

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.850 of 2017

Arising Out of PS. Case No.-43 Year-2011 Thana- BHAGWAN BAZAR District- Saran

1. Reeta Devi and Anr W/o Late Ashok Kumar Aged about 60 years,
2. Nikki Kumari D/o Late Ashok Kumar, Both Resident of Mohalla- Katra Baradari, P.S.- Bhagwan Bazar, District- Saran Chapra.

... .. Appellants

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1000 of 2017

Arising Out of PS. Case No.-43 Year-2011 Thana- BHAGWAN BAZAR District- Saran

Rajkumar Singh @ Ravi Kumar Singh @ Ravi Son of Late Yogendra Singh, resident of Katra Nawaji Tola, Police Station- Bhagwan Bazar, District- Saran at Chapra.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1023 of 2017

Arising Out of PS. Case No.-43 Year-2011 Thana- BHAGWAN BAZAR District- Saran

Malti Kuwar @ Malti Devi Wife of Late Yogendra Singh, Resident of Katra Nawaji Tola, Police Station- Bhagwan Bazar, District- Saran at Chapra.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

with

CRIMINAL APPEAL (DB) No. 1078 of 2017

Arising Out of PS. Case No.-43 Year-2011 Thana- BHAGWAN BAZAR District- Saran

Chandan Kumar Son of Shri Rajendra Prasad, R/o Village- P.S.- Manjhi Manjhaghar, District- Gopalganj.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 850 of 2017)

For the Appellant/s : Mr. Dhananjay Mishra, Advocate
: Mr. Nilesh Kumar Nirala, Advocate
For the State : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 1000 of 2017)

For the Appellant/s : Mr. Dhananjay Mishra, Advocate
: Mr. Nilesh Kumar Nirala, Advocate
: Mr. Surendra Prasad Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 1023 of 2017)

For the Appellant/s : Mr. Dhananjay Mishra, Advocate
: Mr. Nilesh Kumar Nirala, Advocate
: Mr. Surendra Prasad Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CRIMINAL APPEAL (DB) No. 1078 of 2017)

For the Appellant/s : Mr. Awadhesh Kumar, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

Date : 04-09-2024

All these criminal appeals are arising out of the judgment of conviction (hereinafter referred to as the ‘impugned judgment’) and the order of sentence (hereinafter referred to as the ‘impugned order’) dated 28.06.2017 and 30.06.2017 respectively passed by learned 6th Additional Sessions Judge, Saran at Chhapra (hereinafter referred to as the ‘learned trial court’) in Sessions Trial No. 910 of 2011 arising out of Bhagwan Bazar P.S. Case No. 43 of 2011 whereby and whereunder the appellants have been convicted for the offences punishable under Sections 364A/34 Indian Penal Code (in short ‘IPC) and they have been ordered to undergo a sentence of rigorous imprisonment for life and to pay a fine of Rs.

25,000/- each for the said charge. The appellants Raj Kumar Singh @ Ravi Kumar Singh and Chandan Kumar who are appellants in Cr. Appeal (DB) No. 1000 of 2017 and Cr. Appeal (DB) No. 1078 of 2017 have been further convicted for the offences punishable under Sections 376(2)(g)/34 IPC and they have been sentenced to undergo rigorous imprisonment for life. All the sentences are to run concurrently and if the fine is deposited, Rs. 20,000/- from the fine of each convict has been made payable to the victim.

Prosecution Case

2. The prosecution case is based on the written report dated 11.04.2011 (Exhibit '2') submitted by one Chandeshwar Prasad Singh (PW-5) who has stated that his daughter (hereinafter called 'victim') had left her house for market on 31.03.2011 whereafter she did not return. The informant alleged that he received repeated threatening messages from the mobile phone of his daughter being 9204460548 on his mobile no. 9234797787. He received a call on 10.04.2011 at 7:00 PM from another number 08860287541 from which a threat was given that the caller had abducted his daughter and he had already spent Rs. 80,000/- on account of her abduction which the informant would be liable to pay. The informant claimed that he made efforts to find out the identity of caller of the phone number and came to know that the

said number belongs to Raj Kumar Singh @ Ravi Kumar (appellant in Cr. Appeal (DB) No. 1000 of 2017). The informant further alleged that Raj Kumar Singh had earlier also made attempt to abduct and tease his daughter and was caught on the spot. He happened to be son of one Late Yogendra Singh @ Lal Saheb Singh. He had assured on earlier occasion that he would not indulge in this kind of act in future. The informant alleged that said Raj Kumar Singh @ Ravi and his mother Malti Kuwar both had abducted his daughter and have kept her in their possession for purpose of ransom. He also alleged that in their defence, they had forcibly got written some wrong statement. The informant requested for taking lawful action against the accused persons and recover his daughter.

