

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.257 of 2017**

Arising Out of PS. Case No.-30 Year-2015 Thana- MAHILA PS District- Darbhanga

Ram Kumar Sah son of Late Fakira Sah, resident of Village- Khirma, P.S.-
Kewati, District- Darbhanga.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 362 of 2017

Arising Out of PS. Case No.-30 Year-2015 Thana- MAHILA PS District- Darbhanga

Birendra Yadav S/o Ram Briksha Yadav, Resident of Mohalla-Belashankar,
P.S.-L.N.M.U., District-Darbhangha.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 306 of 2018

Arising Out of PS. Case No.-30 Year-2015 Thana- MAHILA PS District- Darbhanga

MD. SHAMIM @ CHHOTU S/o Md. Mustafa Resident of Mohalla Naya
Taol , Sunderpur, P.S. L.N.M. University Campus, Distt.- Darbhanga.



... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 257 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv
Mr.Md.Imteyaz Ahmad, Adv
Mr. Ritwik Thakur, Adv
Mrs. Vaishnavi Singh, Adv
For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 362 of 2017)

For the Appellant/s : Mr.Pankaj Kumar Das, Adv
Mr. Dhananjay Kumar, Adv
For the State : Mr. Sujit Kumar Singh, APP

(In CRIMINAL APPEAL (DB) No. 306 of 2018)

For the Appellant/s : Mr.Md. Kamran, Adv
For the State : Mr. Binay Krishna Spl. PP

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-07-2023

The appellants have preferred these appeals under Section 374(2) of the Code of Criminal Procedure against a judgment of conviction dated 23.01.2017 and an order of sentence dated 27.01.2017 passed by the learned 1st Additional Sessions Judge cum Special Judge (SC/ST POA Act), Darbhanga in Sessions Trial No. 347 of 2015 arising out of Sadar Mahila P.S. Case No. 30 of 2015, whereby and



whereunder the appellants have been convicted and sentenced as
under :-

**Appellant Ram Kumar Sah in Criminal Appeal (DB) No.
257 of 2017**

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 376(D) of the IPC	Imprisonment for life	Rs. 15,000/-	RI for Six months

**Appellant Birendra Yadav in Criminal Appeal (DB) No. 362
of 2017**

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 376(D) of the IPC	Imprisonment for life	Rs. 15,000/-	RI for Six months

**Appellant Md. Shamim @ Chhotu in Criminal Appeal (DB)
No. 306 of 2018**

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
under Section 376(D) of the IPC	Imprisonment for life	Rs. 15,000/-	RI for Six months

2. The victim’s name is not being disclosed in the



present judgment and is being described as the victim (PW-6).

3. A *fardbeyan* recorded by Sub-Inspector of Police Mahila P.S. Darbhanga, on 20.05.2015 at 9:30 A.M. at a petrol pump (Shyam Auto Sale) situated at Baghmore, is the basis for registration of the concerned Sadar Mahila P.S. Case No. 30 of 2015, for commission of the offences punishable under Section 376 (G) of the I.P.C. and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. She alleged in her *fardbeyan* that on 18.05.2015, at about 8 P.M., she had left Delhi for Muzaffarpur by train and had reached Muzaffarpur at about 8-9 pm. She, thereafter, reached Darbhanga bus-stand as she had to go to Tata in a bus to see her children. At the bus stand at Darbhanga, she met an auto rickshaw driver whom she requested to take her to Darbhanga railway station. The victim boarded the tempo (auto rickshaw) for Darbhanga railway station. The victim asserted in the *fardbeyan* that she started interacting with the auto rickshaw driver on her way to the railway station, in course of which the auto rickshaw driver disclosed to her his full details e.g. his name and address, as “Md. Shamim @ Chotu, son of Md. Mustafa of village- Nayatola, Sandalpur, Bela Thana, Mithila



