

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.143 of 2021

Arising Out of PS. Case No.-277 Year-2019 Thana- BOCHAHAN District- Muzaffarpur

AMAR SAHANI @ AMAR KUMAR Son of Chandradev Sahni Resident of
Village- Ramdas Majhauri, P.S.- Bochaha, District- Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv Md. Imtiyaz Ahmad, Adv Mr. Ritwik Thakur, Adv Mrs. Vaishnavi Singh, Adv
For the Respondent/s	:	Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE RAJIV ROY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 01-05-2023

Heard learned counsel for the appellant and learned

APP for the State.

By the impugned judgement of conviction dated 28.02.2020 and order of sentence dated 29.02.2020 passed by learned Additional District & Sessions Judge-1st Cum Special Judge (POCSO Act), Muzaffarpur in Trial No. 22 of 2020 arising out of Bochaha P.S. Case No. 277 of 2019 corresponding to G.R. Case No. 85 of 2019, the appellant has been convicted and sentenced as under:



Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 376D of the IPC and Section 6 of the POCSO Act	Rigorous Imprisonment for 20 years	10,000/-	RI for 6 months

The victim is the informant of the case on whose *fardbeyan* recorded by Sub-Inspector of Bochaha Police Station, Bochaha P.S. Case No. 277 of 2019 came to be registered. She alleged in her *fardbeyan* that when she was sleeping with her parents in her house after having had the dinner at about 11.00 P.M. in the night, the appellant and three associates entered into her house, closed her mouth and abducted her. They took her to a Litchi orchard and committed rape upon her one by one. The F.I.R. was registered for the offences punishable under Section 376 of the IPC, 4/8 of POCSO Act and 3(i)(x) of the SC/ST Act. The informant claimed her age to be 15 years as on the date of occurrence. The police, upon completion of investigation, submitted charge-sheet for the commission of the offence punishable under Sections 376D, Section 6 of the POCSO Act and 3(i)(r)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1975, against this appellant,



keeping investigation pending against others. After the cognizance was subsequently taken of the aforesaid offences and charges were framed against this appellant for commission of the offences punishable under Section 376D of the IPC, Section 6 of the POCSO Act and 3(i)(r)(s) of the Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1975. The appellant pleaded not guilty and claimed to be tried.

At the trial altogether seven witnesses were examined including Dr. Rashmi Ragani (PW5), Ratneshwar Prasad I.O. (PW-6) and the Assistant Director Regional Forensic Science Laboratory, Muzaffarpur, who had examined the clothes of the victim. Father of the victim (PW-2), Mother of the victim (PW-3) and her Aunt (PW-4) who deposed at the trial, did not support the prosecution's case and accordingly, they came to be declared hostile at the instance of the prosecution. PW-1, the victim herself also did not support the prosecution's case at the trial. She has not been declared hostile. She deposed that she had not lodged the F.I.R. She, however, deposed that in the fateful night five persons had abducted her on a Bullet/Apache motorcycle who had left her in the Litchi orchard. She declined to identify the appellant at the trial. On careful reading of her deposition, we notice that she did not depose anything against this appellant



in support of the charge in respect of which the appellant was put on trial. The informant's mother deposed at the trial that in the morning, she had not seen her daughter or victim (PW1) and on an inquiry, she learnt that she had gone to her Maternal Grandmother's (*Nani's*) place. The father of the victim (PW-2) also deposed that in the morning he learnt that someone had abducted her daughter but when the victim returned, she did not disclose anything to him. PW-4 the victim's Aunt expressed complete ignorance about the occurrence in her evidence at the trial. PW-5 the Doctor who had examined the victim though found that hymen was torn and slight bleeding was present, no injury on her thigh or vagina was found. She expressed her inability to say as to whether the victim was raped or not. From the evidence of the I.O. it appears that the undergarments of the victim were recovered and seized by the police which were sent for forensic examination. Blood mixed semen had been detected in the Exhibits A & B on the undergarments of the victim.

The R.F.S.L. report was proved by PW-7. He said that he could not see as to whose blood stains/semen were found on the undergarments sent for forensic examination. Learned trial court, however, has recorded conviction based on above noted evidence on the ground that there were overwhelming evidence



and materials to point out guilt of the appellant.

We do not concur with the aforementioned finding of conviction recorded by the trial court, as in our view, it is a case of no evidence. The charges framed against the appellant cannot be said to have been proved at the trial by any stretch of imagination. The appellant stands acquitted of the charges accordingly.

Situated thus the impugned judgment of conviction dated 28.02.2020 is hereby set aside. Consequently, the order of sentence dated 29.02.2020 is also set aside.

This appeal is allowed.

Since the appellant is in custody, let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Rajiv Roy, J)

ranjan/ravi-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