3. On the basis of the said written report, Bhagwan Bazar P.S. Case No. 43 of 2011 dated 11.04.2011 was registered under Section 366A IPC on 11.04.2011 at 9:30 hours.

4. After investigation, Police submitted a charge-sheet against the accused persons under Sections 366A/376/34 IPC. *Vide* order dated 11.04.2012, the learned Judicial Magistrate, First Class committed the records to the court of Session where *vide* order dated 06.08.2012, the record of accused Chandan Kumar was sent to Juvenile Justice Board for age assessment but after inquiry, he

was found major at the time of occurrence, therefore, the record was returned to the court concerned. Thereafter, the records of said Chandan Kumar was also committed to the court of Sessions *vide* order dated 04.08.2012. Sessions Trial No. 541 of 2012 and 543 of 2012 were registered which were amalgamated in Sessions Trial No. 910 of 2011 *vide* order dated 01.11.2012.

5. It further appears that charges were framed against the accused Malti Devi, Niki Kumari and Reeta Devi for the offences punishable under Sections 366A/34 IPC whereas against accused Chandan Kumar and Raj Kumar @ Ravi charges under Sections 376/34/366A/34 IPC were framed after the accused persons denied the charges and claimed to be tried. It is recorded that the charge has been corrected as under Section 366 instead of Section 366A *vide* order dated 17.04.2016 and subsequently, the charges have been altered under Sections 376(2)(g)/34 IPC against the accused persons, namely, Raj Kumar @ Ravi and Chandan Kumar and under Section 364A/34 IPC against accused persons, namely, Raj Kumar @ Ravi, Chandan Kumar, Rita Devi, Niki Kumari and Malti Devi on 31.05.2016. The accused persons denied the charges and claimed to be tried.

6. In course of trial, the prosecution examined as many as nine witnesses and exhibited the following documentary evidences which are mentioned hereunder in tabular form:-

List of prosecution witnesses:-

PW-1	Dr. Salini Moni
PW-2	Sabita Devi
PW-3	Victim
PW-4	Ravi Kumar Singh
PW-5	Chandeshwar Prasad Singh
PW-6	Amit Kumar Singh
PW-7	Jay Shankar Singh
PW-8	Kumar Santosh Rajak
PW-9	Gautam Kumar

List of Exhibits:-

Ext. -1	Injury Report of Gyan Mala Kumari		Sd/- <u>7.6.13</u> 28.2.17
Ext. 1/1	Supplimentary Report of Gyan Mala Kumari		Sd/- <u>7.6.13</u> 28.2.17
Ext. 2	लिखित आवेदन	दिनांक 18.7.13	Sd/- <u>18.7.13</u> 28.2.17
Ext. 3	Cr.P.C. की धारा 164 के अंतर्गत ब्यान	दिनांक 13.8.13	Sd/- <u>13.8.13</u> 28.2.17
Ext. 4	F.I.R	दिनांक 20.8.13	Sd/- 28.2.17
Ext. 5	लिखित आवेदन का पृष्ठांकन	दिनांक 20.8.13	Sd/- 28.2.17
Ext. 6	Cr.P.C. की धारा 164 के ब्यान पर ज्ञान माला कुमारी का हस्ताक्षर	दिनांक 15.2.14	Sd/- <u>15.02.14</u> 28.2.17
Ext. 7	सनहा	दिनांक 12.1.15	Sd/- 28.2.17

Findings of the learned Trial Court

7. After analysis of the evidences on the record, the learned trial court has recorded a finding that the allegations leveled by the informant and the subsequent offences committed by the accused persons from the date of occurrence dated 31.03.2011 have been proved. The trial court was of the view that though there are some minor discrepancies in the statement of the prosecution witnesses but those are natural and would not prove fatal to the prosecution case. It has been concluded by the trial court that on the basis of the whole evidences, it would come to a conclusion that in furtherance of common intention and their conspiracy, all the accused persons had abducted the victim and some of them committed brutal gang rape with her several times at several places. With such findings, the learned trial court has convicted the accused persons-appellants and sentenced them as stated hereinabove.

