

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.137 of 2021

Arising Out of PS. Case No.-117 Year-2018 Thana- JHAJHA District- Jamui

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Dharmendra Kumar Yadav @ Dharmendra Yadav, Son of Munna Yadav
Resident of Village- Mahapur, P.S.- Jhajha, District- Jamui.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 153 of 2021

Arising Out of PS. Case No.-117 Year-2018 Thana- JHAJHA District- Jamui

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Rabindra Yadav, Son of Kheman Yadav, R/O Village- Mahapur, P.S.- Jhajha,
Dist- Jamui

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
CRIMINAL APPEAL (DB) No. 200 of 2021

Arising Out of PS. Case No.-117 Year-2018 Thana- JHAJHA District- Jamui

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Karu Yadav, S/o Late Chito Yadav, Resident of Mahapur, P.S.- Jhajha,
District- Jamui.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :



(In CRIMINAL APPEAL (DB) No. 137 of 2021)

For the Appellant/s : Mr. Satya Prakash Parasar, Adv.
Mr. G. Kumar, Adv.
Pramod Kumar, Adv.

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

(In CRIMINAL APPEAL (DB) No. 153 of 2021)

For the Appellant/s : Mr. Sunil Kumar Pathak, Adv.
Mr. Pramod Kumar, Adv.

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

(In CRIMINAL APPEAL (DB) No. 200 of 2021)

For the Appellant/s : Mr. Rajesh Kumar Sinha, Adv.

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

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-04-2024

All the three appeals (three appellants in all) have been heard together and are being disposed of by this common judgment.

2. We have heard Mr. Satya Prakash Parasar, Mr. Pramod Kumar, and Mr. Rajesh Kumar Sinha, the learned Advocates in the three appeals respectively and Mr. Dilip Kumar Sinha, the learned APP for the State in all the appeals.



3. All the three appellants have been convicted under Section 376D of the Indian Penal Code. The appellant/Dharmendra Kumar Yadav @ Dharmendra Yadav in Cr. APP. (DB) No. 137 of 2021 has additionally been convicted under Section 354B of the IPC, *vide* judgment dated 07.12.2020 passed by the learned Additional District & Sessions Judge-I, Jamui in Sessions Trial No. 237 of 2018 arising out of Jhajha P.S. Case No. 117 of 2018. By order dated 09.12.2020, they have been sentenced to undergo R.I. for twenty years, to pay a fine of Rs.20,000/- each and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 376D of the IPC. Appellant/ Dharmendra Kumar Yadav @ Dharmendra Yadav has been sentenced to undergo R.I. for seven years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 354B of the IPC. The sentences against appellant/ Dharmendra Kumar



Yadav @ Dharmendra Yadav have been ordered to run concurrently. The fine after its realization has been directed to be paid to the victim as part for compensation. Apart from the fine imposed on the appellants, the Trial Court, considering the need for consideration of the case of the victim under Section 357A of the Cr.P.C, has directed for payment of compensation to the victim by the DLSA, Jamui after calibrate. The appellants, however, have been acquitted by the charges under Section 67, 67A and 67B of the The Information Technology Act, 2000.

4. The victim (P.W.3) is said to have been gang-raped by the appellants and the act of rape was filmed by appellant/Karu Yadav, which was uploaded on social media.

5. The FIR has been lodged by the mother of the victim, who has been examined as P.W.
5. According to her, she had gone to visit Ram Navami fair on 25.03.2018, leaving her daughter (victim)/



(P.W. 3) and her son-in-law/Pankaj Kumar Yadav (P.W. 4) behind. When she came back from Jhajha after witnessing the fair, she found the door of her house open. She did not find her daughter and son-in-law. Since, it was 10:00 P.M. in the night, she tried to look for her daughter and son-in-law. After frantic search, when she reached near a school situated next to the Hanuman Temple, she found that her daughter (victim) was naked and her son-in-law injured. The appellants were raping her daughter (victim). One person was taking a photograph of the act. She had further alleged that after taking photographs, the pictures were uploaded on the social media. One person, viz., Karu Yadav had been keeping vigil outside the place where the occurrence was taking place. All of this she saw in the night. When the appellants saw her, they ran away after threatening her of serious consequences in case she went to the police station to lodge the case. For this fear, there was a delay in lodging the FIR.



