

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.438 of 2022

Arising Out of PS. Case No.-108 Year-2020 Thana- MAHILA PS District- Buxar

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Bholu Rai @ Ashish Rai, aged about 22 years, male, Son of Ram Ekbal Rai,
R/o- Sikraul Chausa, P.S.- Rajpur, Dist.- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 387 of 2022

Arising Out of PS. Case No.-108 Year-2020 Thana- MAHILA PS District- Buxar

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Bali Rai @ Satyam Rai, male, aged about 22 years, Son of Ras Bihari Rai,
Resident of Village- Sikrowl, P.S.- Rajpur, District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 438 of 2022)

For the Appellant/s : Mr. Bindhyachal Singh, Sr. Adv.
Mr. Vipin Kumar Singh, Adv.
Mr. Ram Binod Singh, Adv.

For the State : Mr. Bipin Kumar, APP

For the Informant : Mr. Ritesh Abhishek, Adv.

(In CRIMINAL APPEAL (DB) No. 387 of 2022)



For the Appellant/s : Mr. Ramakant Sharma, Sr. Adv.
Mr. Arabind Nath Pandey, Adv.
Ms. Shruti, Adv.
For the State : Mr. Bipin Kumar, APP
For the Informant : Mr. Ritesh Abhishek, Adv.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-07-2024

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

2. We have heard Mr. Bindhyachal Singh and Mr. Ramakant Sharma, the learned Senior Advocates for the two appellants, namely, Bholu Rai @ Ashish Rai [*Cr. Appeal (DB) No. 438 of 2022*] and Bali Rai @ Satyam Rai [*Cr. Appeal (DB) No. 387 of 2022*].

3. Mr. Ritesh Abhishek, the learned Advocate and Mr. Bipin Kumar, the learned APP have appeared in both the appeals on behalf of the informant and State respectively.



4. Both the appellants, who were put on Trial along with one Rinku Rai @ Brajesh Kumar Rai, have been convicted for the offences under Sections 376-D/34 and 376-DA/34 of the Indian Penal Code (*in short the IPC*) and Sections 4 & 6 of the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act, 2012*) vide judgment dated 18.04.2022 passed by the learned Additional District Judge-VI-cum-Special Judge, POCSO Act, Buxar in POCSO Case No. 43 of 2020/CIS No. 43 of 2020, arising out of Buxar Mahila P.S. Case No. 108 of 2020. By order dated 20.04.2022, they have been sentenced to undergo imprisonment for the remainder of their lives and to pay a sum of Rs. 25,000/- each for the offences under Section 376-DA of the IPC. No separate sentence has been imposed for the offence under Section 6 of the POCSO Act, 2012 in accordance with the provisions contained in Section 42 of the POCSO Act, 2012. In default of payment of fine, both the appellants have



been directed to undergo S.I. for six months.

5. Apart from the afore-noted sentence, the appellants have also been sentenced to undergo R.I. for 25 years, to pay a fine of Rs. 5,000/- each and in default of payment of fine, to further suffer S.I. for six months for the offence under Section 4 of the POCSO Act.

6. The victim has also been awarded compensation of Rs. 5,00,000/-.

7. Both the appellants are alleged to have raped the victim, a minor girl, in the night of 11.11.2020.

8. The victim had lodged the *fardbeyan* on 12.11.2020 alleging that in the previous night, at about 07:30 P.M., she had come out of her house to attend to the call of nature. After she had gone to some distance and was about to sit in the field, the appellants came, caught hold of her and gagged her by using the scarf that she had been wearing and took her by the side of



the haystack. She was repeatedly raped by the appellants. One Rinku Rai (since acquitted) was standing at some distance as if he was on vigil. He did not make any attempt to save the victim. While this was going on, a pedestrian came with a torchlight. Seeing that, all the three accused persons including the appellants ran away. The victim, thereafter, came back home and narrated about the occurrence to her parents. Since it was late in the night, no report was lodged on that day. It was only on the next day, *i.e.*, on 12.11.2020 that she along with her parents came to Rajpur Police Station from where the victim and her family members were sent to Mahila Police Station, Buxar.

