

Cr. Appeal (DB) No. 590 of 1996P
With
Cr. Appeal (DB) No. 593 of 1996P

(Against the judgment and order of conviction and sentence dated 5.10.1996 (sentence passed on 10.10.1996) passed by Sri Chandra Mohan Prasad, learned Special Judge, Dumka in Special Case No. 10/96.

Manoj SinhaAppellant
(In Cr. Appeal (DB) No.590 of 1996P)

Shashi Prabhash Singh @ Shashi SinghAppellant
(In Cr. Appeal (DB) No.593 of 1996P)

Versus

The State of Bihar (Now Jharkhand) ... Respondent

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE DEEPAK ROSHAN

(in Cr. Appeal (DB) No. 590 of 1996P):

For the Appellant : Mr. Rajiv Sinha, Advocate
For the Respondent : Mrs. Kumari Rashmi, A.P.P.

(in Cr. Appeal (DB) No. 593 of 1996P):

For the Appellant : Mrs. Jaswinder Mazumdar, Advocate
For the Respondent : Mrs. Kumari Rashmi, A.P.P.

R. Mukhopadhyay, J. Heard Mr. Rajiv Sinha, learned counsel appearing for the appellant in Cr. Appeal (DB) No. 590 of 1996P, Mrs. Jaswinder Mazumdar, learned counsel appearing for the appellant in Cr. Appeal (DB) No. 593 of 1996P) and opposed by Mrs. Kumari Rashmi, learned A.P.P. in both the appeals.

2. Both these appeals arise out of a common judgment and hence both are being disposed of by this common order.

3. These appeals are directed against the judgment and order of conviction and sentence dated 5.10.1996 (sentence passed on 10.10.96) passed by Shri Chandra Mohan Prasad, learned Special Judge, Dumka in Special Case No. 10/96, whereby and whereunder, the appellants have been convicted for the offences punishable under Sections 376 (2g) IPC and Section 3 (2)(v) of the S.C. (ST) SC & ST (Prevention of Atrocities) Act, 1989 and have been sentenced to undergo rigorous imprisonment for twelve years along with a fine of Rs.1,000/- and in default in payment of fine to undergo rigorous imprisonment for six months. The appellants have further

been sentenced to undergo rigorous imprisonment for life along with a monetary fine of Rs.1,000/- and in default in payment of fine to undergo rigorous imprisonment for a further period of six months. All the sentences were directed to run concurrently.

4. The prosecution case arises out of the Fardbeyan of Poku Hansda recorded on 13.9.94 wherein it has been stated that on 29.8.1994 at about 3 A.M. she was sleeping by closing the door when someone started repeated knocks on the door calling her to open the door. When the door was not opened, attempts were made to break open the door. In the meantime, her eldest daughter Manju Marandi started peering through the window and found three persons standing outside who were identified by her daughter as Gajet Tiwari, Ranjit and Moti Lal Hansda. Ranjit had caught hold of the hand of her daughter and though they started shouting, nobody came to their rescue. Prior to this, at 12 in the night, a sound of alarm had come from the house of Komal Marandi. It has been alleged that when in spite of repeated efforts made by the miscreants, the door was not opened, they ultimately left. After they left, Komal Marandi had disclosed that at 12 A.M. these persons had entered her room and Gajet Tiwari and Ranjit had committed rape upon her and Moti Lal had made an attempt to commit rape. On the next day, she and Komal Marandi had gone to court to lodge a case. She has alleged that on 30.8.1994 at 7 P.M. Manoj Sinha, Ranjit, Shashi had come to her house and on seeing them, she and her daughter fled away. On 31.8.1994, she in view of the repeated attempts made by the miscreants sent her daughter to her sister's place. At about 12 noon, Ranjit, Manoj, Shashi and another person entered her room and started searching for her daughter. When she said that her daughter is not here she was confined in her room and Manoj, Ranjit and the other persons committed rape upon her. She has alleged that Shashi also wanted to commit rape but she fell sick. The miscreants had threatened her not to disclose about the incident to anyone.

