

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.269 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

=====

Jamal Akhtar, S/O Late Ashiq Ali, Resident of Village- Idgah Masjid Ramnagar,
P.S.- Ramnagar, District- West Champaran.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 295 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

=====

Munni Khatoon @ Munni Nisha, W/O Late Shafique Deewan @ Late Shaikh
Hushamuddin, Resident of Village And P.O. Jogia, P.S.- Ram Nagar, At Present
R/O Village- Narainpur, P.S.- Ram Nagar District- West Champaran.

... ... Appellant

Versus

The State of Bihar

... ... Respondent

=====

with

CRIMINAL APPEAL (DB) No. 356 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

=====

Serajul Dealer @ Md. Serajul Ansari, Son of Late Ali Hussain Ansari, Resident
of Village - Pain Tola, P.S. - Ramnagar, Distt. - West Champaran (Bihar)

... ... Appellant

Versus

The State of Bihar

... ... Respondent

=====

Indian Penal Code, 1860—Sections 376/120B, 376(2)(g)—prosecutrix was gangraped by the accused/appellants A-1 and A-3 with the active assistance of the appellant A-2 and delay in lodging the FIR by the prosecutrix—informant lodged her case under the influence of a political person who had political rivalry with the appellants and there are material inconsistencies in between the evidence of prosecutrix and the evidence of her close relatives—prosecution failed to explain an inordinate delay of one month which took place on the part of the prosecutrix in lodging the FIR and prosecution also failed to bring any documentary evidence regarding medical treatment of prosecutrix which is said to have taken by her in a private hospital with the assistance of her husband just some days after the commission of the alleged occurrence—sufficient material to draw an adverse opinion against the conduct of the prosecutrix—trial court not appreciated the evidences in the right perspective—impugned judgment of conviction and impugned order of sentence for which they were charged are set aside and the appellants in all the appeals are acquitted of the charged offences giving them benefit of doubt—appeals allowed.

(Paras 19 to 29)

(2012) 8 SCC 2021; (2016) 9 SCC 1; (2012) 4 SCC 379—Referred to.

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.269 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

Jamal Akhtar, S/O Late Ashiq Ali, Resident of Village- Idgah Masjid
Ramnagar, P.S.- Ramnagar, District- West Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 295 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

Munni Khatoon @ Munni Nisha, W/O Late Shafique Deewan @ Late Shaikh
Hushamuddin, Resident of Village And P.O. Jogia, P.S.- Ram Nagar, At
Present R/O Village- Narainpur, P.S.- Ram Nagar District- West Champaran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

with
CRIMINAL APPEAL (DB) No. 356 of 2023

Arising Out of PS. Case No.-246 Year-2011 Thana- RAMNAGAR District- West Champaran

Serajul Dealer @ Md. Serajul Ansari, Son of Late Ali Hussain Ansari,
Resident of Village - Pain Tola, P.S. - Ramnagar, Distt. - West Champaran
(Bihar)

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In CRIMINAL APPEAL (DB) No. 269 of 2023)

For the Appellant : Mr. Abdul Mannan Khan, Advocate
Mr. Allama Abdul Quadir Jamal Faridi, Adv

For the Respondent : Mr. Binod Bihari Singh, Addl. PP

(In CRIMINAL APPEAL (DB) No. 295 of 2023)

For the Appellant : Mr. Abdul Mannan Khan, Advocate
Mr. Allama Abdul Quadir Jamal Faridi, Adv

For the Respondent/s : Mr. Parmeshwar Mehta, Addl. PP

(In CRIMINAL APPEAL (DB) No. 356 of 2023)

For the Appellant/s : Mr. Pratik Kumar, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, Addl. PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH



ORAL JUDGMENT**(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)****Date : 01-07-2024**

All these three appeals have arisen out of the same judgment, so they are being decided together by a common judgment.

