

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.567 of 2023

Arising Out of PS. Case No.-97 Year-2021 Thana- ROSHANGANJ District- Gaya

1. Alok Kumar, aged about 24 years, male, Son of Charitar Choudhary @ Chalitar Choudhary, R/o Village-Tarwan, Saifganj, P.S.-Bankey Bazar, District-Gaya.
2. Birju Kumar, aged about 25 years, male, Son of Mahendra Choudhary, R/o Village-Tarwan, Saifganj, P.S.-Bankey Bazar, District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 830 of 2023

Arising Out of PS. Case No.-97 Year-2021 Thana- ROSHANGANJ District- Gaya

Pradeep Kumar @ Zero, aged about 26 years, male, Son of Munna Bhuiyan Arjun @ Arjun Rikyashan, R/o Village-Tarwar, P.S.-Roushanganj, District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 567 of 2023)

For the Appellant/s : Ms. Soni Shrivastava, Adv.
Mr. Yogesh Kumar, Adv.



Mr. Ravi Bhardwaj, Adv.
For the State : Mr. Bipin Kumar, APP
(In CRIMINAL APPEAL (DB) No. 830 of 2023)
For the Appellant/s : Mr. Rama Kant Singh, Adv.
For the State : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-08-2024

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

2. We have heard Ms. Soni Shrivastava, the learned Advocate for the appellants/Alok Kumar and Birju Kumar in Cr. Appeal (DB) No. 567 of 2023 and Mr. Rama Kant Singh, the learned Advocate for the appellant/Pradeep Kumar @ Zero in Cr. Appeal (DB) No. 830 of 2023.

3. The State, in both the appeals, has been represented by Mr. Bipin Kumar and Mr. Ajay Mishra, the learned Additional Public Prosecutors respectively.



4. Appellant/Pradeep Kumar [Cr. Appeal (DB) No. 830 of 2023] has been convicted for the offences under Section 4 of the Protection of Children from Sexual Offences Act, 2012 (*in short the POCSO Act, 2012*) as also under Sections 376 and 366-A of the Indian Penal Code (*in short the IPC*) vide judgment dated 26.04.2023 passed by the learned Exclusive Special Judge, POCSO-Cum-Additional Sessions Judge-VII, Gaya in POCSO Case No. 109 of 2021 arising out of Roushanganj (Banke Bazar) P.S. Case No. 97 of 2021. By the same judgment, appellants/Alok Kumar and Birju Kumar [Cr. Appeal (DB) No. 567 of 2023] have been convicted for the offences under Section 17 read with Section 4 of the POCSO Act, 2012 and Section 366-A of the IPC. By order dated 29.04.2023, appellant/Pradeep Kumar @ Zero has been sentenced to undergo R.I. for life and to pay a fine of Rs. 50,000/- for the offences under Section 4 of the POCSO Act, 2012 and Section 376 of the IPC. For the offence under



Section 366-A of the IPC, he has been sentenced to undergo R.I. for five years and to pay a fine of Rs. 25,000/-. By the same order, appellants/Alok Kumar and Birju Kumar have been sentenced to undergo R.I. for life and to pay a fine of Rs. 50,000/- each for the offence under Section 17 read with Section 4 of the POCSO Act, 2012. They have further been sentenced to undergo R.I. for five years and to pay a fine of Rs. 25,000/- each for the offence under Section 366-A of the IPC.

5. The sentences have been ordered to run concurrently.

6. The victim, touted to be 17 years old at the time of the occurrence, was kidnapped on 27.07.2021. The FIR was registered by her father on 28.07.2021 alleging that the appellant/Pradeep Kumar has enticed away her daughter for the purposes of marrying her. He also provided the mobile telephone number of afore-noted Pradeep Kumar. Appellant/Alok



Kumar and Birju Kumar were named by the informant as the associates of Pradeep Kumar, who helped him in taking away the victim.

