

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.745 of 2006

1. Vinod Bind son of Late Bigan Bind, resident of Village-Chando Ruyiya,
P.S.-Bhabua, District-Kaimur
2. Dadan Bind, son of Ram Dhar Bind, resident of Village-Rampur, P.S.-
Bhabua, District-Kaimur at Bhabua

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus Curiae*
For the Respondent/s : Mr. A.M.P Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 03-04-2024

Heard Mr. Vipul Sinha, learned *Amicus Curiae*

for the appellants and Mr. A.M.P Mehta, learned A.P.P

for the State.

2. The present appeal has been filed against

the judgment of conviction and order of sentence dated

23.08.2006 passed by learned Additional District &

Sessions Judge, F.T.C-V, Kaimur at Bhabua in

connection with Sessions Trial No. 218 of 2004/204 of

2004, arising out of Bhabua P.S. Case No. 423 of

2002, whereby and whereunder the appellants were

found guilty and convicted for the offences punishable



under Sections 366, 366(A), 376/34 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Sections 366, 366(A), 376/34 of the Indian Penal Code.

3. The informant registered an F.I.R on 31.12.2002 to the effect that on 27.12.2002, the minor daughter of the informant was kidnapped by the co-villagers of the informant namely Ashok Bind and Dadan Bind. The informant further came to know that his daughter was kept at the house of appellant Vinod Bind for the purpose of solemnizing marriage of the victim with the accused Ashok Bind.

4. On the basis of the aforesaid fardbeyan of the informant, Bhabua P.S. Case No. 423 of 2002 was registered for the offences punishable under Section 366 of the Indian Penal Code.

5. After completion of the investigation, cognizance was taken and the case was committed to



the Court of Sessions for trial.

6. During the course of trial, altogether nine prosecution witnesses were examined on behalf of the prosecution.

7. P.W. 7 Lallan Singh is the informant of this case who has stated in his examination-in-chief that when he came from the office, he was informed by his wife that his daughter has not come from the school. The informant (P.W.7) started searching his daughter and during search, he came to know that his daughter is in the house of appellant Vinod Bind. The police recovered the victim girl from the house of the appellant Vinod Bind on 01.01.2003 and the victim was sent for medical examination. In his cross-examination, P.W. 7 had denied that one month prior to the occurrence, his daughter had called appellant Ashok Bind and when the informant came to know, he registered a false case against the appellant Vinod Bind and others. The informant (P.W. 7) had denied that the



appellants and the informant were on inimical terms from before.

8. P.W. 2 Ashok Kumar Singh is the brother of the victim (P.W. 6) who has stated in his examination-in-chief that his sister was recovered from the house of Vinod Bind. In his cross-examination, this witness has denied that his sister and Ashok Bind were having love affairs for the last two years and she used to say that she would get marry only with Ashok Bind.

9. P.W 3 Ram Jus Singh and P.W. 4 Gorakh Nath Singh are the co-villagers and independent witnesses who appears to be the hearsay witnesses.

10. P.W. 5 Phulmati Devi is the wife of the informant and mother of the victim girl who has stated in her examination-in-chief that she informed her husband (P.W. 7) that the victim girl had not come from the school when he came from the office. She has deposed that her daughter was recovered after one month and she narrated the incidence and told that the



appellants and Ashok Bind took her to Bombay where they forcefully committed rape upon her. In her cross-examination, this witness had denied any love affairs between the Ashok Bind and her daughter(P.W. 6).

11. P.W. 6 is the victim herself who has stated in her examination-in-chief that when she was in the school, Ashok Bind came and told that her grand-mother wants to meet her. She went along with Ashok Bind but did not find her grand-mother. She further deposed that Ashok Bind and appellant Dadan Bind thereafter forcefully took her to Nasik. The appellant Vinod Bind also came there and all the above three persons forcefully committed rape upon her for one month. They thereafter took her to Bhabua and kept her in the house of Vinod Bind and there also they committed rape upon her. The police came there and released her from the clutches of the accused persons. She identified the accused appellants and Ashok Bind in the Court. In her cross-examination, this witness has



deposed that Ashok Bind studies with her in the same class of the school.

12. P.W. 8 Shivmuni Sah is the Investigating Officer of the case who has stated in his examination-in-chief that he has registered the case and investigated the matter. This witness has recorded the re-statement of the informant, recovered the victim and sent her for the medical examination. He has also submitted charge-sheet against the appellants. This witness has deposed that the victim was recovered from the house of appellant Vinod Bind. In his cross-examination P.W. 8 had denied that there was any independent witness/villagers at the time of recovery of the victim girl. He has also deposed in para 11 that victim was recovered on 01.01.2003 but her statement was not recorded on that very day and in the next day, the victim came from her house along with her parents and recorded her statement. The P.W. 8 has further deposed that he has recorded in para 77 of the case



diary that during investigation of Bhabua P.S. Case No. 367 of 2002, he had recovered a love letter of the victim from the house of Ashok Bind. The victim and Ashok Bind were studying in the same school and it is clear from the love letter that there were love affairs between them.

