

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2801 of 2019

In
CRIMINAL APPEAL (DB) No.106 of 2019

Arising Out of PS. Case No.-40 Year-1997 Thana- GORAUL District- Vaishali

Rajkishore Bhagat, aged about 42 years, Male, Son of Dinesh Bhagat
Resident of Village-Mathnamal, P.S.-Goraul, District-Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 326 of 2019

Arising Out of PS. Case No.-40 Year-1997 Thana- GORAUL District- Vaishali

Mahesh Bhagat, aged about 63 years, Male, son of Late Parmeshwar Bhagat
Resident of Village - Mathna Mal, P.S. Goraul, District-Vaishali (Hajipur)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2801 of 2019)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Vipin Kumar Singh, Advocate
Mr. Anirudh Kumar Sinha, Advocate
Mr. Prashant Kashyap, Advocate

For the State : Ms. Shashi Bala Verma, Spl. P.P.

(In CRIMINAL APPEAL (SJ) No. 326 of 2019)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Advocate
Mr. Vipin Kumar Singh, Advocate
Mr. Anil Kumar Singh, Advocate

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 22-10-2024

Heard the parties.

2. These appeals have been preferred against the
judgment dated 19.12.2018 and order dated 21.12.2018 passed



by learned Fast Track Court, Vaishali at Hajipur in Sessions Trial No. 348 of 2004 whereby and whereunder the appellants have been held guilty for committing offences and have been convicted under Sections 366, 368 and 120B of the Indian Penal Code and sentenced to undergo R.I. for a period of ten years and a fine of Rs. 10,000/- each for the offence committed by them under Section 366 of the Indian Penal Code.

3. As per the prosecution case, on 11.02.1997 three accused persons namely Prabhu Singh, Rajkishore Bhagat and Mahesh Bhagat alongwith two unknown persons came to the house of the informant situated at village Mandawar, District Dhanbad where she lived along with her mother and brother. The accused persons stayed at her house saying that some of them have to appear in the interview which is scheduled to be held on 12.02.1997 in Bokaro Thermal Power Plant. All the accused persons after taking breakfast went out and returned in the evening. They stayed on 12.02.1997 in the night saying that they would return next day i.e. on 13.02.1997. In the night between 12-13/2/1997, when the informant was sleeping in another room along with her nephew, the accused persons made her unconscious by injecting some intoxicated drug into her body and thereafter she was kidnapped and brought by a tempo



to Phulwari Sharif in Patna. She was kept in the house of Akhileshwar Bhagat for 7 days and during this period she was raped by Prabhu Singh. After 7 days accused Rajkishore Bhagat, Mahesh Bhagat, Raghunath Bhagat & Raghuvir Bhagat came to the house of Akhileshwar Bhagat and took her to the house of Raghuvir Bhagat in the evening. She was kept confined in the house of Raghuvir Bhagat for 10 days and during this period she was raped by Prabhu Singh. After 10 days Prabhu Singh, Mahesh Bhagat, Rajkishore Bhagat and Raghuvir Bhagat shifted her to another house where she was raped by Prabhu Singh. On 04.03.1997, the accused Prabhu Singh came in the room in the state of intoxication and after committing rape on her, he slept. The informant in the night while other inmates were sleeping, fled away and any how managed to reach Mahua and from there to Hajipur at the house of her sister and brother-in-law namely, Jagarnath Singh. The informant told them about the occurrence who informed her brother Ashok Singh. Her brother came to Hajipur and then she was taken to Dhanbad where her mother had already lodged an FIR regarding her missing but the Dhanbad Police did not take any action on the FIR lodged by her and then she had no option but to come back to Hajipur and in the court of C.J.M. where she filed complaint case no. 545 of



