

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1437 of 2019**

Arising Out of PS. Case No.-5 Year-2018 Thana- PAWANA District- Bhojpur

-
1. Sanu Kumar @ Sonu Kumar Son of Raj Kumar Resident of Village - Pawna, P.S.- Pawna, District - Bhojpur.
 2. Seth Kumar @ Seth Mahto @ Lalji Mahto Son of Birda Mahto @ Vrinda Singh Resident of Village - Pawna, P.S.- Pawna, District - Bhojpur.
 3. Pankaj Kumar @ Vikash Son of Chhotak Yadav Resident of Village - Pawna, P.S.- Pawna, District - Bhojpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellants	:	Mr. Ravindra Kumar, Advocate Ms. Devyani Shekhar, Advocate
For the State	:	Mr. Sujit Kumar Singh, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 06-02-2025

The instant appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'the Code') against the judgment of conviction dated 26.09.2019 and order of sentence dated 30.09.2019, passed by the court of learned Additional District & Sessions Judge-XV, Ara, Bhojpur in Sessions Trial No.423/2018 with Sessions Trial No.30/2019, arising out of Pawna P.S. Case No.05/18, whereby the court has convicted the appellants for the offence punishable under Section 376(D) of the Indian Penal Code and they have been sentenced to



undergo imprisonment for life and to pay a fine of Rs.50,000/- (Rs. Fifty Thousand only) each for the offence punishable under Section 376(D) of the Indian Penal Code and in default of payment of fine, the appellants have to undergo S.I. for a period of six months.

Factual Matrix

2. The factual matrix of the present case is as under:-

2.1 The informant/victim has filed written complaint on 27.01.2018 wherein she has stated that on 27.01.2018 at about 09:30 P.M., she went to ease herself near her house. Then, Seth Mahto, Sushil Kumar, Pankaj Kumar and Sanu Kumar brought her to the house of Lalan Choudhary and committed rape upon her one by one and threatened to kill her if she would tell anyone. Any how, she raised alarm and her mother and father came running. Thereafter the accused persons fled away. In the said incident, the informant/victim sustained injury in her hand.

2.2. After registration of the FIR, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

2.3 As the case was exclusively triable by court of sessions, the learned Magistrate committed the same under Section



209 of the Code to the concerned sessions court where the same was registered as Sessions Trial No.423/2018 with Sessions Trial No.30/2019.

2.4 During course of trial, the prosecution has examined 8 witnesses, namely, PW-1, Om Prakash Pandit, PW-2, Jay Prakash Singh, PW-3, Deena Nath Singh, PW-4, Manoj Singh, PW-5, Dr. Bipin Bihari Sharma, PW-6, Dr. Shalini Sinha, PW-7, Asha Devi and PW-8, Poonam Kumari. The defence has also examined two witnesses, i.e., DW-1, Ram Chhapit Singh and DW-2, Gorakh Singh. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellants, as stated hereinabove.

3. Heard Mr. Ravindra Kumar, learned counsel for the appellants and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor for the State.

SUBMISSIONS ON BEHALF OF THE APPELLANTS

4. Mr. Ravindra Kumar, learned counsel appearing for the appellants would mainly contend that there are major contradictions and discrepancies in the deposition of the prosecution witnesses and in fact, the prosecution has failed to prove the case against the appellants beyond reasonable doubt despite which the Trial Court has passed the impugned judgment



of conviction and order of sentence. He would further contend that in this case the victim has not been examined by the prosecution as she died after lodging of the FIR. It is also submitted that prosecution has placed reliance upon the deposition given by PW-1, father of the victim. From his deposition, it is revealed that he was not present at the place of occurrence and he got the information from his wife, i.e., PW-7. It is further submitted that PWs.-2 to 4 have not supported the case of the prosecution and they have turned hostile. Learned counsel for the appellants thereafter submitted that PW-5, the doctor, who had examined the appellants-accused, has specifically deposed that he did not find any abrasion or bruise on penis of the accused persons. He also did not find any spot or scar on penis or surrounding area of body of the accused persons. He has further deposed that he did not find any injury on the private part of any of the accused persons. At this stage, learned counsel for the appellants has also referred the deposition of PW-6, who had examined the victim. The said witness has also stated that no spermatozoa either alive or dead found. It is clarified by learned counsel for the appellants that though the doctor found lacerated wound at right fore arm and bruise on left fore arm as well as lacerated wound in right foot and all such wounds have black crust. During cross-examination, the said doctor has said that blackening occurs after 24 hours. It has



been pointed out by learned counsel for the appellants that the victim was examined by the doctor after approximately 17-18 hours, therefore, there are all chances that the injuries referred to in the deposition of the doctor were caused prior to 24 hours. Thus, the prosecution has suppressed the correct version before the Court.

