

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.789 of 2021

Arising Out of PS. Case No.-32 Year-2016 Thana- RANIYATALAB District- Patna

ANIL MAHTO @ ANIL NONIA Son of Sri Ram Kishore Nonia Resident of Village- Patut, P.S.- Rani Talab, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 31 of 2022

Arising Out of PS. Case No.-32 Year-2016 Thana- RANIYATALAB District- Patna

JITU SAO Son of Ram Vinay Saw Resident of Village Patoot, P.S. Rani Talab, District -Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 47 of 2022

Arising Out of PS. Case No.-32 Year-2016 Thana- RANIYATALAB District- Patna

VIKASH KUMAR MOCHI Son of Sri Rakesh Mochi @ Rakesh Kumar Mochi Resident of Village- Patut, P.S.- Rani Talab, District- Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance:
(In CRIMINAL APPEAL (DB) No. 789 of 2021)
For the Appellant/s : Mr. S.K. Verma, Advocate
Mr. Binay Kumar, Advocate
For the State : Mr. A. Sharma, APP
(In CRIMINAL APPEAL (DB) No. 31 of 2022)
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Md. Imteyaz Ahmad, Advocate
Mr. Ritwaz Raman, Advocate
Mrs. Vaishnavi Singh, Advocate
For the State : Mr. S.B. Verma, APP
(In CRIMINAL APPEAL (DB) No. 47 of 2022)



For the Appellant/s : Mr.Ashok Kumar Sinha, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 12-10-2023

The appellants have preferred these appeals under Section 374(2) of the Code of Criminal Procedure against the judgment of conviction dated 17.11.2021 and order of sentence dated 29.11.2021 passed by the learned Additional District & Sessions Judge (POCSO), Patna in Special(POCSO) Case No.42 of 2016, arising out of Ranitalab P.S. Case No. 32 of 2016, whereby and whereunder the appellants have been convicted and sentenced as under:-

Cr. Appeal (D.B.) No. 789 of 2021				
Appellant	Convicted under sections	Sentence		
Anil Mahto @Anil Nonia		Imprisonment	Fine (Rs.)	in default of fine
	376 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	302 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	6 of the POCSO Act	R.I. for Life	25,000/-	S.I. for three months
Cr. Appeal (D.B.) No. 31 of 2022				
Jitu Sao	376 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	302 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	6 of the POCSO Act	R.I. for Life	25,000/-	S.I. for three months



Cr. Appeal (D.B.) No. 47 of 2022				
Vikash Kumar Mochi	376 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	302 of the Indian Penal Code	R.I. for Life	25,000/-	S.I. for three months
	6 of the POCSO Act	R.I. for Life	25,000/-	S.I. for three months

All the sentences have been ordered to run concurrently.

2. The victim's father (PW 4) is the informant, who made a written report to the SHO, Rani Talaab police station in the district of Patna alleging therein that on 24.03.2016, the victim aged 16 years had gone out of the house for defecating, in the evening. As she did not return till late, they started searching for her. On the next day, i.e., 25.03.2016, at about 11:00 AM, they learnt that a dead body had been seen hanging from the branch of a tree in the outskirts of village Raghopur. The informant identified the dead body of the deceased to that of his daughter, the victim. He suspected that the victim was raped and subsequently killed. Allegation of the aforesaid effect gave rise to registration of Rani Taalab P.S. Case No. 32 of 2016, disclosing commission of offence punishable under Sections 302, 376, 201 read with 34 of the IPC and Sections 6, 8 and 10 of the Protection of Children from Sexual Offences (POCSO Act) at 1:30 PM on 25.03.2016. Inquest report was prepared on 25.03.2016 and post-mortem examination was conducted. Based on the disclosures said to have been made by the witnesses, the



Officer, who prepared the inquest report recorded that it was a case of murder of the victim after commission of rape upon her. Post-mortem examination of the dead body of the deceased was also conducted on 25.03.2016. The approximate age of the victim was assessed as 15 years and cause of death, asphyxia leading to cardio-respiratory failure as a result of strangulation by soft ligature. The Medical Board reserved its opinion regarding sexual assault on the victim.