6. On the basis of the aforementioned written report by P.W. 5 a case *vide* Jhajha P.S. Case No. 117 of 2018 dated 28.03.2018 was instituted against the appellants for the offences under Section 354B, 354C, 376(G) of the IPC and Section 67, 67A and 67B of the I.T. Act.

7. The police after investigation submitted charge-sheet against the appellants, whereupon they were put on Trial.

8. The Trial Court, after having examined nine witnesses on behalf of the prosecution, including the two doctors and the investigator, convicted and sentenced the appellants as aforesaid.

9. The two of the independent witnesses, *viz.*, Upendra Yadav and Sikandar Kumar Yadav (P.Ws. 1 and 2) have not supported the prosecution case and have been declared hostile.

10. The victim though has supported the



prosecution case and the act of rape against her but her evidence is far from being reliable. She has stated in her examination-in-chief that when her mother had gone to visit the local fair, appellant/Dharmendra Kumar Yadav called her husband to come out of the house. The husband of the victim did not come out. Thereafter, appellant/Dharmendra forcibly entered the house and caught her by her hair. Both, she and her husband were dragged out of the house. She was gagged by appellant/ Dharmendra. Thereafter, appellants/Dharmendra, Ravindra Yadav, Karu Yadav and Ranjeet and Akhilesh, who have not been put on trial, took the couple to an old school and pushed her husband inside the school. Akhilesh and appellant/Dharmendra and Ravindra started assaulting her and her husband, as a result of which, her husband started bleeding from his nose. Then, it has been alleged, appellant/Dharmendra asked her to undress. When she declined, her clothes were torn.



Appellant/Dharmendra, thereafter, committed rape on her. Thereafter, the other accused persons also raped her. One Ranjeet Yadav, related to the victim and her mother, made a video. It was at that time that her mother arrived. Seeing her mother come to the P.O., all the appellants and others fled away.

11. P.W. 3 has denied that she is related to Ravindra Yadav. The house of the mother of the victim is surrounded by houses of other villagers. None of the neighbours had any bad relation with the family of the victim. However, none of them came out for the rescue of the victim. She had yelled for help when she and her husband were dragged out from her house. However, because of night, nobody responded to her call. She tried to bite appellant/Dharmendra but despite that, she was not spared. This fact she has stated before the learned Magistrate under Section 164 of the Cr.P.C. also.

12. No occurrence had taken place inside



the house. The occurrence had taken place at a school, which is situated about hundred yards away from her house. Ram Navami was being celebrated on the day of the occurrence. The Hanuman temple situated next to the school where the victim was raped was full of visitors. However, none came on the cries of the couple. The accused persons, according to the victim, did not allow her husband to leave the P.O.

13. Before the Trial Court, she has further stated various facts which appear to us to be very incoherent and unintelligible with respect to the sexual assault.

14. The police was informed by her parents. In the night of the occurrence, the police was not informed. The mother of the victim had gone to the police station on the next day. She had not accompanied her mother; neither had her husband accompanied the informant to the police Station.

15. P.W. 3 has further averred before the



Trial Court that after the occurrence, she went to her matrimonial home and came to the police station only thereafter. She had also spoken about one Ranjeet, her cousin with whom there was an issue of partition which had yet not been settled. She has denied the suggestion that because of that at partition of the property, a false case has been instituted against the appellants.

16. From an analysis of the deposition of the victim, what appears is that the victim and her husband were both pulled out of their house and perhaps it was more out of the desire of the accused persons to film the act of rape rather than to satisfy their lust.

