Singh, J)

(Chandra Prakash Singh, J)

anand/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.01.2023
Transmission Date	13.01.2023

