

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.195 of 2019

Arising Out of PS. Case No.-494 Year-2015 Thana- BAKHTIARPUR District- Saharsa

Lalan Sada, Son of Rajendra Sada @ Rajendra Rishidev @ Rajendra Ri
Resident of Village - Bhawdeva (Bhagdewa), P.S.- Bakhtiyarpur (Balwahat
O.P.), Distt - Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 255 of 2019

Arising Out of PS. Case No.-494 Year-2015 Thana- BAKHTIARPUR District- Saharsa

Indradev Rishidev @ Indradev Sada @ Indradev Sada Rishidev, Son of -
Dileshwar Rishideo, Resident of Village- Bhavdeva P.S.- Simri Bakhtiyarpur
District- Saharsa.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 195 of 2019)

For the Appellant/s : Mr. Amarnath Jha, Advocate
Mr. Amrendra Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 255 of 2019)

For the Appellant/s : Mr. Chandra Mohan Jha, Advocate
Mr. Dhananjay Kumar Singh, advocate
Mr. Saurabh Kumar, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 26-09-2022

These appeals have been preferred under Section 374(2)
of the Code of Criminal Procedure, 1973.

2. By the impugned judgment and order dated



22.01.2019/28.01.2019 passed by learned 1st Additional Sessions Judge-cum-Special Judge, POCSO Act, Saharsa in POCSO Case NO. 02/2016, the appellants have been convicted and sentenced as under :

Criminal Appeal (DB) No. 195 of 2019				
Appellants' Name	Sentence			
	Conviction under Section	Imprisonment	Fine(Rs.)	In default of fine
Lalan Sada	376-D of the IPC	R.I. for 20 years	10,000/-	R.I. for 6 months
	366-A of the IPC	R.I. for 10 years	10,000/-	R.I. for 6 months
	6 of the POCSO Act	R.I. for 10 years	10,000/-	R.I. for 6 months
Criminal Appeal (DB) No. 255 of 2019				
Indradev Rishidev	376-D of the IPC	R.I. for 20 years	10,000/-	R.I. for 6 months
	366-A of the IPC	R.I. for 10 years	10,000/-	R.I. for 6 months
	6 of the POCSO Act	R.I. for 10 years	10,000/-	R.I. for 6 months

All the sentences have been directed to run concurrently.

3. We have heard, Mr. Amarnath Jha, learned counsel for the appellant in Criminal Appeal (DB) No. 195 of 2019 and Mr. Chandra Mohan Jha, learned Advocate in Criminal Appeal (DB) No. 255 of 2019. Ms. Sashi Bala Verma, learned Additional Public Prosecutor has represented the state in both these appeals.

4. A written report of the father of the victim is the basis for registration of the First Information Report on 31.12.2015. The identities of the victim(PW-3) and the informant (PW-8) have been concealed and they are being referred to as PW-3 and PW-8



in the present judgment. The mother of PW-3 has been examined as PW-4. She is also being referred to as PW-4 in the present judgment, for the same purpose of concealing the identity of the victim.

5. The informant (PW-8) in his written report alleged that on 30.12.2015 at 6.00 am, his daughter (PW-3) had gone outside the house to attend nature's call. In the meanwhile, he saw that Rajeev Sah and Dilip Sada forcibly making his minor daughter sit in the motorcycle which they were riding. Hearing the screams of PW-3, the informant (PW-8) rushed to the house of Rajeev Sah. At the house of Rajeev Sah, he complained to her father, mother, uncle and grandfather of Rajeev Sah regarding his daughter having been kidnapped by Rajeev Sah. He requested them to handover his daughter to him. He further disclosed in his written report that thereafter the father of said Rajeev Sah (Pandav Sah), mother (Leela Devi), Uncle (Nand lal Sah) and Grand father (Ram Swarath Sah) started abusing the informant and others and accosted them to do whatever they could do. In background of the abovementioned allegation, with the apprehension that the informant's daughter might be forcibly made to marry one of the kidnappers or she might be killed, the informant filed his written report.