4.1. Learned counsel for the appellants has also contended that PW-7 is not an eye-witness to the incident in question. Learned counsel, at this stage, has referred the deposition given by PW-8, the Investigating Officer, who has specifically admitted during cross-examination that the mother of the victim did not disclose that when she reached at the place of occurrence, the accused persons were present there and she did not disclose with regard to identification of the accused persons. It is also submitted that though PW-7, mother of the victim, has deposed before the court that she has identified the accused in the torch light, the said torch was not seized by the investigating agency nor the same was produced by the said witness. Learned counsel, therefore, urged that the impugned judgment of conviction and order of sentence be quashed and set aside and thereby the appellants herein be acquitted.

SUBMISSIONS ON BEHALF OF THE STATE

5. On the other hand, Mr. Sujit Kumar Singh, learned



Additional Public Prosecutor for the State has opposed the present appeal by contending that written report was given by the victim and her statement under Section 164 of the Code was also recorded by the Magistrate. It is also submitted that because of the death of the victim, she could not be examined before the Trial Court. However, the doctor, who had given the treatment to the victim, found lacerated wound at right fore arm and bruise on left fore arm as well as lacerated wound in right foot of the victim and, therefore, it can be said that the prosecution has proved the case against the appellants-convicts beyond reasonable doubt. Thus, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence.

6. We have considered the submissions canvassed by learned counsel appearing for the parties. We have also perused the materials placed on record and the evidence led by the prosecution before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined eight witnesses. At this stage, we would like to appreciate the entire relevant extract of the depositions of the prosecution-witnesses.

DEPOSITION OF PROSECUTION WITNESSES

7. PW-1, Om Prakash Pandit, father of the victim, has deposed in his examination-in-chief that occurrence took place an year ago at 09:30 P.M. He was sleeping at that time after taking



meal. His daughter went to ease herself but did not return after a long time. His wife went to see her and she heard the sound of her daughter coming from the khalihan of Lalan Choudhary. She went to the place and saw that Seth was committing rape upon her daughter. Pankaj, Sushil, Seth and Sonu were also there. It is further deposed that when her wife went to the place of incident, Pankaj assaulted her with belt. Her wife raised alarm and he also went there and saw the four accused persons fleeing away from there. The victim told him about the incident. The victim identified Seth, Sonu and Pankaj in court and also claims to identify others by face.

7.1. The said witness has stated in his cross-examination that marriage of his daughter solemnized before six months. His daughter went to her in-laws house after the incident. Thereafter, her in-laws administered her poison and sent the victim to his house. His daughter died after being poisoned. It is further stated by this witness in his cross-examination that a case was lodged by him against the in-laws of her daughter after her death. He does not know what happened in that case. His daughter was forced to swear an affidavit that she has not been raped. The affidavit bears the signature of his daughter. He had registered a complaint that the victim was forced to give the affidavit. It is also stated that he is not a member of I.P.F. party. When the statement



of his daughter was recorded in the police station, he was present there. The victim gave application in the police station. It is stated that the village people did not say that the victim girl had bad character and he solemnized the marriage of his daughter on the pressure of village people. He cannot get anyone from his village to depose. The whole village is against him. His daughter had a mobile. There was no call on her mobile phone before she went to ease herself. The victim told her the names of the accused persons also. He does not have a torch, her wife had a torch. His statement was recorded before the police two days after the incident. The villagers used to say that the boys are innocent and do not implicate them. The said witness has denied the suggestion that he has falsely implicated the accused persons.

8. PWs.-2, 3 and 4 are charge-sheet witnesses and they have been declared hostile. Their evidence need not be gone into in detail.

9. PW-5, Dr. Bipin Bihari Sharma has deposed in his examination-in-chief that on 28.01.2018, he was posted as Medical Officer at Sadar Hospital, Ara and he examined Seth Mahto, Sushil Kumar and Sonu Kumar. He did not find any abrasion or bruise on penis of the accused persons. He also did not find any spot or scar on penis or surrounding area of body of the accused persons.

