

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.777 of 2016

Arising Out of PS. Case No.-321 Year-2014 Thana- JAGDISHPUR District- Bhojpur

Awadhesh Yadav, son of Late Bishwanath Yadav, resident of Mohalla-
Vidyalaya Bishan Tola, P.O. and P.S. Jagdishpur, District Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 774 of 2016

Arising Out of PS. Case No.-321 Year-2014 Thana- JAGDISHPUR District- Bhojpur

Rajesh Choudhary @ Karu Choudhary, son of Ras Bihari Choudhary, resident
of village Jagdishpur, P.S. Jagdishpur, District Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 780 of 2016

Arising Out of PS. Case No.-321 Year-2014 Thana- JAGDISHPUR District- Bhojpur

Anil Paswan, son of Late Dular Paswan, Resident of Village- Jagdishpur, P.S.-
Jagdishpur, District- Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 777 of 2016)

For the Appellant/s : Mr. Bijendra Kumar Singh, Advocate

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

(In CRIMINAL APPEAL (DB) No. 774 of 2016)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Md.Imteyaz Ahmad, Advocate

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

(In CRIMINAL APPEAL (DB) No. 780 of 2016)

For the Appellant/s : Mr. Dhananjay Singh, Advocate

Mr. Bijendra Kumar Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP



CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 21-06-2023

By the impugned judgment and order dated 28.06.2016/30.06.2016, passed by learned Ist Additional Sessions Judge, Bhojur, Ara in Sessions Trial No. 53 of 2015, arising out of Jagdishpur P.S. Case No. 321 of 2014, GR. No. 5172 of 2014, the appellants have been convicted and sentenced as under:

Cr. Appeal (DB) No. 777 of 2016				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Awadhesh Yadav	376(D) of the Indian Penal Code	RI for 20 years	50,000/-	SI for ten months
Cr. Appeal (DB) No. 774 of 2016				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Rajesh Choudhary @ Karu Choudhary	376(D) of the Indian Penal Code	RI for 20 years	50,000/-	SI for ten months
Cr. Appeal (DB) No. 780 of 2016				
Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Anil Paswan	376(D) of the Indian Penal Code	RI for 20 years	50,000/-	SI for ten months

2. The name of the victim is not being disclosed in the present judgment that has been referred to and described as the victim/ PW-2.



3. We have heard Mr. Ajay Kumar Thakur, learned counsel for the appellant in Criminal Appeal (DB) No. 774 of 2016, Mr. Bijendra Kumar Singh, learned counsel for the appellant in Criminal Appeal (DB) No. 777 of 2016 and Mr. Dhananjay Singh, learned counsel for the appellant in Criminal Appeal (DB) No. 780 of 2016. Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor has represented the State in Criminal Appeal (DB) No. 774 of 2016, Ms. Shashi Bala Verma, learned Additional Public Prosecutor in Criminal Appeal (DB) No. 777 of 2016 and Mr. Abhimanyu Sharma, learned Additional Public Prosecutor in Criminal Appeal (DB) No. 780 of 2016.

4. A written report of the informant (PW-2) dated 13.11.2014 addressed to the Inspector of Police-cum-Station House Officer, Jagdishpur Police Station received at 08:30 P.M. on the said date, is the basis for registration of the concerned police case i.e. Jagdishpur P.S. Case No. 321/14, disclosing commission of the offences punishable under Sections 376(i), 376 (ii) (k)/34 of the I.P.C. She asserted in her written report that on 07:00 P.M. on 13.11.2014, she had gone to an orchard belonging to one Baban Choudhary (not examined), resident of Purana Pokhar, Jagdishpur for easing herself. After having eased herself when she was returning at 07:30 P.M., the accused persons namely (1) Raju



Choudhary, son of Lakshman Choudhary (2) Dharmendra Ravani @ Chirai, son of Rajendra Ravani (3) Rajesh Choudhary @ Karu Choudhary (appellant in Criminal Appeal (DB) No. 774 of 2016), son of Rashbehari Choudhary, all residents of Mohalla Purana Pokhara, Ward No. 11 (4) Mukesh Choudhary, son of Hansraj Choudhary, Ward No. 11, Purana Pokhara (Kurmi Tola), Jagadishpur (5) Awadhesh Yadav (appellant in Criminal Appeal (DB) No. 777 of 2016), son of Vishwanath Yadav, resident of Middle School, Bishen Tola (Sabji Market near School), Jagadishpur, Ward No. 13 and (6) Anil Paswan (appellant in Criminal Appeal (DB) No. 780 of 2016), son of Dular Paswan, resident of Badhai Tola, Jagdishpur, Ward No. 13, came and caught her from behind and forcibly dragged her into the orchard. In the process of forceful pulling, she got scratches in both of her hands. In the orchard, all of them, after putting off her *salwar* committed rape upon her. On her screams, persons from the neighborhood and her family members assembled there, to whom she explained the entire occurrence.