Submissions on behalf of the appellants

8. Mr. Dhananjay Mishra, learned counsel for the appellants, namely, Reeta Devi, Raj Kumar Singh @ Ravi Kumar Singh @ Ravi and Malti Kuwar has led the argument which has been followed by Mr. Awadhesh Kumar, learned counsel representing the appellant Chandan Kumar. It is their common

contention that in this case, the learned trial court has completely erred in appreciating the evidences available on the record. The submission is that on a complete misplaced appreciation of the prosecution evidences, the learned trial court has convicted the appellants and it has resulted in travesty of justice.

9. Learned counsel submits that it is evident from the written report itself that the victim girl had left her house for the market on 31.03.2011 but she did not return home. It has come in the evidence of the victim girl (PW-3) that she was a Graduate and at the time of occurrence, she was aged about 25-26 years (paragraph '18' of her cross-examination). Learned counsel submits that according to the informant, he had received repeated message from the mobile phone of his daughter in which he was threatened that he and his children would be killed but despite such messages received by the informant, he did not go to the police station until 11.04.2011 when he submitted the written report (Exhibit '2'). In his written report (Exhibit '2'), he has stated that on 10.04.2011 at about 07:00 pm, he had received a phone call from another mobile and at this time, the caller had informed him that he had already spent Rs. 80,000/- on the abduction of his daughter which the informant would be liable to pay. In course of his evidence, the informant who has been

examined as PW-5 has stated that he had received the phone call on 10.04.2011 for the first time and prior to this date, he had not received any threat. Thus, it is submitted that in this case, on the one hand, the informant (PW-5) came to lodge the FIR at a much belated stage after about eleven days of the missing of his daughter and while lodging the FIR, he made a false statement that he was getting repeated threatening messages from the mobile phone of his daughter.

10. Learned counsel submits that from the evidence of the prosecutrix (PW-3), who is the star witness of this case, it would appear that she has come out with a completely unbelievable statement and in the process, she has made material contradictions in form of deviations from her earlier statement recorded under Section 164 Cr.P.C. It is submitted that the victim girl is said to have returned Chapra on 22.06.2011. According to her, she was taken to the Police Station by the I.O. (PW-9). In her statement before the I.O., she did not disclose that Ravi, Pappu and Chandan had taken her to Tata and Deoghar, she had not stated that they had kept her in a room at Deoghar and all the three committed rape on her. She had also not stated that they were asking her to bring money from her father and she had not stated that they had kept her at Delhi for three months. The victim had also not stated

before the I.O. (PW-9) that they had been committing rape on her at Delhi and that they were threatening her that if she would not bring money from her father, her sister would be killed. It is submitted that in her statement under Section 164 Cr.P.C., she has stated that on 31st March, 2011, she met Nikki and her mother, did marketing with them and together reached at Municipal Chowk where one Maruti Van was standing and all the three sat into the said van in which Ravi, Pappu and Chandan were sitting from before. They went to the field of Girls' School where Nikki and her mother got down and the three boys kept sitting in the vehicle. She was covered with a *burka* and they threatened her to kill on a pistol point, if she raised *hulla* and they took her to the bus stand. According to her, she was put in *burka* in the vehicle itself. The victim has stated that from there, she along with three boys boarded a bus where she was asked to put her signature on a stamp paper and her finger marks/impression were also taken on the stamp paper. From there, she was taken to Tata and from there to Deoghar where she was confined in a room and all the three committed rape on her. She has stated that she spent 20-25 days with them and thereafter they took her to Delhi where she was kept in Udyog Nagar. She has further stated that after 10-15 days, Pappu and Chandan returned from there and Ravi confined her in a

room but one day, she got an opportunity, she came out and made a phone call to her father whereafter her father sent her maternal uncle who took her to Munda. She has stated that from there, Ravi once again lifted her and after few days, she fled away. She has then made a statement that her father came there and took her to home. She disclosed that she returned her home yesterday night at 01:00 O'clock.

