

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.35 of 2021

Arising Out of PS. Case No.-1 Year-2019 Thana- BALTHAR District- West Champaran

BHUSHAN MAHTO Son of Rameshwar mahto Resident of Village - Belthar,
P.S.- Balther, Distt.- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 34 of 2021

Arising Out of PS. Case No.-1 Year-2019 Thana- BALTHAR District- West Champaran

1. MANTU PATEL Son of Ramprasad Patel Resident of Village - Balthar, P.S.-
Balthar, Distt - West Champaran.
2. Ranjeet Mahto Son of Rajkumar Mahto Resident of Village - Balthar, P.S.-
Balthar, Distt - West Champaran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 35 of 2021)

For the Appellant : Mr. Jitendra Kumar, Advocate

Mr. Hemant Kumar, Advocate

For the Respondent : Mr. Abhimanyu Sharma, A.P.P.

(In CRIMINAL APPEAL (DB) No. 34 of 2021)

For the Appellants : Mr. Sanjeev Kumar, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 30-01-2023

A judgment of conviction dated 12.02.2020 and the consequent order of sentence dated 28.02.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST/POCSO) Bettiah, West Champaran, in Trial No. 130 of 2019 (CIS No. 28 of 2019), arising out of Balther P.S. Case No. 01

of 2019, are under challenge in both these appeals, preferred under Section 374(2) of the CrPC, and, therefore, they have been heard together and are being disposed of by the present judgment and order.

2. There are altogether three appellants in these appeals, who have been convicted of the offences punishable under Section 376(D) of the IPC and Section 3(i)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989. After recording their conviction, learned trial court has imposed following sentences: -

Appellant Number	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
CRIMINAL APPEAL (DB) No. 35 of 2021				
Bhushan Mahto	376(D) of the Indian Penal Code	R.I. for 20 years	25,000/-	R.I. for Four years
	3(i)(w) SC/ST (PoA) Act	R.I. for three years	10,000/-	R.I for six months
CRIMINAL APPEAL (DB) No. 34 of 2021				
Mantu Patel (Appellant No. 1)	376(D) of the Indian Penal Code	R.I. for 20 years	25,000/-	R.I. for Four years
	3(i)(w) SC/ST (PoA) Act	R.I. for three years	10,000/-	R.I for six months
Ranjeet Mahto (Appellant No. 2)	376(D) of the Indian Penal Code	R.I. for 20 years	25,000/-	R.I. for Four years
	3(i)(w) SC/ST (PoA) Act	R.I. for three years	10,000/-	R.I for six months

3. We have heard Mr. Jitendra Kumar, learned counsel appearing on behalf of the appellant and Mr. Abhimanyu Sharma,

learned Additional Public Prosecutor representing the State in Cr. Appeal (D.B.) No. 35 of 2021 and Mr. Sanjeev Kumar, learned counsel appearing on behalf of the appellants and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State in Cr. Appeal (D.B.) No. 34 of 2021.

4. The identity of the prosecutrix is being concealed as per the statutory requirements in order to protect her prestige and dignity.

5. The written report of the prosecutrix is the basis for registration of the concerned Balther P.S. Case No. 01 of 2019 for the offence punishable under Section 376(D) read with 34 of the Indian Penal Code (IPC) and Section 3(i)(w) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 ('SC/ST(PoA) Act' for short). The prosecutrix in her written statement claimed to be a married woman of 19 years of age. According to the FIR, she had come from her matrimonial home to her parental home for few days. At about 4:30 PM in the evening, according to her, the appellant Mantu Patel came to a pond near her house and pestered her to accompany him to a nearby sugarcane field. When the informant declined, he, by the use of force, he took her to the sugarcane field and raped her. He, thereafter, made certain calls with his mobile phone, whereafter,

three other co-villagers, namely, Bhushan Mahto (an appellant), Munna Mahto and Ranjeet Mahto (an appellant) came there and raped her one by one. They obstructed her from raising any voice by gagging her mouth. She returned to her house weeping and explained the incident to her mother (PW 2) and, thereafter, went to the police station with her neighbor Shiv Sagar Manjhi. The informant being an illiterate women, the said written report was written in the hand of Shiv Sagar Manjhi.

6. Her statement was recorded under Section 164 of the CrPC on 22.01.2019 before the learned Magistrate, which is there on record, though it has not been proved at the trial by way of exhibit. She stated in her statement under Section 164 of the CrPC that nearly 3-4 days ago, Mantu Patel (an appellant) and Ranjeet (an appellant) had forcibly abducted her in a jeep from her house and they had taken her to sugarcane field. Thereafter, they called the appellant Bhushan Mahto and Munna Mahto, a co-convict. All of them committed rape upon the prosecutrix one by one. The prosecutrix was put to medical examination on 19.01.2019. The medical report has not been proved at the trial. The medical report, which is there on record, did not suggest any recent incident of sexual assault. The clothes of the prosecutrix were sent for forensic examination. The charge sheet was submitted by the police on

16.04.2019 apparently without waiting for the FSL report. The learned Magistrate took cognizance of the offence punishable under Section 376(D) read with 34 of the IPC and Section 3(i)(w) of the SC/ST(PoA) Act. The case was committed to the court of Sessions, whereafter charges were framed for commission of offences punishable under Section 376(D) read with 34 of the IPC and Section 3(i)(w) of the SC/ST (PoA) Act.

