

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.409 of 2022**

Arising Out of PS. Case No.-46 Year-2019 Thana- MAHILA P.S. District- Muzaffarpur
=====

ABID ANSARI S/o Nazir Ansari Resident of Village- Barheta, Gangaram,
P.S.- Hathauri, District- Muzaffarpur.

... .. Appellant/s

Versus

THE STATE OF BIHAR

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 422 of 2022

Arising Out of PS. Case No.-46 Year-2019 Thana- MAHILA P.S. District- Muzaffarpur
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1. PRASHANT GUPTA S/o Jawaharlal Gupta Resident of Village- Badheta
Ganagaram, P.S.- Hatharui, Dist.- Muzzafarpur
2. Nishant Gupta S/o Jawaharlal Gupta Resident of Village- Badheta
Ganagaram, P.S.- Hatharui, Dist.- Muzzafarpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with

CRIMINAL APPEAL (DB) No. 552 of 2022

Arising Out of PS. Case No.-46 Year-2019 Thana- MAHILA P.S. District- Muzaffarpur
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PINTU GUPTA Son of Tapeswar Sah Resident of Village - Badheta
Gangaram, P.S.- Hathauri, District - Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 409 of 2022)

For the Appellant/s : Mr.Arun Kumar, Adv.

For the Respondent/s : Mr. Ajay Kumar Mishra, Adv.

(In CRIMINAL APPEAL (DB) No. 422 of 2022)

For the Appellant/s : Mr. Vindhya Keshari Kumar, Sr. Adv.

Mr.Neeraj Kumar Alias Sanidh, Adv

For the Respondent/s : Mr.Ajay Mishra, APP

(In CRIMINAL APPEAL (DB) No. 552 of 2022)



For the Appellant/s : Ms. Akansha Ranjan, Adv.
For the Respondent/s : Mr. Ajay Mishra, APP

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

Date : 21-11-2024

1. All the three appeals have been heard together and are being disposed of by this common judgment.
2. We have heard Shri Arun Kumar, the learned Advocate for the appellant / Abid Ansari in Cr. Appeal (DB) No. 409/2022; Mr. Vindhyakeshari Kumar, the learned Senior Advocate assisted by Mr. Neeraj Kumar @ Sanidh for the appellants/ Prashant Gupta and Nishant Gupta in Cr. Appeal (DB) No. 422 of 2022; and Ms. Akansha Ranjan, the learned Advocate for the appellant / Pintu Gupta in Cr. Appeal (DB) No. 522/2022. The State in all the three appeals has been represented by Mr. Ajay Mishra, the learned APP.
3. The appellants have been convicted for the offences under sections 376(D), 323/34 and 341 /34



of the IPC and Section 6 of the POCSO Act, 2012 by judgment dated 25.04.2022 passed by the learned 7th Additional Sessions Judge -cum-Special Judge, POCSO (W), Muzaffarpur in G.R. No. 84/19 (Mahila P.S. Case No. 46/19). By order dated 26.04.2022, they have been sentenced to undergo R.I. for 20 years, to pay a fine of Rs. 50,000/- each and in default of payment of fine, to further suffer S.I. for one year for the offences under Sections 376 (D) of the IPC and Section 6 of the POCSO Act; S.I. for one months, to pay a fine of Rs. 500/- each and in default of payment of fine to suffer S.I. for seven days for the offence under Section 341/34 IPC and R.I. for one year along with a fine of Rs. 1000/- each and in default of payment of fine, to further suffer S.I. for one month for the offence under Section 323/34 IPC. The sentences have been ordered to run concurrently.

4. The victim, a 16 years old girl is alleged to have been gangraped by all the four appellants while she was coming back after collecting milk from a local



milkman on 30.07.2019.

5. The victim (PW7) has lodged the fardbeyan recorded by one lady police officer by the name of Abha Rani posted in Mahila Police Station (not examined at the trial), alleging that on 30.07.2019 at about 7.15 P.M., while she was coming back home, she was gagged by the appellant / Prashant Gupta and thereafter taken inside the cluster of bamboo trees where appellants/Nishant Gupta, Pintu Gupta and Abid Ansari raped her. She was threatened of being killed if she spoke about the occurrence to anybody. After the act, she could anyhow come back home and narrate about the incident to her mother (PW6) and thereafter became unconscious. She regained her consciousness only in the emergency ward of SKMCH.