5. Based on the aforesaid allegations, Dumka Town P.S. Case No. 118/94 was instituted for the offences punishable under sections 448, 341, 354, 376/34 IPC against Gajet Tiwari, Ranjit and Manoj Sinha. On completion of investigation, chargesheet was submitted against Gajet Tiwari, Ranjit, Manoj Sinha and Shashi Prabhash Singh and after

cognizance was taken, the case was committed to the Court of Sessions, where it was registered as Special Case No. 10/96. Charge was framed under sections 448/376 (2g) IPC and Section 3(2)(v) of SC ST (Prevention of Atrocities) Act, which was read over and explained to the accused, to which they pleaded not guilty and claimed to be tried.

6. The prosecution has examined as many as eight witnesses in support of its case.

P.W-1-Bablu Soren has feigned ignorance about any incident happening with Poku Hansda and Komal Marandi. The police had recorded his statement. He had later on come to know that Komal Marandi was subjected to rape.

P.W-2-Komal Marandi has stated that the incident had taken place a year back and it was night and she was sleeping in her house. Her brother Suraj Marandi was also in the same room. It was around 12 in the night when Ranjit, Moti Lal Hansda and Gajet Tiwari had come to her room and asked her to open the door. When they threatened that they will kill her brother she opened the door as her brother was sleeping in the verandah. She has stated that Ranjit entered in her room and closed the door and committed rape upon her. When Ranjit went out, Gajet came inside and he also had committed rape upon her. Moti Lal Hansda did not indulge in such act. She had raised an alarm but nobody came to her rescue. She has stated that at 4 A.M. she went to the house of Bablu and disclosed the incident to him. She had gone to the house of Poku in the morning and Poku had confided in her that Moti Lal, Ranjit and Gajet had come to her house though she did not disclose any other thing. She and Poku had not gone to the police station but had gone to the Court where a document was prepared. She was sick due to which she had to undergo treatment. Poku was also sick and these were the reasons for delay in institution of the case. In cross-examination, she has deposed that she and Poku had gone to the court where a petition was prepared which was the same document given to the police. They had come to the court on the next day of the incident and on the same day they had given the application to the police. She has deposed that she has married twice and her first husband has already died. She has married Arun Tiwary with whom she had stayed for 10-15 years. The houses of Poku Hansda and Martial are nearby to her house at a distance of 10-15

yards. She did not know Ranjit, Gajet and Moti Lal from before. Before knocking at her door, the accused persons had raised a commotion. She had raised an alarm on seeing them but nobody came to her rescue. She has deposed that when she had asked the accused to disclose their identity they had stated their names as Ranjit and Gajet. Ranjit had thrashed her to the ground but no injury was suffered by her. After Ranjit had left her place she and her brother fled away and returned at 7 A.M.

P.W-3-Poku Hansda is the informant who has stated that she was sleeping in her room and her children were also sleeping with her. Ranjit Singh, Gajet and Moti Lal came to her house and started banging on the door. When she asked them to reveal their identity one of them disclosed his name as Ranjit Singh. She did not open the door and from the window she could identify Ranjit Singh, Gajet and Moti Lal Murmu. Her daughter had in the meantime awakened. All the three accused were demanding that either she comes outside or she sends her daughter-Manju Marandi. Ranjit caught hold of the hand of Manju Marandi and dragged her. When her daughter started crying, the accused persons left her and fled away. She has stated that on the next day, the staff of her husband had submitted an application to the D.C. On the same day at 6 P.M. Ranjit, Shashi and Manoj came to her house but due to fear she had fled away along with her daughter. When she found out that the accused persons are not in her house she returned back. She has stated that on Wednesday at 11 A.M. Ranjit had told her that Yesterday evening she had fled away but they will come once again to do an immoral act. On hearing this, her daughter Manju Marandi fled away. She had forbade Manoj to come to her house again as she is a respectable person of the area. However, Manoj returned immediately and committed rape upon her. Ranjit also committed rape upon her. She had abused them and thereafter all had gone away. After the commission of rape upon her, she had a severe stomach pain and she remained sick for 5-6 days after which she took a medicine worth Rs.10 and she recovered. The police had come after 10-11 days and she had disclosed the incident to them. The police had sent her and Komal Marandi to Sadar Hospital, Dumka for medical examination. On the next day, her statement as well as the statement of Komal Marandi was recorded in the court.

In cross-examination, she has stated that she had come to know

about the accused persons from the date of the incident itself. She had seen Manoj and Shashi in the police station and she had also come to know about their names. In her house, the other inmates are her daughter Manju, her sons Paresh Marandi and Sanat. She had given her statement to the police in Hindi.