2. The appeals have been filed against the judgment of conviction dated 17.02.2023 and order of sentence dated 24.02.2023 passed by the learned Additional Sessions Judge -1st, Bagaha, West Champaran, in Sessions Trial Case No. 344 of 2014 arising out of Ramnagar P.S. Case No. 246 of 2011, whereby and whereunder the appellant Munni Khatoon @ Munni Nisha has been convicted for the offence under Sections 376/120B of the Indian Penal Code (in short 'IPC') and the rest appellants, namely, Jamal Akhtar and Serajul Dealer @ Serajul Ansari have been convicted for the offence under Section 376(2)(g) of IPC. The appellant Munni Khatoon @ Munni Nisha has been sentenced to undergo rigorous imprisonment for a period of ten years along with a fine of Rs. 10,000/- for the offence under Sections 376/120B of IPC and in default of payment of fine, she has been directed to undergo further simple imprisonment for a period of six months. The rest two appellants have been sentenced to undergo life imprisonment along with a fine of Rs. 10,000/- each for the



offence under Section 376(2)(g) of IPC and in default of payment of fine, they have been directed to undergo further simple imprisonment for a period of six months.

3. Here, it is important to mention that along with the appellants one co-accused namely, Sheikh Hasmuddin, was also charged but during the course of trial, he died and against him, the trial stood abated vide order dated 13.04.2022 of the trial court. All the appellants stood charged for the offences under Sections 376/120B of IPC and the appellants Jamal Akhtar and Serajul Dealer @ Serajul Ansari were separately charged also for the offence under Section 376(2)(g) of IPC.

Prosecution Story :-

4. The substance of the prosecution story is that on 11.08.2011, at about 8:00 PM, the appellant/accused in Cr. Appeal (DB) No. 295 of 2023 (hereinafter referred to as 'A-2') arrived at the residence of the informant (hereinafter referred to as 'victim/prosecutrix') at *Miskar Toli* and told the victim to go with her to the house of *Uppramukh* where the victim's husband (Noorul Hoda) was present as per A-2. She further told the informant/victim that an incident had taken place regarding which a talk would be made. Relying upon A-2, the victim went to the residence (*dera*) of accused Sheikh Hasmuddin but she did not



find her husband Noorul Hoda, there she met the accused Sheikh Hasmuddin and Israfil but after seeing her, they left the house saying to the informant/victim to wait for her husband, who was about to come on a vehicle and after his arrival, they would talk. The informant further alleged that till 10:00 PM, her husband did not come and she was unable to understand the cause of sudden call, so, she asked A-2 to drop her at her residence on which A-2 asked her as to why she was not agreeing to enjoy living with Seikh Hasmuddin and on this point, a verbal altercation took place between the informant and A-2 and in the meantime, the appellants Jamal Akhtar and Serajul Dealer (hereinafter referred to as 'A-1' and 'A-3' respectively) entered into the room and they started abusing the victim by using filthy language and while doing so, they overpowered her and tied her mouth with her *dupatta* (scarf), took her arms and feet in their grip violently and thereafter, they took turns to rape her and committed sexual assault upon her one by one with active assistance of A-2.

5. As per allegation, the victim was kept by the appellants in their custody and she was subjected to sexual assault repeatedly for two consecutive days and nights and during that course, when the victim became unconscious then the accused made her conscious and again raped her repeatedly and brutally



but fortunately, in the evening of the third day, she managed to escape away from the clutch of the accused and went to local police station and narrated her ordeal but hearing the names of the accused persons, the police began abusing her, threatened to put her behind the bars and told her to be out of the police station and thereafter, she went to Harinagar railway station and boarded a train and reached at Muzaffarpur where she took some medicine and purchased *Hijab (nakab)* by collecting money through begging and thereafter, she left Muzaffarpur and came to Ramnagar after four days. There she met her husband and narrated the whole occurrence to him but her husband got frightened and said that the accused persons were wealthy men having higher approach and influence and they might kill them. In the last, the victim alleged that the accused persons had been harassing and pressurizing her to start sexual relationship with them and upon her reluctance, the alleged occurrence took place. She further revealed that she went to the Deputy Inspector General of Police (D.I.G.) and on his order, the application for institution of the case was filed. As per the victim, the accused tortured her husband by imposing false accusations due to which she had to change several rental residences at Ramnagar. According to the informant, she is second wife of her husband and due to lack of cordial relation with the



first wife of her husband, she was residing at Ramnagar in a rented house.

