

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.375 of 2023

Arising Out of PS. Case No.-60 Year-2018 Thana- MAHISHI District- Saharsa

Deepak Ray, Son of Nand Kishore Ray @ Nand Kishor, Resident of village-
Darhar, P.S.-Navhatta, (Darhar-O.P.), District-Saharsa. Appellant
Versus

The State of Bihar Respondent

Appearance :

For the Appellant	:	Mr. Shekhar Kumar Singh, Advocate Mr. Raja Surendra Mohan, Advocate Mr. Buddhilal Yadav, Advocate Mr. Rupes Kumar Singh, Advocate Ms. Pooja Kumari, Advocate
For the State	:	Mr. Binay Krishna, Spl.PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SOURENDRA PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)
Date : 09-10-2025

Heard learned counsel for the appellant and learned
Special Public Prosecutor for the State.

2. Despite the fact that the informant has entered
appearance through her Advocate, no one has appeared on her
behalf to contest the appeal.

3. This appeal is arising out of judgment of conviction
dated 11.04.2022 (hereinafter referred to as the 'impugned
judgment') and the order of sentence dated 19.04.2022 (hereinafter
referred to as the 'impugned order') passed by learned Additional
Sessions Judge-III-cum-Special Judge, SC/ST (Prevention of
Atrocities) Act, Saharsa (hereinafter referred to as the 'learned trial



court') in Special Case No. 58 of 2018 arising out of Mahishi P.S. Case No. 60 of 2018.

4. By the impugned judgment, the learned trial court has been pleased to convict the appellant for the offences punishable under Section 376D of the Indian Penal Code (in short 'IPC') and Sections 3(1)(e)(r)(w), 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as the 'SC/ST Act').

5. By the impugned order, the appellant has been ordered to undergo rigorous imprisonment for twenty years and to pay a fine of Rs.25,000/- for the offence under Section 376D IPC. For the offence under Section 3(2)(v) of the SC/ST Act, he has to undergo rigorous imprisonment for life and to pay a fine of Rs.25,000/-. For the offences under Sections 3(1)(e), 3(1)(r) and 3(1)(w) of the SC/ST Act, he has to further undergo six months simple imprisonment each and to pay a fine of Rs.5,000/- each. In case of default of payment of fine, he has to further undergo three months simple imprisonment. All the sentences shall run concurrently.

Prosecution Case

6. The prosecution case is based on the written application of the informant/victim (PW-2). In her written



application, she has submitted that on 06.03.2018 at about 04:00 AM in the morning, when she was going towards the maize field to defecate, all of a sudden (1) Deepak Ray (this appellant) and (2) Rohit Ray caught her, slammed her in the maize field and committed rape on her one after another. Then the informant fell unconscious and the two accused persons left her in the maize field and fled away. When the informant's mother-in-law went to the maize field to attend nature's call, she heard the informant groaning and came running towards the maize field. The informant's mother-in-law took her to her house and the informant gave information about the incident to them. The informant stated that she belongs to *Harijan* community.

7. On the basis of this written application, Mahila P.S. Case No. 60 of 2018 dated 07.03.2018 was registered under Sections 376/34 IPC and Sections 3w(i)(g)(r) of the SC/ST Act against two accused persons. After investigation, Police submitted chargesheet bearing No. 78 of 2018 dated 27.05.2018 against this appellant under Sections 376(D) and Section 3(1)(e)(r)(w) and 3(2)(v) of the SC/ST Act keeping investigation pending against co-accused Rohit Ray. On the basis of the chargesheet, learned trial court *vide* order dated 03.12.2018 took cognizance of the offences punishable under above-mentioned sections. Charges were read



over and explained to the appellant in Hindi to which he pleaded not guilty and claimed to be tried. Accordingly, vide order dated 15.07.2019, charges were framed under Section 376(D) IPC and Section 3(1)(e)(r)(w) and 3(2)(v) of the SC/ST Act.