P.W.-4-Poresh Marandi has stated that he was sleeping in his house and his mother and sister Manju Marandi were also sleeping. There was a commotion and Ranjit had caught hold of the hand of his sister. He cannot say as to who else were present. He out of fear did not come out from the house. He later on came to know that apart from Ranjit, there were two other persons. On Tuesday, Ranjit, Manoj and Shashi had come but nothing untoward happened but on Wednesday they had once again come at 2-3 P.M. He had gone to the market. When he came back he saw Manoj and Ranjit leaving his house. There was another person whom he could not identify. When he entered the house he found his mother lying and when he asked about the reason she disclosed that she is suffering from stomach pain. Later on he came to know that Ranjit and Manoj had committed rape upon her.

In cross-examination he has denied that his mother and sister are involved in flesh trade. His father had died 4-5 years back and his mother receives a pension of Rs.700/--750/- per month. He did not know the accused persons from before and he came to know about their names when they were addressing each other.

P.W-5-Suresh Marandi is the brother of Komal Marandi who has stated that on 29.8.94 at 12 in the night he was sleeping in the veranda and his sister was sleeping in her room when three persons came and asked him to call his sister otherwise he will be done to death. He called out his sister but she did not open the door. When the accused persons had issued a threat she opened the door and one of the accused entered and closed the door. He had committed rape upon his sister and he came to know that his name is Ranjit. The other accused Gajet had also entered into the room and committed rape upon her. The third person Moti Lal Hansda did not do anything. He did not raise any alarm because the accused persons had threatened him with dire consequences. He does not know the accused and their names were disclosed to him by his sister. He had not seen their faces

as the night was dark.

In cross-examination, he has deposed that after the incident he had left the house of his sister due to the threat issued to him by the accused persons.

P.W-6-Dr. Mary Thelna Dan was posted at Sadar Hospital, Dumka and on 14.9.1994 she had examined Poku Hansda and had found the following:-

Height -5'
Weight -85lbs.
Teeth -16 upper
--16 lower
Attrition last molars ++.
Breasts --Well developed
Axillary and pubic hair present.

No mark of injury was found over the body externally. On internal examination no mark of injury was found present and no foreign hair was found present on her private parts. It means showed no rupture. Vaginal swab was taken and sent to pathology for microscopic examination. Pathological report showed that no spermatozoa was found.

It was opined that no definite opinion could be given whether the victim was raped or not. She has proved the report which has been marked as Ext-1.

On the same day, she had examined Komal Marandi and had found the following:-

Height -4'4"
Weight -88 pounds.
Teeth -14 upper
--16 lower
Attrition of lower last molar ++.
Breasts --Well developed
Pubic hair present was black.

No mark of injury found over the body externally. On the internal examination no mark of injury was found on her private part. No foreign hair was found present there. Hymen showed old rupture. Vaginal swab was taken and sent to Pathology for microscopic examination for presence of spermatozoa. Pathological report showed spermatozoa were not present.

No definite opinion could be given as to whether the victim was raped or not. She has proved the report prepared by her, which has been marked as Ext-1/1.

P.W-7-Md. Tahir Khan has proved the Fardbeyan, which has been marked as Ext-2. He has also proved the formal FIR, which has been

marked as Ext-3. After taking over investigation, he had inspected the place of occurrence which is at the end of village-Kurwa Rasikpur in a house built of mud and tiles. There is a big room where nothing out of the ordinary could be detected. The said house belongs to Komal Marandi. The second place of occurrence is at a distance of 100 yards from the first place of occurrence which is a mud house belonging to Poku Marandi. The house has three rooms, which are enclosed by a veranda with a small courtyard. The room on the eastern side is the place where rape was committed. He had got the medical examination of Komal Marandi and Poku Hansda done.

The statements under section 164 Cr.P.C. were also got recorded. He had recorded the statement of the witnesses and after completion of investigation, had submitted chargesheet.

In cross-examination, he has deposed that he had not recorded the statement of the neighbours as they were not available but this fact was not noted down in the case diary. The Dy. S.P. who was the supervising authority had in his supervision note noted that the character of the victims appears to be not good and several unscrupulous persons visit their place. It is incorrect to say that the accused persons were already apprehended from before.

