

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1119 of 2019

Arising Out of PS. Case No.-41 Year-2016 Thana- MEDNI CHAUKI District- Lakhisarai

Bhukhan Mahto @ Bhukan Mahto Son of Bullak Mahto @ Hullak Mahto
Resident of Village - Khawa Chandra Tola, P.S.- Medni Chowki, Dist.-
Lakhisarai.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1089 of 2019

Arising Out of PS. Case No.-41 Year-2016 Thana- MEDNI CHAUKI District- Lakhisarai

Ranjit Kumar S/o Late Ramanand Mahto @ Ramnandan Singh R/o village-
Khava Rajapur Chany Tola, P.S.- Medni Chowki, District- Lakhisarai

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 473 of 2021

Arising Out of PS. Case No.-41 Year-2016 Thana- MEDNI CHAUKI District- Lakhisarai

Karelal Mahto Son of Aayo Mahto Resident of Village- Khawa, P.S.-
Mednichowk, District- Lakhisarai.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 1119 of 2019)

For the Appellant : Mr. Binay Kumar, Advocate
Mr. Sumit Shekhar Pandey, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 1089 of 2019)

For the Appellant : Mr. Rajesh Kumar Singh, Sr. Advocate
Mr. Ram Chandra Sahni, Advocate

For the Respondent : Ms. Shashi Bala Verma, APP

(In CRIMINAL APPEAL (DB) No. 473 of 2021)

For the Appellant : Mr. Binay Kumar, Advocate



For the Respondent : Mr. Sumit Shekhar Pandey, Advocate
Ms. Shashi Bala Verma, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 11-10-2022

Since all these three appeals arise of the same judgment and order of learned trial court, they have been heard together and are being disposed of by the present common judgment and order.

2. These appeals have been preferred by the appellants assailing the impugned judgment of conviction dated 16.08.2019 and order sentence dated 21.08.2019, passed by the learned Additional District & Sessions Judge-1st-cum-Special Judge POCSO, Lakhisarai in POCSO No. 41 of 2016 arising out of Medni Chowki P.S. Case No. 41 of 2016, whereby 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.1119 of 2019				
Bhukhan Mahto	376D of the Indian Penal Code	For life	1,00,000/-	Two years imprisonment
	506 of the Indian Penal Code	Three years imprisonment	10,000/-	Six months imprisonment
	4 of the Protection of Children from Sexual Offences Act	For life	1,00,000/-	Two years imprisonment



CRIMINAL APPEAL (DB) No. 1089 of 2019				
Ranjit Kumar	376D of the Indian Penal Code	For life	1,00,000/-	Two years imprisonment
	506 of the Indian Penal Code	Three years imprisonment	10,000/-	Six months imprisonment
	4 of the Protection of Children from Sexual Offences Act	For life	1,00,000/-	Two years imprisonment
CRIMINAL APPEAL (DB) No. 473 of 2021				
Karelal Mahto	376D of the Indian Penal Code	For life	1,00,000/-	Two years imprisonment
	506 of the Indian Penal Code	Three years imprisonment	10,000/-	Six months imprisonment
	4 of the Protection of Children from Sexual Offences Act	For life	1,00,000/-	Two years imprisonment

3. Heard Mr. Binay Kumar with Mr. Sumit Shekhar Pandey, learned counsel appearing on behalf of the appellants in Cr. Appeal (DB) No. 1119 of 2019 and Cr. Appeal (DB) No. 473 of 2021; Mr. Rajesh Kumar Singh, learned Senior Counsel with Mr. Ram Chandra Sahni, learned counsel appearing on behalf of the appellant in Cr. Appeal (DB) No. 1089 of 2019 and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State in all the appeals.

4. The victim's name is being concealed in the present judgment and order and she is being referred to as the victim or P.W.-3. The mother of P.W-3 is the informant of the case on whose written report dated 22.08.2016, the concerned Medni Chowki P.S. Case No. 41 of 2016 came to be registered leveling offences punishable under Sections 376, 504 read with 34 of the



Indian Penal Code and Section 8 of the Protection of Children from of Sexual Offences Act (POCSO), who has been examined as PW-2 at the trial.