University, District-Darbhanga.” The said Md. Shamim is the appellant in Cr. Appeal (DB) 306 of 2018 who, instead of taking the victim to the railway station is said to have taken her into a room of a petrol pump where two persons were already present. Both the persons present in the room sexually assaulted her, one by one. In the meanwhile, the appellant Md. Shamim left the place. After about an hour, the appellant, Md. Shamim returned and in the same room, he committed rape upon her. Despite the fact that she raised outcries for help, no one came to rescue her. Based on the utterances of the accused persons in course of mutual conversation, the victim could learn that the other two were "Ram Kumar, son of Fakira Saw, resident of Khirma Police Station, Keoti, District- Darbhanga” and “Birendra Yadav, resident of Mohalla-Bela, District- Darbhanga,” both of whom were the staff at the petrol pump. In the next morning, some people came at the petrol pump and police also arrived and whereafter her *fardbeyan* was recorded. According to her, the accused Birendra Yadav (appellant) in Cr. Appeal (DB) No. 362 of 2017 had left the place of occurrence whereas two others were present and attempted to flee away but they were apprehended by the police. Based on the allegation made in the *fardbeyan*, the aforesaid F.I.R. was registered against three



persons namely Md. Shamim, Ram Kumar and Birendra Yadav.

The victim was subjected to medical examination on 21.05.2015. The Medical Board constituted to examine her reached a conclusion that there was no positive evidence to suggest commission of recent sexual intercourse with her, or without her consent.

5. The police submitted chargesheet on 02.11.2015 whereupon cognizance was taken of the offences punishable under Section 376-D of the I.P.C. and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. After completing the formalities under Section 207 of the Cr.P.C, the case was committed to the court of Sessions for trial. Charges were framed against these appellants for commission of the offences punishable under Section 376-D read with Section 34 of the I.P.C. and Section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. Appellants pleaded not guilty and claimed to be tried.

6. At the trial, altogether 14 witnesses came to be examined including Dr. Raj Shri Kumar (PW-1) the Doctor, who was a member of the Medical Board constituted to examine the victim. Another doctor, Dr. Vijay Pratap Singh, who had



examined the appellants, Ram Kumar and Md. Shamim @ Chotu, on the same day i.e. 21.05.2015 deposed at the trial as PW-2. In his opinion, there was no positive evidence to suggest performance of recent sexual intercourse with emission by them, though possibility of previous sexual intercourse could not be ruled out. PW-3, PW-4 and PW-5 did not support the prosecution's case and accordingly, they came to be declared hostile at the instance of the prosecution.

7. The prosecutrix was examined as PW-6 on 03.09.2016. From her deposition, as available on record, it appears that she disclosed to the Court that she had come from Katihar where her mother lived by putting a plastic sheet under a tree as shelter which had no significant mark of location or situation and that she had come to depose alone. She supported in her evidence the prosecution's case of her being taken to the petrol pump by the auto rickshaw driver [the appellant Md. Shamim of Criminal Appeal (DB) No. 306 of 2018]. She deposed that the auto rickshaw driver, after talking to the staff of the petrol pump, had committed rape upon her, locked the victim inside the room and thereafter he called two staff of the petrol pump viz. Birendra Yadav and Ram Kumar, who afterward committed rape upon her. She deposed at the trial that



on hearing her outcry, the police had arrived whereupon two out of three appellants were apprehended. She was later brought to the police station where her *fardbeyan* was recorded by a police officer.

8. There are few patent contradictions between the story narrated in the *fardbeyan* by the victim (PW-6) leading to registration of F.I.R. and her deposition at the trial. Firstly, according to the First Information Report and the *fardbeyan*, the victim's *fardbeyan* was recorded at the petrol pump (Shyam Auto Sale), Baghmore whereas according to the deposition of PW-6, the victim was brought firstly to the Vishwavidyalaya Police Station and thereafter taken to Mahila Police Station where her statement was recorded where she had disclosed all the facts to the police officer. Secondly, according to her *fardbeyan*, the auto rickshaw driver (appellant Md. Shamim) had taken her to a room at the petrol pump where two persons were present who had committed rape upon her first and in the meanwhile, the auto rickshaw driver had left the place and when he (the appellant Md. Shamim) returned, he also committed rape on her. In her deposition at the trial on the other hand, she testified that Md. Shamim had committed rape upon her first and afterward he called two staff of the petrol pump who also