9. The afore-noted *fardbeyan* statement was authenticated by her parents, *viz.*, Rameshwar Chaudhary and Shakuntali Devi, who have been examined as P.W. 1 and P.W. 3 respectively before the Trial Court.



10. On the basis of the afore-noted *fardbeyan* statement, a case *vide* Buxar Mahila P.S. Case No. 108 of 2020, dated 12.11.2020, had been registered for the offences under Section 376-D of the IPC and Section 4 & 6 of the POCSO Act, 2012.

11. The police, after investigation, submitted *charge-sheet* against the appellants and one Rinku Rai and all the three were put on Trial.

12. The Trial Court, after having examined seven witnesses on behalf of the prosecution and one on behalf of the defense, convicted and sentenced the appellants as aforesaid. However, for the lack of evidence against accused/Rinku Rai, he was acquitted.

13. Mr. Ramakant Sharma and Mr. Bindhyachal Singh, the learned Senior Advocates for the appellants have argued that an absolutely false case has been instituted against the appellants. The version of the prosecutrix does not inspire confidence and she cannot, by any stretch of imagination, be called a



starling witness. The medical evidence, it has been argued, completely belies the version of the prosecutrix, thereby damaging the prosecution case to a great extent.

14. It has also been urged on behalf of the appellants that even the age of the victim could not be proved, which could justify the Special Court to try the offence and also convict the offenders under Sections 4 & 6 of the POCSO Act, 2012. The further defense of the appellants is that the case has been lodged at the instance of the father of the victim (P.W. 1), who had an axe to grind against the appellants.

15. As opposed to the afore-noted contentions, the learned APP, with reference to the deposition of the witnesses, has stated that all the witnesses have supported the prosecution case. Though the medical examination of the victim on 22.11.2020 did not reflect that she was subjected to any sexual attack, but then, the forensic examination of the wearing



apparel, especially the undergarment of the victim, discloses that a semen stain was found. It has further been submitted that the evidence of a prosecutrix, who otherwise is believable, is to be seen in the context of the entire case and minor discrepancies ought not to be taken as indicator of the victim not coming out with truth.

16. The learned APP has also referred to various case laws which clearly mandate that the Courts ought not to look for corroboration in cases of rape where the victim makes a categorical statement about her having been sexually violated. In the present case, two persons raped the victim, whereas the other was keeping a vigil, though that persons has been acquitted because of the paucity of evidence.

17. Under such circumstances, the learned APP has submitted that no interference with the judgment of the Trial Court and the sentence imposed upon the appellants is required.



18. On a careful analysis of the *fardbeyan* statement of the victim and her deposition before the Trial Court as P.W. 2, we have but noticed certain facts which weaken the prosecution case and make the deposition of the victim doubtful. She was raped in the night of 11.11.2020 at about 07:30 P.M. She has named the two perpetrators of the crime, viz., the appellants. She also has named Rinku Rai (since acquitted), who was keeping vigil. In the meantime, a pedestrian walked in the field with his torchlight burning. This was the reason for the appellants to have left her and run away from the scene. She then narrated the entire incident to her parents in the night, but the written report was filed on the next day.

19. At the Trial, though the victim/P.W. 2 has supported the prosecution case of her having been raped by the appellants, but in her cross-examination, she has stated that did not know the names of the appellants before the occurrence. She did not even



know their parentage. However, she was aware of the fact that her father worked as labourer in the field of the appellants. She was also not aware of Rinku Rai, the accused who has been acquitted.

20. There is yet another infirmity in the case which can be pointed out from the deposition of the victim/P.W. 2. While going and coming back from the field, she never met any person and when she had subjected herself to medical examination, she had only shown to the Doctor the injuries which she had suffered in her hand and chest. She had also tried to get away from the stranglehold of the appellants and she had bitten appellant/Bali Rai and had pushed appellant/Bholu Rai with her elbow.

