

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.699 of 2023**

Arising Out of PS. Case No.-221 Year-2014 Thana- NAWANAGAR District- Buxar

1. Sunil Kumar @ Sunil Yadav @ Sunil Kumar Yadav, Son of Rangrot Singh, Resident of village - Jagdishpur, P.S. - Jagdishpur, Distt. - Bhojpur (Ara)
2. Bhola Singh @ Bhola Yadav, Son of Rambyas Singh, Resident of village - Nokhpur, P.S. - Nawanagar, Distt. - Buxar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with  
**CRIMINAL APPEAL (DB) No. 639 of 2023**

Arising Out of PS. Case No.-221 Year-2014 Thana- NAWANAGAR District- Buxar

Chhotu Yadav @ Rama Shankar Yadav, S/O Nanhaku Singh @ Nand Kumar Singh, R/O Village- Baluahi, P.S- Dhanghain, Distt.- Bhojpur (Ara).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

(In CRIMINAL APPEAL (DB) No. 699 of 2023)

For the Appellant/s : Mr. Arvind Kumar Pandey, Advocate.  
Mr. Rang Nath Choubey, Advocate.

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

(In CRIMINAL APPEAL (DB) No. 639 of 2023)

For the Appellant/s : Mr. Bachan Jee Ojha, Advocate.  
Mr. Akhilesh Kumar Pandey, Advocate.

For the Respondent/s : Mr. Binod Bihari Singh, APP.



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE NANI TAGIA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 13-12-2023**

1. Both these appeals (three appellants in all) have been heard together and are being disposed off by this common judgment.

2. We have heard Mr. Arvind Kumar Pandey, learned Advocate for the appellants/Sunil Kumar @ Sunil Yadav @ Sunil Kumar Yadav and Bhola Singh @ Bhola Yadav in Criminal Appeal (DB) No. 699 of 2023 and Mr. Bachan Jee Ojha, learned Advocate for the appellant/Chhotu Yadav @ Rama Shankar Yadav in Criminal Appeal (DB) No. 639 of 2023. The State has been represented by Mr. Binod Bihari Singh, learned APP.

3. All the appellants have been convicted under Sections 363, 366A and 376D/34 of the Indian Penal Code and Section 6(1) of the Protection of Children from Sexual Offences Act, 2012, *vide*



judgment dated 18.05.2023 passed by the learned Additional Sessions Judge-VI-cum-Special Judge POCSO Court, Buxar, in POCSO Case No. 13 of 2015, C.I.S. No. 87 of 2018, arising out of Nawanagar (Vasudeva O.P.) P.S. Case No. 221 of 2014. By order dated 25.05.2023, they have been sentenced to undergo R.I. for seven years each, to pay a fine of Rs.10,000/- each and in default of payment of fine, to further suffer S.I. for three months, each for the offences under Sections 363/34 and 366A/34 of IPC and to undergo R.I. for twenty years each, to pay a fine of Rs.20,000/- each and in default of payment of fine, to further suffer S.I. for six months, each for the offences under Section 376D of IPC and Section 6(1) of the POCSO Act, 2012.

4. The sentences have been ordered to run concurrently.

5. The victim (P.W. 1) is alleged to have been kidnapped sometimes in the month of April, 2014 but



was recovered at the instance of police on 20.04.2014. The FIR has been lodged on 07.11.2014 by the father of the victim (P.W. 6).

6. According to the written report lodged by him, it has been alleged that his daughter (victim) was not to be found in the house since 12.04.2014. Initially, P.W. 6 suspected that she had run away with jewellery and cash. A report was made about the victim missing from the house with valuables on 17.04.2014.

7. While P.W. 6 had been searching for his daughter everywhere, he along with his *samdhi* learnt that the victim has been confined on the upper floor of a hospital meant for paralytic patients, under the territorial jurisdiction of New Bhojpur Police Station.

8. P.W. 6 claims to have gone to the police station and accompanied by two of the policemen then went to the hospital where the victim was recovered. Along with the victim, appellant/Sunil was also arrested. Both of them were brought to the police station but on



the advise of the Officer-in-Charge of the police station that lodging any case by him would only bring bad reputation to the family, no case was filed. Appellant/Sunil was also allowed to go away. Thereafter, P.W. 6 brought his daughter (victim) home, where she narrated about the entire occurrence of her having been kidnapped by the appellants, kept in a moving truck for about three days and, thereafter, confined in a room on the upper floor of the hospital. During this period, the victim has also alleged to have been raped a multiple times by all the three appellants.

