

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.878 of 2022

Arising Out of PS. Case No.-41 Year-2021 Thana- MAHILA PS District- Buxar

Rakesh Ram, Son of Late Angur Ram, R/o Village - Sakhuana, P.S.- Rajpur,
District - Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 899 of 2022

Arising Out of PS. Case No.-41 Year-2021 Thana- MAHILA PS District- Buxar

Sanjay Ram, S/O Narsingh Ram, R/O Village- Sakhuana, P.S- Rajpur,
District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 878 of 2022)
For the Appellant/s : Mr. Abhash, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP
(In CRIMINAL APPEAL (DB) No. 899 of 2022)
For the Appellant/s : Mr. Pradhan Murli Manohar Prasad, Advocate
Mr. Raju Kumar, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP

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

Date : 01-05-2024

1. The two appeals, viz., Cr. Appeal (DB) Nos.
878 of 2022 and 899 of 2022 (appellants/Rakesh Ram
and Sanjay Ram respectively) have been heard together



and are being disposed off by this common judgment.

2. Both the appellants, along with one Sangita Devi, were put on Trial.

3. The appellants have been convicted under Sections 342/34, 323/34 and 376-D/34 of the Indian Penal Code and Sections 4/17 of the POCSO Act, 2012 *vide* judgment dated 27.09.2022 passed by the learned Additional District & Sessions Judge-VI-cum-Special Court POCSO Act, Buxar in POCSO Case No. 28 of 2021, arising out of Mahila P.S. Case No. 41 of 2021. By order dated 29.09.2022, they have been sentenced to undergo S.I. for one year, to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further suffer S.I. for one month under Section 342/34 of the IPC; S.I. for one year, to pay a fine of Rs. 1,000/- each and in default of payment of fine, to further suffer S.I. for one month under Section 323/34 of the IPC and R.I. for twenty years, to pay a fine of Rs. 20,000/- each and in default of payment of fine, to



further suffer S.I. for six months under Section 376-D/34 of the IPC.

4. The victim was given compensation of Rs. 5,00,000/-.

5. The other person put up on Trial along with appellant, viz., Sangita Devi has only been sentenced to undergo S.I. for one year and to pay a fine of Rs. 1,000/- for the offence under Section 342 of the IPC.

6. The sentences against the appellants have been ordered to run concurrently.

7. The victim, a girl of less than 18 years, is said to have been gang-raped by six persons including the two appellants in the night of 09.06.2021.

8. The victim has herself filed the FIR alleging that while she was witnessing the marriage function of the daughter of one Laxman Ram from her roof-top, she was gestured by co-accused/Sangita Devi to come down. Sangita Devi took her to a hut and locked her inside.



This had happened at about 09:00 P.M. in the night of 09.06.2021. Later, at about 11:00 P.M., six accused persons entered the hut and committed rape with the victim. She was stripped naked and her photograph was taken by mobile telephone for the purposes of uploading it on social media. Thereafter, appellant/Sanjay Ram (Cr. Appeal (DB) No. 899 of 2022) undressed her and committed rape on her. All others watched.

9. She also claims to have been divested of her personal belongings including her ornaments. When she shouted for help, her parents and villagers arrived. Seeing them, the accused persons ran away. She was taken to her home by her parents. Next day, in the morning of 10.06.2021, she went to the Mahila Police Station along with her parents and lodged the case. Since she was the only child of her parents, the accused persons had an evil eye on her family property.

10. On the basis of the afore-noted statement of the victim, Mahila P.S. Case No. 41 of



2021, dated 01.06.2021 was registered for investigation for the offences under Sections 147, 341, 323, 342, 376-D, 379, 506 and 120-B of the IPC and Sections 4 and 6 of the POCSO Act, 2012 against the appellants and others.

11. The police after investigation, submitted charge-sheet against four of the accused persons including the appellants and Sangita Devi and one Arvind.

