

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.267 of 2020

Arising Out of PS. Case No.-18 Year-2019 Thana- AZIMABAD District- Bhojpur

Bhuar Rawani, Son of Late Bijay Rawani, Resident of Village - Tarachak, P.S.
- Azimabad, District - Bhojpur (Ara).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 172 of 2020

Arising Out of PS. Case No.-18 Year-2019 Thana- AZIMABAD District- Bhojpur

Bhim Yadav, Son of Sri Bhagwan Yadav @ Bhagwan Singh, Resident of
Village - Tarachak, P.S. - Azimabad, District - Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In both the Appeals)

For the Appellant/s : Mr. Rahul Singh, Adv.

For the State : Mr. Abhimanyu Sharma, APP



CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 26-09-2024

Both the appeals have been taken up together and are being disposed off by this common judgment.

2. Mr. Rahul Singh, the learned Advocate has appeared for the appellant/Bhuar Rawani in Cr. Appeal (DB) No. 267 of 2020.

3. Mr. Prabhat Kumar Singh, the learned Advocate, who had filed the *Vakalatnama* on behalf of appellant/Bhim Yadav in Cr. Appeal (DB) No. 172 of 2020, has stated at the Bar that he has given "no objection" in this case.

4. There is, otherwise, no representation on behalf of appellant/Bhim Yadav in Cr. Appeal (DB) No. 172 of 2020.

5. However, Mr. Rahul Singh, the learned



Advocate representing appellant/Bhuar Rawani has assisted us in both the appeals.

6. The State, in both the appeals, has been represented by Mr. Abhimanyu Sharma, the learned Addl. Public Prosecutor.

7. Both the appellants have been convicted for the offences under Section 376(D) of the Indian Penal Code (*in short the IPC*) and Section 6 of the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act, 2012*) vide judgment dated 17.12.2019 passed by the learned 1st Addl. District & Sessions Judge-Cum-Special Court, POCSO Act, Bhojpur (Arrah) in POCSO Case No. 12 of 2019, arising out of Azimabad P.S. Case No. 18 of 2019. By order dated 19.12.2019, the appellants have been sentenced to undergo imprisonment for a minimum term of 20 years, to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer R.I. for six months for the offence under Section 376(D) of the IPC. They have



also been separately sentenced for life imprisonment with a fine of Rs. 10,000/- each and in default of which, to further suffer R.I. for six months for the offence under Section 6 of the POCSO Act, 2012.

8. Both the sentences have been ordered to run concurrently.

9. The victim (P.W. 1), an eleven years old girl, is alleged to have been raped by the appellants.

10. The F.I.R. was lodged by the father of the victim, who has been examined as P.W. 2. He has alleged that on 01.03.2019, while his daughter (victim) along with her friend (P.W. 3) had been scraping grass at about 04:30 P.M., both the appellants came from somewhere and raped the victim successively. On *hulla* raised by the friend of the victim (P.W. 3), one Girza Sah, a resident of the locality, turned up. Seeing him, the appellants ran away.

11. On the basis of the afore-noted written report, a case *vide* Azimabad P.S. Case No. 18 of 2019,



dated 01.03.2019, was registered for investigation for the offences under Section 376(D) of the IPC and Section 6 of the POCSO Act, 2012.

12. The police, after investigation, submitted *charge-sheet* against the appellants, whereafter cognizance was taken against them and the case was committed to the Court of *Sessions* for trial.

13. The Trial Court, after having examined five witnesses on behalf of the prosecution including the Doctor and the I.O., convicted and sentenced the appellants as aforesaid.

14. While assailing the judgment of conviction and order of sentence, it has been urged on behalf of the appellants that an absolutely false case has been lodged against them. In fact, the victim has clearly deposed before the Trial Court that she had made her statement under Section 164 Cr.P.C. on the asking of her father (P.W. 2). She has also denied that she could identify the appellants, if shown to her.



15. In this background, it has been urged that the case is false and, perhaps, there are several reasons for P.W. 2 to frame the appellants in this case. P.W. 2 himself is an accused of a murder case and a clear suggestion was given to him that because the appellants did not agree to depose in the Court of Law in favour of P.W. 2, they have been made accused in this case. Of course, such a suggestion was denied by P.W.2.

16. It has also been pointed out on behalf of the appellants that P.W. 2 is an active member of CPIML and there was some resentment against the appellants being members of the same party, but not giving any donation to the party.

17. It would be really necessary to examine the evidence of the victim (P.W. 1) in some detail.

18. Though the victim (P.W. 1), in her examination-in-chief, has clearly alleged rape by both the appellants, but, in her cross-examination, she has



stated that she cannot identify both the appellants and that she had made the statement before the Magistrate out of her own imagination and what was told to her by her father to speak.

19. The father of the victim (P.W. 2) has also supported the prosecution case, but his evidence is full of inconsistencies and is not in sync with the prosecution case. For the first time at the trial, P.W. 2 disclosed an additional fact, namely, that he learnt about the occurrence from his son, who had given a telephonic call to him. On such information by his son, he came to his house and found the victim seriously injured. There were swelling and inflammation on her body. He got saline water administered to her and only thereafter went to the police station to lodge the case. The victim was examined medically by the Doctor in a government hospital.

20. In his cross-examination, he has not given any detail of the date of birth of the victim. He



has but only stated that he has five children and the eldest daughter was born in the year 2001. The victim is the second daughter. No further detail could be provided by P.W. 2.