9. Despite that, no case was filed.

10. P.W. 6 decided to file the case when the demand of rupees five lakhs was made by the appellants. P.W. 6 was offered that he should either handover the victim to them or pay up rupees five lakhs, failing which the family would meet dire consequences.

11. On the basis of the afore-noted written



report, a case *vide* Nawanagar (Vasudeva O.P.) P.S. Case No. 221 of 2014, dated 07.11.2014 was initially instituted for the offences under Section 363, 366A and 34 of the IPC. However, later by order dated 10.04.2015, Section 376(g) of the IPC and Section 8 and 9 of the POCSO Act, 2012 were also added.

12. The police after investigation submitted charge-sheet upon the appellants whereupon they were put on Trial.

13. The Trial Court, after having examined nine witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

14. It has been argued on behalf of the appellants that an absolutely unbelievable story of gang rape of the victim has been put up by the prosecution. The falsity of the case appears from the very fact that even after the recovery of the victim on 20.04.2014, the FIR was lodged on 07.11.2014. The threat doled out by the appellants is said to be the cause for the



delayed lodging the FIR by the father of the victim.

15. It has also been urged before us that the story does not appear to be probable for another very stark reason. If appellant/Sunil was arrested from the place of recovery and brought to police station, there would have been no reason for letting him go free on the ostensible reason of the family prestige being sullied.

16. For eight days, the victim had been missing and was in the company of the appellants. Ornaments and cash were also missing from the house of P.W. 6. In such an event, the aforementioned explanation of the delayed FIR does not appear to be acceptable.

17. Even otherwise, if P.W. 6 would have agreed not to lodge any case against the appellants, the Officer-in-Charge of the concerned police station ought not to have allowed appellant/Sunil to have walked out without there being any case registered against him.

18. The whole story, therefore, of the



recovery of the victim along with appellant/Sunil, thus, appears to be imaginary.

19. Apart from this, it has been argued that even the victim (P.W. 1) and her father (P.W. 6) have not made any consistent statement at the Trial.

20. The Investigating Officer has not been examined and only one Jay Kishun Yadav (P.W. 8), who was posted in Nawanagar (Basudeva O.P.) Police Station was examined at the Trial, who had identified the formal FIR (Exhibit-4/1).

21. It has thus been argued that the prosecution version is an imaginary story by P.W. 6, which has been supported by the victim (P.W. 1) for reasons unknown, even when P.W. 1 admittedly is leading a married life with somebody else.

22. The learned counsel for the appellants wonders as to how lodging of this case and deposing before the Trial Court would have helped the family to salvage their reputation in the society; rather such case



would only tarnish the reputation and it has the potency of even disturbing the marital life of P.W. 1.

23. As opposed to the aforementioned contention, the learned Additional Public Prosecutor assisting the Court has submitted that all the discrepancies in the deposition of the witnesses is required to put aside and the allegation by the victim of all the three appellants having raped her for four days, should be considered and which actually has been considered by the Trial Court. The victim was a minor when such an occurrence had taken place and, therefore, the Trial Court has rightly convicted the appellants under Sections 363, 366A and 376D of the Indian Penal Code and Section 6 of the POCSO Act, 2012.

24. On going through the records of this case, we find the afore-noted arguments of the learned State counsel to be over-simplification of facts and very misplaced.



25. The fact that the case was lodged after seven months of the victim having gone missing, is in itself a circumstance which cannot be ignored.

26. Immediately after the recovery of the victim on 20.04.2014, she narrated about the entire occurrence to P.W. 6, but still no case was filed against the appellants. Was that acquiescence or acceptance of the fact that even though the victim had gone out of the house on her own, perhaps because of her carrying an affair with appellant/Bhola, and then agreed to come back home after abandoning such relationship.

27. The story of the appellants demanding rupees five lakhs or pressurizing the father (P.W. 6) to handover the victim to them, in that background appears to be absolutely unbelievable.