P.W-8-Manju Marandi is the daughter of the informant who has stated that she was sleeping in her room at night along with her mother when she heard somebody pushing at the door. She heard a commotion outside and they were insisting to open the door. Ranjit, Gajet and Moti Lal were standing outside. She and her mother had raised an alarm when Gajet had caught hold of her hand from the window. On the second day, Manoj, Ranjit and Shashi had come to her house in the evening but she out of fear had fled away. On the next day, Manoj, Shashi and Ranjit had again come at 12 noon and committed rape upon her mother as told by her. She was in the house on the date of the incident.

In cross-examination, she has deposed that the accused persons do not visit her house. Her mother is an aged lady. She has deposed that Komal Marandi had disclosed to her the identity of the accused as she was not knowing them. Her statement was not recorded by the police. On the date of the incident, she was in the house along with her mother and two brothers. There are several houses adjacent to her house. She was earlier married

but her husband had left her. She had gone to Patna with Karnal where she stayed for two months. She had never eloped with Karnal.

7. The statements of the accused were recorded under section 313 Cr.P.C. in which they have denied about their involvement in the commission of rape.

8. It has been submitted by Mr. Rajiv Sinha, learned counsel appearing for the appellant-Manoj Sinha in Cr. Appeal (DB) No.590/96P that the evidences of the witnesses does not inspire confidence as the same are incoherent and projects a story which is unbelievable in itself. Mr. Sinha has submitted that there has been an inordinate delay in lodging the FIR, which has not been explained by the prosecution. The identification of the appellant is also doubtful as there was no acquaintance previously with him as stated by the victim and only in the police station he was made to be identified as one of the persons who was involved in the commission of rape.

9. Mrs. J Mazumdar, learned counsel appearing for the appellant-Shashi Prabhash Singh in Cr. Appeal (DB) No. 593/96P has submitted that there is no allegation against this appellant of commission of rape and he has been implicated on account of his presence at the place of occurrence.

10. Mrs. Kumari Rashmi, learned A.P.P., has submitted that P.W-3 has been consistent in her evidence about the appellant-Manoj Sinha committing rape upon her and such evidence has been corroborated by P.W-4 and P.W-8. The delay in lodging the case has also been sufficiently explained as on account of illness being suffered by the victims they could not lodge the complaint in the police station immediately after the occurrence had taken place.

11. We have heard the learned counsel for the respective sides and have also perused the Lower Court Records.

12. The case of the prosecution hinges upon the evidence of P.W-2 and P.W-3 who claim that they were subjected to gang rape by the accused persons. P.W-2-Komal Marandi has stated that it was a Monday when Ranjit, Gajet and Moti Lal had come to her house and on the threat of doing away with the life of her brother she was forced to open the door consequent to which Ranjit and Gajet had committed her rape. Gajet is one of the appellants in Cr. Appeal (DB) No. 590/96P but during the pendency of the appeal, the appellant-Gajet Tiwari has died and therefore this appeal so far

as Gajet Tiwari is concerned stood abated. The evidence of P.W-2 does not relate to the remaining appellants but her evidence will be dealt with in the later part of the judgement. The appellants have been convicted primarily on account of the evidence of P.W-3 who is the informant as well. The accused persons who form the crux of the evidence of P.W-3 had on the same night made an attempt to forcibly enter into the house of P.W-3 and had asked her either to come out herself or send her daughter Manju Marandi. When such attempt failed, they left and P.W-3 had filed an application before the D.C. but there is nothing on record to suggest by way of documentary evidence about P.W-3 approaching the authorities intimating them about such incident. Another attempt was made by the accused persons Ranjit being the common factor with the addition of the appellants Manoj Sinha and Shashi Prabhash Singh to commit an immoral act with P.W-3 but as she and her daughter had fled away nothing untoward could happen but on the next day these accused persons once again resurfaced at 11 A.M. and Manoj and Ranjit committed rape upon her. It would thus seem that attempts to enter into a sexual relationship with P.W-3 was made by the accused on 29.8.1994 and on 31.8.94 they ultimately subjected P.W-3 to a gang rape. The fardbeyan of P.W-3 was recorded on 13.9.1994 after a delay of about 15 days. According to P.W-3, after she was subjected to rape she suffered a stomach pain and she remained ill for 5-6 days. The evidence of P.W-3 and her children being P.W-4 and P.W-8 does not even give a hint about any attempts made by P.W-3 to inform the incident of rape in the police station. P.W-4 is the son of P.W-3 who had gone to the market on 31.8.94 and when he came back he had seen Manoj and Ranjit going out from his house and later on he came to know that they have committed rape upon his mother. The daughter of P.W-3 who has been examined as P.W-8 has stated that she had fled her house and her mother later on had taken the name of Manoj and Ranjit as the persons who had committed such heinous act. The statement of P.W-8 was not recorded by the police which fact has been admitted by the Investigating Officer (P.W-7). As per P.W-4, his statement was also not recorded by the police. The evidence of P.W-3, P.W-4 and P.W-8 therefore does not seek to dispel the submission of the learned counsel for the appellants with respect to the inordinate and unexplainable delay in lodging the F.I.R. In order to further explore any plausible explanation, we