21. All these facts, independently, would not be of great consequence unless it is seen in the context of the medical examination report, which was conducted on 12.11.2020 only, *i.e.*, a day after the occurrence.



22. Dr. Amlesh Kumar (P.W. 4) had examined the victim on 12.11.2020 and had found no spermatozoa either alive or dead or low or high in the microscopic examination of the vaginal swab. A few epithelial cells but were found.

23. The victim was also examined by Dr. Nibha Mohan (P.W. 5) on the same day, who had found the person of the victim to be well developed, but there was no sign of injury on her private parts. There were also no sign of injury on any part of her body. The hymen was found to be intact. In her opinion, it was very difficult to say about either the sexual act or the group sexual act.

24. In this context, we referred to the deposition of the father of the victim, namely, Rameshwar Chaudhary (P.W. 1). He has offered to the Trial Court whatever was stated by the victim in her written report. However, in cross-examination, he has admitted that the appellants belonged to his village and



was known to them. He had no idea as to who was the person who had entered the field with a torchlight in his hand. Whichever clothes his daughter had been wearing was given to the police. His daughter narrated about the occurrence first to her mother and, thereafter, to him. The case was lodged on the next day of the occurrence.

25. What is very noticeable in the deposition of P.W. 1 is that he knew the parents of the appellants as well as he worked on their farm. He has but denied the suggestion that he has used his daughter as a front for implicating the appellants falsely. Very curiously, he has also claimed to have seen scratch marks on the body and the chest of the victim, which, as we have seen from the evidence of the Doctor, was non-existent. A specific suggestion given to him that because the land belonging to the appellants, which he had hitherto been tilling, was not given to him on *bataidari*, therefore he harboured anger against the appellants and their families, was denied by him.



26. In the deposition of the mother of the victim, namely, Shakuntali Devi (P.W. 3), the only relevant fact, which we could notice, is the disclosure about her family. She claims to have given birth to three sons and two daughters. The victim was her youngest daughter/issue. The eldest daughter was born about 25 years ago. Rest of the children were born after one year of each birth. From her deposition, it appears that the victim may not be of that tender age as what has been projected by the prosecution.

27. The Investigator of this case (P.W. 6) appears to have completely abdicated her functions in a serious case of rape of a minor by two persons. He had not taken the statement of the Doctors, who comprised the Medical Board; did not take the opinion of any expert and did not even get the appellants medically examined. No attempt was made by her to take the appellants on remand and asked them about the occurrence. She has given reference of some mobile numbers and their



locations on the date and time of the occurrence, but that has been rendered completely useless for prosecution in the absence of such reports having been brought as an evidence. She also fairly admitted before the Trial Court that she did not examine the *Chawkidar* or try to know about the population composition of the village or whether the father of the victim was a labourer for the father of the appellants. Apart from the parents of the victim, she examined nobody during the course of investigation. She also could not find out as to who was that person who had entered the field with a torch in his hand, seeing which the appellants had run away. However, when she had visited the place of occurrence, she did not find any sign on which it could be deduced that rape had taken place at that place. No independent person, she repeated before the Trial Court, was examined by him.

28. The only inference which can be drawn from her deposition (P.W. 6) is that she did not



investigate the case properly. The lapse on her part of not getting the appellants examined medically has caused serious prejudice to the case of the appellants. This lapse got further exacerbated when the appellants had made a request for their medical examination and the same was turned down.

29. With respect to age of the victim, the attempt of the prosecution to prove that the victim was a minor was also very feeble in nature.

30. One Ram Jee Rai was examined on behalf of the prosecution, who had come to the Trial Court with the Admission register of the up-graded Middle School, Sikraul. The victim was admitted in that school 20.04.2013 in Class-I. Her date of birth was entered in the Admission register as 09.10.2007. There were no supporting documents with respect to age of the victim and the date 09.10.2007 was entered in the admission register on the asking of the parents of the victim.



31. This takes the prosecution nowhere so far as the age of the victim is concerned. However, we have found that there was no objection of the appellants in the Special POCSO Court having tried the appellants.