12. For the reason of Arvind being a juvenile, his case was transferred to the concerned Juvenile Justice Board for determination of his guilt. With respect to the others, the investigation was kept pending.

13. The Trial Court, after having examined six witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

14. We have heard Mr. Abhash and Mr.



Pradhan Murli Manohar Prasad, the learned Advocates in the two appeals respectively and Mr. Binod Bihari Singh, the learned APP for the State in both the cases.

15. According to the *fardbeyan* of the victim, she was gang-raped in the night of 09.06.2021. This had happened after she was asked to come down by co-accused/Sangita, who led her to a hut. The appellants and four others entered the hut at about 11:00 P.M. The consistent case of the prosecution is that on the cries of the victim, her parents and villagers arrived. It was only then that the victim could be brought back home. This sequence of events, however, has been completely abandoned by the witnesses at the Trial.

16. Testing the prosecution case with another lens, we have examined the deposition of the victim in some detail. She (P.W. 2) has stated many more things in her examination-in-chief which were really essential for her to narrate in the FIR also when she had made such a detailed statement therein. She



has supported the prosecution case as also the story of Sangita having taken her to the hut. Thereafter, she has further disclosed before the Trial Court that the room in which she was locked was made of straw and it was a makeshift accommodation. The house of appellant/Sanjay Ram is only next to the house of the victim. Appellant/Rakesh's house is at some distance from the house of the victim.

17. While the victim was being taken to the hut where she was raped, nobody else noticed because of people remaining busy in the marriage ceremony. Nobody saw her being taken to the hut or of Sangita Devi having made a gesture to her to come down from the roof-top. She was treated at Deoria as she had developed pain in her ears after ten days of the occurrence. The people of the village, according to her, came to know about the occurrence in the night only after about half an hour of the occurrence. She has admitted before the Trial Court that appellant/Sanjay



Ram is physically challenged and does not have one arm.

18. During cross-examination, she has again admitted that appellants/Sanjay and Rakesh are related to her and that there was no dispute with appellant/Sanjay even when water from the roof-top of the house of Sanjay fell on the roof-top of the victim's house.

19. She was treated on 11.06.2021.

20. She had stated before the police that the appellants had an evil eye on her property.

21. Her statement becomes doubtful for very many reasons. She was called by Sangita while she was witnessing the marriage ceremony of the daughter of Laxman Ram (D.W. 1). That time, according to the evidence of others, there were several persons available not only in an around the house of the victim but on the roof-top. Her being called by Sangita would not have gone unnoticed.

22. The second aspect of the matter is that



she claims to have been locked inside a hut. It was a makeshift accommodation which did not have any window or door.

23. The Investigator found that the hut was very near the house of the victim. In fact, the garland exchange ceremony was taking place in the house of the victim only.

24. It appears to be rather strange that the victim remained inside that makeshift hut for two hours. Whether the lock put on the door was broken or whether the victim could be freed only after the villagers and her parents arrived, remains unknown. There are different versions about that aspect of the story.

25. We have noticed that according to the FIR, her parents had arrived at the scene of occurrence and had taken her to home. She, in her cross-examination, however, has clearly stated that on her cries, her parents arrived but the other witnesses have only testified to the fact that the victim came back home



on her own and, thereafter, narrated about the incident to her parents and others. Perhaps, for this reason, there are no other independent witnesses to the occurrence.

26. In this context, it would be profitable to refer to the deposition of the parents of the victim, who have been examined as P.Ws. 1 and 3.

27. The father of the victim (P.W. 1) has supported the prosecution case, but in his cross-examination, he has said that in his house, there are eight rooms on the ground floor and no room on the upper floor. On the day of the occurrence, a *baraat* had come in the house of Laxman Harijan, whose daughter's marriage was being performed. The house of Laxman Harijan is situated nearby. *Jaimala*, i.e., exchange of garlands between bride and groom had taken place at 09:00 P.M. near his *darwaza*. It was at that time that his daughter was called by Sangita and his daughter followed suit. He met his daughter (victim) only when



she came back home. Very curiously, P.W. 1 has stated that he met his daughter after the assault was over.

