

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1472 of 2018

Arising Out of PS. Case No.-241 Year-2013 Thana- DEHRI TOWN District- Rohtas

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Ravi Kumar Son of Ravindra Paswan @ Ravindra Kumar Resident of Village
- Pahleja, P.S.- Dehri, District – Rohtas Appellant

Versus

The State Of Bihar Respondent

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with

CRIMINAL APPEAL (DB) No. 1460 of 2018

Arising Out of PS. Case No.-241 Year-2013 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Mukesh Paswan S/o Late Gorakh Paswan, R/o Vill.- Pahleza, P.S.- Dehri
Town, District- Rohtas. Appellant

Versus

The State Of Bihar Respondent

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Appearance :

(In CRIMINAL APPEAL (DB) No. 1472 of 2018)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Advocate
Mrs. Meena Singh, Advocate
Mr. Bhaskar Shankar, Advocate

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

(In CRIMINAL APPEAL (DB) No. 1460 of 2018)

For the Appellant/s : Mr. Siya Ram Shahi, Advocate
Mr. Shally Kumari, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 16-09-2022

Both these appeals have been preferred against the judgment of conviction dated 05.10.2018 and order of sentence dated 11.10.2018 passed by learned Presiding Officer, Fast Track Court No. 1, Rohtas at Sasaram in S.Tr. No. 388 of 2014 arising out of Dehri (Town) P.S. Case No. 241 of 2013. Accordingly, both these appeals have been heard together and are being disposed of by this common judgment and order.



2. By the impugned judgment and order, the appellants have been convicted and sentenced as under: -

Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No.1472 of 2018				
Ravi Kumar	366A of the Indian Penal Code	Ten years R.I.	-	-
	376 of the Indian Penal Code	R.I. for life	25,000/-	Three months S.I.
CRIMINAL APPEAL (DB) No. 1460 of 2018				
Mukesh Paswan	366A of the Indian Penal Code	Ten years R.I.	-	-
	376 of the Indian Penal Code	R.I. for life	25,000/-	Three months S.I.

3. We have heard Mr. Krishna Prasad Singh, learned Senior Counsel for the appellant in Criminal Appeal (DB) No. 1472 of 2018, Mr. Siya Ram Shahi, learned counsel for the appellant in Criminal Appeal (DB) No. 1460 of 2018 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State in both the appeals.

4. A complaint case filed on 02.05.2013 before the court of learned S.D.J.M., Dehri by P.W.-3 giving rise to complaint case No. 122 of 2013 set into motion the criminal case. Under an order passed by learned S.D.J.M., Dehri, in exercise of his power under Section 156 (3) of the Code of Criminal Procedure ('Cr.P.C.' for short), Dehri Town P.S. Case



No. 241 of 2013 came to be registered on 04.05.2013 levelling offences punishable under Sections 366A, 376 and 54 of the Indian Penal Code (I.P.C., for brevity). It is noted at this stage itself that the occurrence, according to the prosecution's case, was of 26.04.2013. After completion of investigation, the police submitted charge-sheet against these appellants and others, whereupon cognizance was taken by learned S.D.J.M. and thereafter the appellants were sent up for trial. Charges were framed for commission of the offences punishable under Sections 366A read with Section 34 and 376 the I.P.C..

5. It is the prosecution's case, as unfolded in the complaint petition, which is the basis for registration of the First Information Report (F.I.R., for brevity), that the complainant/victim (P.W.-3) had come to stay for sometime with her sister at her elder sister's matrimonial home at Pahleja. She had been living there for nearly a month. During this period the appellant Ravi Kumar [Criminal Appeal (DB) No.1472 of 2018] used to oftenly tease her. In the morning, at about 5:00 a.m. of 26.04.2013, when the complainant/informant (P.W.-3) had gone to answer nature's call outside her sister's house, the appellant Ravi Kumar [Criminal Appeal (DB) No. 1472 of 2018] came in a white Maruti car with the appellant Mukesh Paswan [Criminal



Appeal (DB) No. 1460 of 2018] and three others, who, with the use of force, kidnapped her and took her in the said Maruti car to a house belonging to one of the relatives of the appellant-Ravi Kumar in a *mohalla* of Dehri town. She alleged that all of them repeatedly raped her in the said house. On 30.04.2013, on an assurance given by the informant to these appellants that if released, she would disclose nothing to anyone as regards the occurrence, they brought and dropped her in evening of 30.04.2013 near Pahleja village, from where she was earlier kidnapped, and they fled away thereafter. She was threatened by the appellants of dire consequences would she revealed their misdoings to anyone. She further asserted in her complaint petition that she had disclosed the entire occurrence to her relatives including her sister with whom she was then residing. Thereafter she was sent back to her parents. She had gone to police station at Mohania with her father for registration of F.I.R. but she was advised to file F.I.R. at Dehri police station. This is how P.W.-3 explained the delay in registration of the complaint case on 02.05.2013 in relation to the occurrence which had taken place on 26.04.2013, when she was kidnapped and subsequently released on 30.04.2013.