6. It is noteworthy that the occurrence of kidnapping as disclosed in the First Information Report is of 30.12.2015 at 6.00 in the morning. From the First Information Report it transpires that the information to the police was given at 4.30 pm on 31.12.2015. Based on the said written report, Bakhtiyarpur Police Station case no. 494 of 2015 thus came to be registered on 31.12.2015 disclosing commission of the offences punishable under Sections 363, 366A, 323, 504/34 of the Indian Penal Code and Sections 6 and 8 of the Protection of Children from Sexual Offences Act (the POCSO Act for short).

7. We consider it appropriate to mention at this juncture itself, as is evident from the records more particularly the evidence of the Investigating Officer (PW-9) that on the very next day of registration of First Information Report, these appellants were arrested by him. Further, PW-3 was found on 03.01.2016. Her statement was recorded under Section 164 of the Code of Criminal Procedure on 05.01.2016 before learned Judicial Magistrate 1st Class. There is no apparent reason emerging from the evidence and other materials on record as to why these appellants' were arrested on 01.01.2016 by the police. They were not named in the First Information Report and before their arrest, there appeared to be no material which required the police to cause their arrest. In



her statement made under Section 164 of the Code of Criminal Procedure, PW-3 narrated a different story than the one disclosed by the informant in the written report. She stated that five boys, namely, Indradev (appellant), Dilip, Sajjan, Rajeev and Lalan(appellant) had kidnapped her, whereafter the appellant Lalan Sada had taken her to his sister's house at village Gangaprasad. The appellant, Lalan Sada, kept her there for four days. Co-accused Rajeev was also there with Lalan Sada (appellant) where PW-3 was kept and Lalan Sada had told her that he would get her married to Rajeev. She further stated in her statement under Section 164 of Code of Criminal Procedure that all the five boys raped her for four days. As regards, the appellant (Lalan Sada), she alleged that he raped her everyday.

8. Thus, on the one hand PW-3 asserted in her statement under Section 164 of the Code of Criminal Procedure that the appellant (Lalan Sada) raped her everyday, the fact, however, remains that these appellants were arrested on 01.01.2016 itself, which is evident from the testimony of the Investigating Officer (PW-9).

9. Be that as it may, the police submitted its charge-sheet whereafter, cognizance was taken of the offences punishable under Sections 366A, 376 and 34 of the Indian Penal Code and



Section 4 of the POCSO Act.

10. Subsequently, charges were framed by the trial court for commission of offences punishable under Sections 366A, 376D of the Indian Penal Code and Section 6 of the POCSO Act against the appellants.

11. As the appellants denied the charges they were put on trial.

12. From the impugned order it transpires that there were four persons put on trial. However, the trial in respect of Rajeev Kumar @ Rajeev Sah, and Dilip Sada was separated on the ground of juvenility and sent for trial to the Juvenile Justice Board, Saharsa. These two appellants were, thus, put on trial before the learned Court below. During the course of trial, the prosecution examined all together ten witnesses, including the Doctor who had conducted medical examination of PW-3, as PW-10, the Investigating Officer of the case as PW-9. The Doctor while proving the medical report deposed in her evidence that there was no definite evidence of rape on PW-3. There was no visible mark of any external injury over and around her genitalia. In response to a question during the cross-examination she deposed that in case of sexual assault in form of continued intercourse for four days by five persons, external and internal



injuries are bound to appear.

13. PW-3 in her deposition at the trial, while supporting the prosecution's case of her kidnapping and subsequent rape deposed that Rajeev Sah, Lalan Sada (appellant), Dilip Sada, Indradev Rishidev(appellant) and Sajjan Sada had come in two motorcycles. Evidently, this deposition is different from what she had stated in her statement under Section 164 of the Code of Criminal Procedure. In her statement under Section 164 of the Cr.P.C. she had stated that the accused persons had come in three motorcycles. She further asserted that her mouth was shut by the miscreants with a towel before she was kidnapped and subsequently confined in a room. The appellant Lalan Sada had taken her to the house of his sister. She was kept there for 3-4 days. During the said period all the five persons repeatedly raped her and thereafter, set her free at Paharpur Bazaar.

14. PW-3 further deposed in her evidence that she was raped twenty times between 30.12.2015 to 03.01.2016 and two hours before she was released by the miscreants at Paharpur Bazaar, she was raped.