6. Based on the afore-noted fardbeyan statement, a case vide Mahila P.S. Case No. 46/19 dated 30.07.2019 was registered for investigation under Sections 376(D), 323 and 34 of IPC and Section 4 of



the POCSO Act, 2012.

7. The police after investigation submitted chargesheet against all the appellants whereupon they were put on trial.
8. The learned Trial Court after having examined ten witnesses on behalf of the prosecution and thirteen on behalf of the defense, convicted and sentenced the appellants as aforesaid.
9. While leading the arguments on behalf of the appellants, Mr. Vindhyakeshari Kumar, the learned Senior Advocate has argued that though a harrowing tale has been given by the victim in her fardbeyan statement and in her deposition before the Trial Court, but on a careful analysis of the evidence on record, it would clearly appear that the victim was not making a correct statement. In order to support the aforenoted contention, Mr. Kumar has drawn the attention of this Court to various facts, specially the medicological and serological reports. He has referred to the evidence of Doctor Chetna (PW8) and



has submitted that the report clearly discloses that the victim was not subjected to gangrape. Similar is the situation with respect to the serological report in which it could not be said with certainty whether the blood found on the wearing apparel of the victim was human blood and that there were no trace of motile/dead of spermatozoa.

10. The other ground urged on behalf of the appellant is that the mandate under Section 53A Cr.P.C. has been blatantly flouted by the Investigator.
11. The age of the victim also could not be assessed with any exactitude. The date of birth of the victim on record is 14.08.2001 whereas the occurrence had taken place on 30.07.2019. Even if this date of birth is accepted as the correct age of the victim, she would have been only a month less than 18 years. That apart, without proof of the age, the jurisdiction of the Special Court to try the POCSO cases has been doubted by the appellants.
12. Lastly, it has been submitted that the



circumstances reveal that perhaps for ulterior motives, all the appellants have been framed in this case. Three of the appellants viz. Prashant Gupta, Nishant Gupta and Pintu Gupta stay next doors whereas appellant / Abid Ansari is the first cousin of the victim. There is evidence on record indicating that the victim was known to appellant / Prashant Gupta with whom she wanted to elope but Prashant was prevented from doing so by others and the entire episode was seen by Abid, who being a brother of the victim, had chastised her.

13. However, all these suggested motives are only in the realm of speculation.

14. Combating the aforementioned arguments, Mr. Ajay Mishra, the learned APP has submitted that in the event of clear and cogent deposition of the victim, her mother and her two uncles, namely, Md. Kasim Ansari and Md. Firoj Ansari (PWs 3 and 4 respectively), the prosecution story cannot be discarded merely on account of certain discrepancies or vagueness in the



opinion of the Doctor, the radiologist and serologist. He has further submitted that non compliance of Section 53A Cr.P.C. would definitely entitle the accused / appellants to urge for taking an adverse inference by the Court but that cannot be the sole ground for jettisoning the prosecution case in its entirety. He has further submitted that the evidence of a minor girl who has faced emotional and physical trauma ought to be understood in that context. The suggestion given to the witnesses regarding *arriere pensee* of the witnesses including the victim to depose against the appellants cannot out-rightly be believed without a demur. In ultimate analysis, Mr. Mishra contends, the appellants have gangraped a village girl with such brutality that she had to get herself admitted in the emergency ward of the hospital.

15. To test the case, we will first refer to the fardbeyan statement of the victim and her deposition before the Trial Court supporting the accusation



against the appellants.