13. P.W. 9 Dr. Miss Merry Puspa Bara had examined the victim and found the following conclusion:-

(i) No any bruise or abrasion or swelling on any part of body including breast, lower part of abdomen buttock and inner part of thigh.

(ii) No any bruise or redness, abrasion or swelling on perineum, valva and introitus. No foreign hairs present.

(iii) Hymen not intact. Old tears, vagina admitting two fingers easily. No vagina tenderness present

(iii) Neither dead or alive spermatozoa found. There are no mark of violence over body and external genetila and in



microscopic examination neither dead or alive spermatozoa found; even after rape could not be excluded. She is habituated in sexual intercourse.

14. Mr. Vipul Sinha, learned *Amicus Curiae*, appearing on behalf of the appellants has submitted that admittedly, except victim herself, there is no eye witness to the occurrence. During the course of investigation, not a single witness has come forward to claim himself/herself to be the eye witness to the occurrence. In the pathological examination of the victim (P.W. 6), no sign of rape was found by the doctor. It had come during the course of investigation that the victim and Ashok Bind were studying in the same school and there were love affairs between them. The Investigating Officer (P.W. 8) had also recovered love letter of the victim from the house of Ashok Bind which suggests that the victim went outside along with Ashok Bind out of her own volition and since the



appellants happen to be the relatives of Ashok Bind, they were falsely been implicated in this case. Admittedly, there is dispute between the parties and at earlier point of time, a case was also lodged by the informant against the appellants. Hence, taking the advantage of fleeing away of the victim, the informant falsely implicated the appellants. Though the victim was recovered on 01.01.2003 but her statement was recorded in the next day on 02.01.2003 which suggests that the statement of the victim under Section 164 Cr.P.C is an afterthoughts. The statement of the victim girl has also not been corroborated with the medical evidence. Learned *Amicus Curiae* further submitted that it is simply a matter of love affairs between two teenagers which was given was different colour just to settle the personal vendetta with the accused appellants.

15. *In contra*, learned A.P.P appearing on behalf of the State has stated that victim is a minor girl



and she was recovered from the house of Vinod Bind which clearly shows the involvement of the appellants. The parties were on inimical term from before, hence, there might be a possibility that appellants used the victim as a tool to take revenge from the informant.

16. The learned Trial Court was of the view that appellant Dadan Bind and co-accused Ashok Bind had lured the victim girl from the school on the pretext of meeting her grand-mother and thereafter by showing fear, they took her to Nasik and kept her in the rented house of appellant Vinod Bind where the appellants and co-accused Ashok Bind committed rape for several days. The appellants also committed rape upon the victim in the house of the Vinod Bind at Bhabua from where the police recovered the victim girl. Though there is no eye witness to the occurrence but most of the prosecution witnesses have supported the prosecution case. The medical report of the victim also suggests that she was minor and from the deposition of



the doctor (P.W.9), it is clear that the victim was continuously sexually abused. Though the spermatozoa was not found in the medical examination of the victim girl but accusation of rape cannot be denied on that basis. The learned Trial Court thereafter found the appellants guilty for the offences punishable under Sections 366, 366(A), 376/34 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Sections 366, 366(A), 376/34 of the Indian Penal Code.

17. Considering the rival submissions of the parties, this Court is of the view that the prosecution has proved its case beyond the shadow of all reasonable doubts. The victim had deposed that appellant Dadan Bind and co-accused Ashok Bind had forcefully took her to Nasik and kept her in the rented house of appellant Vinod Bind where the appellants and co-accused Ashok Bind committed rape for several



days. The victim was again raped by the accused appellants and co-accused Ashok Bind in the house of the Vinod Bind at Bhabua from where she was recovered by the police, which is sufficiently proved the ingredients of the offence under Sections 366(A) and 376/34 of the Indian Penal Code. The medical report of the victim also corroborates the case of the prosecution as against the appellants.

18. This Court does not find any infirmity in the order impugned. No fault could be found with the judgment of the trial court in convicting the appellants under Sections 366, 366(A), 376/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of ten years. The conviction of the appellants under Sections 366, 366(A), 376/34 of the Indian Penal Code, is, therefore sustained and upheld.

19. However, keeping into account the nature of accusation, the circumstances under which the case



was lodged, the period of custody of the appellants for more than three and half years, the age of the appellants and the prosecutrix and other factors, this Court is of the view that ends of justice would be sufficiently met, if the sentences imposed upon the appellants are modified and reduced to the period which the appellants have already undergone in custody.

20. The sentences imposed upon the appellants are therefore modified and reduced to the extent of the period already undergone by them in custody.

21. Accordingly, the appeal stands dismissed with the modification in the sentences as discussed above.

22. Since the appellants are all along on bail, they are discharged from the liabilities of the bail bonds.

23. This Court expresses the appreciation for



the efforts taken by Mr. Vipul Sinha, learned *Amicus Curiae* who had insisted for assisting the Court in the matter. This Court directs the Patna High Court Legal Services Committee to pay to Mr. Vipul Sinha a sum of Rs. 6000/- (Six Thousands) towards his professional fee for extending valuable assistance to this Court in deciding this appeal.

(Sunil Kumar Panwar, J)

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