1997 which was forwarded to officer-in-charge Goraul Police Station for registering and instituting a case under section 156(3) Cr. P.C. and thus an FIR was lodged vide Goraul P.S. Case No. 40 of 1997 dated 16.04.1997 against all the five accused persons. After completing the investigation of the aforesaid FIR, the I.O. of the case submitted charge-sheet against five accused persons and cognizance was taken in the case against Prabhu Singh, Raghubir Bhagat, Mahesh Bhagat, Raghunath Bhagat, Akhileshwar Prasad @ Munna vide order dated 27.02.2011 and the case was committed to the Court of Sessions Judge, Vaishali, Hajipur. The I.O. of the case has submitted charge-sheet in the case vide C.S. No. 18 of 99 dated 31.01.1999 showing one of the accused namely Prabhu Singh as an absconder and charge has been framed only against five accused persons namely Raghunath Bhagat, Raghubir Bhagat Mahesh Bhagat, Raghunath Bhagat, Akhileshwar Prasad @ Munna.

4. During course of trial one of the accused Raghunath Bhagat died and thereafter only four accused persons including the appellants faced trial. Two of the accused persons namely Akhileshwar Bhagat and Raghuvir Bhagat were acquitted and remaining two accused persons namely Mahesh



Bhagat and Rajkishore Bhagat (appellants) were convicted and sentenced to R.I. for 10 years.

5. The date of occurrence in the present case is the night of 12/13 February, 1997 at village Bathana Mall, P.S. Goraul, District-Vaishali. The prosecution had been initiated on the complaint of Ahilya Kumari @ Punam. The complaint was filed on 01.04.1997 and F.I.R. vide Goraul P.S. Case No. 40 of 1997 was registered under Section 156(3) of the Indian Penal Code.

6. In the trial, the prosecution has examined eight witnesses. P.W.1 Sanjay Kumar Singh, P.W. 2 Suresh Sah, P.W. 3 Narmdeshwar Prasad, P.W. 4 Kashi Bhagat, P.W. 5 Ram Prit Bhagat, P.W. 6 Sita Divi (mother of the victim) P.W.7 Ahilya Kumari (the victim girl) and P.W. 8 Jagarnath Singh.

7. P.Ws. 1, 2, 4 and 5 have been declared hostile. P.W. 3 had denied any knowledge about the occurrence. P.W. 6 Sita Devi, who is the mother of the victim has supported the prosecution case. She has said that Ahilya Kumari aged about 15 years, was sleeping in the house and in the morning it was discovered that she was missing. In the night of the occurrence, Prabhu Singh, Akhileshwar, Raj Kishore Bhagat- appellant, Mahesh Bhagat- appellant, Raghubir Bhagat had stayed in her



house. Prabhu Singh, who is the brother-in-law (sala) of Angad Singh who is the son of P.W.6 and brother of the victim P.W.7. On search, the victim could not be recovered but afterwards, her son-in-law Jagarnath Singh who resides at Hajipur informed that her daughter has arrived at his residence and thereafter, her son namely, Ashok Singh went there and brought P.W.7 to Dhanbad. Ahilya Kumari, P.W.7, told her mother that she was forcibly taken to Phulwarisharif, Patna by Prabhu Singh along with other accused persons and Prabhu Singh committed rape with her. Thereafter, Prabhu Singh brought her at Muzaffarpur the house of his Fua where she was kept and was continuously raped by Prabhu Singh. She was also taken by Prabhu Singh to his house from where she fled away.

8. In her cross-examination, P.W. 6 has denied the knowledge about the case lodged by Rajkishore Bhagat on 06.03.1997. P.W. 6 in her cross-examination has said that she does not know where the victim is now residing or whether she was married with Prabhu Singh or was residing with Prabhu Singh. P.W. 7 is Ahilya Kumari @ Ahilya Devi, the victim herself. She has deposed that she was unmarried and resides with her mother on the date of occurrence and she has supported the prosecution case and she was forcibly taken by Prabhu



Singh and other co-accused persons at Phulwarisharif, Patna. He was made unconscious by injecting some material and thereafter she was kept in the house of Akhilesh Prasad at Phulwarisharif and she was thereafter taken to Muzaffarpur and other places and was raped by Prabhu Singh.

