

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1697 of 2023

Arising Out of PS. Case No.-37 Year-2020 Thana- SIKRAUL District- Buxar

Priyanka Kumari, Daughter Of Suresh Paswan, Resident Of Village and P.O.-
Belhari, P.S.- Sikraul, District - Buxar.

... .. Appellant/s

Versus

1. The State of Bihar
2. Bhim Paswan, Son of Vishwanath Paswan Resident of Village - Belhari,
P.S.- Sikraul, District - Buxar.
3. Jhuna Paswan Son of Kamlesh Paswan Resident of Village - Belhari, P.S.-
Sikraul, District - Buxar.

... .. Respondent/s

Appearance :

For the Appellant/s	: Mr.Ramesh Kumar Singh, Advocate
For the Respondent nos. 2 &3	: Mr. Brij Mohan Kumar Singh, Advocate
	Mr. Dr. Sanjay Kumar Singh, Advocate
For the Respondent/s	: Mr.Syed Ashfaque Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 07-03-2024

1. Heard the parties.

2. The instant appeal has been filed for setting aside the judgment of acquittal dated 07.03.2022 passed by the learned Additional District & Sessions Judge-VI-cum-Special Judge, POCSO Act, Buxar in connection with POCSO Case No. 27 of 2021 (C.I.S. No. 27 of 2021), arising out of Sikraul P.S. Case No. 37 of 2020, whereby and whereunder the respondent nos. 2 and 3 have been acquitted of the offences punishable under Sections 354, 452, 380 of the Indian Penal Code (in short 'IPC') and Section 12 of POCSO Act, for which they were



charged.

3. Mr. Ramesh Kumar Singh, learned counsel appearing for the appellant submits that during trial, the prosecution examined altogether five witnesses, among them PW-1 and PW-2 were victims and they fully supported the case of prosecution and both the victims were below the age of 18 years at the time of occurrence and the mother of the victims, who was examined as PW-3, also supported the case of the prosecution. It is further submitted that PW-4, who is the youngest sister of the informant, was sleeping with her both the sisters (victims) and she herself witnessed the occurrence and before the trial court, supported the prosecution's allegation and PW-5, investigating officer, proved the formal FIR and deposed that there are two criminal antecedents against the respondent no.3 and he got the age certificate from Belhari Middle School to find out the age of one of the victims and according to his conclusion, the said victim was a minor girl. It is further submitted that as per trial court, there were six criminal cases against the respondent no. 3 namely Bhim Paswan but ignoring this fact as well as other material evidences, the respondent nos. 2 and 3 were wrongly acquitted of the offences charged and the evidence of prosecution witnesses was not properly appreciated



by the trial court and minor contradictions, which were probable due to various reasons in the testimonies of the prosecution witnesses, were only taken into consideration by the trial court while acquitting the respondents.

4. On the contrary, Mr. Brij Mohan Kumar Singh, learned counsel appearing for the respondent nos. 2 and 3 submits that the prosecution's allegation levelled against the respondents is completely false and the learned trial court rightly acquitted the respondents as there are serious and vital contradictions among the statements of the material witnesses of the prosecution and admittedly there was no good relation in between both the parties at the time of alleged occurrence, due to which a false story was fabricated against the respondent nos. 2 and 3 but the prosecution could not succeed to prove the said story described in the FIR. Hence, there is no force in this appeal and it is liable to be dismissed.

5. Mr. Syed Ashfaque Ahmad, learned APP appearing for the State submits that there are material contradictions in the evidences of the prosecution witnesses, particularly, with regard to the manner of occurrence and the so-called victims did not remain consistent to the allegations levelled in the FIR.



