

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.912 of 2023

Arising Out of PS. Case No.-14 Year-2019 Thana- MAHILA P.S. District- Araria

ANWARUL SON OF MD. RAFID VILLAGE -DAHUWABARI WARD NO
13, PS-KURSAKANTA DISTT- ARARIA

... .. Appellant/s

Versus

The State of Bihar BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 985 of 2023

Arising Out of PS. Case No.-14 Year-2019 Thana- MAHILA P.S. District- Araria

MD. PINKU S/O- MD. SAHOMUDDIN @ MD. SAIMUDDIN R/O-
VILLAGE- DHOWABARI, WARD NO. 13, P.S.- KURSAKANTA, DIST.-
ARARIA

... .. Appellant/s

Versus

THE STATE OF BIHAR BIHAR, PATNA

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 912 of 2023)

For the Appellant/s : Mr.Anil Prasad Singh. Adv.

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 985 of 2023)

For the Appellant/s : Mr.Mrigendra Kumar, APP

For the Respondent/s : Mr. Abhimanyu Sharma, Adv.



**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 20-06-2024

1. Both the appeals have been taken up together and are being disposed of by this common judgment.
2. We have heard Shri Anil Prasad Singh, the learned Advocate for the appellant/Anwarul in Cr. Appeal (DB) No. 912 of 2023 and Shri Mrigendra Kumar, the learned Advocate for the appellant /Md. Pinku in Cr. Appeal (DB) No. 985/2023. The State, in both the appeals, has been represented by Mr. Abhimanyu Sharma, the learned APP.
3. The appellants have been convicted under Sections 323, 341, 354-B, 376-D and 506/34 of the Indian Penal Code vide judgment dated 03.08.2023 passed by the learned Additional Sessions Judge-I, Araria in Sessions Trial No. 164 of 2019/ CIS No. 164 of 2019, arising out of



Mahila P.S. Case No. 14 of 2019. By order dated 10.08.2023, the appellants have been sentenced to undergo SI for one year, to pay a fine of Rs. 1000/- and in default of payment of fine to further suffer SI for one month under Section 323 IPC; SI for one month under Section 341 IPC; RI for five years, to pay of fine of Rs. 5,000/- and in default of payment of fine to further suffer SI for three months under Section 354-B IPC; RI for life, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffers RI for three months under Section 376- D IPC and SI for one year, to pay a fine of Rs. 2,000/- and in default of payment of fine to further suffer SI for one month under Section 506 IPC. The sentences have been ordered to run concurrently.

4. Both the appellants along with one Md. Murtaza (since dead) are said to have gang-raped the victim (PW1). The F.I.R. was lodged by the



victim on 22.02.2019 in the night i.e. shortly after the occurrence. The victim has alleged that she had gone to attend a marriage ceremony in the house of one Bihari Mandal in the night of 21.02.2019. When her child started crying, she came back home and slept with the child. Since the door of the room could not be locked because of the defective latch, she only drew the curtain and went off to sleep. Late in the night, it has been alleged, three persons entered the house and after gagging her, took her to a nearby field where garlic crops were sown. She was raped successively by three persons, out of whom, she identified appellant / Anwarul. The two other persons who had committed rape on her could not be identified by her. The appellant / Anwarul is said to have threatened her of dire consequences in case she reported the matter or shouted. However, by that time, the mother-in-law of the victim (PW2) came



running from the house. Seeing her, the victim was assaulted and was pushed aside. The appellants and another thereafter fled away. She narrated the entire occurrence to her mother-in-law. After some time, the information about her gang rape spread in the village.

5. On the basis of the afore-noted written report by the victim (PW1), a case vide Araria Mahila P.S. Case No. 14/2019 dated 22.02.2019 was registered for investigation against the appellant / Anwarul and two other unknown persons under Sections 323, 341, 354(B), 376 (D), 506/34 and 448 of the Indian Penal Code.

6. During the course of investigation, it came to light that the two associates of the appellant / Anwarul viz. Md. Pinku and one Md. Murtaza, who could not face the Trial as he had died before that, were the perpetrators of the crime.

7. We have also noticed that the written report



was signed by the brother-in-law of the victim, namely, Chandan Kumar, who too has been examined as PW3.

8. A perusal of the deposition of PW3 would indicate certain facts which would make the prosecution story very doubtful. Before the Trial Court, he has alleged that in the night of the occurrence, he was present in the village. While he and his elder brother (PW4) were returning from the marriage ceremony, he saw three boys, namely, Anwarul, Md. Murtaza and Md. Pinku committing rape on the victim. Seeing them, the appellants and another tried to flee away. They were attempted to be apprehended but they could run away. The victim narrated about the occurrence to him. Shortly thereafter, all the family members came at the P.O. and the case was registered. On the written report (Ext. 1) lodged by the victim, he had also signed.