9. About the appellants, it has been said that she was kept at the house of Raghubir Bhagat and Prabhu Singh forcibly obtained her signature on a blank paper and pressurized her to marry and threatened that if she did not marry, he will prepare the documents of marriage. Thereafter, the accused persons brought her to village Bathana Mall and getting a chance, she fled away on 04.03.1997 and reached the house of brother-in-law and sister who informed her family and took her to Dhanbad. She also has said that Raghubir Bhagat has lodged a false case that she was married with Prabhu Singh and after marriage she became pregnant. The Dhanbad Police has not registered a police case when her mother had made a complaint.

10. Initially, no cross-examination was done on behalf of the accused persons but an application for recall of the witness was filed which was allowed but the victim P.W. 7 did not appear for cross-examination. P.W. 8 Jagarnath Singh, is a hearsay witness. He has said that he has no knowledge where



Ahilya Kumari @ Ahilya Devi was residing and she is aged about 18-20 years.

11. It has been argued by learned senior counsel for the appellants that from the reading of the complaint and the evidence of P.W. 6 and P.W. 7, it will appear that P.W. 7, the victim had eloped with Prabhu Singh as she was in a relationship with Prabhu Singh. Prabhu Singh is the brother-in-law of P.W.7 and thereafter she travelled to different places willingly and after a case was filed by Ragkishore Bhagat, the present prosecution was lodged on the basis of a complaint case and there is no explanation for the delay in filing of the complaint. The date of occurrence being night of 12-13 February, 1997 whereas the complaint was filed on 01.03.1997. He also submits that the complainant/informant could not be cross-examined on behalf of the appellants and she has not appeared for cross-examination.

12. Learned Senior counsel for the appellants relies upon the judgment of the Hon'ble Supreme Court in the case of **Gopal Sharan vs. Satya Narayan** reported in (1989) 3 SCC 56 and in the case of **Rajesh Yadav and Ors. vs. State of UP** reported in (2022) 12 SCC 200.

13. Learned Senior counsel has submitted that since



P.W. 7 has not subjected herself to cross-examination in spite of the order of the trial Court, it is not safe to rely on her examination-in-chief. Since, the victim, who is P.W. 7 choose not to appear and get herself cross-examined, her evidence cannot be relied upon in the present case.

14. Except for P.W. 6, there is no material which can be considered in the present case as the evidence of P.W. 7 cannot be considered because she was not cross-examined.

15. The allegation against the appellants are that they had accompanied the main accused Prabhu Singh, who had taken away the victim P.W.7 and established sexual relation with her.

16. The evidence of P.W. 6 cannot be looked into in the present case. The evidence of P.W. 6 is of no value so far as the appellants are concerned because she has only said that the appellants had stayed in the house in the night when the victim girl disappeared. She has not seen the two appellants committing any overt act or having participated in the abduction/kidnapping of the victim girl and neither P.W. 6 nor P.W. 8 are witness to the allegation of abduction/kidnapping by the two appellants.

17. In my opinion, the conviction of the appellants



by the trial Judge cannot be maintained.

18. In view of the discussions made above, the conviction of the appellants by the trial Judge cannot be sustained and therefore, the same is set aside.

19. In view of the discussions above, both the aforesaid appeals are allowed. The conviction and sentence passed against both the appellants in Sessions Trial Case No. 348 of 2004 are set aside. Appellant of Cr. Appeal (SJ) No. 2801 of 2019 (Rajkishore Bhagat) and the appellant of Cr. Appeal (SJ) No. 326 of 2019 (Mahesh Bhagat) who are in jail custody should be released forthwith, if not wanted in any other case.

(Sandeep Kumar, J)

P. Kumar/Vikas

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.10.2024
Transmission Date	29.10.2024