8. In course of trial, the prosecution examined as many as four witnesses and exhibited several documents to prove it's case. The list of the prosecution witnesses and the list of exhibits are being shown hereunder in tabular form:-

List of Prosecution witnesses

PW-1	Mother-in-law of the victim
PW-2	Victim
PW-3	Ashok Singh (I.O.)
PW-4	Dr. Archana Sneha

List of Exhibits on behalf of the Prosecution

Exhibit-1	Signature of the Officer-in-Charge on the pagination of the formal FIR
Exhibit- '1/1'	Writing of the formal FIR and signature of the Officer-in-Charge
Exhibit '2'	Seizure list prepared by Ashok Singh
Exhibit '3'	Chargesheet prepared by Ashok Singh
Exhibit 'I'	Material Exhibit-A marked by FSL, Patna which is the saree of the victim
Exhibit 'II'	Material Exhibit-B marked by FSL, Patna which is the petticoat of the victim
Exhibit 'III'	Material Exhibit-C marked by FSL, Patna which is the blouse of the victim
Exhibit '4'	Medical report of the victim
Exhibit '5'	Section 164 CrPC statement of the victim



Exhibit '6'	FSL Report
Exhibit '6/1'	FSL Report

9. Thereafter, the statement of the appellant was recorded under Section 313 of the Code of Criminal Procedure (in short 'CrPC'). He pleaded innocence.

Findings of the Learned Trial Court

10. Learned trial court, after analysing the evidences on record found that the evidences of the prosecution witnesses, namely, PW-2 (victim), PW-1 (mother-in-law of the victim), PW-3 (I.O.) and PW-4 (Doctor) are reliable without any doubt.

11. Learned trial court after considering all the facts and circumstances of the case found that the prosecution has been able to prove it's case against the appellant beyond all reasonable doubts. Accordingly, learned trial court held the appellant guilty of the offence punishable under Section 376D IPC and Sections 3(1) (e)(r)(w), 3(2)(v) of the SC/ST Act.

Submissions on behalf of the Appellant

12. Learned counsel for the appellant has assailed the impugned judgment and order. It is submitted that the learned trial court has erred in convicting the appellant on the testimony of the victim.



13. Learned counsel submits that the victim (PW-2) has stated that two persons had committed rape on her in the maize field, however, the I.O. (PW-3) has not stated about the presence of any sign of mark of trampling of the maize crops at the place of occurrence.

14. Learned counsel submits that the evidence of the victim (PW-2) alone cannot be taken as a clinching evidence to sustain the conviction of the appellant. She is required to be corroborated in material particulars but neither the evidence of the I.O. nor that of the Doctor are corroborating her oral testimony.

15. It is submitted that the trustworthiness of PW-2 becomes doubtful and this coupled with the fact that there is a delay of 36 hours in lodging of the FIR even as PW-1 has stated in her deposition in paragraph '15' that only two hours after the occurrence the I.O. had reached at the place of occurrence.

16. Learned counsel submits that the Medical Examination Report of the victim (Exhibit '4') shows no sign of injury mark over her body even though she claims that she was subjected to forceful rape in the maize field by two persons.

17. Learned counsel also submits that the FSL Report (Exhibit '6') is of no use because the appellant was not subjected to medical examination, hence, neither his blood sample was



collected nor any semen matching was conducted to connect him with the case.

Submissions of the State

18. Learned Special Public Prosecutor for the State has opposed the appeal. It is submitted that the evidence of the victim (PW-2) has been supported by PW-1 and the minor inconsistencies would not prove fatal to the prosecution case.

Consideration

19. Having heard learned counsel for the appellant, learned Special Public Prosecutor for the State and upon perusal of the trial court's records, this Court finds that in this case, the victim (PW-2) is not a sterling witness and it would not be safe to rely upon her sole testimony to convict the appellant. From her written information, it would appear that with regard to the occurrence which had taken place on 06.03.2018 at 04:00 AM, she got prepared a written information through a deed writer Auqil Sharma who has not been examined in this case. The victim (PW-2) is illiterate and has put her thumb impression on the written information which was submitted in the police station only on 07.03.2018 and the FIR has been registered on 07.03.2018 at 16:30 hours. Thus, there is a delay of over 36 hours in lodging of the first information report. This has to be considered keeping in view the



evidence of the mother-in-law (PW-1) who has stated in her deposition in paragraph '15' that only two hours after the occurrence, police had arrived at her house still her statement was recorded after one day.

20. This Court has further noticed from the evidence of the mother-in-law (PW-1) that in her examination-in-chief, she claims that she had also gone together with the victim (PW-2) in the morning to defecate where PW-2 was subjected to rape by this appellant and one Rohit Rai. In her own evidence, she has contradicted herself in paragraph '14' where she has stated that she reached the place of occurrence after one hour of the occurrence and found that the victim (PW-2) was alone there.