11. Learned counsel submits that when she was being examined in course of trial, she made materially inconsistent and contradictory statements.

12. Learned counsel submits that the veracity of the evidence of the prosecutrix would lose its credence when this Court would examine the statement of the prosecutrix as regards her return to Chapra. In her examination-in-chief, PW-3 has stated that she was made to wear a burka at the government bus stand from where she was taken in a bus on a sleeper seat to Tata. In her statement under Section 164 Cr.P.C., she has stated that she was made to wear burka in the Maruti van. It is further pointed out that in her examination-in-chief, she has stated that on finding a chance, she fled away and reached Chapra Bus Stand where she found police, police took her to the police station where her statement was recorded. In paragraph '25' of her cross-

examination, she has stated that she had not lodged any complaint against anyone at Delhi because she did not get any chance to do so. She has stated in paragraph '35' that she had talked to her father on his mobile no. 9234797787 from a PCO. In paragraph '39', she has stated that while talking from PCO or going to Munda Gaon, she had not stated to anyone that the accused persons were committing rape on her after her abduction. In paragraph '40', she has stated about her abduction and gang rape to her maternal uncle in Munda Gaon but after reaching there, neither she nor her maternal uncle had given any information to police about the accused persons. She denied the suggestion that she was aware at Delhi itself that she was pregnant and she had gone for her treatment in a government hospital at Delhi on 09.06.2011 where on the prescription she had got mentioned her husband name as Ravi Singh. She had stated in paragraph '42' that after reaching Chapra, she came to know about her pregnancy, she was treated for her abortion but she did not remember as to where she was treated. In paragraph '43', she was suggested that she was in love with Ravi and earlier also she had tried to elope with him but could not succeed. Since Chandan was against the relationship between the victim and said Ravi Singh, therefore, he was falsely implicated.

13. Learned counsel submits that the story of her return to Chapra has not been truly stated by PW-3. She has stated in paragraph '14' of her cross-examination that she had returned from Delhi through aeroplane, her father had gone to Delhi and she had informed her father by her mobile number 9234797787. She had reached Patna first. It is pointed out that in her statement under Section 164 Cr.P.C. (Exhibit '3'), she has stated that when she was brought to Delhi by Pappu, Ravi and Chandan, they had kept her in Udayog Nagar. After 10-15 days, Pappu and Chandan returned. Ravi confined her in a room but one day she got chance to escape, she escaped from there and made a phone call to her father. Her father sent her maternal uncle who took her away to Munda but from there also Ravi lifted her but after few days she escaped. Her father brought her home at 1:00 AM (night hour). Learned counsel submits that the victim has given a dramatic story and it is evident from her statement at different places that she being a Graduate and fully adult aged about 25-26 years at the time of occurrence had left her house on her own because of her love with Ravi and then she was staying with him for about three months at Delhi. She seems to have been persuaded by her family members later on to return. The defence has suggested to her in paragraph '18' of her cross-examination that she was not abducted rather she had left her

house on her own volition. On the one hand, she had stated in paragraph '14' of her deposition that she had informed her father from her mobile number 9234797787 but in paragraph '19' of her deposition she has stated that on the date of occurrence, she had no mobile with her and she had talked to her father from Delhi from a landline. It is submitted that this witness has made false statements at several places, therefore, she is not a sterling witness and cannot be relied upon to convict the appellants.

14. It is further submitted that in course of investigation, the mobile phone of the informant was not seized and no forensic test was conducted to prove that any phone call was made by Ravi on 10.04.2011 or prior to that repeated threat messages were being received by the informant.

15. Learned counsel submits that Amit Kumar Singh, learned Judicial Magistrate has deposed as PW-6 and has proved the statement of the victim recorded under Section 164 Cr.P.C. as Exhibit '3'.

16. Jai Shankar Singh (PW-7) has proved the formal FIR (Exhibit '4'). He had recorded restatement of the informant and Savita Devi and had inspected the place of occurrence. He had, however, not visited either Tata or Udyog Nagar at Delhi where the victim was allegedly confined. In his cross-examination, he has

stated that he had not taken printout of the mobile number mentioned in the FIR and had not made any verification with respect to the talk from the said mobile. He had recorded statement of two independent witnesses, namely, Ravi and Savita Devi. Those two independent witnesses have, however, not been examined in this case.