17. The most surprising thing in her deposition is that she was dragged out and brought to a school near a temple which was full of visitors. The distance from her house to the place of occurrence is about hundred yards. It was only 10 O'clock in the night which is not a very late hour on the festival day,



especially when there are many persons in the temple situated next to the school where the victim was raped repeatedly.

18. Ranjeet, a cousin of the victim is said to have filmed the act of rape. This appears to be rather surprising. Ranjeet has not been put on Trial. Though from the evidence, it appears that one Bablu had deposited one CD said to be the film taken of the act of rape but in the absence of the requirements under Section 65B of the Evidence Act having been complied with, the same was not taken into account.

19. Who is Bablu and what was the film about remains completely unknown.

20. Ranjeet, we have taken notice, is the cousin of the victim and attributing such role to him raises eyebrows especially when the issue of partition with the family of Ranjeet is still pending consideration before the local Panchayat. The suggestion given to the victim is in this context but she has denied the same.



Thus, the story of the victim and her husband both having been dragged out of the house, attracting attention of no one; not even of the visitors in temple, create serious doubts.

21. The mother of the victim saw all the appellants raping the victim one after the other. This does not appear to be possible especially when she had arrived at the P.O.

22. It also appears to be rather strange that the mother of the victim would immediately see and notice that the film taken of the act, was made viral or uploaded on the Facebook. How did she know about it? Was it ever in circulation in the blogosphere? Nothing is known about.

23. In the presence of the mother, the act of rape had taken place. This appears to be rather strange. The appellants did not run away after seeing the mother of the victim; rather, as the allegation goes, they continued to rape the victim and then left. This



would have taken plenty of time. The story, thus, appears to be highly exaggerated. If the evidence of the victim is juxtaposed to the evidence of her husband, viz., Pankaj Kumar Yadav (P.W. 4), the story would become even more untrustworthy.

24. Pankaj Kumar Yadav (P.W. 4) has stated in his examination-in-chief that the dress of his wife/victim was cut by use of a knife. Thereafter, appellant/Dharmendra raped her. Ranjeet is said to have made a video. It was at that time that his mother-in-law had arrived and she took him and the victim back home. Thereafter, his father-in-law (P.W. 6) also arrived. Both of them i.e. P.W. 4 and victim were treated by a Doctor. The case was filed thereafter. This witness has further stated that the members of the family of the victim were not being allowed to come out from the house and, therefore, the case was lodged only when his father-in-law came back from Nepal. In his cross-examination, he has admitted that near the



P.O. there was a Hanuman temple where a fair had been organized and there were many people at that time in the temple complex. Deposing before the Trial Court, he had consulted his wife and he spoke only such things before the Trial Court which his wife had told him to say. He was also medically examined in a Government hospital at Jhajha. There is no reference about his medical examination. No medical report has been brought on record.

25. Appellant/Ravindra Yadav is said to be related to the Pankaj Kumar Yadav (PW4).

26. What is very amazing to note in his deposition is that he candidly expressed before the Trial Court that there was consultation with his father-in-law. It was decided as to who all have to be named in the FIR. It was only after such consultation and confabulation that the FIR was lodged.

27. What does this reflect?



28. The truth is not what meets the eye. In an event of woman having been raped by three persons and the act having been filmed by a relative, it would be really difficult to accept that before lodging the case, consultations would be held as to who should be named in the FIR. The other peculiar aspect of the evidence is that admittedly appellant/Ravindra is related to the husband of the victim, whereas the persons who had filmed the entire act is the cousin of the victim himself, who has not been put on Trial.

29. If the evidence of the victim and her husband are analyzed, it would appear that both of them have fallen prey to some evil desire of the family to frame the appellants. The attempt at doing so is absolutely machiavellian.