committed rape upon her. There is yet another aspect which is of significance; in her *fardbeyan*, she had descriptively disclosed the name and address of the auto rickshaw driver (Md. Shamim), which she had learnt from him only. She, however, could not disclose the name of Md. Shamim while deposing at the trial. She further deposed at the trial that one day prior to the date of occurrence at Darbhanga, she was at Muzaffarpur from the morning till night. She also deposed that she had disclosed to the police that on 18.05.2018, she had left Delhi for Muzaffarpur by Vaishali Express and she had reached Muzaffarpur on 20.5.2015. In her cross-examination, she further deposed that at about 1:30 A.M. in the night, the police had taken her to the police station whereafter, she was taken to Mahila Police Station. She reiterated that her *fardbeyan* was recorded at Mahila Police Station and no such statement was recorded prior to that. She also deposed that all the three persons had been apprehended and brought to the police station. She had to stay at the police station for 6-7 days, she deposed.

9. In our considered view, the evidence of the Investigating Officer assumes significance in the present case, in the light of manifest contradictions in the evidence of the victim and her *fardbeyan* which was recorded by the police. The



Investigating Officer (PW-14) deposed *inter alia* that the clothes which the victim was wearing were seized for scientific examination. *Janghiya* and *pyjama* of appellant Ram Kumar were seized and a second seizure list was prepared. A *Jeans Pant* of the appellant Md. Shamim was also seized and a third seizure list was prepared. She also deposed that witnesses Kaushal Kumar (PW-3), Shatrughan Sah (PW-4), and Ganesh Choudhary (PW-5) had supported the prosecution's case stating that the two staff of the petrol pump and the auto rickshaw driver had committed rape upon the victim. We have already noticed hereinabove that Kaushal Kumar (PW-3), Shatrughan Sah (PW-4) and Ganesh Choudhary (PW-5) did not support the prosecution's case and accordingly, they came to be declared hostile at the instance of the prosecution. Ramashish Mahto was not examined at the trial.

10. Further, the I.O. also deposed that the seized articles were sent for examination to the forensic science laboratory. In her cross-examination, she deposed that subsequently, the appellant Birendra Yadav had surrendered and had disclosed to her that the auto rickshaw driver had brought the girl to the petrol pump where he worked as an employee. In her cross-examination, she further deposed that the information was



received about the occurrence between 12 to 1 A.M., and she had reached the place of occurrence at 9:30 A.M. and that she had taken no action before recording of the *fardbeyan* soon after receiving the information in the night about the occurrence. It is worthwhile mentioning at this juncture that the distance of the Vishwavidalaya Police Station was 2 K.M. from the place of occurrence where according to the prosecution's case, the victim was taken first from the place of occurrence. According to I.O., she did not enquire during her investigation as to why had the victim come from Muzaffarpur to Darbhanga. The victim had disclosed to the Investigating Authorities that she had started for Muzaffarpur from Delhi on 19.05.2015 at about 9 A.M. The I.O. declined that the victim had ever told her that she had come to Darbhanga to meet her mother.

11. PW-7 and PW-8 are seizure list witnesses, who proved seizure of *Janghiya* and is a formal witnesses. PW-9, also a seizure list witness did not support the seizure of any article in her presence and deposed that she was made to put her thumb impression by a police officer. PW-10 is a seizure list witness of the seizure of the apparels of the victim, who proved the seizure.

12. PW-11, another formal witness proved seizure of the



jeans pant of one of the accused persons. PW-2, also a seizure list witness proved seizure of the *jeans pant*. PW-13, a female constable produced before the trial court a sealed envelope received from the Forensic Science Laboratory, Bihar containing *Janghiya*, *jeans fullpant* and *salwar*, marked as A, B and C respectively.