17. Kumar Santosh Rajak (PW-8) was posted in Bhagwan Bazar Police Station and had assumed investigation of the case on 27.08.2011. He had only submitted charge-sheet.

18. Gautam Kumar (PW-9) was posted as Police Sub-Inspector in Bhagwan Bazar Police Station on 20.06.2011 and had taken charge of the investigation of the case. He has made a statement that he found the victim girl standing alone on the road at Chapra, she had not stated that she was coming with someone. She was taken to police station with a woman Constable where her statement was recorded. She had not taken name of Rita, Nikki and Chandan in his presence. Her father and mother had also come there and thereafter the statement of the victim under Section 164 Cr.P.C. was recorded and her medical examination was done on 23rd. In his cross-examination, he has stated that he had not taken out any printout or location of the mobile and from which mobile talks were done. He had not received call details. The defence

suggested that had he brought the call details on record then the truth would have been revealed. In his cross-examination, he has contradicted the victim girl on almost all aspects of the matter which this Court has already taken note of earlier.

Submissions on behalf of the State

19. Mr. Dilip Kumar Sinha, learned Additional P.P. has submitted that the victim girl in this case was a Graduate and aged about 25-26 years at the time of occurrence. From her deposition, it appears that on 31.03.2011, she had left her house at about 4:00 PM and went to Hathua Market. In her examination-in-chief, she has stated that after doing the marketing work, she reached Municipal Chowk together with Nikki and her mother and there a van was standing. In her examination-in-chief, she has not stated that she was made to wear a *burka* (a dress which is used by Muslim women to cover their body from head to leg). According to her, she was made to wear a *burka* at the bus stand. In her cross-examination, however, in paragraph '9', she was suggested by the defence that in her previous statement before police, she had not stated only about identifying Ravi in the vehicle and she had stated that when she reached near vehicle, then Raj Kumar had called her taking her name whereafter she sat in the vehicle. She was also suggested by the defence referring to her previous statement

before police that she had stated before police that first of all, vehicle had gone to the premises of Girls' School which is a government school and she denied the suggestion of the defence but when the I.O. (PW-9) came to be examined, he has contradicted the prosecutrix (PW-3). PW-9 has stated that the victim has not stated before him that Ravi, Pappu and Chandan had taken her to Tata and Deoghar.

20. Learned Additional P.P. submits that from the evidence of PW-3, he finds that the evidences suggest a relationship between the victim and the appellant Raj Kumar Singh @ Ravi Kumar Singh @ Ravi. It is submitted that being a prosecutor, his role is to assist this Court in rendering justice and in this case, he finds that at several places, the evidence of PW-3, who is the star witness of this case, stands falsified.

Consideration

21. We have heard learned counsel for the appellants and learned Additional Public Prosecutor for the State. We have also perused the trial court records.

22. In this case, the learned trial court has convicted all the appellants for the offences punishable under Section 364A/34 IPC. The appellants, namely, Raj Kumar Singh @ Ravi Kumar Singh and Chandan Kumar have been further held guilty and

convicted for the offence punishable under Section 376(2)(g)/34 IPC. It is evident from the evidences on the record that the victim woman (PW-3) was a Graduate aged about 25-26 years on the date of occurrence. She left her house on 31.03.2011 at 4:00 PM and reached Hathua Market where she had done marketing together with Nikki and her mother. About Nikki and her mother, PW-3 has stated that they told her to take the van which was standing there for going their house but in the said van altogether three boys were sitting from before. According to PW-3, when she wanted to get down from the van, then Pappu had pointed pistol on her and told her not to make noise otherwise she would be shot dead. The said van was taken towards the Girls' School where Nikki and her mother got down but when she wanted to come out of the van then she was threatened. This occurrence took place on 31.03.2011 but a written report with regard to this occurrence was submitted by her father Chandreswar Prasad Singh who has been examined as PW-5 only on 11.04.2011. In his written report (Exhibit-5), the informant has stated that he had received threat messages on his mobile no. 9234797787. Contrary to his statement, the victim (PW-3) has stated in paragraph '14' of her deposition that she had informed her father from Delhi by giving a mobile call. She has specifically stated that her mobile number is 9234797787. Later

on, PW-3 has stated that she had made a telephone call to her father on his mobile number 9234797787 from a PCO (public booth). The informant never produced either his mobile or the mobile of his daughter and the I.O. (PW-9) has stated that he had not done any investigation about the location of the mobile, he was not aware as to whether the call details were obtained. Thus, on the point of threatening messages having been received by the informant repeatedly after the occurrence, there is no evidence.