7. At the trial, three prosecution's witnesses came to be examined, namely, the prosecutrix (PW 1), mother of the prosecutrix (PW 2) and the Investigating Officer (PW 3). At the trial, the prosecution brought on record certain documents, which came to be marked as exhibits in support of the case of the prosecution including the FSL report (Exhibit 7 and 8). The doctor, who had examined the victim, was not examined at the trial. The medical evidence was, thus, not proved. The FSL report, exhibited as Exhibit 7, does not lead the Court to a definite conclusion that the semen of these appellants were found on the clothes, which the victim was wearing at the time of the occurrence, though blood mixed semen was found on the petticoat cuttings of the prosecutrix.

8. The most crucial aspect for determination of the present appeal is the evidence of the prosecutrix (PW 1) and the

mother of the prosecutrix, PW 2. PW 1 in her examination-in-chief deposed that the occurrence had taken place at 5 in the evening. All the four persons put to trial had ravished her, and thereafter, she had gone to the police station to register the FIR. She proved her written report as exhibit 1 and her RTI as exhibit 1/a. In paragraph 5 of her cross examination, she deposed that all the accused persons had concealed their faces with clothes and, therefore, she could not identify them. She further deposed that she was not knowing the names of the accused persons and she had got registered the criminal case on the instigation of her co-villagers. She denied, in her cross examination, that she had seen the accused persons. Her mother (PW 2), in her deposition, though supported the narration of commission of rape by four persons upon the prosecutrix, she deposed, in her cross examination, that the prosecutrix had not disclosed the names of the persons put to trial. She also deposed that PW 1 had told her that because all the miscreants had covered their faces, she could not identify them. She further deposed that she had named all the accused persons at the instance of co-villagers. She denied the involvement of the persons put to trial in commission of the offence and added that based on suspicion, their names were given in the criminal case.

9. From the deposition of the IO, it transpires that all the four named accused persons were arrested on 18.01.2019 from their respective houses, soon after the registration of the FIR. It is the contention on behalf of the appellant that this is not natural conduct of the accused persons to have remained in their house after commission of such gruesome offence. The IO further deposed, in his cross examination, that till the submission of the charge sheet, he had not received FSL report and, therefore, he had submitted the charge sheet without waiting for the result of the FSL report. He had visited the place of occurrence, i.e., the sugarcane field, but he did not notice anything material to support the accusation of occurrence of rape at the said place.

10. The trial court, based on assessment of the evidence of the prosecution's witnesses and the exhibits proved at the trial, has concluded that the prosecution has been able to establish the charge of commission of offence punishable under Section 376-D of the IPC against all the persons put to trial, namely, Bhushan Mahto, Munna Mahto and Ranjeet Mahto. Further, they were not in a position to prove at the trial that they were unaware of the fact that the prosecutrix belong to one of the Scheduled Castes. Accordingly, the trial court recorded the conviction, as noted above.

11. It has been stated at the bar that, according to their information, there is no appeal preferred by the co-convict Munna Patel, as he is no more and he died soon after the conviction was recorded.

12. Learned counsel appearing on behalf of the appellants has submitted that the finding of conviction recorded by the trial court is without any evidence and the finding of the conviction is patently erroneous and perverse. He has submitted that when the prosecutrix (PW 1) and her mother (PW 2) have not supported the prosecution's case against these appellants and they have apparently declined to identify these appellants as perpetrators of the alleged commission of rape there was no occasion for the trial court to have recorded finding of conviction without any evidence. They have also argued that apparently these appellants were named in the FIR at the instance of the co-villagers based on suspicion as is evident from the deposition of the main prosecution witnesses, namely, PWs 1 and 2. Further, we have noticed that the case of the prosecution, as disclosed in the written report of the prosecutrix and her statement recorded under Section 164 of the CrPC, are materially different. In her written statement, which is the basis for registration of the FIR, she alleged that she was persuaded, cajoled and pestered by the

appellant Mantu Patel, when she was present near a pond close to her house to go with him to a nearby sugarcane field and when she had declined, she was forcibly taken by the appellant Mantu Patel to sugarcane field and raped. After he (Mantu Patel) had committed the rape upon her, he had called other accused persons using his mobile phone and, half an hour later, other accused persons arrived there and raped her. Her statement, recorded under Section 164 of the CrPC, is materially different, wherein she stated that Mantu Patel and Ranjeet Mahto had come to her house and kidnapped her in a jeep and had taken her to sugarcane field and, subsequently, she was raped by all the four co-accused persons one by one. At the trial, her evidence is entirely different. She declined to identify these appellants as the ones who had committed rape upon her. She further deposed that she had lodged the case against them at the instigation of the co-villagers. She could not identify the persons, who had committed rape upon her as they had concealed their faces. PW 2, her mother, has also deposed that the names of the accused persons were mentioned in the FIR at the instance of the co-villagers. We are mindful of the fact that PW 2 herself is a witness to the written report whose RTI is available thereon.

13. Further, in our opinion, no definite conclusion can be drawn from the FSL report (exhibit 8) as regards the fact that the prosecutrix was sexually assaulted by these appellants. We find force in the submission made on behalf of the appellants that the findings of conviction recorded by the trial court is without any evidence and is, therefore, unsustainable. The impugned judgment of conviction dated 12.02.2020 and order of sentence dated 28.02.2020, passed by learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST/POCSO) Bettiah, West Champaran, in Trial No. 130 of 2019 (CIS No. 28 of 2019), arising out of Balther P.S. Case No. 01 of 2019, are hereby set aside.

14. These appeals are accordingly allowed.

15. The appellants, namely, Bhushan Mahto in Criminal Appeal (DB) No. 35 of 2021 and Mantu Patel and Ranjeet Mahto in Criminal Appeal (DB) No. 34 of 2019, are in custody. Let them be released forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajesh Kumar Verma, J)

Pawan/-

AFR/NAFR	NAFR
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