may revert back to the evidence of P.W-2 who has stated that on 30.8.94 she and P.W-3 had gone to the court and a document was prepared which was submitted to the police station. The other reason for delay as enumerated in her evidence is that she was sick and so was P.W-3. Neither P.W-7 has stated about any such document presented to the police nor has such document been brought into existence. The evidence of P.W-2 also appears to make a feeble attempt to explain the delay in tune with the evidence of P.W-3. The prosecution has therefore failed to suitably explain the delay in lodging the F.I.R. We could have set aside the judgement and order of conviction and sentence on such ground itself but we feel necessary to deal with some other aspects of the case which would discard the evidence of P.W-3 in its totality.

13. In this context, we may refer to the case of **Ramdas and others Vs. State of Maharashtra**, reported in **2007(2)SCC 170** wherein it has been held as follows:-

“23. It is no doubt true that the conviction in a case of rape can be based solely on the testimony of the prosecutrix, but that can be done in a case where the court is convinced about the truthfulness of the prosecutrix and there exist no circumstances which cast a shadow of doubt over her veracity. If the evidence of the prosecutrix is of such quality that may be sufficient to sustain an order of conviction solely on the basis of her testimony. In the instant case we do not find her evidence to be of such quality”.

14. Though the accused persons had continuously endeavored in their mission of doing an immoral act with P.W-3 but as we have taken note of earlier she did not inform about the same to anybody. As we could gather from the evidence of P.W-8 the house was not in an isolated place but was surrounded by several houses. Interestingly, none of the neighbours had arrived on 29.8.94 when an alarm was raised by P.W-3 nor they had arrived on the subsequent dates. Infact, none of the independent witnesses have been examined by the prosecution and P.W-7 (I.O.) has also not specified as to whether he had recorded the statements of the neighbors of P.W-3 or not. Forcible intrusion and commission of such a grave offence in a locality having several houses nearby would never go unnoticed and keeping the incident under wraps by P.W-3 and lodging an FIR as a delayed response in concert with P.W-2 evinces a concocted narrative which cannot form the basis for conviction.

15. The other aspect of the case is of establishing the identity of the appellants as the perpetrators of rape. P.W-3 in her cross-examination has stated that she had seen Manoj and Shashi in the police station and she had also come to know about their names in the police station itself. It would mean therefore that Manoj and Shashi were not known to her from before but in her Fardbeyan she has conveniently named them as the accused. P.W-4 has stated that he did not know the name of the accused but came to know about them when they were addressing each other by name. P.W-8 is another inmate of the house who has also feigned ignorance about knowing the accused and it was Komal Marandi (P.W-2) who had disclosed about their names to her. P.W-7 has denied that the police had apprehended the accused persons from before. What can be concluded from the evidence of the witnesses is that the identity of the appellants were not known to P.W-2 yet in her fardbeyan she had named the appellants. Her children also had never come across the appellants to establish their identity. On this score also, the prosecution has miserably failed to prove its case.

16. The learned trial court has overtly relied upon the evidence of P.W-2 and P.W-3 without delving into the essential features of their evidence which would demolish the truthfulness and credibility of their evidence and we as a consequence to the above set aside the judgment and order of conviction and sentence dated 5.10.96(sentence passed on 10.10.96) by Shri Chandra Mohan Prasad, learned Special Judge, Dumka, Special Case No. 10/96.

17. These appeals are allowed.

18. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(R. Mukhopadhyay, J.)

(Deepak Roshan, J.)

**Jharkhand High Court, Ranchi,
Dated the 10/06/2024
Rakesh/NAFR**