9. In his cross-examination, PW3 has spoken about his relationship with the victim and the fact that there was a marriage ceremony in the house of one Bihari Mandal of the village where all the family members of the victim and PW3 had gone. With respect to the occurrence, the information provided by the victim was the only source. There were marks of violence on the body of the victim. The clothes of the victim were also found to be torn. However, the victim was wearing her clothes. The appellants are co-villagers.
10. What is very noticeable in the deposition of PW3 is that he, at one point of time, has stated that he and PW4 (husband of the victim) saw the appellants committing rape on the victim but in his cross-examination, has asserted that the source of information about rape was only through the mouth of the victim. That apart, when he had seen three persons viz. appellants/ Anwarul and Md.



Pinku and one Md. Murtaza (since dead) and was present at the time of filing the written report which he had signed also, there was no reason for him not to disclose the names of Md. Pinku and Md. Murtaza to the victim who could have arraigned them in the written report. What is then even more surprising is that the story narrated by PW3 is not in sync with what has been stated by the victim (PW1) and her mother-in-law (PW2).

11. The victim (PW2) though has supported the prosecution case in its entirety but the story narrated by her is different in many respects. She has averred before the Trial Court that while she was being raped and threatened, her mother-in-law (PW2) came. At that point of time, she was thrown in the garlic field and it was only thereafter that the case was filed. Nowhere, has she stated that her husband and brother-in-law also came at the time when the appellants were in flagrant delicto or



that they tried to apprehend the accused persons.

In her cross-examination, she has stated that she had gone to attend the marriage ceremony in the evening at about 7 'O' clock. By about 11 'O' clock, her son started crying. It was at that time that she came back home and slept in her room without the door locked from inside. The garage field was situated next to the room. The occurrence continued for about one hour.

12. Though her medical examination was done on 22.02.2019 only but about four days later, she was again subjected to another medical examination. The reasons for the second medical examination has remained unexplained. She has also stated that her husband (PW4) was serving food at the marriage venue. She has again specifically stated that neither at the time of the occurrence nor when she was sent for medical examination, her husband was present with her. It



is precisely for this reason that a suggestion was given to her that no such occurrence as reported by her had ever taken place and that she had falsely framed the appellants.

13. In the same context, it would be profitable to refer to the deposition of the husband of the victim, who has been examined as PW4. He has stated that while he and his brother/Chandan Kumar (PW-3) were coming back home from the marriage ceremony, they heard a gurgling sound. Both of them went in that direction and found that the clothes of his wife were torn and she looked absolutely perplexed. She was naked also. The miscreants were trying to run away and could not be apprehended. He went to the police station and informed the police about the occurrence.

14. During his cross-examination, he has admitted that he lives in a village where many persons of muslim community also reside. He



admitted that he had not seen the act of rape but had reached immediately thereafter. In the next breadth, he had stated that he saw the accused persons running away from the P.O.. He did not know the parentage of the appellants. All his family members lived in the same house and slept on the floor. He had also noticed injuries of the nature of abrasion on the person of his wife.

15. The mother-in-law of the victim (PW2) has given a statement which is somewhat consistent with what the victim had told the Trial Court. She had been sleeping in the adjacent room in the night of the occurrence. On hearing the garbled voice of her daughter-in-law, she went to the garlic field and found that she had been raped by the appellants and another and had been thrown in the field. She made her daughter -in-law wear another *Sari*, whereafter she was brought back home and then the written report was lodged.



16. If her deposition is seen keenly, it would only appear that she had reached the garlic field after the appellants had fled away.

17. In her cross-examination, she has given a different story altogether. According to her, while the miscreants were trying to flee away, they were caught by the husband (it is not clear whether PW2 was referring to her husband or the husband of the victim). However, the miscreants could run away. The police had come immediately after the occurrence and had visited the house again after three -four days.

18. In this factual background, the deposition of Dr. Sheela Kumar (PW7) assumes significance. She has examined the victim on 22.02.2019 only had not found any external injury on any part of the body except mild abrasion which was fresh on the labia majora. The hymen was found to be old but ruptured. The vaginal swab which was



collected had been sent for semen analysis. The microscopic examination of the vaginal swab reflected no spermatozoa, either dead or alive. However, she gave an opinion that as per her findings, especially the injury on the private part of the victim, there could be a possibility of a fresh sexual assault but simple in nature. The age of the victim was assessed to be 20 years.