5. It can be easily gathered from the victim's narration of the case in the F.I.R. that the victim had the knowledge not only of the names of the accused persons but also their parentage and their respective addresses with ward numbers, as well. The records of



the case suggest that the accused Dharmendra Ravani and Rajesh Choudhary (an appellant) were apprehended by the police on the very next date i.e. 14.11.2014.

6. The statement of the victim was recorded under Section 164 of the CrPC before the learned Judicial Magistrate, Ist class, Ara (PW-5). In her statement under Section 164 of the CrPC she asserted that on 13.11.2014, she had gone to ease herself at 07:00 P.M. and the place where she had gone to ease herself, her maternal aunt was defecating at a distance of 10-12 steps. The moment she was about to sit to ease herself, Dharmendra, Anil, Raju, Mukesh and two others caught her from behind and took her into the orchard where firstly Dharmendra committed rape on her, thereafter, Anil (an appellant herein) and thereafter, Mukesh and then Raju and then two other unknown persons committed rape on her. Whenever she would attempt to scream, they would press her mouth. She was raped in standing position and thereafter, all of them escaped. After she raised alarm, her family members came and took her to the police station and got the case registered. She also stated that she knew all the six persons named in the FIR from before, who were residents of the adjacent *mohalla*.

7. It is also worthwhile mentioning that the victim was medically examined on 14.11.2014 at Sadar Hospital, Ara. Except



for abrasion on the left forearm above 1.2" X 2" and right hand above wrist 1" X 2", no external injury was found on the person of the victim. No spermatozoa either alive or dead were found in the vaginal swab.

8. We have noticed in detail the narration in the F.I.R. and the statement of the victim recorded under Section 164 of the CrPC, having noticed manifest conflicting disclosures made by the informant. According to the F.I.R., the occurrence had taken place when she was returning from the orchard after having eased herself, whereas in her statement under Section 164 of the CrPC, she disclosed that the occurrence had taken place when she was about to sit to ease herself. According to the F.I.R., the place of occurrence is different from the place where she had gone to ease herself, whereas, according to the statement under Section 164 of the CrPC, the place of occurrence is the place where she had gone to ease herself. Secondly, according to the F.I.R., the occurrence had taken place after she had eased herself, whereas, according to her statement under Section 164 of the CrPC, she was caught by the accused persons before she was about to sit for easing herself. Thirdly, in the F.I.R., she gave a detailed description of all the six accused persons with their parentage and age; in her statement under Section 164 of the CrPC, she named four persons, namely,



Dharmendra, Anil, Raju and Mukesh and she could not furnish the even the names of other two persons, let alone their parentage and addresses. The names of the appellants mentioned in the written report, namely, Rajesh Choudhary and Awadhesh Yadav did not figure in the statement of the victim recorded under Section 164 of the CrPC, though she named the appellant Anil as one of the persons who had committed the offence.

9. Be that as it may, the police upon completion of investigation submitted charge-sheet against all the six accused persons for commission of the offences punishable under Section 376(i), 376 (ii) (k) and 506/34 of the I.P.C., whereafter, cognizance was taken of the aforesaid offences by the learned Judicial Magistrate and the case was subsequently committed to the Court of learned Sessions Judge, Bhojpur, Ara. The charges were framed against all the six persons for commission of offence punishable under Section 376-D of the Indian Penal Code [apparently, wrongly typed as 376(G) in the memo of charge]. It is noteworthy that three of the six accused, namely, Raju Choudhary, Dharmendra Ravani and Mukesh were provisionally found to be juvenile and accordingly their case-records were sent to the Juvenile Justice Board, Ara for enquiry and disposal in accordance



with law. Accordingly, only these appellants were put on trial after they denied the charge and claimed to be tried.

10. At the trial, the prosecution examined altogether seven witnesses including the informant/ victim (PW-2), the father of the victim (PW-3), one Baijnath Sharma who was sitting with PW-3 at the time of occurrence, the Doctor who had examined the victim (PW-4), the Magistrate who had recorded the statement of the victim under Section 164 of the CrPC (PW-5), the Investigating Officer (PW-6) and one Saryu Pandey, an Advocate's Clerk (PW-7), who deposed that the written report of the informant was drawn by one Pappu Singh, a Constable in the Police Station.

11. In addition to the oral evidence, the prosecution got exhibited documents also in support of the charges including the statement of the victim recorded under Section 164 of the CrPC, the medical report (Exhibit-2) as well as the seizure-cum-production-cum- seizure-list (Exhibits- 3 and 4).

12. After closure of the prosecution's evidence, the appellants were questioned by the Trial Court under Section 313 of the CrPC. The appellants answered in negative, the questions put by the learned Trial Court under Section 313 of the CrPC.