16. According to her, she was first taken under control by the appellant / Prashant Gupta and on his pointing appellants / Abid Ansari, Nishant and Pintu Gupta came and held her tight. She was literally lifted from that place and brought to a nearby bamboo clump behind the local school. She was gagged with her own stole and was raped successively. She was threatened of being administered insecticides if she ever raised any cry. Out of the aforementioned four appellants, someone was clicking snaps as well. She was also threatened that the entire act would be filmed and would be made viral. She was also bitten on her body by appellant / Prashant Gupta. Because she started bleeding from her mouth, the appellant thought that she was dead and so they fled away. She could trudge back home and narrated the incident to her mother (PW6). After regaining her consciousness, she found herself in the emergency ward of the hospital. It was at that time



that a police officer came and recorded her statement. With respect to her age, she could only state before the Trial Court that she had studied till 10th standard but she did not remember the name of the school. She had passed her 10th examination in the year 2019. She knew Prashant Gupta since her childhood. She denied the suggestion that because her father, a teacher, had felled a tree standing over the land of Abid and for which a panchayati was held, Abid has also been made accused in this case.

17. Her mother (PW6), apart from supporting what the victim had narrated before the Trial Court, also deposed that the wearing apparel of the victim was seized (Ext. 3). She did not give any explanation for the father of the victim not having come to the witness-stand or of having made any statement to the Investigator. She admitted that Md. Kasim Ansari and Md. Firoj Ansari (PWs 3 and 4) are own uncles of the victim whereas appellant / Abid Ansari is the first cousin of the victim. She has also denied all



suggestions of dispute with Abid Ansari because of cutting of a tree and of Abid having seen the victim trying to elope with Prashant Gupta and he chastising the victim in his capacity as brother.

18. While going through the deposition of Md. Kasim Ansari and Md. Firoj Ansari, we found that they are not only the uncles of the victim but are close neighbours as well.

19. According to Kasim (PW-3), he heard some commotion in the house of the victim on 30.07.2019. The father of the victim was shouting and calling people of the neighbourhood. He went to the house of the victim and found her lying unconscious. He was told that the victim was raped. He saw the clothes of the victim smeared with blood. The victim was also bleeding that time. Seeing this, he called a three-wheeler for taking the victim to the Police Station. He along with the father of the victim proceeded to Hathauri Police Station and informed the officer-in-charge about the occurrence. The officer-in-charge



immediately swung into action, saw the victim and immediately made arrangements for her being admitted in SKMCH. He knew all the appellants from before. They (Prashan and Nishant) did not carry a good reputation in the locality. Prashant and Nishant are the grand sons of one Anuchit Sah and one Sakur Miya is the grand father of the victim. He denied that there was any civil dispute between Anuchit Sah and Sakur Miya.

20. Similarly, Firoj (PW-4) supported the case, but provided an additional fact to the Trial Court. His father had married another lady namely, Jamila Khatoon. It was suggested to this witness that Jamila had sold her share of land to the grand father of Prashant and Nishant and therefore the bad blood between them was denied by him. He also denied that there was any panchayati with respect to such transfer of land.

21. A look at the deposition of the Investigator would clearly reveal that the disclosures by PW-3 and



PW-4, referred to above, were made for the first time before the Trial Court and not before the Investigator.

22. The statement of Kasim (PW-3) was recorded by the Investigator after 26 days of the reporting of the occurrence. Kasim had never told the I.O. that hearing the cries from the house of his brother, he had visited the house.

23. Similarly, the statement of Firoj was also recorded by her after 26 days. He also did not make such detailed statement about his having seen the victim in her house, to the Investigator.

24. According to her, even the victim and her mother had not stated before her that the victim was continuously bleeding after the occurrence. Rather, the statement of Prashant in defence was that he was known to the victim from before and was asked by the victim herself to run away for marriage. However, he admitted before her that he had established physical relationship with the victim. She candidly admitted that no effort was made by her to ascertain



age of the victim by obtaining school certificate. No document also was offered on behalf of the prosecution regarding the age of the victim.

25. She could learn only from the medical report that the victim was sixteen to seventeen years of age. She could also lay her hands upon the admit card issued by Bihar School Examination Board, in which the date of birth of the victim was recorded as 14.08.2001.

26. From her deposition, it is also absolutely clear that the appellants after being arrested were never subjected to any medical examination.

