

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.480 of 2024

Arising Out of PS. Case No.-283 Year-2020 Thana- BAHERA District- Darbhanga

Mukesh Kumar S/o Ram Briksh Mahto, R/o village - Maujampur, P.S. -
Bahera, Distt. - Darbhanga.

... .. Appellants

Versus

1. The State of Bihar.
2. Raj Kumar Mahto S/o Jagnarayan Maht, R/o village - Maujampur, P.S. -
Bahera, Distt. - Darbhanga.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Om Prakash Kumar, Advocate Ms. Soni Kumari, Advocate
For the State	:	Mr. Binod Bihari Singh, APP
For the Informant	:	Mr. Kumar Rajeev, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA)

Date : 28-11-2024

We have heard Mr. Om Prakash Kumar, the
learned counsel for the appellant, Mr. Binod Bihari Singh,
the learned APP for the State and Mr. Kumar Rajeev, the
learned counsel for the informant.

2. The appellant has preferred this appeal,
against the judgment of conviction dated 25.11.2023 and
the order of sentence dated 29.11.2023 passed by the



learned Special Judge (POCSO), Darbhanga, in POCSO G.R. Case No. 40 of 2020, arising out of Bahera P.S. Case No. 283 of 2020, whereby the sole appellant has been convicted and sentenced as under:

Convicted under Sections	Sentence		In default of payment of fine
	Imprisonment	Fine (Rs.)	
376(2)(n) of the IPC	RI for 10 years	10,000/-	SI for six months
6 of POCSO Act	RI for 20 years	10,000/-	SI for six months

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

4. The prosecution case is based on the FIR lodged by one Raj Kumar Mahto (PW-3), the father of the victim, who has alleged therein that on 15.03.2020 at about 7 to 8 AM, the victim was alone in her house. The appellant entered her house and committed sexual assault upon her. When she tried to raise alarm, the appellant threatened her but also proposed to marry her in a temple. The daughter of informant remained silent due to societal pressure. It is further alleged that appellant made sexual relationship with



the victim several times, due to which she became pregnant. When the appellant became aware of her pregnancy, he, on the pretext of marriage, took her to Darbhanga on 20.07.2020 on a motorcycle and stopped the vehicle midway between Sajuhar and Baigini and offered her cold drinks. The victim, after drinking the same, became unconscious. The appellant left her there and fled away. When the victim regained consciousness, she found blood oozing out from her private parts. After that, she came back home and narrated about the entire incident to her family. The family members got her admitted in a hospital.

5. The investigating officer, after completion of investigation, submitted chargesheet against the appellant on 18.09.2020 *vide* chargesheet no. 292 of 2020 under Section 376 of the Indian Penal Code (for brevity, “IPC”) and under Sections 4 and 6 of Protection of Children from Sexual Offences (for brevity, “POCSO”) Act, 2012. After commitment of the case, charges were framed against the appellant on 08.02.2021 under Sections 376(2), 363 and 313 of the IPC and under Section 4 and 6 of POCSO Act,



2012. The statement of appellant was recorded on 22.11.2022. He denied the occurrence and claimed himself to be innocent.

6. The prosecution has examined altogether five witnesses as hereunder:

S. N.	P.W. No.	Name of Witnesses	Detail of witnesses
01.	PW-1	Ms. X	The victim / injured in this case.
02.	PW-2	Ms. Y	The mother of the victim.
03.	PW-3	Mr. Z	The father of the victim / informant.
04.	PW-4	Dr. Prasanta Krishna Gupta	The Medical Officer (MO) of this case, who has conducted the medical examination of victim. (Medical Witness)
05.	PW-5	ASI Md. Jawed Alam	Investigating Officer (IO) of this case. (Police Witness)

7. The defence has altogether examined three witnesses as hereunder:

S.N.	D.W. No.	Name of Witnesses	Detail of Witnesses
01.	DW-1	Arun Kumar Mahto	Hearsay witness
02.	DW-2	Ramanand Mahto	Hearsay witness
03.	DW-3	Sunil Kumar Thakur	Hearsay witness

8. The prosecution has produced documentary evidence and the defence also has produced one documentary evidence.



9. Before we examine the deposition of the witnesses, it would be relevant to look at the evidence of Dr. Prasanta Krishna Gupta (PW-4), who had examined the victim on 19.08.2020 and A.S.I. Md. Jawed Alam (PW-5), who is the investigating officer.

