

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1018 of 2023

Arising Out of PS. Case No.-113 Year-2022 Thana- MAHILA PS District- Gaya

MODASSIR KHAN @ MD. MODASSIR KHAN son of Moju Khan @ Mozalim Khan @ Md. Mozammil Khan Village- Hamjapur Ps- Amas Dist- Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1085 of 2023

Arising Out of PS. Case No.-113 Year-2022 Thana- MAHILA PS District- Gaya

AFTAB KHAN @ KAKU KHAN S/O NESAR KHAN R/O VILLAGE- HAMJAPUR, P.S- AMAS AND DISTT.- GAYA (BIHAR).

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 1141 of 2023

Arising Out of PS. Case No.-113 Year-2022 Thana- MAHILA PS District- Gaya

ZAIDI KHAN SON OF JULFIKAR KHAN RESIDENT OF VILLAGE- JHAKHAURA, POLICE STATION- HASPURA AND DISTRICT- AURANGABAD (BIHAR)

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 1018 of 2023)
For the Appellant/s : Mr Ajay Thakur, Adv.
Mr. Imteyaz Ahmad, Adv.
Ms. Vaishnavi Singh, Adv.
Mr. Ritik Thakur, Adv.
For the Respondent/s : Mr. Parmeshwar Mehta, APP
(In CRIMINAL APPEAL (DB) No. 1085 of 2023)
For the Appellant/s : Mr Ajay Thakur, Adv.
Mr. Imteyaz Ahmad, Adv.



Ms. Vaishnavi Singh, Adv.
Mr. Ritik Thakur, Adv.
For the Respondent/s : Mr. Parmeshwar Mehta, APP
(In CRIMINAL APPEAL (DB) No. 1141 of 2023)
For the Appellant/s : Mr. Manish Kumar No. II., Adv
Mr. Aryan Singh, Adv.
Mr. Gajendra Kumar Singh, Adv.
For the Respondent/s : Mr. Parmeshwar Mehta, APP

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

Date : 11-12-2024

1. All the three appeals have been heard together and are being disposed of by this common judgment.
2. We have heard Ms Vaishnavi Singh, the learned Advocate for the appellants /Modassir Khan @ Md. Modassir Khan in Cr. Appeal (DB) No .1018 of 2023 and Aftab Khan @ Kaku Khan in Cr. Appeal (DB) No. 1085/2023 and Mr. Manish Kumar No. II for Zaidi Khan in Cr. Appeal (DB) No. 1141/2023. The State in all the three appeals has been represented by Mr. Parmeshwar Mehta, the learned APP.
3. The appellants have been convicted for the offences under Sections 323, 341, 376(DA) and 506 of the IPC and Sections 6 of the POCSO Act, 2012 by



judgment dated 24.08.2023 passed by the learned Special Judge, POCSO Court -cum-Additional District & Sessions Judge -VI, Gaya in POCSO Case No. 34/2023 arising out of Mahila P.S. Case No. 113 of 2022. By order dated 04.09.2023, they have been sentenced to undergo R.I. for one year for the offence under Sections 323 IPC; S.I. for one months for the offence under Section 341 IPC; R.I. for five years for the offence under Section 506 IPC and R.I. for remainder of their lives along with a fine of Rs. 10,000/- each and in default of payment of fine to further suffer S.I. for three months for the offence under Section 6 of the POCSO Act, 2012. No separate sentenced was ordered for the offence under Section 376 (DA) of the IPC.

4. The three appellants are alleged to have gang-raped the victim (PW2).
5. The victim had herself lodged the written report after six days of the occurrence on 06.12.2022 alleging that on 30.11.2022, while she was going to



the house of one Waris Khan for bringing milk, the appellants took her on a motorcycle to a Mausoleum. In a container parked there, she was subjected to rape by all the three appellants. She was also threatened that if she spoke about the occurrence to anyone, the consequence would follow.

6. Based on the aforementioned written report lodged by the victim (PW2), a case vide Gaya Mahila P.S. Case No. 113 of 2022 dated 06.12.2022 was registered for investigation against the appellants under Sections 341, 376(D), 376(DA) and 506 of the IPC and Sections 4/6 of the POCSO Act, 2012.
7. The police after investigation submitted chargesheet against the appellants whereupon they were tried.
8. The learned Trial Court after having examined seven witnesses on behalf of the prosecution and none on behalf of the defense, convicted and sentenced the appellants as aforesaid.
9. The learned Advocates for the appellants have



contended that neither the prosecutrix nor anyone of the witnesses including her father, brother and sister have supported the prosecution case. All of them have spoken about rape having been committed on the victim but the appellants were not to be blamed. Some of them have been declared hostile.