3. The police, upon completion of investigation, submitted charge-sheet against the appellants Jitu Sao and Anil Mahto on 08.06.2016, and kept the investigation pending as against appellant Vikash Kumar Mochi and Punyadev Yadav. A supplementary charge-sheet was submitted against the appellant Vikash Kumar Mochi on 22.11.2016 for the offences punishable under Section 376, 302, 201, 120B read with 34 of the Indian Penal Code and Section 6, 8 and 10 of the POCSO Act. Cognizance was subsequently taken. Investigation remained pending as against the co-accused Punyadev Yadav. Later, these appellants came to be charged of commission of offences punishable under Sections 376, 302 read with 34, 201 and 120B of the IPC and Sections 6 and 8 of the POCSO Act. As the appellants denied the charge and claimed to be tried, they were



put on trial. At the trial, the prosecution examined seven witnesses including the two Investigating Officers namely Prabhat Kumar Sharma (PW 5) and Nidhi Rani (PW 7). The Doctor, who had conducted the post-mortem examination, deposed at the trial as PW 2. The victim's father/informant came to be examined as PW 4 and victim's sister as PW 6. Husband of PW 6 deposed at the trial as PW 3. In addition to the oral evidence of the prosecution's witnesses, the prosecution brought on record following documentary evidences to prove the charge:-

Sl. No.	Description	Exhibit No.
1.	Post-mortem report	Exhibit-1
2.	The swab report	Exhibit-2
3.	Signature of the SHO on the written report of the informant	Exhibit-3
4.	Seizure list	Exhibit-4

4. The trial court, after having appreciated the evidence adduced at the trial, has concluded in its impugned judgment dated 07.11.2021 that the prosecution successfully proved the charges for the offences punishable under Sections 376 and 302 read with 34 of the IPC and Section 6 of the POCSO Act against all these appellants and has convicted them accordingly. The trial court further viewed that the offence punishable under Sections 120B and 201 of the IPC and Section



8 of the POCSO Act could not be proved against the appellants and accordingly, the appellants stood acquitted of the aforesaid charges. After having held the appellants guilty of the aforesaid charges, the trial court sentenced them to imprisonment and fine, as has been noted above.

5. We have heard Mr. Ajay Kumar Thakur, Mr. S.K. Verma and Ashok Kumar Sinha, learned counsels appearing on behalf of the appellants and Ms. Shashi Bala Verma, learned Additional Public Prosecutor for the State.

6. It has been argued on behalf of the appellants that it is a case of no evidence as the prosecution failed to bring on record any cogent evidence, even to make out a case of strong suspicion against these appellants for commission of offence, let alone circumstantial evidence to prove the charge of the offences for which they were put to trial. It has been argued that there is no eye-witness to the occurrence and it is not a case even of any of these appellants having been last seen with the victim. It has been argued that the finding of conviction recorded by the trial court suffers from perversity inasmuch as there is absolutely no evidence adduced at the trial to establish the prosecution's case of commission of rape by these appellants on the victim. As a matter of fact, the prosecution failed to



establish that the victim was subjected to sexual assault at all. It has been argued that according to the Investigating Officer (PW 7), the appellant Jitu Sao had confessed his involvement and involvement of other persons, who were made accused on the point of killing of the victim, after committing rape upon her. There is absolutely no evidence beyond the said deposition of the Investigating Officer at the trial, which has no evidentiary value. It has been argued that even the informant is a hearsay witness inasmuch as in his evidence, he deposed that he had learnt that the victim was raped and killed by these appellants. Evidence of PW 1 is of no worth as he came to be declared hostile at the instance of the prosecution. Evidence of the other two witnesses namely PW 3 and PW 6 are also not of much relevance to the extent the same relate to proof of rape and murder of the victim by these appellants.

7. Learned Additional Public Prosecutor, representing the State, has defended the finding recorded by the trial court and has submitted that though the FIR was registered against unknown, during the course of investigation, name of appellant Jitu Sao had surfaced who was extensively interrogated by the Investigation Officer during which he confessed his involvement and disclosed names of other two



appellants and one Punyadev Yadav, who were involved in commission of the offence. She contends that it has been consistent case of the prosecution that the victim was a child within the meaning of Section 2(d) of the POCSO Act, which stands corroborated by the medical evidence also. She submits that the finding recorded by the trial court in the aforesaid background does not require any interference by this Court as PWs 3, 4 and 6 have supported the prosecution's case of commission of the offence by these appellants.