9.1. The said witness has stated specifically in his



cross-examination that he did not find any injury on the private part of any of the accused persons.

10. PW-6, Dr. Shalini Sinha has deposed in his examination-in-chief that on 28.01.2018, she was posted as Medical Officer at Sadar Hospital, Ara. On that day, at about 03:45 P.M., she examined the victim and found following injuries on her body:

“about 2-3 inches lacerated wound at right fore arm have black crust on wound, about one inches bruise on left fore arm, about one inches lacerated wound in right foot, all have black crus.
Secondary sexual character well developed.
Per abdomen examination – soft
Per vaginal examination -
Hymen torn, menstruating
investigation report
vaginal swab examination – No spermatozoa either alive or dead found.

10.1. The said witness has stated in her cross-examination that the victim was menstruating. All the injuries has black crush over it. Blackening occurs after 24 hours. With in 12 hours the lacerated wound appears red in colour. Then colour changes to blueish and then black.

11. PW-7, Asha Devi is the mother of the victim girl and she has deposed in her examination-in-chief that occurrence took place more than a year ago at 09:30 P.M. She was present in her house with her children. Her daughter went to ease herself. When her daughter did not return after a long time, she went in search of her. When she reached near the house of Lalan



Choudhary, she heard the sound of her daughter. When she went to the place, she saw that Seth Mahto was over the body of the victim and Sonu stood beside her. Sushil and Pankaj were standing at the door. When she caught the jacket of Pankaj, he fled and his jacket was torn. Thereafter the accused persons assaulted her with belt and fled away. She raised alarm and her husband also came. Her husband also saw the accused persons fleeing. On her alarm, some more people came but she could not identify them. She identified Seth Mahto, Pankaj and Sonu in court and claims to identify Sushil also.

11.1. The said witness has stated in her cross-examination that on her alarm, 2-4 persons came but she could not identify them as the night was dark. She stayed at the place of occurrence for 15 minutes. During 15-20 minutes, no witness has come. She went to the place of occurrence after hearing alarm. Her statement was recorded before the police. She does not remember what she told the police. It is further stated by this witness in her cross-examination that she saw the accused persons in the light of torch and she did not tell anyone regarding this fact before. The torch was not shown to Darogaji. She told in her statement that she went with the torch. Whoever came after hearing alarm of her daughter and her, she did not see them in the light of torch. The statement of her daughter was made once in the police station. It is



further stated that the statement of her daughter was also recorded before the Magistrate in her presence. Her daughter did not clean dirty clothes on hand pump. The said witness has denied the suggestion that her daughter went to in-laws house and the in-laws ousted her from the house and she administered poison herself. She has also denied the suggestion that she has implicated the accused persons due to enmity in a false case. The said witness has also denied the suggestion that she has deposed falsely.

12. PW-8, Poonam Kumari has deposed in her examination-in-chief that on 27.01.2018, she was posted as SHO of Mahila P.S., Bhojpur. She took charge of investigation of Pawna P.S. Case No.05/2018. Thereafter she recorded the re-statement of the informant. She also recorded the statement of Asha Devi. She inspected the place of occurrence. She found red coloured broken pieces of bangles of the informant, red coloured garland made of pearl and a red coloured *Gamchha*. Thereafter she prepared seizure list (Ext.3/1). She also sent a letter to the Medical Officer for conducting medical examination of the victim. The statement of the victim under Section 164 of the Code was also recorded.

12.1. The said witness has stated in her cross-examination that she got information of the occurrence at 23:05 hours. When she reached to the police station, informant and her mother were also present there. Her mother did not disclose



regarding the torch. The statement of father of the victim was recorded on 30.01.2018. The father of the informant did not disclose before her that he went to the place of occurrence after hearing alarm of his daughter. Asha Devi, the mother of the informant did not disclose that when she reached at the place of occurrence, the accused persons were present there. She disclosed that she saw the accused persons fleeing. She did not disclose to her regarding identification of the accused persons. Jai Prakash Singh disclosed in his statement that marriage of the informant was solemnized last year and she often used to come to her *Maike*. Deena Nath Singh disclosed in his evidence that some other person was present on the date of occurrence and the accused persons were guarding the field. He has also disclosed about the bad character of the informant due to which a *panchayati* was held. PW-8 has further stated in her cross-examination that Manoj Singh disclosed that it is true that the informant bears a bad character. PW-8 has also stated that on the basis of the supervision note of the DSP, it appears that the informant with her consent called some known persons at the place of occurrence. During this, four boys guarding the field saw her with an unknown person and scolded the informant. Also, the above four persons had quarreled with the informant a day before the incident regarding cleaning of dirty clothes at the hand pump. PW-8 did not find any slipper at



the place of occurrence. PW-8 has denied the suggestion that she has done false investigation.