13. After closure of the evidence of the prosecution's witnesses, the trial court questioned the appellants so as to give them an opportunity to explain the circumstances emerging against them at the trial. The appellants denied the circumstances against them and answered the questions in negative. Three defence witnesses were examined for the appellant Birendra Yadav. On perusal of the said depositions, we gather that the said defence witnesses testified at the trial that Birendra Yadav was not present at the place of occurrence and he was rather present in a ceremony relating to the marriage of the daughter of his namesake Birendra Yadav (DW-2).

14. The trial court, after having appreciated the evidence adduced at the trial has concluded that the prosecution was able to establish beyond all reasonable doubts commission of offences punishable under Section 376D read with Section 34 of the I.P.C. and Section 3(2)(v) of of the Scheduled Castes and the



Scheduled Tribes (Prevention of Atrocities) Act, 1989 and has sentenced them to undergo imprisonment and pay fine as noted above.

15. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant Ram Kumar has submitted that though the victim disclosed the name of the appellants Ram Kumar and Md. Shamim with their respective addresses, police stations and the districts, she expressed her inability to recollect even their names while deposing at the trial. He has further submitted that as per her evidence, a day earlier, she (the victim) had reached Muzaffarpur where she had stayed from the morning till night. She had further stated to the police that on 08.05.2015 at about 8 P.M., she had left Delhi for coming to Muzaffarpur by Vaishali Express and reached Muzaffarpur on 20.05.2015. She had gone to her house as one of her children was with her *Diyadin* (sister-in-law) while the other was with her and she had returned with her child. She further deposed that when she had deboarded the train at Muzaffarpur at about 8:00 pm, she had stayed in her village *Tandwa* for the whole night and on the next day, she had come to Darbhanga to meet her mother Ganeshi Devi (not examined). In her deposition, the victim had stated that her mother was living in the orchard of



Darbhanga *Raj* near the bus stand. He contends that the campus of *Raj* and the bus stand are contiguous. He has emphasized on the contradictions in the evidence on the point of arrival of police at the place of occurrence, since she deposed in her evidence that the police had arrived at 1-1:30 A.M. and she was taken to the police station at 1:30 in the night. Mr. Thakur has further submitted that the medical evidence does not corroborate the prosecution's case of commission of gang rape by three persons and contends that the victim does not at all appear to be a trustworthy witness. He has submitted that for wrong reasons out of business rivalry, a false case appears to have been instituted by planting the so called victim.

16. Learned Additional Public Prosecutor appearing on behalf of the State has submitted that minor contradictions in the prosecution's narrative is of no significance. Fact remains, he argues, that the victim has fully supported the prosecution's case of commission of gang rape by these appellants. The finding of conviction is based on correct appreciation of the evidence adduced at the trial, particularly of the victim herself, he contends.

17. 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 made on behalf of the parties.

18. In the present case, the victim has alleged commission of gang rape by three persons in one night, one by one, in a room, next to a petrol pump. The victim was examined by a Medical Board, on the very next day, on 21.05.2015. The Medical Board opined that there was no sign of recent sexual intercourse with her. No injury was found on the person of the victim upon examination by the Medical Board. It is true that it is settled legal proposition that the accusation of rape is not necessarily required to be corroborated by a medical evidence to bring home the charge of commission of rape at the trial. It is equally true, however, that if the medical evidence does not at all support the prosecution's narrative, it becomes the duty of the court to consider the evidence of a prosecutrix/victim with due care, caution and circumspection. If the evidence of victim of rape is found to be trustworthy, the victim appears to be truthful without any embellishment, conviction for commission of rape can be recorded, though not supported by the medical evidence. With these settled principles, we need to examine in the present case as to whether the victim can be said to be a truthful and reliable in her conduct during the investigation and



at the trial that and whether, based on her evidence alone, despite the accusation not being corroborated by the medical evidence, the impugned finding of conviction recorded by the trial court can be upheld.