5. According to the prosecution's case as disclosed in the First Information Report (F.I.R. for brevity), at about 11:00-12:00 pm on 19.08.2016, when the informant's daughter (the victim) was sleeping in her house, Bhukhan Mahto (appellant of Cr. Appeal (DB) No. 1119 of 2019), Karelal Mahto (appellant of Cr. Appeal (DB) No. 473 of 2021) and Ajit Mahto along with one unknown entered into the house. Ajit Mahto is said to have disclosed to victim that he was the father-in-law of the maternal uncle of the victim (P.W.-3). They thereafter started molesting the victim. It was further alleged that the said three persons named in the F.I.R forcibly took P.W-3 (the victim) to a nearby field where they raped her. The accused persons were armed with firearms and after having sexually assaulted her, they brought the victim back to her house in unconscious condition. For the occurrence said to have taken place on 19.08.2016, the F.I.R came to be registered on 22.08.2016 with an explanation that out of the fear of the accused persons and likely social humiliation, there was delay of two days in lodging the F.I.R..

6. It transpires from the materials on record that the



statement of P.W.-3 was recorded under Section 164 of the Code of Criminal Procedure (Cr.P.C. for brevity) on 22.08.2016 itself. Though the name of appellant, Ranjeet Kumar, was not disclosed in the written report, in her statement under Section 164 of the Cr.P.C., P.W-3 disclosed name of the appellant Ranjeet Kumar as the one among three who had raped her after taking her to a nearby field. She disclosed in her statement under Section 164 of the Cr.P.C. that she had become unconscious after she was sexually assaulted by these appellants.

7. It further transpires that on 22.08.2016, P.W.-3 was subjected to medical examination for determination of her age, since the F.I.R disclosed she was 14 years of age and therefore, a minor. The age of P.W.-3 (the victim) has been determined as 14-15 years by a Medical Board of Sadar Hospital, Lakhisarai. Further, the Medical Officer who examined the victim, in the wake of accusation of commission of rape, found that there was no sign of struggle or violence. The pregnancy test was found to be positive. Ultra-sonography depicted that P.W.-3 (the victim) was carrying pregnancy of seven weeks and three days. At the cost of repetition, we note here that according to the prosecution's case, the date of occurrence is 19.08.2016 and the



date of registration of F.I.R is 22.08.2016. On 22.08.2016 itself, the victim was subjected the medical examination during which the pregnancy test was found to be positive and the victim was found to be carrying 'seven weeks and three days old pregnancy'.

8. The vaginal swab was taken and sent for histopathological test. The clothes of the victim were sent to the Forensic Science Laboratory.

9. Upon completion of investigation, the police submitted its charge-sheet, based on which the learned Special Judge (POCSO) took cognizance of the offences punishable under Sections 376D, 506 read with 34 of the I.P.C. and Section 4 of the POCSO Act. The Court thereafter framed charge on 07.04.2018 and 10.08.2018 for commission of offences punishable under Sections 376, 504 read with 34 of the I.P.C. and Section 4 of the POCSO Act. Subsequently, charge under Section 376D was framed on 24.07.2019 by the learned Special POCSO Court against the appellants.

10. As the appellants denied the accusation, they were put on trial. During the trial, altogether eight witnesses came to be examined including two Investigating Officers, namely, Binod Das (P.W.-5) and Amlesh Kumar (P.W.-6), Dr. Bipin Kumar



(P.W.-7) and Dr. Awinash Kumar Satyam (P.W.-8). P.W.-7 proved the ascertainment of the age of the P.W.-3 (the victim) whereas P.W.-8 Dr. Awinash Kumar Satyam proved the medical report. The evidence of P.W.-8 is of much relevance in the present case, relevant portion of which is being reproduced hereunder:-

“No any sign of struggle and violence was noted.

Vaginal swab was taken and send to histo pathological test, which shows neither the presence of spermatozoa not R.B.C.

Pregnancy test was positive.

U.S.G. shows a viable pregnancy seven seeks three days.”

11. P.W.-2, the informant and the mother of the victim (P.W.-3) in her deposition did not utter a word to support the prosecution's case of commission of rape on the victim by these appellants. She simply deposed in her evidence that these appellants and another person, namely, Tunnu used to tease the victim in respect of which she had registered the present F.I.R.. P.W.-1 who is the brother of the victim too did not support the prosecution's case and accordingly he came to be declared hostile at the instance of the prosecution.