21. It is further noticed that according to PW-1, the place of occurrence is the maize field of one Sakaldev Yadav in which the maize plants were there and those were of the height of one male person. As regards the place of occurrence, PW-2 has stated that the said maize field is situated only after one plot from her house and there were house of number of persons in the neighbourhood. She has stated that when she had gone to defecate in the said plot, there was no other female, therefore, not only PW-1 has contradicted herself, even PW-2 has not stated about the presence of PW-1 in the maize field at the time of occurrence.



22. The I.O. Ashok Singh (PW-3) has stated that, he got the charge of investigation of this case on 07.03.2018 after receipt of the written application. He has proved the endorsement on the formal FIR in his hand-writing and his signature as Exhibit '1'. He has stated that after taking over the charge of investigation, he had recorded the statement of the informant and thereafter, he had proceeded towards the place of occurrence. He has taken the victim to the court for recording her statement under Section 164 CrPC and then took her for medical examination to Sadar Hospital, Saharsa. From where he was sent to Bhagalpur for medical examination. PW-3 has stated that he had seized the clothes of the victim and had sent the same to the FSL.

In his cross-examination, PW-3 has stated that he had not recorded the statement of the deed writer Waqil Sharma in the case diary. He had, though, recorded the statement of PW-1 but has not recorded the date and time of recording of her statement in the case diary. He had also not recorded the statement of Sakaldev Yadav and he had not recorded the statement of any of the boundary people, namely, Rambilas Sharma, Suresh Sharma and Hareram Sharma. He has stated that the seized articles were not before him. In his further cross-examination, he has stated that he had not seized any article from the place of occurrence. He had not



recorded that who had brought the victim to the police station. PW-3 has stated that in course of investigation, he had arrested this appellant but had not taken him to hospital for medical examination. He had also not recorded the statement of the Doctor or staff of the hospital at Bhagalpur where he had taken the victim for medical examination. In course of his further cross-examination, this witness has proved the '*saree*' and '*petticoat*' of the victim as Material Exhibit 'A' and 'B' respectively and the blouse as Material Exhibit 'C'. He has stated in paragraph '29' that all the clothes as per seizure list were produced by the mother-in-law (PW-1) of the victim. This Court has noticed that the seizure list has not been brought on record in evidence and the mother-in-law (PW-1) has categorically stated that she did not remember that of which colour *saree*, she had handed over to police. PW-1 further categorically stated that except '*saree*', she had not given any other thing to police. It is, thus, evident that PW-1 does not say about handing over of '*petticoat*' and blouse of the victim to PW-3.

23. In this case, the victim (PW-2) has stated that two persons had committed rape on her in the maize field, however, the I.O. has not stated about presence of any sign of mark of trampling of the maize crops at the place of occurrence. The victim was taken to the Doctor for her medical examination. The Medical



Examination Report (Exhibit '4') has been proved by Dr. Archana Sneha (PW-4). In her deposition, she has stated that on examination, no injury mark over face, back, chest, lower abdomen and upper limbs. Perinium valva could be found and vagina is normal. The Urine pregnancy test report was found positive and a single live intrauterine fetus of nine weeks and four days was found. The Doctor has recorded that no sign of assault was there, although probability of sexual assault cannot be ruled out. PW-2 has been assessed aged between 17-19 years. It is evident from the Medical Report (Exhibit '4') that the Doctor had not found any injury mark over the body of the victim (PW-2) even though she claims that she was subjected to forceful rape in the maize field by two persons.

24. We have found from the evidences on the record that one FSL report has been brought in evidence which has been marked Exhibit '6'. It has not been proved through any expert from the FSL. We have noticed from Exhibit '6' that the parcel carrying exhibits were sent to the FSL vide Memo No. 774/18 dated 25.05.2018 i.e. after more than two and half months of the occurrence and it was received through Special Messenger – Chowkidar-1/11 Naveen Kumar Paswan, only on 31.07.2018 i.e. after more than two months of the aforesaid memo. The said