28. Had it been true, P.W. 6 would have filed some complaint against the appellants.

29. Surprisingly, P.W. 6 has gone on record to state that later, after the recovery of the victim, he



had filed a case of demand of ransom from him by the appellants; but in that case, he had withheld the fact of kidnapping of his daughter. Nothing is known about the status of the afore-noted case. Even if it were true that a case of that kind was filed, not talking about the entire occurrence of the victim having been kidnapped, kept in a moving truck for four days and then having been brought to a hospital from where she was recovered, only suggests that an imaginary story was spun by the prosecution, perhaps for the purposes of keeping the appellants, especially, appellant/Bhola at bay and not insisting for continuing the relationship which he had developed with the victim.

30. It appears that the victim came out of her house with cash and jewellery, but later, when she ran out of her cash or her plan with the appellants having been busted, she came back home.

31. Does this therefore reflect that only in order to protect the marriage of the victim with



somebody else, this case has been lodged?

32. On carefully examining the deposition of the victim, her statement does not inspire confidence.

33. Though in her examination-in-chief, she has repeated the allegation of all the appellants having raped her and later after her recovery of the appellants demanding rupees five lakhs from her father, but the sequence of events narrated by her makes her statement very doubtful.

34. Though she has denied of having any truck or alliance with the appellants but she knew about the relationship between appellants Sunil and Bhola. From her statement, it also appears that Bhola and Sunil had several occasion to visit the house of the victim.

35. It appears that P.W. 6 deals in sale and purchase of food-grains whereas the brother of the victim, who has been examined as P.W. 2, earns his living by loading and unloading grains on vehicles.

36. Appellant/Sunil is said to be a truck



driver, whereas appellant/Bhola is a cleaner. Both are related to each other as well.

37. Nothing is known about the relationship of Chhotu Yadav, who also has been named in the FIR as also by the victim (P.W. 1) and the informant (P.W. 6).

38. The victim was subjected to medical examination, the report of which only suggests that she did not have any injury on her person when she was examined. This does not help either the appellants or the prosecution for the reason that the case has been lodged after seven months and later the victim was married to someone else and had been residing in her matrimonial home.

39. Two of the Doctors, who were part of the medical team, viz., Dr. Gita Kumari and Dr. Anil Kumar Singh have been examined as P.Ws. 4 and 5. Dr. Pramod Kumar Kanaujiya (P.W. 9) has only proved the age of the victim on the date of the examination. The



age of the victim was assessed to be 16 to 17 years. This assessment, therefore, justifies the Trial to be held by the Special POCSO Court for the victim would be a minor at the time of the occurrence.

40. With the non-examination of the I.O., no fact which would have been necessary to take the prosecution case to a logical conclusion, could be unraveled and this has caused serious prejudice to the appellants.

41. Similarly, the parents of the victim have made totally contradictory statements, with respect to kidnapping of the victim, her being kept in confinement and then raped by three of the appellants.

42. There is no evidence with respect to kidnapping of the victim. We say so for the reason that the victim at one point claimed that she was gagged and taken away from the house, whereas at some other occasion, she alludes to her having been enticed away.

43. If she had not come out of the house



on her home, who had taken away the cash and jewellery which could be detected by P.W. 6.

44. The parents and brother of the victim were present in the house when the appellants are said to have taken away the victim.

45. When and how, but remains under wraps.

46. We cannot but reject the entire prosecution story as a product of the fecundity of the mind of the collaborators.

47. We are surprised as to what was perceived by the Trial Court for recording conviction under Sections 366A and 376D of the IPC and Section 6(1) of the POCSO Act, 2012 and sentencing the appellants so severely.

48. There appears to be total non-application of mind on the part of the Trial Court as well.

49. We find the Trial Court judgment to be absolutely perverse and not fit to be sustained in the



eyes of law.

50. The prosecution case has failed miserably. The charges against the appellants have not been proved at all.

51. For the reasons aforementioned, the conviction of the appellants, therefore, under all the counts is set aside and the appellants are acquitted of the charges levelled against them.

52. Both the appeals are allowed.

53. It is informed by the learned Advocates that all the three appellants are in jail. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

54. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

55. The records of this case be returned to the Trial Court forthwith.

56. Interlocutory application/s, if any, also



stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/suarav-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 14.12.2023 |
| Transmission Date | 14.12.2023 |