19. To begin with, it would be apt to scrutinize the *fardbeyan* itself. According to the F.I.R., the *fardbeyan* was recorded at 9:30 A.M. at the place of occurrence when the police had first arrived. It has come in the evidence of the victim at the trial that as a matter of fact, the police had come between 12:00-1:00 A.M. at the petrol pump wherefrom she was taken to Vishwavidyalaya police station and from there to Mahila Police Station. According to her, the *fardbeyan* was recorded at Mahila Police Station and not at the place of occurrence. The second significant aspect is that according to the *fardbeyan*, Md. Shamim (auto rickshaw driver) had brought her to the petrol pump and had thereafter taken to a room where two persons Birendra Yadav and Ram Kumar were already present. They raped her one by one and in the meanwhile, Md. Shamim had gone to some other place and returned after an hour and then committed rape upon her. The chain of events narrated by her in her evidence at the trial is materially different. She deposed at the trial that she was firstly raped by Md. Shamim and thereafter



two persons raped had her one by one in the room. Further, according to her, Md. Shamim (an appellant), while taking her from the bus stand to the place where she wanted to go, disclosed to her not only his name but also his parentage, his place of residence with the police station and the district. Furthermore, according to her, after she was raped by two other persons, she could learn from them based on their mutual conversation, the names of Ram Kumar with his parentage, full address and that of Birendra Yadav with his address. To us, it appears to an unusual circumstance that the appellants, after having indulged in commission of such offence would disclose their identity to the extent of letting the informant know their parentage and addresses. Situated thus, the victim's version of the occurrence cannot be said to be far from embellishment and she does not appear to be truthful witness. Further, it is an admitted case of the prosecution that when the police had arrived at the place of occurrence at 9:30 am, the appellant Birendra Yadav was not present. As he was named in the FIR, he subsequently surrendered and was put to trial. He took specific plea of *alibi* by producing defence witnesses to make out a case in his defence that he was somewhere else, invited in connection with marriage function of someone known to him.



20. As has been noted hereinabove, PW-2 proved the medical reports prepared upon examination of two of the appellants on 21.05.2015, itself. The expert's opinion is consistent about them that there was no positive evidence of they having indulged in recent sexual intercourse with emission. Further, the report of the medical board which had examined the victim is to the effect that there was no sign of recent sexual intercourse with or without her consent. Furthermore, it is the case of the prosecution that the IO had reached the place of occurrence for the first time at 9:30 am, whereupon, she had recorded *fardbeyan* of the informant and apprehended two of the appellants, namely Md. Shamim and Ram Kumar. It is the evidence of the victim on the other hand, that she and the appellants Ram Kumar and Md. Shamim were taken to the Vishwavidalaya P.S. from the petrol pump in the night between 12:00-1:00 am. Taking into account the entire evidence on record together, we find that there are material contradictions in prosecution's case as disclosed by the victim in her *fardbeyan* and her deposition at the trial as regards the manner of occurrence. The claim of the victim that the accused persons were disclosing their names and addresses to her before or after commission of the offence does not appear to be truthful.



Further there is no evidence as to how the police were informed about the occurrence pursuant to which they arrived at the petrol pump. According to the investigating officer she had learnt about the occurrence. The distance between the Vishwavidalaya Police Station and the place of occurrence has been mentioned in the FIR as 2 Kilometers. What made the police to reach the place of occurrence at 9:30 am is a question which has remained a mystery. These circumstances, coupled with the fact that the medical evidence contradicts the accusation of gang rape against these appellants punishable under section 376-D of the Indian Penal Code create reasonable doubt about veracity of the prosecution's case. For the same reason, we are of the considered view that the charge of commission of offence punishable under section 3(2)(v) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, cannot be said to have been established at the trial, based on the evidence adduced at the trial.

21. For the reasons noted above, the appellants stand acquitted of the charges for the offence punishable under section 376D of the Indian Penal Code by giving them benefit of doubt.

22. Accordingly, the impugned judgment of conviction dated 23.01.2017 and order of sentence dated 27.01.2017 passed



by the learned 1st Additional Sessions Judge cum Special Judge (SC/ST POA Act), Darbhanga in Sessions Trial No. 347 of 2015 arising out of Sadar Mahila P.S. Case No. 30 of 2015, is set aside.

23. These appeals are allowed.

24. The appellants are in custody. Let them be released from the jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Ranjan/Kundan

AFR/NAFR	NAFR
CAV DATE	NA
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