21. There was no relationship between the families of the appellants and P.W. 2.

22. P.W. 2 has admitted in his cross-examination that he was made accused in a case of murder of one Jyoti Prakash. One Satish Yadav of the same village, at the same point of time, was killed and, thereafter, afore-noted Jyoti Prakash was abducted and killed. P.W. 2 was named as an accused in the afore-noted case. Satish Yadav, the slain person, is stated to be a State level leader of CPIML.

23. Though P.W. 2 has denied that he is an active member of CPIML and that he has falsely framed the appellants because of their not giving donation to the party, but what clearly appears from his deposition is that he is either a member of a faction of CPIML or is



opposed to the politics of the CPIML. In any case, he was made an accused in case of murder of a CPIML activist. There could be a possibility of P.W. 2 belonging to a separate faction in the same party.

24. We have also noted the fact that the villager who had arrived at the scene of occurrence, viz., Girza Sah, has not been examined at the trial. Even the son of P.W. 2 (brother of the victim), who first gave information to P.W. 2, whereafter the case was lodged, has also not been examined.

25. The companion of the victim (P.W. 3) has also a different story to narrate. Though she admits of her having accompanied the victim to the field for scraping grass, but in her cross-examination, she has said something which is quite different from the prosecution version. According to the victim, after the incident of rape, she came back home and narrated about the incident to her mother; but P.W. 3, on the contrary, has deposed that after the appellants had



raped the victim, her parents arrived at the scene and took her to the Doctor. Her statement is not at all corroborative of what has been stated by both P.Ws. 1 and 2.

26. Apart from this, we have also taken note of the fact that P.W. 3 though accompanied the victim, but both the friends were scraping grass at some distance. They were not in the line of vision of each other. After they had been in the field for about half an hour, she heard some commotion. She, thereafter, ran away to her home and hid herself. She did not know actually what had happened thereafter.

27. With this deposition of P.W. 3, the entire prosecution case gets a jolt and the accusation gets busted.

28. That apart, in her cross-examination, P.W. 3 has also very candidly stated before the Trial Court that the father of the victim, viz., P.W. 2 had told her also as to what she should state before the Court



and she abided by the instructions of the father of the victim.

29. What more is left to disbelieve the prosecution case in its entirety?

30. We have also examined the evidence of Dr. Vijayata Prasad (P.W. 4), who examined the victim on 02.03.2019. The hymen was found to be ruptured. There is no opinion of P.W. 4 whether such rupture was of any recent origin. The vagina appeared to be admitting one finger tightly. There was no bleeding at the time when examination was conducted. The microscopic examination of vaginal swab revealed that there was no spermatozoa, either alive or dead. The age of the victim was assessed to be between 9 to 11 years. The final opinion of P.W. 4 was that she found no external or internal injury on the private part of the victim. She was not sure whether rape was committed or not. She categorically stated that she did not opine either that rape was committed or that it was not



committed.

31. This is, perhaps, most vague assessment of a Doctor, especially when the victim is subjected to medical examination a day after the alleged occurrence.

32. The Investigator (P.W. 5) though claims to have visited the place of occurrence and had also found vegetable crops trampled, but that by itself, would not signify anything. There could have been struggle because of some fight, but then, that is no evidence independently of other evidence to come to any conclusion.

33. We are also amazed at the disclosure of the Investigator that blood stained undergarment of the victim was found in the wheat field somewhere near the P.O. (Ext. 4). If that were so, the victim and her father would not have stated before the Trial Court that the blood stained clothes were carried in a wrapper and handed over to the police officer at the time of lodging



of the report.

34. The garment, so seized, is also said to have been sent for forensic examination, but it appears that there is no report of the forensic examination on record.

35. We have also no evidence to ascertain whether the appellants, who were arrested shortly, were put to any medical examination as contemplated under Section 53A of the Code of Criminal Procedure.

36. The Trial Court, on one day, when the lawyer for the appellants was not present, questioned the appellants. Both the appellants only stated that they had gone to purchase *ganja* (a narcotic) and while returning, they had seen the victim and P.W. 3 scraping grass. There was a verbal spat between them because the friend of the victim had abused them.

37. Thus for all practical purposes, no evidence points towards the participation of the appellants in the offence.



38. In the totality, the prosecution has failed to prove the case beyond all reasonable doubts.

39. There is yet another aspect of the matter which requires to be noticed.

40. Section 42 of the POCSO Act, 2012 provides that when an act or omission constitutes an offence punishable under the POCSO Act as also under various sections of the IPC, the sections having been enumerated in the provision and Section 67B of the Information Technology Act, 2000, then, notwithstanding anything contained in any law for the time being in force, the offender found guilty of such offence shall be liable for punishment only under the POCSO Act or under the IPC which provides for punishment which is greater in degree.

41. Section 376(D) of the IPC provides that the convict shall be sentenced for a term which shall not be less than twenty years, but which may extend to life, which shall mean imprisonment for the remainder of



that person's natural life and with fine. Under Section 6 of the POCSO Act, 2012, the punishment provided is the same, *viz.*, imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment of life, which shall mean for the remainder of life.

42. Thus, the Trial Court was required only to impose sentence in one of the Sections, *viz.*, Section 376(D) of the IPC or Section 6 of the POCSO Act, 2012.

43. We have noted this only to indicate that the Trial Court adopted a total mechanical approach in disposing off this case without giving due regard to the evidence on record.

44. We find the judgment impugned, referred to above, to be unsustainable in the eyes of law and, therefore, we set it aside.

45. Both the appellants are acquitted of all the charges levelled against them.

46. The appeals stand allowed.



47. Both the appellants are in jail. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

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

49. The records of these cases be returned to the Trial Court forthwith.

50. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Saurav

AFR/NAFR	NAFR
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