23. The informant (PW-5) has stated in his examination-in-chief that he had gone in search of his daughter in the evening of 31.03.2011 and when she was not found, he had lodged a Sanha on 01.04.2011. This Sanha has not been brought on record. In his cross-examination, PW-5 has stated that his daughter was not using mobile number 9204460548, he had received a missed call from mobile number 9204460548 on the 21st whereafter he had gone to Delhi by aeroplane and on the same day, he had returned from Delhi with his daughter and had landed at Patna whereafter they had gone to Chapra by bus and at the bus stand, he left his daughter, she had been taken to police station. He had informed police that after receiving missed call, he had gone there but he had not disclosed that he had brought her daughter from the house of her maternal uncle. He has stated that his mobile phone was not

seized by police. This Court finds that neither the Sanha has been proved by the prosecution nor the delay of eleven days in submitting written report to the police has been explained by the informant (PW-5). The informant did not furnish any information to police regarding receiving of missed call from his daughter on 21st. He did not inform police that he was going to Delhi to bring back his daughter and further his evidence that he left his daughter at the bus stand at Chapra from where police picked her and took her to police station is nothing but a completely false statement. The victim (PW-3) has in her statement under Section 164 CrPC stated that her father had brought her back to home and she had reached yesterday night at 1:00 o'clock. It is also evident that both the informant as well as the victim are making vacillating statement about their respective mobile numbers and the mode of communication by the victim to her father from Delhi.

24. In this case, the star witness is the victim herself. She has stated that she had gone to Hathua Market on 31.03.2011 at 4:00 PM. In her cross-examination, she has stated that she had gone to purchase a teddy bear in the market but what happened to them is not known to her. Contrary to her statement, her mother (PW-2) has stated that her daughter had gone market to purchase the things for sewing. The victim has stated in her cross-

examination that the way to her house from Hathua Market is straight towards west and for going to her house from Hathua Market, there is no need to go to Municipal Chowk. She has stated that prior to the occurrence she had seen all the three persons in the market also. She has made statement in her cross-examination that she had no talk with Pappu, Chandan and Raj Kumar @ Ravi who were sitting in the van. Her attention was drawn towards her previous statement made before police after she came back. She had not made any statement before police that she was taken to Tata and Deoghar by Ravi, Pappu and Chandan. She had not stated before police that all the above named three persons had confined her in a room at Deoghar and they were committing rape on her. She had not stated before police that all the three had been asking her to bring money from her father failing which she would not be spared. She had also not stated before police that all the three had taken her to Delhi and kept there for three months. The I.O. (PW-9) has further stated that the victim (PW-3) had not stated that the above named three persons had been committing rape with her at Delhi. Thus, immediately after her reaching to Chhapra when she was interrogated by the I.O. (PW-9), she did not make any statement of her abduction by Ravi, Pappu and Chandan, she did not make any statement alleging commission of rape on her. In her

entire evidence PW-3 has not stated that Nikki, her mother and the mother of Ravi Kumar Singh @ Ravi Kumar were in collusion with the three persons.

25. This Court finds that for the first time in her statement under Section 164 Cr.P.C., the victim girl came out with a statement that she was threatened by pointing pistol on her head and was not allowed to shout and they took her to bus stand where she was made to wear a *burka* and then she was taken to Tata by a bus from where she was taken to Deoghar and was confined there in a room where all the three namely Pappu, Ravi and Chandan were committing rape on her. She has stated that after staying there for 20-25 days, they took her to Delhi and kept her in Udyog Nagar from where after 10-15 days, Pappu and Chandan returned. Ravi kept her in a room but she fled away from there and made a phone call to her father who sent her maternal uncle and her maternal uncle took her to Munda but once again Ravi lifted her from there and after a few days, she again escaped. Thereafter she had returned with her father. Her Section 164 Cr.P.C. statement has been proved as Exhibit '3'.