28. This is not the prosecution case.

29. He had seen his daughter bleeding from her ears. Her mouth also was swollen.

30. This, therefore, completely contradicts the deposition of the victim that her parents had rushed to the P.O. hearing her cries. P.W. 1 did not report about the occurrence to anybody for whole of the night. He has also clearly admitted before the Trial Court that even though he was present during the marriage ceremony at his house, but he never saw Sangita calling his daughter. He had not stated before the police that when his daughter was on the roof-top, Sangita had called her at 11 o'clock in the night.

31. If his deposition is to be believed, many persons were present in the marriage ceremony. The house of the bride was situated next doors. The hut where the occurrence took place was also at a distance



of 10 metres. It was simply impossible for the villagers and others not to have seen and noticed the taking away of the victim; her being locked in a hut and then gang-raped at about 11 o'clock in the night. He has finally concluded before the Trial Court that he had not seen any part of the occurrence nor had any villagers seen anything.

32. What is even more surprising is that P.W. 1 has stated that on the roof-top, along with the victim, there were 25 other persons who were also witnessing the marriage ceremony. All the happenings in the hut was not seen by him but was narrated to him by his daughter.

33. This, therefore, makes the deposition of the victim very doubtful.

34. He has also admitted that both the appellants are distantly related to him.

35. Similar is the deposition of the mother of the victim, who has been examined as P.W. 3. It was



admitted by her also that the house of appellant/Sanjay was next door and that near her house, the garland exchange ceremony was going on. She was all along with her daughter (victim). She has also admitted that appellant/Sanjay is differently abled. Both the appellants are married and they have children. She had not stated before the police that the appellants wanted to appropriate her family property. With respect to the occurrence, she has stated that only she and her husband (P.W. 1) knew about it and nobody else. In fact, she, in her deposition has talked about the participation of the husband of Sangita as well, which was never the prosecution case.

36. In this background, the evidence of the two Doctors would assume significance.

37. The victim was assessed to be 16 to 17 years of age on the day of ossification test by Dr. Yogendra Kumar (P.W. 4). This was done on 10.06.2021. On the same day, the victim was also



examined for the injuries on her person. At about 04:30 P.M. on 10.06.2021, Dr. Awani Chitra Sinha (P.W. 6) examined her and also collected the vaginal swab for its microscopic examination. No spermatozoa was found either dead or alive under the microscopic examination. A few epithelial cells were, of course, present in the vaginal swab. The hymen was found to be ruptured. There was no evidence of any external injury over any part of the body of the victim including her private parts.

38. The case of the prosecution is that she was gang-raped and had also been assaulted while being divested of her personal belongings. In fact, the father of the victim had seen her bleeding from her ears. The victim also claims to have been hurt in her ears and for the pain which had erupted, she had to go to Deoria for treatment. This medical examination was done on the next day of the occurrence but P.W. 6 found that there was no recent sign of any sexual act on the victim.

39. What could then have been the reason



for the victim to have named so many persons of the village including the appellants and her parents?

40. This remains a mystery to us.

41. The Investigator (P.W. 5) has offered no material to us to take this case to any logical conclusion. She has only expressed before the Trial Court what she had not done as an Investigator. She did not get the appellants medically examined as is mandated under Section 53A of the Cr.P.C. (refer to ***Chotkau vs. State of U.P.; (2023) 6 SCC 742***).

42. Though, the clothes of the victim were sent for forensic examination, but no report was obtained by her. She had not inquired about any uploading of nude pictures of the victim on the social media. All that she has done was to send the victim for her medical examination. No investigations at all were made with respect to the veracity of the accusation against the appellants and others, against whom no material was forthcoming and, therefore, the



investigation was kept pending against them.