13. DW-1, Ram Chhapit Singh has deposed in his examination-in-chief that she knew the informant who was the daughter of Om Prakash Pandit. It is further deposed that the informant had lodged a false case due to which a *panchayati* was also held.

13.1. The said witness has stated in his cross-examination that compromise took place after Govardhan Puja. He has denied the suggestion that *panchayati* was not held and he has falsely deposed.

14. DW-2, Gorakh Singh has deposed in his examination-in-chief that he knows the informant. On 06.02.2018, the informant came to the court with her mother and father.

14.1. The said witness has denied the suggestion in his cross-examination that he gave false evidence.

DISCUSSIONS & FINDINGS

15. It transpires from the record that victim has given written complaint on 27.01.2018 wherein she had levelled certain allegations against the appellants by alleging that when she went to ease herself near her house, the accused persons came at the said place and brought her to the house of Lalan Choudhary and committed rape upon her one by one and when she raised alarm,



her mother and father came running and thereafter the accused persons fled away. It is also revealed that statement of the victim under Section 164 of the Code was recorded by the learned Magistrate. From the statement of the victim recorded under Section 164 of the Code, it is revealed that the victim has narrated the story in different manner. In her statement given under Section 164 of the Code, she has stated that when she had gone outside to ease herself, at that time, accused Seth Mahto came from behind, gagged her mouth by *Gamchha* (towel) and dragged her. Thereafter another accused Sanu Kumar tied her hands with *Gamchha* (towel) and thereafter accused Seth Mahto brought her to the house of Lalan Choudhary where other accused Pankaj and Sushil were present. Thereafter Sushil ran away from the said place after seeing the mother of the victim. It is further alleged that Sushil and Sanu caught her hands and thereafter all the accused persons gave threats that she will be killed if she raises alarm. She has further alleged that Seth Mahto, Pankaj and Sanu committed rape upon her. Sushil has not committed rape because he was frightened and thereafter she became unconscious.

16. Thus, from the aforesaid statement given by the victim under Section 164 of the Code, it is clear that she has narrated different version with regard to the manner in which the incident took place. At this stage, it is pertinent to note that from



the deposition given by PW-1, who is father of the victim, it is revealed that marriage of his daughter was solemnized and thereafter she went to her in-laws house after the incident in question. However, her in-laws administered her poison and thereafter his daughter (victim) died. Thus, the fact remains that the victim has not been examined in the present case.

17. Keeping in view the aforesaid aspect, if the deposition of PW-1 is examined, it is revealed that he is not an eye-witness to the occurrence in question and, in fact, as per his version, he got the information from his wife, i.e., PW-7. The said witness has admitted during cross-examination that he cannot bring any witness from the village as the entire village was against him. He has also admitted that his statement was recorded by the police after two days. Further, the said witness has admitted that the village people were saying that the accused are innocent and, therefore, they may not be implicated falsely. The village people were also saying that appellants-accused are innocent and, in fact, some other person is the culprit. Thus, from the aforesaid deposition, it is revealed that the statement of PW-1 was recorded by the police after two days. As per version of PW-1, he was present when the written complaint was given by his daughter to the police, despite which his statement was recorded after two days which creates doubt with regard to presence of PW-1 on the



date of occurrence and at the place of occurrence.

18. It would further reveal that PWs.2 to 4, who are charge-sheet witnesses, have not supported the case of the prosecution and they have turned hostile.

19. From the deposition given by PW-5, Dr. Bipin Bihari Sharma, it is revealed that the said witness had examined the accused and he did not find any injury on the private part of any accused persons.

