

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.119 of 2021

Arising Out of PS. Case No.-4 Year-2014 Thana- MAHILA PS District- Jehanabad

CHANDANI KUMARI Daughter of Kamla Singh Resident of Village -
Terwan, P.O.- Panditganj, P.S.- Ghosi (Okari op), District - Jehanabad.

... .. Appellant/s

Versus

1. The State of Bihar
2. Shayam Nandan Sharma Son of Late Kamala Prasad Singh Resident of
Village - Okari, P.S.- Ghosi (Okari op), District - Jehanabad.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Sanjay Kumar
For the Respondent/s	:	Mr. A.G.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY)

Date : 07-01-2025

We have already heard the learned counsel
for the appellant as well as learned counsel for the
respondent no. 2.

2. The present memo of appeal has been
filed for setting aside the judgment and order dated
28.08.2020 passed by Sri. Dharmendra Kumar
Jaiswal First Additional Sessions Judge, Jehanabad in
Sessions Trial No. 18 of 2015/01 of 2020 arising out
of Jehanabad Mahila P.S. Case No. 04 of 2014
corresponding to G.R. No. 184 of 2014 whereby and
whereunder the learned court below has acquitted



the respondent no. 2 for the charges under Section 376(2)(G) of the Indian Penal Code and Section 34 of the Indian Penal Code.

3. The appellant is alleged to be the victim of rape. This case was lodged on the basis of her written report stating therein that the respondent no. 2, who was the *Mukhiya* of *Okri* Village and stood in the relation of the maternal uncle of the victim, had assured her father to arrange for a job of *Asha* worker to the victim and for that, he had asked for two photographs of her (the respondent No. 2). On 09.12.2013, she went to the house of respondent no. 2 and gave him two photographs. Respondent no. 2 took her mobile number and asked her to call, when the concerned officer would come.

4. On 10.12.2013, at about 3:00 P.M. the respondent no. 2 called the victim but she expressed her inability to come to the house of respondent no. 2, because her father was not in the village. He had gone to attend *Satsang* at *Deoghar*. Respondent no. 2 told the victim that if the officer would return, she will not be able to get the job. Thereafter, she went to the house of the respondent no.2 where she was



asked to sit in a room. After sometime, the respondent No. 2 and Rajiv Sharma, Block *Pramukh*, (acquitted in Session Trial No. 18/2015,40/2015), entered into the room, bolted the door from inside and started consuming liquor. Thereafter, respondent no. 2 pointed rifle at her chest and threatened her for not raising any hue and cry. It has been alleged in the FIR that they continued committing rape on her till late in the night. On the next morning, she was dropped near a bridge located near her house. She did not disclose the occurrence to her father immediately. On 22.01.2014, her father saw her weeping whereafter she narrated the entire incident to him and thereafter FIR could be lodged.

5. On the basis of written report of the victim's father (P.W. 3), Jehanabad Mahila P.S. Case No. 04 of 2014 was lodged. The investigation was carried out and the chargesheet was submitted against co-accused Rajiv Sharma and the respondent no. 2. As indicated above, Rajiv Sharma was acquitted in Session Trial No. 18/2015,40/2015, because the victim and her father did not support the case against him.



6. After separating the case of respondent No. 2, cognizance was taken against co-accused Rajiv Sharma but as noted above, he was acquitted. Later on, the case of the respondent no. 2 was also committed to the court of sessions and charges were framed against him on 23.11.2015 under Section 376(2)(G)/34 of the Indian Penal Code.

7. The prosecution has examined 10 witnesses to prove its case. PW-1 is the victim herself. PW-2 is a villager. PW-3 is the father of the victim. Pws- 4, 5 and 6 are the co-villagers of the victim. PW-7 is the Doctor, who conducted the medical examination. PW-8 is the Investigating Officer. PW-9 is a formal witness, who proved the signature of the Magistrate on the statement of the victim recorded under Section 164 of the CrPC and PW-10 is also a Doctor, who conducted the medical examination of the victim.

8. The documentary evidences adduced on behalf of the prosecution are:- The medical reports (Ext.2/2/1), the statement of the victim recorded under Section 164 of the CrPC. (Ext-4), formal FIR. (Ext-3), and the signature of the informant on her



typed application as Ext-1. The defense did not adduce oral evidences but the following documentary evidences have been adduced on behalf of the defence:- Ext-A is the certified copy of the judgment of Session Trial No. 18/2015,40/2015. Ext-B is the certified copy of the deposition of the victim in Session Trial No. 18/2015,40/2015. Ext-B/1 is the certified copy of deposition of father of the victim in Session Trial No. 18/2015,40/2015. Ext-B/2 is the deposition of witness Lalan Sharma in Session Trial No. 18/2015,40/2015.