43. On the contrary, some explanation can be gathered from the deposition of two of the defence witnesses who were examined, *viz.*, Laxman Ram (D.W. 1) and Pinki Devi (D.W. 2).

44. In the night of the occurrence, marriage ceremony had taken place in the house of D.W. 1, whose daughter was getting married. He was aware of the appellants and the family of the victim. He has specifically stated that in the marriage, approximately 100 persons including women were present in his house. All of them remained in his house till about 3 o'clock till early in the morning. Both the appellants were helping the family of the bride in feeding the guests who had come over for the marriage function. Even Sangita Devi was present in his house. Appellant/Sanjay, according to him, is physically disabled but is a family man with wife and children. So is the appellant/Rakesh.

45. Though he did not state anything about



the reason for false implication but his deposition clearly endorses the innocence of the appellants.

46. Had the appellants participated in the crime and had gang-raped the victim, perhaps there would have been many villagers to depose against them. Nobody has been brought to the witness-stand to prove the case against the appellants.

47. Pinki Devi (D.W. 2) is the wife of appellant/Sanjay Ram. She was absolutely distraught on hearing about the accusation against her husband. She has spoken before the Trial Court about her happy family life and that the accusation against her husband was absolutely wrong.

48. We have also examined the statement of the victim recorded under Section 164 Cr.P.C. to be doubly sure whether the evidence brought on record against the appellants make out any sense. In her 164 statement, the victim has not even named Sangita but has only alleged that out of several women who had



come to the house of Laxman Ram, one woman called her and took her to a hut where she was locked from inside. Later, the appellants and others gang raped her.

49. What is very stark in her statement under Section 164 of the Cr.P.C. is that after she was raped, she ran back to her home and locked the door from inside. Only later, she informed about the occurrence to her parents and others. This is at complete variance with what she had to say in her FIR and before the Court during the Trial.

50. Thus, for all practical purposes, the prosecution has not been able to prove the case beyond all reasonable doubts. We say so for the following reasons:-

(i) There is a wide divergence in the *fardbeyan* statement of the victim, her statement under Section 164 of the Cr.P.C. and her deposition before the Trial Court.

(ii) In the night of the occurrence, a marriage



ceremony was being performed where hundreds of villagers and guests had arrived. None of them admittedly had noticed any part of the occurrence and nobody from the village or neighbourhood was brought to the witness-stand to prove the case against the appellants.

(iii) The victim was locked inside a hut about which one of the witnesses has disclosed that it did not have a door or a window. All the witnesses have said that the hut was a makeshift construction with the roof of corrugated tin and plastic sheets. The victim could not have been locked inside such a place.

(iv) There is a great divergence in the story of the victim having cried for succour and her parents and other villagers arrived at the scene of occurrence.

(v) The victim was subjected to medical examination the next day when the Doctor did not find any injury on any part of her body or any recent sign of sexual intercourse. The evidence collected during the



Trial was replete with references to the appellants being the neighbours and related to the victim.

(vi) And lastly, the deposition of the two witnesses on behalf of the defence about the false implication of the appellants improbabilizes the prosecution version.

51. Taking the entire case in its totality and the failure of Investigator to make proper investigation and completely avoiding the mandate of Section 53A of the Cr.P.C., we are not convinced that the prosecution has proved the case beyond all reasonable doubts. The prosecution evidence totters when seen in some detail.

52. For the afore-noted reasons, we give benefit of doubt to both the appellants and set aside the conviction and sentence against them. The appellants are acquitted of all the charges levelled against them.

53. Both the appeals stand allowed.

54. It is informed by the learned Advocates that both the appellants are in jail. They are directed to



be released forthwith from jail, if not detained or wanted in any other case.

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

56. The records of this case be returned to the Trial Court forthwith.

57. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Sauravkrsinha/
Sunilkumar-

AFR/NAFR	NAFR
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