6. A medical board was constituted to determine the



age of the informant which was found to be between 15-16 years. Further, the informant was also examined by a lady doctor on 07.05.2013 in view of accusation of sexual assault.

7. During the course of trial, the prosecution examined altogether 7 witnesses, out of whom P.W.-6 and P.W.-7 were declared hostile at the instance of the prosecution. P.W.-5, Shri Bhagwan Singh, a Doctor posted as medical officer at Sasaram, though proved the signature of the Doctor who had examined the informant, he did not prove contents of the medical report. The Investigating Officer was not examined at the Trial. The informant's statement was recorded by the Magistrate under Section 164 of the Cr.P.C.. The Magistrate was also not examined at the Trial.

8. P.W.-4, a member of the medical board constituted for the purpose of determination of the age of the informant proved the report of the medical board wherein it was concluded that the age of the informant was between 15-16 years.

9. Apparently, the conviction recorded by the Trial Court for commission of the offences punishable under Sections 364A and 376 of the I.P.C. is based on evidence of (i) the informant (P.W.-3), (ii) the husband of elder sister of the informant (brother-in-law, P.W.-2) and (iii) the brother of P.W.2



(P.W.-1).

10. Learned Senior Counsel appearing on behalf of the appellants have submitted that there are material contradictions in the evidences of the aforesaid prosecution witnesses *vis-a-vis*, the prosecution's case as disclosed in the complaint petition which is the basis for registration of the F.I.R.. It has been argued that there are material contradictions in the evidences of P.Ws-1, 2 and 3 as well, on several counts. The informant herself does not appear to be truthful in her deposition, he contends and submits that the medical report does not substantiate the allegation of rape. It is accordingly being submitted that as the medical evidence does not corroborate the accusation of rape, based on testimony of P.W.-3, the informant, which is not fully reliable, the conviction for commission of offence punishable under Section 376 of the I.P.C. recorded by the Trial Court is unsustainable. It is argued that the finding recorded by the Trial Court is without proper appreciation of evidence and the same verges on perversity, inasmuch as, the Trial Court has not taken into account the relevant aspects of the evidence. It has further been argued that the prosecution completely failed to establish its case beyond all reasonable doubts before the Trial Court. There are two places of



occurrence, as disclosed in the complaint petition. In the absence of examination of the I.O., the places of occurrence have not been proved. Our attention has been drawn to the depositions of P.W.s 1, 2 and 3 to convince this Court that the same are not reliable and deserve to be disbelieved. Non-examination of parents of the informant and her sister at the trial, where also casts serious doubt on the veracity of the prosecution's case as disclosed in the complaint petition and as set up at the trial. It has also been argued that, in any view of the matter, the appellants deserve to be given benefit of doubt as the prosecution failed miserably to prove its case beyond all reasonable doubt.

11. Ms. Shashi Bala Verma, learned Additional Public Prosecutor appearing for the State has submitted that the trial court has rightly recorded the conviction based on the evidence of the rape, after finding the said evidence reliable. The trial court's finding of conviction need not interfered with by this court on the ground of absence of corroborating medical evidence, she contends.

12. We have perused the impugned judgment and order of the Trial Court as well as the lower court records. We have carefully gone through the oral and documentary evidence



adduced at the trial by the prosecution, more particularly P.W.s 1, 2 and 3. Further, we have given our anxious consideration to the rival submissions made on behalf of the parties.

13. It is noteworthy that P.W.-3 (the informant) supported the prosecution's case as disclosed in the complaint petition. In her cross-examination, she deposed in paragraph 7 that she did not know the persons made accused in the complaint petition from before the date when occurrence had taken place, but she knew their names because their houses were in close proximity with the house of her sister. She disclosed further that the families of the informant's sister and those of the persons made accused were not maintaining good relationship, though, she did not know the reason behind such dispute. In response to a question during her cross-examination, she expressed her inability to disclose the name of the person who had disclosed to her the names of the persons made accused in the complaint petition. She was not able to disclose the place where she was taken after her kidnapping. She further deposed in paragraph 9 of her evidence that she had told her father about the occurrence. She had come back to Pahleja with her brother-in-law (P.W.-2) later. She specifically disclosed that she was not taken to police station in this connection. One day after she had



come to Pahleja, she had gone to Dehri Civil Court for filing the case. During the cross-examination, she further deposed that she did not have any meal during all the days when she was in captivity of the miscreants including these appellants from 26.04.2013 to 30.04.2013 as the accused persons did not provide her any meal. She could not raise alarm because she was under threat of life by the miscreants, she disclosed during the cross-examination.