9. Learned counsel for the appellant has submitted that despite cogent material for conviction, the learned court below acquitted the respondent no. 2 from the charges levelled against him. He has submitted further that during investigation, CDR of Mobile Phones of the victim and the respondent no. 2 were analyzed which shows that the respondent no. 2 had been calling the victim frequently. The victim and her father have narrated the entire occurrence but without assigning any reason, their testimonies were disbelieved by the learned Trial Court. He has also submitted that it



is settled law that the sole testimony of the victim, if it is unimpeachable, is adequate for conviction of the accused. In the present case, not only the victim but her father have fully corroborated the allegation but it was disbelieved by the learned Trial Court.

10. On the other hand, the learned counsel for respondent no. 2 has submitted that the prosecution miserably failed to substantiate the charges levelled against respondent no. 2. As such, the learned Trial Court had no option but to acquit the respondent no. 2. Learned counsel, inviting our attention towards the contradictions in depositions of the victim and her father, has submitted that during her deposition in the present case, the victim deposed that she had identified the co-accused Rajiv Sharma earlier when he was present in the Court (at the time of her deposition in Session Trial No. 18/2015,40/2015) but soon, she took an about turn by deposing that she did not identify Rajiv Sharma in the Court. These two different assertions made by the victim are self-contradictory. Similarly, in paragraph no. 17, she has stated that she had no mobile phone but in paragraph no. 19, she stated



that after giving mobile phone to her, her father had gone to attend *Satsang*. Similarly, her father (PW-3) has stated during his deposition that in the trial of Rajiv Sharma, he was not examined but the certified copy of his deposition (Ext-B/1) shows that he was examined in that case also. It has been submitted by the learned counsel that these material contradictions create serious doubts on the prosecution case and the benefit thereof would enure to the respondent no. 2.

11. We have gone through the entire evidence available on the record and have given our thoughtful consideration to the rival submissions of the parties.

12. Out of 10 prosecution witnesses, only two witnesses, i.e. the victim (P.W. 1) and her father (P.W.3) have supported the occurrence. P.W. 1 although corroborated her earlier version as asserted in the FIR, but there are material contradictions in her deposition. In paragraph-11 of her statement, she claimed to have identified Rajiv Sharma who was present in the dock but in paragraph-14, she turned volte face by deposing



that she did not identify him. In paragraph-17, she has stated that she had no mobile phone whereas in paragraph-19, she says that her father had gone to *Satsang* after giving mobile phone to her. In paragraph-26 of her deposition, she admits that in the written report, she had made allegation against Rajiv Sharma and the respondent No. 2 both, but from the perusal of Ext-B, which is certified copy of her deposition in S.Tr. No. 18 of 2015/40 of 2015, makes it clear that during that trial, she did not identify Rajiv Sharma who was present in the dock and during her deposition in that Sessions Trial, she had deposed that Rajiv Sharma was not involved in the occurrence. In paragraph-34 of her deposition, she has stated that she has compromised the case with Rajiv Sharma. In paragraph-6, she has stated that both the accused persons committed rape upon her entire night.

13. There is also contradiction in the statement of father of the victim (P.W.3) and the victim herself. The victim, in her written report has stated that her father had gone to *Deoghar* in a *Satsang* whereas her father has deposed that he



had gone to *Bettiah* in *Satsang*. The credibility of P.W. 3 stands shaken by his statement in paragraph-22 in which he has stated that he was not examined during the trial of Rajiv Sharma whereas Exbt-B/1 is the certified copy of his deposition in the trial of Rajiv Sharma, which shows that he was examined in the case.

14. The occurrence is said to have taken place in the night of 10/11-12-2013 and on 22-01-2014 she apprised her father about the incident but the FIR was lodged on 25-01-2014 and there is no explanation of delay in lodging the FIR.

15. As discussed above, during medical examination, no sign of rape was found on the person of the victim.

16. After analysing the evidence on record, we are of the opinion that there are a number of material contradictions, which cast serious doubts on the prosecution case. The prosecution has failed to prove the guilt of the respondent No. 2 beyond all reasonable doubts. The judgment of acquittal dated 28-08-2020 passed by 1st Additional Sessions Judge, Jehanabad in Jehanabad Mahila P.S. Case No. 04 of



2014, G.R. Case No. 184 of 2014 corresponding to Sessions Trial No. 18 of 2015/01 of 2020 thus need not be interfered with.

17. Accordingly, the present appeal is ***dismissed.***

(Nawneet Kumar Pandey, J)

(Ashutosh Kumar, J)

Nirmal/AKV

AFR/NAFR	N/A
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