7. On the basis of the afore-noted written report by the father of the victim, namely, Kauleshwar Sao (P.W. 4), a case *vide* Raushanganj (Banke Bazar) P.S. Case No. 97 of 2021 was registered for investigation on 28.07.2021 for the offences under Sections 366-A/34 of the IPC and Sections 8 and 12 of the POCSO Act, 2012.

8. It appears that the victim was recovered on the very next day. However, according to the version of the victim herself, she was kept in confinement for three days, whereafter she was brought to Dumariya Police Station by appellant/Pradeep Kumar @ Zero.

9. The learned Advocates for the appellants have submitted that an absolutely false case has been lodged by the father of the victim, which would appear from the very fact that he knew about the identity of



appellant/Pradeep Kumar as well as of appellants/Alok Kumar and Birju Kumar. He also knew about the mobile telephone number of appellant/Pradeep Kumar. It has further been submitted that evidence has been garnered during Trial that near the house of appellant/Pradeep Kumar, there is a ditch where the rain water gets accumulated, which is the bone of contention between his family and the family of the victim.

10. Apart from this, it has been pointed out by the learned Advocates for the appellants that Ram Ratni Devi, who was tried along with the appellants but who has been acquitted, is not a member of the family of the informant but is only distantly related, whose house is situated at some distance.

11. It would be more apposite to first refer to the deposition of the victim herself in order to find out whether the contention of the appellants that they have been falsely implicated in this case is correct.

12. The victim (P.W. 2) claims to be of 17



years of age when the occurrence had taken place. She had taken admission in 9th standard and her date of birth, according to her, is 04.02.2005. However, with respect to the date of occurrence, P.W. 2 repeatedly spoke about the occurrence having taken place on 27th of March, 2021 and not 27th of July, 2021. While she was going to a shop to bring some colouring agent and reached near the house of appellant/Pradeep, she met Ram Ratni Devi who ushered her to her home. Thereafter, Pradeep came. He was followed by 3 - 4 other boys including appellants/Alok Kumar and Birju Kumar. The room was locked from outside and appellant/Alok took a video-graph of the victim and appellant/Pradeep. The video-graph was also uploaded on the *Whatsapp*. Thereafter, according to P.W. 2, she was forced to come to Dobhi park where she and Pradeep were left alone and the other accused persons/appellants went away. She was kept at Gaya Railway Station where she was subjected to rape for



whole night. On the next day, she was taken to Dumariya Police Station by appellant/Pradeep Kumar himself.

13. This appears to be rather strange for two reasons. The victim came on foot from the house of appellant/Pradeep to the Railway Station, Gaya. She was kept at Gaya Railway Station for whole of the night. It is absolutely unbelievable that she would be subjected to sexual intercourse on the railway platform and if that were so, appellant/Pradeep, the perpetrator of the offence, would have himself volunteered to bring her to Dumariya Police Station.

14. The story does not appear to be probable.

15. P.W. 2, in her cross-examination, has spoken about the members of her family, but what is most noticeable is that she has claimed to come back to her home only after three days. While she was at Banke Bazar Police Station, her father and brother were



present there and in their presence, the case was lodged. She has stated before the Trial Court that she had lodged the case.

16. It was pointed out by the learned Advocates appearing for the appellants that if she was the informant of the case, her FIR is inexplicably non-existent and the police had proceeded on the FIR lodged by her father in Banke Bazar Police Station.

17. After speaking about Ram Ratni Devi, a co-accused who has since been acquitted, P.W. 2 has also spoken about the dispute between Ram Ratni Devi and her family. On being specifically questioned, she has stated that even though she was threatened by the accused persons including the appellants, she never sought any help and did not shout to attract the attention of people. She saw many pedestrians while coming to the railway station. There is nothing in her deposition which would indicate that she was under any threat for her life if she ever shouted. She has also



gone to the extent of saying that she was brought to railway station on a motorcycle and all the three appellants were seated on the same motorcycle along with her.

18. This again does not appear to be believable.

19. She was brought to the Gaya Railway Station at about 08:00 P.M., when no effort was made by her to run away to safety. A close look at her deposition makes the entire fabric of the prosecution absolutely doubtful.