Chowkidar has not been examined. The description of the articles in Exhibit '6' would show that a red-green-yellow printed old saree marked 'A', red colour old dirty petticoat marked 'B' and red old dirty blouse marked 'C' which bore greyish stains. The result of the examination would show that semen has been detected in the Exhibit marked 'B', however, semen could not be detected in any of the exhibits marked 'A' and 'C'. It is evident from the materials on the record that the appellant was not subjected to medical examination, hence, neither his blood sample was collected nor any semen matching was conducted to connect him with the case. In the case of **Krishna Kumar Malik versus State of Haryana** reported in (2011) 7 SCC 130, the Hon'ble Supreme Court has considered this aspect of the matter and has found that no matching of the semen of the accused would prove fatal to the prosecution case. We quote paragraphs '43' and '44' of the said judgment hereunder for a ready reference:-

“43. With regard to the matching of the semen, we find it from *Taylor's Principles and Practice of Medical Jurisprudence*, 2nd Edn. (1965) as under:

“Spermatozoa may retain vitality (or free motion) in the body of a woman for a long period, and movement should always be looked for in wet specimens. The actual time that spermatozoa may remain alive after ejaculation cannot be precisely defined, but is usually a matter of hours. Seymour claimed to have seen movement in a fluid as much



as 5 days old. The detection of dead spermatozoa in stains may be made at long periods after emission, when the fluid has been allowed to dry. Sharpe found identifiable spermatozoa often after 12 months and once after a period of 5 years. Non-motile spermatozoa were found in the vagina after a lapse of time which must have been 3 and could have been 4 months.”

Had such a procedure been adopted by the prosecution, then it would have been a foolproof case for it and against the appellant.

44. Now, after the incorporation of Section 53-A in the Criminal Procedure Code w.e.f. 23-6-2006, brought to our notice by the learned counsel for the respondent State, it has become necessary for the prosecution to go in for DNA test in such type of cases, facilitating the prosecution to prove its case against the accused. Prior to 2006, even without the aforesaid specific provision in CrPC the prosecution could have still resorted to this procedure of getting the DNA test or analysis and matching of semen of the appellant with that found on the undergarments of the prosecutrix to make it a foolproof case, but they did not do so, thus they must face the consequences.”

25. We have found that the defence has suggested to PW-1 that the accused has been falsely implicated in this case through PW-2 because she had taken Rs.5000/- from the father of the accused. The village of PW-2 is the *nanihal* of the appellant and only when on demand money was not returned, this false case has been lodged.



26. Having regard to the entire evidence on the record, we find that in this case, the only material present for purpose of the prosecution is the statement of the victim (PW-2). No doubt conviction may take place on the sole testimony of the victim but for that the victim has to come out as a sterling witness. Who will be a sterling witness has been discussed by the Hon'ble Supreme Court elaborately in the case of **Rai Sandeep @ Deepu vs. State (NCT of Delhi)** reported in **(2012) 8 SCC 21**. Paragraph '22' of the said judgment is reproduced hereunder for a ready reference:-

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such



as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

27. In the present case, we are of the considered opinion that the evidence of PW-2 alone cannot be taken as a clinching evidence to sustain the conviction of the appellant. She is required to be corroborated in material particulars but neither the evidence of the I.O. nor that of the Doctor are corroborating her oral testimony. The FSL Report (Exhibit ‘6’) is of no use because on the one hand, it is not known that who had handed over the ‘*petticoat*’ to the I.O. and on the other hand, PW-1 says that she



had given only *saree* to the I.O and no other cloth, at the same time, we find that the semen said to be present on the ‘*petticoat*’ has not been matched with that of the appellant. In such circumstance, the trustworthiness of PW-2 becomes doubtful and this coupled with delay of 36 hours in lodging of the FIR would further prove fatal to the prosecution case.

28. In result, we are of the opinion that the judgment of the learned trial court cannot sustain. It is liable to be set aside.

29. This appeal is allowed. The impugned judgment of conviction dated 11.04.2022 and the consequent order of sentence dated 19.04.2022 passed by learned Additional District and Sessions Judge-III-cum-Special Judge, SC/ST Act, Saharsa, Bihar in Special Case No.58 of 2018 arising out of Mahishi P.S. Case No.60 of 2018 are, accordingly, set aside. The appellant is acquitted of the charges giving him benefit of doubt.

30. The appellant is said to be in custody, hence he is ordered to be released forthwith, if not wanted in any other case.

31. A copy of this judgment together with the trial court’s record be sent back.

(Rajeev Ranjan Prasad, J)

(Sourendra Pandey, J)

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CAV DATE	
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