8. We have perused the impugned judgment and order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties.

9. It can be easily discerned from the records that the appellants were not named in the FIR and they came to be arrested during the course of investigation. From the evidence of PW 7 (the Investigating Officer), it appears that in course of investigation, a phone number was found written on a chit of paper kept in the vanity box of the deceased. The family members did not know as to whose telephone number was written on the said chit of paper. After taking assistance from the technical section, the Investigating Officer learnt that the



appellant Jitu Sao was using the said number and was working in the brick-kiln where the informant also worked as labour. Further, after the occurrence, the appellant Jitu Sao had stopped coming to the brick-kiln and his mobile number was found to be switched off. The circumstances led to the suspicion in the mind of the Investigating Officer, leading to arrest of the appellant Jitu Sao. Appellant Jitu Sao, according to the police, confessed his guilt before the police and disclosed that the appellants Anil Mahto and Vikash Kumar Mochi were also involved in commission of the crime. Other two appellants were also apprehended whose confessional statements were recorded by the Investigating Officer.

10. The summary of the case, in the court's opinion, is that the entire prosecution's case is based on the disclosures said to have been made by these appellants to the Investigating Officer in their confessional statements recorded during the course of investigation under Section 161 of the CrPC, while in custody. The said confessional statements said to have been made before the police when the appellants were in police custody has no evidentiary value. The confessional statements said to have been recorded by the Investigating Officer have not been proved at the trial.



11. Learned counsels appearing on behalf of the appellants appear to be correct in their submissions that there is no eye-witness to the occurrence and the prosecution has miserably failed to prove complete chain of circumstances at the trial based on which it can be inferred that the guilt of these appellants is the only possibility ruling out any other hypothesis. From the evidence of the informant (PW 4), it is evident that he had simply learnt that these appellants had taken the victim to some place in the nature of ditch where he had found the dead body of the deceased hanging from a tree. Her pyjamas was found untied. In his cross-examination, he deposed that the victim had not told him before leaving the house that she was going to answer the call of the nature. The information regarding the occurrence was transmitted to the police by the owner of the brick-kiln. The nature of information which was transmitted to the police, it appears from the evidence of PW 4, was the first and foremost version of the occurrence. The said owner of the brick-kiln has not been examined at the trial. The prosecution, thus, suppressed the initial version of the occurrence. On close scrutiny of the evidence of PW 4, it can be safely said that the said evidence does not support the prosecution's case against these appellants of commission of offence of murder and rape of



the victim. PW 6, a sister of the victim deposed that on the date of occurrence, she had got a missed call from the appellant Jitu Sao. The status of the PW 6 is not even of a hearsay witness for the reason that in her cross-examination, she deposed that no person had told her that he/she had seen committing rape upon the victim or killing her. PW 3, the husband of PW 6 is also a hearsay witness.

12. After having carefully scrutinized the evidence of the prosecution's witnesses adduced at the trial, we are of the view that it has rightly been argued on behalf of the appellants that it is a case of no evidence. The prosecution miserably failed to prove the charge of commission of offence punishable under Sections 302 and 376 of the IPC and Section 6 and 8 of the POCSO Act.

13. The finding of conviction recorded by the trial court is not at all sustainable. Accordingly, the impugned judgment of conviction dated 17.11.2021 and order of sentence dated 29.11.2021, passed by the learned Additional District & Sessions Judge (POCSO), Patna in Special(POCSO) Case No. 42 of 2016, arising out of Ranitalab P.S. Case No. 32 of 2016, are set-aside.

14. These appeals are allowed.



15. The appellants, namely, Anil Mahto and Vikash Kumar Mochi are on bail. They stand discharged from the liability of the bail bonds and sureties, if any.

16. The appellant Jitu Sao of Criminal Appeal (DB) No. 31 of 2022 is in custody. Let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

SONALI/Kundan

AFR/NAFR	NAFR
CAV DATE	NA
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