30. We do appreciate that in such cases, there would be some reluctance of the victim and her family to report the matter. However, there is nothing on record that the family was prevented from going to



the police station. The delay was only on account of taking a call about who to be made accused in this case. This is the reason for filing of a written report by the mother of the victim after three days of the occurrence.

31. The victim was examined by Dr. Veena Singh, (P.W. 7) on 31.03.2018. Obviously, such delay would have caused all evidence to have vanished. Nonetheless, no mark of violence were found either on her private parts or on the body. The old hymen was found to be ruptured. The vaginal swab tested negative for spermatozoa. The Doctor was careful enough in stating that before the medical examination, the victim had taken bath and had changed her clothes. Precisely for this reason, there was no recent sign of rape and therefore no definite opinion could be given whether rape had at all been committed on her.

32. Dr. Devendra (P.W. 8) on radiological examination, had found the victim to be twenty years of



age.

33. This takes us to the evidence of the investigator/Rakesh Kumar (P.W. 9). On 28.03.2018 he was posted at Jhajha police station. On that day, he received a written application by P.W. 5, the mother of the victim. Thereafter, the case was registered and investigation was taken over by him. He went to the P.O. and took the further statement of the informant. The P.O. was found to be a room in a school near the temple. Beyond the school and the temple complex, there was a road. After receiving the written report and taking over the investigation on 28.03.2018, P.W. 9 had visited the home of the victim and did not find either the victim or her husband. Their statements were recorded only on 30.03.2018 i.e. the date before the victim was subjected to medical examination. The victim had not stated before him that all the appellants had raped her one after the other. Pankaj Kumar Yadav (P.W. 4) had not stated before him that he started



bleeding from his nose and that his clothes were torn or that he was tethered to the window of the school. The informant (mother of the victim) had also not told the investigator that while searching for her daughter and son-in-law, she came on the road and from there, she heard the cries of her daughter which made her go to the place where the victim was being raped by the appellants. She had also not stated to have seen appellant/Dharmendra raping the victim. She did not state that she was attempted to be held back when the victim was being violated.

34. No part of the prosecution case especially with respect to the act of rape and holding back the victims in the school was stated before the investigator. In her further statement, the informant did not even claim to have seen the appellants, what to talk of having seen her raping the victim.

35. Similar is the situation with the evidence of the father of the victim, viz., Chhote Lal



Yadav (P.W. 6) who had not stated before the investigator about his son-in-law having arrived at his home or the victim and his son-in-law being alone in the house when the appellants had come and dragged them out and had raped the victim.

36. No part of the prosecution case thus was spoken by the witnesses before the investigator.

37. This being the fact scenario, it is again difficult to believe any part of the statements of the victim or the informant or the husband of the victim. It appears that because of some family dispute with Ranjeet, a case was filed where a dirty role has been attributed to the Ranjeet viz. filming the act of rape. The investigator did not find as to how the appellants were known to the victim or her family or her husband. They did not appear to be outsiders as all the witnesses know their names. Where did they run away? Where were the co-villagers and agnates? Whether any panchayati was convened ?



38. All these were issues which ought to have caught the attention of the investigator. The investigation is, to say the least, absolutely shoddy. The allegations are far-fetched and the manner in which the sequence of events have been narrated by the witnesses, they do not inspire confidence about the truthfulness of the prosecution.

39. We, for these reasons, do not feel inclined at all to affirm the judgment and order of conviction and sentence.

40. We, thus, set aside the judgment and order of conviction and sentence of the appellants and acquit them of the charges, giving them benefit of doubt and holding the victim, her husband and her parents to be doubtful witnesses.

41. The appellants are in jail. They are directed to be released forthwith from jail, if not required or detained in any other case.



42. All the appeals stand allowed.

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

44. The records of these appeals be returned to the Trial Court forthwith.

45. Interlocutory application/s, if any, also stands disposed off accordingly.

(Ashutosh Kumar, J)

(Khatim Reza, J)

manoj/sunil-

AFR/NAFR	NAFR
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