10. We have carefully examined the depositions of the aforesaid two prosecution witnesses. Dr. Prasanta Krishna Gupta (PW-4) found multiple hymenal tears. No mark of external injury but was seen. There was no sign of sexual assault and no sign of abortion on the person of victim (PW-1).

11. The Radiological report suggested that the victim was between 16 to 17 years of age.

12. The investigating officer (PW-5) has deposed that the statement of victim was recorded under Section 164 of the Cr.P.C. The father of the victim (PW-3) gave him the ultrasound report prepared by Dr. Bharti Kumari. However, he could learn that there was no doctor in Baheri Bazar with that name. He has further stated that he had gone through the medical report of the victim and had



found no sign of abortion. He has also deposed that he even went to Navjeevan Centre, where no doctor by the name of Bharti Kumari was found. He met Dr. R.K. Roshan and enquired from him, who, after verifying from the clinic register, informed PW-5 that victim's treatment was not done at the Navjeevan Centre.

13. We have carefully examined the deposition of the rest of prosecution witnesses and of the victim (PW-1). PW-1 has supported the case of the prosecution. According to her, the appellant came to her house approximately ten times. The first time, i.e., on 15.03.2020, the appellant raped her and thereafter for about five to six times also, the appellant established sexual relation with her within a period of five to six months. Each time, he established physical relationship with her at her house. She has further stated that except her father, all her family members reside at her house. Due to repeated wrongdoings of the appellant, she became pregnant. After the abortion, she disclosed such information regarding her pregnancy to the appellant. She also got medical treatment



from doctor Bharti Kumari at Baheri. She had further deposed that she had informed the police officer regarding her miscarriage and the police officer had taken her to the Darbhanga Medical College and Hospital (for brevity, “DMCH”), where her physical examination was conducted. The doctor at DMCH found that the victim had suffered a miscarriage.

14. But, the evidence of PW-4 and PW-5 suggest that the accusation against the appellant is false.

15. The mother of the victim (PW-2), has also supported the case of the prosecution. She has repeated the version of PW-1. PW-2 has further deposed that she took her daughter for medical treatment. She made a complaint to the father of the appellant about his son’s act, who misbehaved with her husband and also asked for Rs. 5,00,000/- (rupees five lakhs only) for marrying his son with the victim.

16. The father of the victim (PW-3) has also supported the case of the prosecution and has stated that the appellant had committed rape upon his daughter and



when his daughter tried to raise her voice, the appellant forcibly shut her up and threatened to kill her. However, the appellant promised to marry her sometimes later. He has further stated that whenever his daughter remained alone in the house, the appellant visited her and also established physical relation with her. After two to three months, PW-3 became aware of his daughter's pregnancy and when she told the appellant about that, he replied that whenever he would get an opportunity, he will marry her. On 19.07.2020, the appellant gave her a tablet to stop her vomiting. On the next day, at around 08:00 AM, when he along with his wife was going towards his agricultural field, he saw the appellant on motorcycle coming towards his house and thereafter taking his daughter for solemnizing marriage in a temple. The appellant stopped the motorcycle midway between Sajuhar and Baigini and asked his daughter to have cold drinks and after drinking the same, his daughter became unconscious. The appellant fled from that place, leaving his daughter alone. Thereafter, the PW-3 took his daughter to Baheri and got her treated by Dr.



Bharti Kumari. He also repeated the version of PW-2.