15. It would be apt to notice the deposition of PW-2, at this stage, who has also claimed to be an eye witness of the occurrence. According to him, while returning from Koshi Dam he



had seen Rajeev Sah and Dilip Sada taking PW-3 away in a motorcycle. These appellants were riding another motorcycle, according to him.

16. PW-4, mother of PW-3 supported the prosecution's case of kidnapping, as disclosed in the First Information Report. PW-5 another eye witness supported the prosecution's case of abduction of PW-3 by Rajeev Sah, Dilip Sada, Lalan Sada (appellant), Indradev Rishidev (appellant). The occurrence, according to him, had taken place between 5 to 6 am on 30.12.2015. In response to a question during the course of cross examination, he (PW-5) deposed that though he had seen the occurrence taking place but he did not follow the miscreants who had kidnapped PW-3. PW-7 also claimed to be an eye witness to the occurrence of kidnapping of PW-3.

17. PW-8, the informant and Father of PW-3 deposed at the trial that when he heard PW-3 screaming, he rushed to the spot and had seen Rajeev Sah and Dilip Sada taking PW-3 away by making her forcibly sit with them on a black motorcycle. They drove her away towards the south to the house of Rajeev Sah. He also deposed that there was another motorcycle which these appellants and Sajjan Sada were riding. Further, in his deposition, PW-8 stated that after four days the police had informed him about



the victim having been found. After four days, when he received information about the recovery of PW-3 by the police, he did not go to the police station and instead, on the next day, he went to the court.

18. The Investigating Officer (PW-9) in his deposition at the trial testified, when his attention was drawn to the case diary that the restatement of the informant and fresh statements of the witnesses were taken by him. Even in the restatement the informant had disclosed the name of Indradev Sada (appellant). Further, PW-3 was recovered from a public road at Pahadpur Bazaar, but he didn't mention in the case diary in whose presence she was recovered. He neither informed the police station about the occurrence nor made any entry in the Station Diary that the victim was recovered. He deposed that he arrested these appellants from their house on 01.01.2016.

19. It is to be noted that after closure of the evidence of the prosecution's witnesses the circumstances coming against these appellants based on the evidence of the prosecution witnesses were explained to them (the appellants) by the trial court in accordance with the requirement under Section 313 of the Code of Criminal Procedure. The appellants denied in their statement, all such circumstances which had come against them.



Father of the accused, Lalan Sada, came to be examined as DW-1. He deposed at the trial that because of the certain disputes regarding payment of wages to the informant with the mother of accused Rajeev Kumar, a false case was registered in retaliation.

20. It further transpired that the defence, during the course of trial relied on deposition of mother of PW-3 before the Juvenile Justice Board, Saharsa to demonstrate contradictions in the prosecution's case. It appears from the impugned judgment of the trial court that the two juveniles in conflict with law namely, Rajeev Sah and Dilip Sada have been convicted of the offences alleged in the said case by the Juvenile Justice Board.

21. The trial court, upon its analysis, based on the evidence adduced at the trial held the appellants guilty of the offences punishable under Sections 376D and 366A of the Indian Penal Code and Section 6 of the POCSO Act and sentenced them accordingly as has been noted at the outset.

22. Learned counsel appearing on behalf of the appellants has submitted that there are material contradictions in the evidence of the prosecution's witnesses and none of the so called eye witnesses appear to be truthful to the extent the same relates to the involvement of these appellants. It has been argued that the deposition of PW-3 that she was raped by five persons



including these appellants for four days from the date of her kidnapping i.e. 30.12.2015 stands falsified by the admitted case of the prosecution that these appellants were apprehended on 01.01.2016 by the police, i.e. the very next day when the First Information Report was registered. It has further been argued that the entire case of the prosecution that PW-3 was repeatedly raped for four days stands also falsified by medical evidence and the evidence of the Doctor. Further, there are substantial contradictions in the narration of the informant in the FIR and his deposition at the trial. It has accordingly been argued that the appellants have been wrongly held guilty beyond all reasonable doubts of the offences punishable under Sections 376D and 366A of the Indian Penal Code and Section 6 of the POCSO Act by the trial court ignoring material inconsistencies and contradictions in the evidences at the trial. It has accordingly been submitted that the appellants deserve to be acquitted of the charges framed against them.