26. In course of trial, PW-3 has stated that she was made to wear *burka* in the Maruti Van itself therefore on this point she is not consistent with her statement under Section 164 CrPC. She has

stated in her cross-examination that she had not made any statement before police that she was made to wear *burka*. From the evidence on this point, this Court would conclude that the story that she was made to wear *burka* while taking away in the Maruti Van and the bus is only an afterthought which has not been proved by the prosecution.

27. This Court finds that the statement of the victim regarding her stay in Delhi would show that she did not remember as to how many days she had stayed at Delhi. She has stated that she returned from Delhi on 22nd with her father. She had informed her father from her mobile number 9234797787 but she did not remember the date. Her father (PW-5) has stated that he had received a missed call from mobile number 9204460548. The victim (PW-3) has stated at one place in course of her cross-examination that she had made a call on the mobile number of her father i.e. 9234797787 from a public booth. It is evident that both PW-3 and PW-5 are suppressing the truth on the point as to how PW-5 came to know about the presence of his daughter (PW-3) at Delhi. It is evident from the evidence on the record that the story of PW-3 that she escaped and made a phone call from PCO to her father is a false statement. PW-5 was well aware that his daughter

had gone with Raj Kumar Singh @ Ravi Kumar Singh and she was in Delhi.

28. This Court also finds that on the point of her return from Delhi to Chapra and then going to the police station for making her statement also the victim (PW-3) and her father (PW-5) both are trying to suppress the truth. PW-3 has stated that she met police at the bus stand but could not say that who had called police. She had gone with police to the police station where after interrogation she was left and reached her house in evening. She has stated that her father was present at house. She has stated that when she returned from Delhi to Chapra, she was pregnant. PW-5 has stated in his deposition that his daughter had made telephone call to him from Udyog Nagar. She met him for the first time after her abduction at Delhi Airport from where he brought her to Patna by aeroplane and from Patna he reached Chapra by bus. He had not advised his daughter to go to the nearest police station and report the occurrence of her abduction and rape. He has stated that after reaching Chapra, he went to bring a rickshaw but at that time Bhagwan Bazar Police had taken away his daughter. He had not informed about this to the police station. This Court finds that while PW-3 has stated in her Section 164 Cr.P.C. statement that she had reached her home yesterday night itself at 1:00 o'clock,

her father (PW-5) has stated that he had reached Patna by air and thereafter he had reached Chhapra by bus and had gone to bring a rickshaw when the victim was taken away to Bhagwan Bazar Police Station. The whole story seems to be dramatic.

29. The doctor who conducted the medical examination of the victim has been examined as PW-1. The victim was examined on 22.06.2011 at 12:45 PM. The doctor did not find any mark of external injury on her body. There was no injury on around the private part. The hymen was old ruptured and pathological report did not show spermatozoa either dead or alive. The urine for pregnancy test was found positive. The doctor noted that there is no evidence of recent sexual intercourse. The victim was found pregnant. The gestational age of her pregnancy was eight weeks. The medical report has been proved by PW-1 which has been marked Exhibit '1' and '1/1'.

30. Upon complete analysis of the evidences available on the record, this Court finds that the prosecution has miserably failed to bring cogent evidence to prove the guilt of the accused persons beyond all shadow of doubts for the charged offences. This Court has found that PW-3 in this case is materially inconsistent and has made contradictory statements which would take away her credence and she cannot be taken as a trustworthy

witness. It would thus not be safe to sustain the conviction of the appellants in the present case.

31. Accordingly, this Court acquits the appellants namely Reeta Devi, Nikki Kumari, Rajkumar Singh @ Ravi Kumar Singh @ Ravi, Malti Kuwar @ Malti Devi and Chandan Kumar from the charges under Sections 364A/34 IPC and the appellants Rajkumar Singh @ Ravi Kumar Singh @ Ravi and Chandan Kumar are also acquitted from the charges under Sections 376(2)(g)/34 IPC giving them benefit of doubt.

32. All the appellants are on bail, hence they are discharged from the liability of their bail bonds.

33. These appeals are allowed.

34. Let the trial court records along with copy of the judgment be sent to the learned court below.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Rishi/Lekhi-

AFR/NAFR	
CAV DATE	
Uploading Date	11.09.2024
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