17. The defence altogether has examined three witnesses. Arun Kumar Mahto (DW-1), has deposed in favour of appellant and has said that in *panchayati*, one Dinesh Mahto, who has physical relation with the victim, gave Rs. Six lakhs to PW-3 in his presence and also in presence of Ram Briksha Mahto and after that this false FIR has been instituted against the appellant.

18. Ramanand Mahto (DW-2) has stated that he knows PW-3, who is a resident of his village. He also knows the appellant. He has further stated that on 21.07.2020, he went for the *panchayati*, which took place at Ram Janki Mandir. At the *panchayati*, the victim and her father, Dinesh Kumar Mahto and his father Vijay Kumar Mahto and Mukesh Kumar Mahto and his father Ram Briksha Mahto and some other persons were also present. In the *panchayati*, the victim stated that for the last one and half years, she is in love with Dinesh Kumar Mahto and also had physical relations with him. When she was asked about her desire, she stated that she wants to marry Dinesh



Kumar Mahto. When she was asked about Mukesh Kumar Mahto, she stated that she had no relation with Mukesh Kumar Mahto. The *panchayati* also asked Dinesh Kumar Mahto who admitted that he was in love with the victim and had physical relation with her and that he also wanted to marry her. However, PW-3 was not ready to marry his daughter to Dinesh Kumar Mahto and demanded rupees six lakhs as penalty. He also demanded rupees one lakh from father of Mukesh Kumar Mahto. The father of Mukesh Kumar Mahto namely, Ram Briksha Mahto refused to give money as his son was innocent. On 23.07.2020, Dinesh Kumar Mahto's father namely, Vijay Kumar Mahto gave rupees six lakhs to PW-3, thereafter, PW-3 (victim's father) filed this false case against Mukesh Kumar.

19. Sunil Kumar Thakur (DW-3) has also asserted that that the appellant is innocent.

20. The medical report and the evidence of PW-4 and PW-5 demonstrate that the accusation against the appellant is false.

21. We have carefully examined the aforesaid



evidence, especially the evidence of PW-4 and PW-5, who are the doctor and investigating officer of the case. The PW-4, who had conducted the medical examination of the victim has categorically stated in her report that there was no sign of sexual assault and also there was no sign of abortion. The PW-5, who is the Investigating Officer of the case has also categorically stated that during investigation, he had found that there was no such doctor in the Baheri Bazar. Apart from that, the father of the victim had also handed over the paper of ultrasound report of Navjeevan Centre, which suggested that the victim was pregnant, but when he met and enquired from Dr. R.K. Roshan at the said centre, he, informed PW-5 that no patient by the name of victim has been treated in this clinic.

22. It appears that after the *panchayati*, the present FIR was instituted against the appellant, just after the father of the victim had received rupees six lakhs as penalty from the father of Dinesh Kumar Mahto and when the father of the appellant refused to give rupees one lakh to PW-3. It has also come during investigation that



ultrasound report of the victim was not found to be genuine. Even the report of the doctor who had initially examined the victim namely, Dr. Bharti Kumari is doubtful. The doctor (PW-4) has categorically stated in her report that there is no sign of sexual assault or of abortion.

23. The entire case, therefore, is redolent with doubt and suspicion.

24. Finding the accusation against the appellant to be doubtful, we are left with no alternative but to give benefit of doubt to the appellant.

25. The appellant is thus acquitted of all the charges.

26. The appeal succeeds.

27. The appellant, who is in jail since 10.08.2020, is directed to be released forthwith, if not warranted or detained in any other case.

28. Let a copy of the judgment be dispatched to the superintendent of the concerned jail forthwith for compliance and record.

29. The records of this case shall also be



transmitted to the concerned trial Court forthwith.

30. The interlocutory application/s, if any, also stand disposed of accordingly.

(Rajesh Kumar Verma, J)

(Ashutosh Kumar, J)

Shahnawaz

AFR/NAFR	NAFR
CAV DATE	23.10.2023
Uploading Date	28.11.2024
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