19. In her cross-examination, she admitted that the mild abrasion on the labia majora could be manufactured also.

20. What becomes evident is that the victim was straightaway sent for medical examination. There is no evidence that she had changed her clothes or had taken bath. Had she been raped by three persons in row, there would not have been only a minor bruise on her private part. The victim is a married lady with a son and, therefore, the old ruptured hymen could not be any indicator of any



physical onslaught on her. That apart, the microscopic examination of the vaginal swab disclosed nothing.

21. After five days (though claimed by the victim to be four days), she was again subjected to medical examination by Dr. Md. Ansar Alam (PW8). He had examined the victim on 27.02.2019 and had found redness / bruises on the right thigh and a minor abrasion on the thumb. All the injuries were found to be simple in nature caused by hard and blunt substance.

22. This medical examination is thus also of no consequence so far as the determination of the guilt of the appellants is concerned.

23. Anima Kumari (PW5) had investigated this case. She had inspected the P.O. and based on the written report of the victim, arrested appellant / Anwarul. The victim was sent for medical examination. Appellant / Anwarul was also sent for



medical examination. She had recorded the statement of all the family members and independent persons also, namely, Balkrishna Mandal, Nanvir Mandal and Dayanand Mandal, who have not been examined at the Trial. Anwarul was arrested first whereafter Md. Murtaza and Md. Pinku were arrested. According to her, both of them gave their confessional statement before the police and only thereafter they were also subjected to medical examination.

24. The investigation was then handed over to Rita Kumari (PW6), who had got the statement of the victim recorded under Section 164 Cr.P.C. The clothes which was seized by her was sent to the forensic science laboratory but there is no reference of any FSL report in her deposition.

25. It thus appears that there could be a possibility of false implication of the appellants or of over-exaggeration. The first anomaly in the



prosecution case is that the victim lodged the written report which was countersigned by her brother-in-law, namely, Chandan Kumar (PW3). According to Chandan Kumar, three persons including the appellants had raped the victim. If this were so, the name of Md. Pinku and late Md. Murtaza also would have found mention in the array of the accused persons. In the written report, only the name of appellant / Anwarul has been mentioned.

26. The second aspect of the matter is the nature of injury suffered by the victim, specially in the background of not only three persons not having raped her successively but she having been assaulted brutally and thrown her in garlic field. The first medical examination reflected only a minor bruise on the labia majora.

27. Thirdly, we have found that with respect to sequence of events, the witnesses have made



contradictory statements, striking at the root of the very failure of prosecution. If the husband of the victim had seen the act of rape or even the appellants fleeing away, he too would have said so to the victim before filing of the written report.

28. In fact, the victim has clearly stated that neither at the time of occurrence nor during her medical examination, her husband was ever present. This clearly signifies that the husband of the victim was either not present in the village or had remained busy at the marriage venue serving food to the guests. If his presence at the place of occurrence at the time of fleeing away of the accused persons is doubtful then the presence of PW3 also becomes doubtful as both the brothers, namely, PW3 and PW4 had proceeded for their home and on way they had heard the garbled voice of the victim.

29. That apart, there is no reference of the



arrival of PWs 3 and 4 either in the deposition of the victim or of her mother-in-law.

30. But what perplexes us is the reason for false implication. We have not been able to find any. All that the witnesses had to offer to the Court was that the village home of the victim had a mixed population of Hindus and Muslims. No evidence has been brought forth to indicate any dispute between the parties. In such a situation, it is very difficult for anyone to say that the allegations made by the victim are motivated or false. However, the manner in which, the occurrence is alleged to have been committed and practically no physical injury on the person of the victim having been found in the two medical examinations, we find ourselves in a quandary as to whether the implication of the appellants is correct.

31. One of the golden rules of the appreciating evidence is that if the materials collected during



the trial are capable of two explanations, one out of which is capable of drawing an inference of innocence of the accused persons, that has to be given primacy and importance. Not for a second do we doubt the victim of having made any false statement but so far as the naming of the appellant is concerned, this has become doubtful with only the name of appellant /Anwarul in the written report which was countersigned by Chandan (PW3), who had seen all the three perpetrators of the crime, namely, the appellants and late Md. Murtaza.

32. Thus giving benefit of doubt to the appellants, we set aside the judgment of conviction and order of sentence and acquit them of the charges levelled against them.

33. Both the appellants are in jail. They are directed to be released from jail forthwith unless their detention is required in any other case.



34. The appeals stand allowed.
35. The interlocutory application(s), if any, also stands disposed of.
36. Let a copy of this judgment be dispatched to the Superintendent of concerned jail for record as also for compliance
37. Let the records of this case be also returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

sunilkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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