20. It appears that P.W. 2/victim had come out of her house of her own volition, but for some reason or the other, she was brought to Dumaria Police Station by Pradeep from there, information was sent to Bankey Bazar Police Station. Then, perhaps the victim was brought to Bankey Bazar Police Station and the case lodged by her father was proceeded upon and investigation was carried out mechanically.



21. We say so for the reason of the disclosures made by the Investigators of this case.

22. Shankar Kumar Sinha, the first of the Investigators (P.W. 9), has stated that on registering the FIR at Bankey Bazar Police Station, he learnt that the victim has presented herself at Dumaria Police Station. He also learnt from the members of the family of the victim that appellant/Pradeep is waiting at the bus stand. On such information, appellant/Pradeep Kumar was arrested and later, was remanded to custody.

23. This fact itself demonstrates that since appellant/Pradeep had brought the victim to Dumaria Police Station, for reasons which remain unknown to us, the Police Officers at Dumaria Police Station, on learning the identity of the victim, informed the Bankey Bazar Police Station where the father of the victim also arrived.

24. This proposition gets support from the deposition of the father of the victim, viz., Kaleshwar Prasad @ Kaleshwar Sao/P.W. 4. In his examination-in-



chief, P.W. 4 has stated that he received a telephone call from Bankey Bazar Police Station on 28th of July, when he visited the police station. The written report was drafted by one Naresh Jee of Bankey Bazar, which was signed by him. He was told there that his daughter and appellant/Pradeep Kumar are at Dumaria Police Station. He, thereafter, went to Dumaria Police Station where he met his daughter. His daughter gave her statement then and, thereafter, was subjected to medical examination. All these only signify that, perhaps, the victim ran away from her home out of her association and liking for appellant/Pradeep Kumar, and Pradeep, in order to avoid any further confusion and problem, surrendered before the Dumaria Police Station.

25. As analyzed by us, these facts clearly reveal that P.W. 4 did not have any idea about his daughter having been enticed away, but only learnt about the presence of his daughter and appellant/Pradeep Kumar at Dumaria Police Station



when he received a telephone from Bankey Bazar Police Station.

26. There could have been no other reason for the appellant/Pradeep Kumar to have himself gone to Dumaria Police Station along with the victim except for presenting himself before the police, so that he is not accused of any other offence later.

27. It appears that only thereafter, the story of the victim being kept at railway station in confinement for two more days was developed by the prosecution.

28. The entire story line of the prosecution is fraught with absurdities.

29. Per-force, we have examined the deposition of the Doctor who had examined the victim, viz., Dr. Sushma Verma (P.W. 3). She had examined the victim on 30th of July, 2021. She had found no mark of violence on any part of her body. No external injuries were found on the private parts of the victim.



The fusion was evident from the radiological examination, which depicted the adulthood of the victim. She was assessed to be of 19 years of age.

30. The hymen though was found to be ruptured.

31. Though an attempt has been made by the prosecution through the mouth of ten of the witnesses, two of whom have been declared hostile, to put up a case of the victim having been enticed away and raped by appellant/Pradeep Kumar and the two other appellants, viz., Alok Kumar and Birju Kumar having assisted Pradeep, but the statement of the victim and her father as also of the Investigators make it clear that the entire story was cooked up.

32. However, we are surprised and perplexed to find that police also resorted to such falsehood.

33. We find the prosecution case to be tottering at all fronts.



34. There is no way in which the judgment and order of conviction of the appellants can be sustained in the eyes of law.

35. The judgment and order of conviction and sentence, referred to above, is set aside and the appellants are acquitted of all the charges levelled against them.

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

37. Since all the appellants, viz., Alok Kumar, Birju Kumar [*Cr. Appeal (DB) No. 567 of 2023*] and Pradeep Kumar @ Zero [*Cr. Appeal (DB) No. 830 of 2023*] are in jail, they are directed to be released forthwith, if they are not detained or wanted in any other case.

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

39. The records of these cases be returned



to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Saurav

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.08.2024
Transmission Date	08.08.2024