10. The other argument raised on behalf of the appellants is that their names have been introduced in the case by the Investigator. The reason for this assumption is that the Investigator had made a requisition before the Court for getting a Test Identification Parade held. The appellants are the local persons and if the victim had named them, there was no necessity for any Test Identification Parade.

11. Lastly, it has been urged that the victim was immediately put to medical examination but the Doctor though found her to be 14 to 15 years of age, did not discover any sign of recent sexual intercourse or any injury on her private parts.

12. Additionally, it was also submitted that the age



of the victim was not assessed in the manner in which it should have been by the Trial Court and that the appellants, after their arrest, were not subjected to any medical examination in accordance with Section 53(A) of the Cr. P.C.

13. The learned Advocates have further argued that two articles viz., a towel and a piece of cloth with stains were sent for forensic examination but no report was forthcoming and the Trial Court did not even look for such report. This even renders the accusation of rape of the victim doubtful.

14. Mr. Parmeshwar Mehta, the learned Additional Public Prosecutor for the State has, on the other hand, submitted that it is an illustrious case where the appellants appears to have exerted influence on the victim and her family and have turned volte-face at the trial. He has further argued that injuries on the private part of the victim is not the only marker for concluding that there was no recent sexual intercourse with the victim. Lastly, it has been



submitted that it is not necessary in all cases to ascertain and fix the age of the victim, provided it appears to the Court plainly and without any doubt that the victim is a minor. No objection also was ever raised by the appellants with respect to the minority of the victim. In that event, the provision contained in Section 34 of the POCSO Act, 2012 does not get triggered.

15. After having examined the records, we have found that the father of the victim (PW-1) has not supported the prosecution case. He learnt about the incident of rape from his daughter (victim) and people of the locality. However, none of them disclosed the names of the appellants to him.

16. The victim herself has come up with a different story at the trial. According to her version, an attempt was made to rape her in a container (a vehicle parked near a Mausoleum), but she could not identify the perpetrators of the crime. Immediately after the occurrence, she informed about it to her parents and



had also gone to the police station to give information. She denied that she had given any written report in the Police Station. She was taken to the jail premises for participating in the Test Identification Parade and she had identified the appellants there.

17. In her cross-examination, she has explained that for identifying the accused persons, she was shown the photographs of the appellants in jail premises. However, there was no identification by her in the dock. She was very clear in her deposition that the appellants, who were standing in the dock were not the persons who had attempted or committed rape upon her.

18. The brother of the victim namely, Md. Shahnawaz (PW-3) and another sister of the victim (PW-4) have also testified to the fact that victim was raped but there was no whisper about the appellants having committed the act.

19. The Investigator of this case (PW-5) in her



deposition has not referred to any effort on her part to get the appellants medically examined. She had sent two pieces of clothe for forensic examination but did not care to procure the laboratory report. In her cross-examination, she was questioned about the reason for seeking and arranging for a Test Identification Parade in the jail in the background fact of the appellants having been named in the written report. The answer of the investigator was far from convincing. With respect to the date of birth, no investigation was made by her and complete reliance was placed on the date of birth certificate issued by Statistical Department of the Government of Bihar, which in fact, is not the document suggested for establishing the date of birth of a minor victim.

20. Though, the victim denied that she was subjected to any medical examination but the medical report on record, makes her statement doubtful. She had been examined by Dr. Sandhya Prasad (PW-6), who, though found her to be a minor, assessing her



age to be between 14 to 15 years, but did not find any sign of any recent sexual intercourse.

21. Considering these aspects of the matter, we find that the prosecution has not been able to prove the case against the appellants in any manner whatsoever.

22. We are thus left with no option but to set aside the judgment of conviction and order of sentence and allow the appeals.

23. The appellants are thus acquitted of all the charges.

24. All the appellants are in jail. They are directed to be released forthwith, if not wanted or detained in any other case.

25. The appeals stand allowed.

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

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



28. The records of these appeals be also returned to
the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.12.2024
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