32. In order to test the correctness of the prosecution version and in our quest to find out the truth and the reason for false implication, we have looked at deposition of D.W. 1/Rinku Rai, who had an absolutely different story to narrate.

33. D.W. 1 claims to know the victim and her father. The father of the victim had come to his house on 02.06.2020, where his father and his elder brother were present. The father of the victim wanted Rs. 10,000/- as an accommodation loan. After consulting the family members, the father of Rinku Rai (D.W. 1) gave Rs. 8,000/- to the father of the victim but took a promise from him that he shall return the loan after some time. The father of the victim was dilly-dallying in returning the amount. On 01.11.2020, when



the father of the victim was insisted upon for returning the loan, he fought with the father of D.W. 1 and also threatened that he shall put him to task.

34. There is nothing on record to indicate that he was earlier investigated by the police. Thus, his statement cannot be taken as gospel truth.

35. However, from the deposition of the father of the victim as also D.W. 1, it appears that the parties are no strangers to each other. It also becomes very clear that the father of the victim is a labourer, who had been working in the field of the father of the appellants. There could be a possibility of the father of the victim entertaining anger at his not being made a *batayidar* or the insistence for returning the accommodation loan which he had taken.

36. That apart, it also appears from the statement of the victim that she had no idea about the appellants, their identity or their parentage prior to lodging of the case.



37. How then did she name the appellants in her written report a day after is a matter of curiosity for us. Would the defence be far off the line in suggesting that the victim was put up as a front by her father to get this false case registered?

38. The details of the specific acts committed by the appellants also appears to be doubtful for the reason that the occurrence took place when the victim had gone to the field to purge herself. There was no source of identification. She had not known the appellants from before. And when a villager entered the field with a torch, the victim has not claimed to have seen the appellants in the torch light, but has only stated that seeing a person arrive somewhere near the P.O., the appellants ran away.

39. The entire story line and the medical report of their being no injury on any of the body parts of the victim and no sign of rape at all with hymen intact, the prosecution case totters at the seams.



40. We have also found that the wearing apparel of the victim was sent to the forensic laboratory. The undergarment of the victim was found to be having semen stains. This information would be of no value or use to test the case of the prosecution for the reason that the appellants were never examined despite their insistence.

41. We are conscious of the fact that Section 53A of the Code of Criminal Procedure mandates that a person accused of rape ought to be medically examined if there are reasonable grounds for believing that an examination on his person will afford evidence as to the commission of such offence.

42. The appellants surrendered before the Court on 24.06.2020, *i.e.*, after twelve days of the occurrence. Even then, their blood test and semen test would have been good materials for matching the semen stains found on the undergarment of the victim in the forensic examination.



43. The prosecution is to be blamed for the afore-noted lapse.

44. Thus to tie the strings together : the victim named the appellants in her written report even though she was not known to them from before; the victim knew that her father worked as a labourer in the field belonging to the appellants; there was no injury found in the medical report; the hymen was found to be intact; the father of the victim lied before the Court when he said that he had found scratch injuries on the person of the victim in the night of the occurrence, which was not detected by the Medical Board and the circumstances and background facts indicating that the father of the victim had some angst against the family of the appellants.

45. These aspects, if seen in totality, make the prosecution case absolutely doubtful for the Trial Court to have invoked the mischief of Section 29 and 30 of the POCSO Act, 2012.



46. For the reasons stated above, we give benefit of doubt to the appellants and acquit them of all the charges levelled against them.

47. The judgment and order of conviction and sentence, referred to above, in both the appeals, are set aside.

48. Both the appeals stand allowed and disposed off accordingly.

49. Since the two appellants in both the appeals, viz., Bholu Rai @ Ashish Rai [*Cr. Appeal (DB) No. 438 of 2022*] and Bali Rai @ Satyam Rai [*Cr. Appeal (DB) No. 387 of 2022*] are in jail, they are directed to be released forthwith, if they are not detained or wanted in any other case.

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

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



52. Interlocutory application/s, if any in
both the appeals, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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