14. In her deposition, P.W.-3 has further stated about the existence of animosity between the families of her brother-in-law (P.W.-2) and that of the appellant No. 1. P.W.-1 in his deposition has also stated regarding animosity between the two families. P.W.-2, however, in his deposition denied that there was any animosity between the two families. The evidence of the prosecution witnesses as regards animosity between the families is apparently contradictory.

15. Coming to the evidence of P.W.-1, he deposed in his examination-in-chief that he was informed by P.W.-2 that P.W.-3 had not returned home after he had gone in the morning to ease herself. In his cross-examination, he, however, deposed that in the evening of 30.04.2013, he learnt about the occurrence when PW-3 had returned to Pahleja. He also deposed that an



information was given to the police station regarding disappearance of PW-3 on 26.04.2013 itself by his brother against unknown. There is no evidence, however, adduced at the trial that any information regarding disappearance of PW-3 was given to the police.

16. The place where PW-3 was taken to, from Pahleja, has not been proved by any evidence.

17. As has been noted, the injury report has not been proved at the trial and only the signature of the Doctor, who had conducted the medical examination, has been proved. The Doctor who had examined PW-3 has not been examined at the trial. The evidence of PW-3 was recorded under Section 164 of the Code of Criminal Procedure before the Magistrate in which she had supported the prosecution's case, as disclosed in the complaint petition. The Magistrate has however, not been examined at the trial. PWs-6 and 7, the co-villagers of PWs- 1 and 2 did not support the case of the prosecution and accordingly they have been declared hostile at the instance of the prosecution. The Investigating Officer was not examined at the trial, nor the parents of PW-3. Sister of PW-3 with whom the PW-3 was residing, as disclosed in the complaint petition as well as in the deposition of PW-3, has not been examined, who



could have been an important witness to whom PW-3 is said to have disclosed the occurrence which had taken place, as disclosed in the complaint petition. PW-3, in her deposition has rather mentioned that she (PW-3) was sent back to her parents by her sister after the occurrence.

18. Considering the entire evidence adduced at the trial in totality, in our considered opinion, PW-3 does not appear to be a truthful witness. Her deposition that she was not provided any food during all the four days when she was confined in a room at Dehri and was being sexually abused by the appellants at the same time does not inspire much confidence particularly in the background of non-examination of the sister of the PW-3 with whom she met first after she was dropped back by the appellant at Pahleja. The place of occurrence, where PW-3 was said to have been kept confined, could not be proved at the trial in the absence of non-examination of the Investigating Officer.

19. There is contradiction in the evidence of the prosecution witnesses on the point as to whether PW-3 had gone to the police station or whether any information was given to the police before filing of the complaint case. We have noted hereinabove, that no evidence had been adduced at the trial to substantiate the prosecution's case that any information was



given to the police before lodging of the complaint petition. It is further significant to note that in her deposition, PW-3 has stated in paragraph 7 that she did not recognise the accused persons before the occurrence and since they resided adjacent to the house of her sister, she knew their names. Further, PW-3 in her deposition, has expressed her inability to disclose the name of the person who had disclosed the names of these appellants to her.

20. The deposition of PW-3 to the effect that she did not recognize these appellants from before, prior to the date of occurrence, read with her deposition to the effect that she was not able to tell the name of the person who had disclosed the names of these appellants who had committed that offence, raises doubts over the prosecution's case to the extent the same relates to implication of these appellants. It is noteworthy that the names of these appellants have been mentioned with full description of their parentage with address.

21. In the light of discussions aforesaid, considering material contradictions in the evidence of the prosecution witnesses as noted above, non-examination of the Investigating Officer, the Doctor, the sister of PW-3 and parents of PW-3 as well as the Magistrate who had recorded the statement of PW-3



under Section 164 of the Cr.P.C., in our opinion, the finding of conviction of these appellants of offences punishable under Section 366A and 376 of the I.P.C. becomes unsustainable. The appellants, in our opinion, deserve to be acquitted of the charge of commission of offences punishable under Section 366A and 376 of the I.P.C. by giving them benefit of doubt.

22. These appeals are accordingly allowed. The impugned judgment of conviction dated 05.10.2018 and order of sentence dated 11.10.2018 passed by the Trial Court requires interference and is accordingly, hereby set aside.

23. The appellants are in custody. They are directed to be released forthwith, if not required in any other case.

24. These appeals are allowed.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

K.K.RAO/-

AFR/NAFR	NAFR
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