27. Section 53(A) of the Cr.P.C. was incorporated in the Court mandating that when a person is arrested on a charge of committing an offence of rape or an attempt to commit rape and there are reasonable grounds for believing that an examination of his person will afford evidence as to the commission of such offence, it shall be lawful for a registered medical practitioner employed in a hospital run by the



Government or by a local authority and in the absence of such a practitioner within the radius of sixteen kilometres from the place where the offence has been committed, by any other registered medical practitioner, acting at the request of a Police Officer not below the rank of Sub-Inspector, and for any person acting in good faith in his aid and under his direction, to make such an examination of the arrested person and to use such force as is reasonably necessary for that purpose.

28. In the case of ***Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130***, the Supreme Court had found that the failure of the prosecution to obtain the report of the Forensic Science Laboratory, confirming the commission of such an offence was fatal.

29. On the scope of newly inserted Section 53(A) of the Cr.P.C., the Supreme Court further observed that with its incorporation in the Cr.P.C., with effect from 23.06.2006, it had become necessary for the



prosecution to go in for D.N.A. test in such type of cases, facilitating the prosecution to prove the case against the accused.

30. No doubt, a three judges Bench of the Supreme Court in ***Rajendra Pralhadrao Wasnik v. State of Maharashtra; (2019) 12 SCC 460***, has held that the provision contained under Section 53(A) is not mandatory but non-compliance thereof would definitely warrant an adverse inference to be drawn (also refer to ***Chotkau v. State of Uttar Pradesh; (2023) 6 SCC 742***)

31. We are aghast to note that Dr. Chetna (PW-8) has made such a tentative and a vague report, leading to no conclusion at all. She was told about the background facts, especially of the victim having been raped by four accused persons. However, she found the integrity of the hymen maintained. But in cross-examination, replied that this may or may not reflect any sexual act. She had found one abrasion on the nipple but with no clear observation that it was of



recent past. Two apparels of the victim, as we have already noted, were sent for forensic examination.

32. Dr. Sunil Kumar (PW-9) found that the victim's lower garment bore reddish brown stains at places. It also bore greyish stains, which were neither stiff to feel nor did they produce any characteristic bluish-white fluorescence in ultraviolet light. Semen could not be detected in any of the exhibits before him, though blood was detected.

33. According to the evidence of Dr. Ajay Kumar (PW-10), antigen-A and antigen-B, which were found in the blood sample is common to human and animals. However, combining the two reports, PW-10 could not conclusively opine that the blood stains were of human blood.

34. Thus, with the Investigator having completely abandoned her responsibilities of proper investigation of the case; the victim having exaggerated the accusation; her own cousin having been made accused and her uncles making efforts at becoming



witnesses to the developments immediately after the occurrence, makes the prosecution case very doubtful.

35. True, it is that the suggestions given to the witnesses would not make out a case, but from the surrounding circumstances, it appears that neither the victim nor her mother came out with a correct version.

36. From the evidence on record along with the matters surrounding it, we find that neither the victim nor her mother could be called sterling witnesses or that they are wholly reliable *qua* the accusation of rape. In this situation, it would not be wide off the mark to take note of the contradictions available in the record.

37. We have also given our anxious consideration to the statements made by defence witnesses, most of whom only talked about Abid being a person of good character and being closely related to the victim. However, the filtrate of their deposition is that Firoj's



father had married one Jamila, who had alienated the family land falling in her share in favour of grand father of Prashant and Nishant. Pintu appears to be an associate of Prashant and Nishant. Abid was also not in the good books of the family of the victim for the reason of dispute, because of felling of a tree unauthorizedly, which had been standing over the land of Abid.

38. From an overall conspectus of the case, we do not feel persuaded to put our imprimatur to the judgment of the Trial Court in convicting and sentencing the appellants.

39. The appellants must be given the benefit of doubt.

40. The judgment and order of conviction and sentence is thus set aside. The appellants are acquitted of the charges.

41. Since all the appellants are in jail, they are directed to be released from jail forthwith, if not warranted or detained in any other case.



42. All the three appeals are allowed.
43. Interlocutory application/s, if any, also stands disposed of.
44. Let the copy of this judgment be communicated to the Superintendent of concerned jail for record and compliance.
45. Let the records of these appeals be returned to the concerned Trial Court forthwith.

(Ashutosh Kumar, J)

(Rajesh Kumar Verma, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	22.11.2024
Transmission Date	22.11.2024