13. The defence brought on record a protest petition which was filed by the informant on 03.12.2014 before the learned



Judicial Magistrate Ist Class, Ara in connection with the aforesaid Jagdishpur P.S. Case No. 321/2014. The signature over the said protest petition of the informant came to be identified by the informant and marked as Exhibit-A at the trial.

14. The Trial Court, after having evaluated the oral and documentary evidence adduced at the trial, concluded that the prosecution was able to establish the charge of commission of the offence punishable under Section 376-D of the I.P.C. and sentenced them to imprisonment and fine, by the impugned judgment and order, as has been noted at the outset.

15. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellants in Criminal Appeal (DB) No. 774 of 2016 has submitted that the victim (PW-2) is not at all a reliable witness which is manifest on comparative and close scrutiny of her written report which is the basis for registration of F.I.R., her statement recorded under Section 164 of the CrPC., the case made out in her protest petition after lodging of the F.I.R. and her deposition at the trial. He contends that the victim's statements at different stages are materially different from each other and, therefore, this Court should disbelieve her evidence. He has also submitted that the evidence of the father of the victim (PW-3) is also not trustworthy for two apparent reasons. Firstly, PW-3 in his



evidence claimed to be an eye-witness to the occurrence of the victim being dragged by the accused persons after closing her mouth. She claimed to have seen the entire occurrence of rape and thereafter, the victim being thrown in a drain filled with water. He deposed that he had taken the victim out of the drain and thereafter to the Police Station for lodging the case. The evidence of the informant's father (PW-3) is inconsistent with the evidence of PW-1, who, in his evidence, deposed that he was sitting at the shop of PW-3 and after having heard the commotion, he had rushed in the orchard with others when he found the victim wearing a pair of torn *salwar-sameej*. On inquiry from the victim, he had learnt that the accused Raju, Dharmendra, Rajesh, Mukesh, Anil and Awadhesh had committed rape on her. Mr. Thakur has argued that the victim in her statement under Section 164 of the CrPC had stated before the learned Magistrate that she was raped in standing position, whereas she deposed at the trial that she was forced to lie down on a murky ground at the time when she was raped. He has also argued that the victim's garments were not sent for scientific examination nor the appellants, who were arrested, were put to any medical examination in accordance with the requirement under Section 53A of the CrPC. He contends that there is no medical evidence which corroborates commission of any sexual assault



much less, gang-rape. He submits that the finding of conviction of these appellants recorded by the learned trial court, based on uncorroborated evidence of the victim (PW-2), which is apparently not trustworthy, is unsustainable and the appellants deserve acquittal upon giving them benefit of doubt.

16. Learned counsel appearing on behalf of the appellants in Criminal Appeals (DB) No. 777 of 2016 and 780 of 2016 have adopted the submissions made by Mr. Ajay Kumar Thakur.

17. Learned Additional Public Prosecutors representing the State, on the other hand, have argued that though there are minor inconsistencies in the evidence of the witnesses, such inconsistencies are immaterial in a case of gang-rape. It has been argued that there is no reason why the informant would have falsely implicated these appellants with the allegation of gang-rape.

18. We have perused the impugned judgment and order of the trial court as well as the lower court's records and we have given our anxious consideration to the rival submissions advanced on behalf of the parties. We have already noticed the patent deviations in the facts disclosed in the written report of the informant which was the basis for registration of F.I.R. and her



statement recorded less than forty-eight hours thereafter before the learned Judicial Magistrate under Section 164 of the CrPC. The written report was not drawn by the informant herself rather the same was prepared by someone else. The I.O. in his cross examination at the trial, expressed his inability to state as to written report was in whose handwriting. PW-7, an Advocate's Clerk proved the said handwriting to be that of one Pappu Singh, a Constable. In his cross-examination, however, he deposed that he did not have any opportunity to work with Pappu Singh. On close reading of the evidence of PW-7 and other evidence on record, it is not difficult to conclude that the prosecution could not prove at the trial as to who had prepared the written report. This has significance because whereas the written report contains names of all the accused persons with their parentage and respective addresses, the victim in her statement under Section 164 of the CrPC recorded on 15.11.2014 failed even to furnish the names of the appellants Rajesh Choudhary and Awadhesh Yadav.