23. Learned Additional Public Prosecutor representing the State, on the other hand, has submitted that as the victim, a minor girl, in her oral testimony has proved commission of rape repeatedly right from the day of kidnapping till she was release on 04.01.2016, her deposition cannot be held to be unreliable only on



the ground that the same is not corroborated by medical evidence. She contends that the court may not take inconsistencies and contradictions in the evidence of prosecution's witnesses which are minor and cannot be treated to be substantial requiring this court's interference with the impugned judgment of conviction recorded by the trial court.

24. We have perused the impugned judgment of conviction and the order of sentence passed by the trial court. We have also perused the lower court records including the evidence adduced by the witnesses at the trial. We have given our thoughtful consideration to the rival submissions made on behalf of the parties as noted above.

25. It is manifest from the First Information Report that initially the accusation of kidnapping was made by PW-8, the informant against Rajeev and Dilip only. PW-8, Father of PW-3, claimed to be an eye witness. The occurrence, according to him, had taken place in the morning at 6.00 am on 30.12.2015. The First Information Report came to be registered on 31.12.2015 on the basis of written report submitted by the informant (PW-8) at 4:30 pm. Nearly 36 hours after the occurrence when the informant filed his written report to the police, he did not disclose involvement of these appellants in kidnapping of PW-3. From the



deposition of I.O. (PW-9), it is evident that even in his restatement before the investigating officer, he did not disclose the names of the appellant Indradev Sada. There is no clue as to in what circumstance appellant Indradev Sada came to be arrested by the police on 01.01.2016, soon after registration of the First Information Report. On 03.01.2016, PW-3, according to the prosecution's case, was recovered from the roadside at Pahadpur Bazaar. There is no evidence as to how the investigating officer learnt about the presence of PW-3 at Pahadpur Bazaar. It is curious to note that in her statement recorded under Section 164 of the Code of Criminal Procedure, PW-3 stated before the Magistrate that these appellants had raped her for all the four days when she was kept in wrongful confinement. It is the case of the prosecution itself that these appellants were arrested on 01.01.2016 itself. In her deposition at the trial, PW-3 stated that she was raped twenty times within four days by the persons who had kidnapped her. She emphatically deposed before the trial court that the appellant Lalan Sada had continuously raped her. The fact remains that appellant Lalan Sada was admittedly in the custody since 01.01.2016. In such background, the evidence of PW-3 that she was raped by these appellants for all the four days, does not inspire confidence. Further, the medical evidence adduced at the



trial does not at all corroborate the oral evidence of PW-3 of rape committed on her twenty times in four days.

26. It is true that even if medical evidence does not fully corroborate evidence of victim of rape, conviction can be recorded, based on the testimony of the victim, if the same is found to be truthful, reliable and unblemished.

27. In the present case, we find apparent contradictions at different stages in the statement of the informant and others prosecution's witnesses. In view of the apparent contradictions as noted above, in our opinion, it would not be safe to uphold the conviction of these appellants of the offences punishable under Sections 376D and 366A of the Indian Penal Code and Section 6 of the POCSO Act.

28. Situated thus, we are of the opinion that the impugned judgment of conviction recorded by the trial court deserves interference. The conviction of these appellants cannot be upheld. They deserve to be given benefit of doubt. Accordingly, the impugned order of sentence passed by the trial court is also not sustainable.

29. For the abovementioned reasons, the impugned judgment of conviction and order of sentence dated 22.01.2019/28.01.2019 passed by the learned Additional



Sessions Judge-I-cum-Special Judge, POCSO Act, Saharsa in POCSO Case No. 2/2016, arising out of Bakhtiyarpur P.S. Case No. 494 of 2015 is set aside. The appellants stand acquitted of the charges levelled against them for the offences punishable under Sections 376-D and 366-A of the Indian Penal Code and Section 6 of the POCSO Act, giving them benefit of doubt.

30. Appellants are in jail. Let them be released forthwith, if not required in any other case.

31. Both the appeals are accordingly allowed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Rajesh/Nishant

AFR/NAFR	NAFR
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