6. Heard both the sides and perused the evidences and materials available on the record. As per the prosecution's allegation, the informant was sleeping with her two sisters then in the night at around 11:30 P.M., the respondents namely, Bhim Paswan and Jhuna Paswan, jumped over the back side wall of her house and entered into her house and started abusing her and also caught hold of her hand. She further alleged that the respondents threatened to kill her, if she would raise an alarm and thereafter her mother's ornaments, her matriculation certificate, Aadhar Card, Passbook, silver anklet and Rs. 6,000/- kept in a box were removed by the respondents and the said articles were taken away by them. As per this allegation, the informant was sleeping with her two sisters and during the course of happening of the occurrence, the respondents caught hold of her hand but before the trial court, she deposed that at the time of occurrence she was sleeping with her younger sister only. She further deposed that the respondents took away *payal*, ear ring (*jumka*) and Rs. 6000/- that were kept in a box. But in the FIR, she alleged that the respondents took away her matriculation certificate, Aadhar Card and passbook in addition to the ornaments and a cash amount of Rs. 6,000/-. As per the evidence of this witness the respondents and victim's mother



were already on litigating terms.

7. PW-2, who is also stated to be a victim, deposed that they were in other room when the respondents were taking away the articles and upon hearing the noise, they entered into the 2nd room then the respondents went away with the articles. The said statement is completely contradictory to the prosecution's story narrated in the FIR.

8. PW-1 deposed in the cross-examination in paragraph no.17 that at the time of incident, she cried but no one from outside came to save her. The said statement does not appear to be reliable as according to this witness there are several houses near and around the house of this witness. This witness further deposed in the paragraph no. 18 of her cross-examination that on the next morning after the occurrence, no body came to meet them and they did not make any complain to *Mukhiya, Surpanch* or *Choukidar*; The said conduct on the part of victim's family as to not lodging or making any complaint before the *Mukhiya, Surpanch* or *Choukidar* appears to be suspicious and casts a serious doubt in the prosecution's allegation.

PW.1, deposed that she and her sisters were sleeping in a room situated in the eastern side but PW-2,



who happens to be sister of PW-1, stated that they were sleeping in a room situated in western side of her house. So, a contradictory statement regarding the location of room, in which the victims were sleeping, was made by the material witnesses of the prosecution. Further as per the evidence of PW-2, the door of their room had been closed when she and her sisters were sleeping. There is no allegation by the prosecution as to breaking open the said door of the victim's room so the fact as to how the respondents entered into the room of the victims when the door of their room was in closed position, was not explained by the prosecution. The alleged occurrence is stated to have taken place in the night of 20.03.2020 but the FIR was lodged by one of the victims by filing a written application (Exhibit-1) on 23.03.2020 and the delay of three days that took place in lodging the FIR, was not properly explained by the prosecution.

9. PW-3, who happens to be mother of the victims, deposed that at the time of commission of the alleged occurrence, the respondents caught hold of the hands of her two daughters but as per FIR, the respondents caught hold of the hands of the informant only.



PW-3, mother of the victims deposed that she did not inform her co-villagers, *sarpunch*, *mukhiya* or neighbours about the occurrence. The said conduct of this witness appears to be highly suspicious as in normal course in such type of occurrence when it takes place in a village, public representatives and neighbours are informed about the occurrence.

PW-3 deposed that there was some sign of climbing over the wall but the investigating officer, who examined and inspected the place of occurrence, deposed that he did not find any sign of occurrence over the said wall.

10. Here, it is important to mention that during investigation, the police failed to recover any of the theft articles from the possession of the respondent nos. 2 and 3.

11. In the light of aforementioned contradictions coming out from the evidence of material witnesses of the prosecution regarding the manner of occurrence and other relevant facts and also on account of non-examination of an independent person, this court forms the opinion that the prosecution miserably failed to prove its case before trial court and the respondents have been rightly acquitted of the offences



charged and there is no reason to interfere in the conclusion of the trial court. Hence, this court finds no merit in this appeal, so it stands dismissed.

12. Let the L.C.R. be sent back to the trial court forthwith.

(Shailendra Singh, J)

Rajiv/-

AFR/NAFR	AFR
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