12. P.W.-3, the victim, in her deposition at the trial proved her signature on her statement recorded under Section 164 of the Cr.P.C. (Exhibit-1/1). In paragraph 2 of her deposition, she



stated that when she was sleeping in the night on the date of occurrence, these appellants had taken her from her house to a nearby field, whereafter she had become unconscious. She regained consciousness at about 3:00-4:00 am.. She further deposed that before the present occurrence, earlier also, the appellants Bhukhan, Karelal and Tunnu had ravished her, which fact she had not disclosed to anyone. In her cross-examination, however, she denied allegation against these appellants of commission of rape either on the date of occurrence as disclosed in the F.I.R. or prior to the said date. In paragraph 8 of her deposition, she stated that on the last date of her cross-examination before the Court her co-villagers had pressurized her to identify these appellants with their names in the Court and out of fear, she had identified them. From deposition of P.W.-3 (the victim) in her cross-examination, it is evident that she did not support her own version as disclosed in her statement under Section 164 of the Cr.P.C..

13. P.W.-4, Alok Kumar, a co-villager of the victim also did not support the prosecution's case and accordingly he came to be declared hostile at the instance of the prosecution.

14. As has been noted above, altogether eight witnesses were examined at the trial out of which four were official



witnesses. None of the four witnesses i.e. P.Ws 1 to 4 have supported the prosecution's case as developed in the F.I.R. and set up by the prosecution at the trial.

15. In our opinion, the medical report (Exhibit-7) too does not support the prosecution's case for the apparent reason that victim was found to be carrying more than seven weeks' old pregnancy as on 22.08.2016, when she was medically examined, three days after the alleged occurrence. The report of the Forensic Science Laboratory based on forensic examination of the clothes of P.W.-3 has been exhibited as Exhibit-8, result of which reads as under:

- “1. Blood has been detected at places in the exhibit marked 'B/3'.*
- 2. Semen has been detected in the exhibit marked 'A'.*
- 3. Blood could not be detected in any of the exhibits marked A, B/1 and B/2.*
- 4. Semen could not be detected in any of the exhibits marked B/1, B/2 and B/3.*
- 5. Serological reports on origin and group of blood and semen would follow.”*

16. Though the result of forensic examination shows that semen had been detected in the Exhibit marked 'A' i.e. one old dirty brown colour Janghia, there is no evidence on record to connect these appellants with the said finding based on the forensic examination.



17. Learned Trial Court while holding the appellants guilty of the offences as noted above has refused to accept the denial by the victim (P.W.-3) of the occurrence of rape with her applying Section 29 of the POCSO Act. Referring to a Supreme Court's decision in case of ***Bhagwan Das Vs. State (NCT of Delhi)*** (AIR 2011 SC 1863), the learned Special Judge (POCSO) has held, based on his appreciation of the evidence adduced at the trial, that there was ample evidence to indicate that the victim had been gang raped.

18. We are of the view, upon analysis and scrutiny of the evidence adduced at the trial, that the finding of conviction so recorded by the learned Special Judge (POCSO) is without any evidence. None of the prosecution witnesses have supported the prosecution's case. It appears that the learned Special Judge got swayed away by the fact that the victim was found to be pregnant during the medical examination little realizing the fact that the said pregnancy of more than seven weeks old was not a result of the occurrence in question. The victim vaguely disclosed in her deposition that earlier also, she was raped by these appellants in her examination-in-chief. The present trial was evidently not in respect of any occurrence other than the occurrence alleged in the F.I.R.. We are of the definite opinion



that it is a case of no evidence at all adduced at the trial to establish commission of the offences under Sections 376D and 506 of the I.P.C. and Section 4 of the POCSO Act in respect of which the appellants were put on trial. The impugned judgment of conviction and the order of sentence, in our considered opinion, cannot be sustained.

19. The impugned judgment of conviction dated 16.08.2019 and order of sentence dated 21.08.2019 passed by the learned Additional District & Sessions Judge-1st-cum Special Judge POCSO, Lakhisarai is accordingly set aside. The appellants are acquitted of the charges giving them benefit of doubt.

20. These appeals are accordingly allowed.

21. The appellants are in jail. Let them be released forthwith, in not required in any other case.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

K.K.RAO/Annpurna-

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