20. We have also gone through the deposition given by PW-6, Dr. Shalini Sinha, who had examined the victim. Though the said witness has found lacerated wounds as well as bruise, the said witness has specifically admitted during cross-examination that all the injuries has black crush over it and blackening occurs after 24 hours. The said witness has further clarified that within 12 hours the lacerated wound appears red in colour then colour changes to blueish and then black. It is pertinent to note at this stage that the victim was examined by the said witness after 17-18 hours, i.e., prior to 24 hours and, therefore, the defence has raised doubt with regard to the injuries sustained by the victim in the so called incident in question. From the deposition of the said witness, it is further revealed that no spermatozoa either alive or dead was found while examining vaginal swab. Th said doctor has further stated that it cannot be clearly said that rape has been



committed or not. At this stage, it is relevant to note that as per the case of the prosecution, out of four accused, three accused have committed gang rape upon the victim. However, from the deposition of PW-6, the doctor, it is revealed that the said witness was not in a position to clearly say that rape has been committed or not. Thus, medical evidence also does not support the version of the prosecution.

21. We have also gone through the deposition given by PW-7. It appears from her examination-in-chief that she has projected herself as an eye-witness and deposed in the court that she saw that Seth Mahto was over the body of the victim and Sonu stood beside her. Sushil and Pankaj were standing at the door. When she caught the jacket of Pankaj, he fled and his jacket was torn. Thereafter the accused persons assaulted her with belt and fled away. She has further stated that she raised alarm and her husband also came. On her alarm, some more people came but she could not identify them. However, surprisingly she has stated that she identified the accused persons in torch light.

21.1. However, at this stage, if the deposition given by PW-8, the Investigating Officer, is closely examined, it is revealed that the said witness has admitted during cross-examination that PW-7, mother of the victim, did not disclose that when she reached at the place of occurrence, the accused persons



were present there. In fact, she disclosed that she saw the accused persons fleeing. Further, the said witness has also admitted that PW-7 did not disclose to her regarding identification of the accused persons. Thus, we are of the view that there are major contradictions and improvement in the version of PW-7 and her presence at the place of occurrence was doubtful.

22. Now, if the deposition given by PW-8, the Investigating Officer, is carefully seen, it is revealed that she has stated that the victim did not state about the torch in the hand of her mother. The said witness has further admitted that statement of father of the victim was recorded after three days, i.e., on 30.01.2018. The Investigating Officer has further admitted that Om Prakash Pandit (PW-1) did not disclose before her that he went to the place of occurrence after hearing alarm of his daughter. It is further revealed from deposition of PW-8 that one Jai Prakash Singh disclosed in his statement that marriage of the informant (victim) was solemnized last year and she often used to come to her *Maike*. Further another witness Deena Nath Singh disclosed that some other person was present on the date of occurrence and the accused persons were guarding the field. He has also disclosed about the bad character of the informant due to which a *panchayati* was held. It would further reveal from deposition of PW-8 that witness Manoj Singh disclosed that it is true that the



informant bears a bad character. Further, PW-8 has also admitted that on the basis of the supervision note of the DSP, it appears that the informant with her consent called some known persons at the place of occurrence. During this, four boys guarding the field saw her with an unknown person and scolded the informant. Also, the above four persons had quarreled with the informant a day before the incident regarding cleaning of dirty clothes at the hand pump.

23. Thus, from the aforesaid deposition given by PW-8, the Investigating Officer, it is clear that during investigation, it was revealed that the victim voluntarily went outside of her house and thereafter she was found with unknown person at the place of occurrence and when the boys saw her with unknown person, they scolded her. Even prior to date of occurrence, some dispute arose with the victim with regard to cleaning of dirty clothes at the hand pump. Thus, defence taken by the accused with regard to their false implication cannot be ruled out.

24. Looking to the aforesaid evidence led by the prosecution, we are of the view that the prosecution has failed to prove the guilt of the accused beyond reasonable doubt despite which the Trial Court has recorded the judgment of conviction and order of sentence against the appellants herein and, therefore, the same is required to be quashed and set aside.

CONCLUSION



25. Accordingly, the appeal stands allowed. The impugned judgment of conviction dated 26.09.2019 and order of sentence dated 30.09.2019, passed by the court of learned Additional District & Sessions Judge-XV, Ara, Bhojpur in Sessions Trial No.423/2018 with Sessions Trial No.30/2019, arising out of Pawna P.S. Case No.05/18, dated 27.01.2018 are hereby quashed and set aside. The appellants are acquitted of the charges levelled against them by the learned Trial Court.

25.1. Since appellants are in jail, they are directed to be released from jail custody forthwith, if their presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Alok Kumar Pandey, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2025
Transmission Date	13.02.2025