19. PW-3 is the father of the victim, who in his examination-in-chief deposed that on 13.11.2014 at 07:30 P.M. when he was at his shop, he had heard some noise, whereafter, he had rushed towards the orchard and found that the victim was being taken towards a pond after tying her mouth with a piece of



cloth and, thereafter, the accused persons raped her one by one and told her that she could complain to her father and maternal grandmother only if they would let her live. The accused persons thereafter had pushed the victim in the drain and when the victim cried, he went there and pulled her out. In his cross-examination, he deposed that he had heard 4-10 females raising alarm, whereafter, he had gone to the *mathiya* near the orchard. The orchard was twenty steps north of the *mathiya*. When he reached the orchard, he found the victim sitting there. In cross examination in paragraph 6, he deposed that Bhagwan Kushwaha, a former Minister and Dharmendra Sharma, Chairman had come to the Police Station and the said two persons had got the written report drawn after making certain enquiries from the victim. He, however, denied the suggestion that the accused persons had opposed the said two leaders at the hustings. He further deposed that a *fardbeyan* of the victim was recorded by a Sub-Inspector of Police. He reiterated in his deposition that the rape was committed in his presence for half an hour. The evidence of PW-1 does not, however, support the evidence of PW-3. According to PW-1, he was there with PW-3 when he had heard commotion.

20. It is not even the case of the victim that the rape was committed in the presence of her father (PW-3). The victim (PW-



2) did not depose at the trial that her mouth was tied. Contrary to her statement under Section 164 of the CrPC, the victim deposed at the trial that the accused persons had caught her from behind when she was returning after easing herself. She further deposed that she was made to lie on a murky earth before she was raped. In her cross-examination, she failed to point out the location of the orchard where the rape was committed. According to the victim (PW-3), she had returned to her house after the occurrence and had then gone to the Police Station. The father of the victim (PW-3), on the other hand, clearly deposed that he had proceeded to the Police Station with the victim soon after the occurrence without going to their house, which is evident from his depositions in paragraphs 5 and 7.

21. In our considered view, PW-3, the father of the victim, is not at all a reliable witness who claimed to have seen the entire occurrence taking place. His evidence is falsified by the evidence of PW-1 and is not corroborated by the evidence of the victim (PW-2).

22. Coming back to the evidence of the victim, it is significant to note that while proving her signature on the protest petition, she deposed that her statement was recorded by a Police Officer at the Police Station. From the F.I.R., it is apparent that it



was not registered on the basis of the *fardbeyan* of the victim rather it was based on a written report. Who was the author of the written report has not been proved at the trial. There is patent inconsistency in her evidence on the point of the manner in which the rape was committed. In paragraph 7, she deposed that she was forced to lie before commission of the rape. In paragraph 8, she deposed that she had stated in the Court that the rape was committed in standing position. She made an improvement in her deposition at the trial that her mouth was tied with *gamchi* during the commission of offence. She also deposed in paragraph 12 that she did not know the father's name of any of the accused persons and she had disclosed the names of the accused persons, their parentage etc. as disclosed by other persons. Again, in paragraph 12 of her evidence describing the manner of occurrence, she deposed that during the course of the commission of rape, whereas one accused would held her body, the other would commit rape on her. It is not the evidence of the victim that it was her father (PW-3) who had come after the occurrence and had taken her to the Police Station.

23. On close scrutiny of the evidence of the prosecution's witnesses, particularly PWs-1, 2 and 3, we find that they are full of inconsistencies and contradictions. The evidence of



these witnesses are self-contradictory. They do not appear to be reliable witnesses at all. The evidence of PW-3, the father of the victim, suffers from apparent falsehood and not at all reliable. The evidence of the victim also does not appear to be trustworthy and reliable, there being manifest inconsistencies in her deposition at the trial, the initial version of the prosecution's case as disclosed in the written report and her statement recorded under Section 164 of the CrPC.. The deposition of the victim at the trial to the effect that she did not know the names and parentage of the accused persons and she had disclosed their names at the time of registration of FIR, at the instance of other persons, goes to the root of the matter.

24. In such circumstance, we are of the view that it would be highly unsafe to sustain conviction of these appellants based solely on uncorroborated evidence of the victim (PW-2). Failure on the part of the prosecution to get the clothes of the victim scientifically examined is also fatal to the prosecution's case. In our view, in the present case, the prosecution miserably failed to prove the case of commission of sexual assault much less commission of offence of gang rape by these appellants.

25. In the light of above mentioned discussions, we are of the view that the appellants deserve acquittal by giving them benefit of doubt. Accordingly, impugned judgment and order dated



28.06.2016/30.06.2016, passed by learned Ist Additional Sessions Judge, Bhojur, Ara in Sessions Trial No. 53 of 2015, arising out of Jagdishpur P.S. Case No. 321 of 2014, GR. No. 5172 of 2014 are hereby, set aside. The appellants are acquitted of the charge of commission of offence punishable under Section 376(D) of the IPC.

26. These appeals are accordingly allowed.

27. The appellants are in custody. Let them be released forthwith, if they are not required in any other case.

(Chakradhari Sharan Singh, J)

Rajesh Kumar Verma, J I agree.

(Rajesh Kumar Verma, J)

Rajesh/Sachin

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