6. With the above prosecution’s story and describing the allegations, the informant/victim filed a written report Ext.- ‘P-3’ at Ramnagar police station, which was written by one namely, Madhukar Rai, on that basis, formal FIR bearing Registration No. 246/2011 was registered under sections 376 and 120B of IPC which set the criminal law in motion.

7. Upon completion of the investigation, the police submitted chargesheet against the appellants and co-accused Sheikh Hasmuddin (now deceased) for the offences under Sections 376 and 120B of IPC and one person namely, Ishrafil, who was named in the FIR, was not sent up by the police and thereafter, the learned A.C.J.M., Bagaha took cognizance of the alleged offences and committed the case of the appellants to the court of sessions for trial.

8. During trial, the prosecution examined altogether 11 witnesses and proved six documents and got them marked as exhibits which are as follows : -

List of 11 prosecution witnesses :-

Rank	Name	Nature of witness
P.W. 1	XXXX	Eye witness (informant of the case)
P.W. 2	Murtuza Khan	Police witness



P.W. 3	Mehrun Nesha @ Bilai Khatoon	Police witness
P.W. 4	Shahnawaz Mistri	Police witness
P.W. 5	Shamim Akhtar Hawari	2 nd I.O. of the case
P.W. 6	Anwarul Haque	Police witness
P.W. 7	Sekh Reyaj Amin	Police witness
P.W. 8	Noorul Hoda	Police witness
P.W. 9	Kishori Chaudhary	1 st I.O. of the case
P.W. 10	Dr. Rashminand Kaliyar	Doctor of the case/Expert witness
P.W. 11	Madhukar Rai	Other witness/Formal witness

Prosecution Exhibits :-

Sl. No.	Exhibit No.	Description
1	Ext. P-1/PW-9	Endorsement on written information report of Krishna Nand Jha, SHO, Ramnagar
2.	Ext. P-2/PW-9	Writing and signature of Ganesh Singh and S.H.O on FIR
3.	Ext. P-3/PW-11	Writing and signature of PW-11 Madhukar Rai on written information report
4.	Ext. P-4	C.C. of Chargesheet No. 285/12
5.	Ext. P-5	C.C. of statement u/s 164 Cr.P.C. of the victim .
6.	Ext. P-6/PW-10	Writing and signature of PW-10 on medical report of the victim .

9. After completion of the prosecution’s evidence, the statements of the appellants were recorded by the trial court giving them an opportunity to explain the main incriminating circumstances appearing against them from the prosecution’s evidences. The appellants denied the said circumstances and



claimed themselves to be innocent and while recording the statements, they did not take any specific defence.

10. In defence, the appellants examined only one witness, namely, Dr. Braj Bihari Prasad, Doctor of Navjeevan Nursing Home, Bettiah, as D.W.-1 who proved the writing and signature of the said witness upon a medical report purported to be of A-2 and the documentary evidence was marked as Ext.-‘D-A’.

Submission on behalf of the appellants :-

11. Mr. Pratik Kumar, learned counsel for the appellant Serajul Dealer @ Serajul Ansari has argued that during the trial, the material witnesses, including the husband of the prosecutrix, went hostile and an inordinate delay of one month took place on the part of the prosecutrix in lodging her FIR and the delay was not properly explained by the prosecution. It is further argued that the prosecutrix lodged her case due to political rivalry at the instance of one Madhukar Rai and no medical evidence was given by the prosecution despite the informant being treated at a private hospital just some days after the alleged occurrence as per her testimony, in actual the prosecutrix’s conduct was questionable at the time of alleged occurrence.



12. Learned counsel further submits that the trial court convicted the appellants mainly relying upon the prosecutrix's evidence which is full of contradictions and no independent witness has been examined by the prosecution. It is further submitted that the prosecutrix can not be deemed to be a sterling witness as her version did not remain consistent to the allegations and there are several circumstances giving a room for a serious doubt as to the credibility of the offence and the inordinate delay of one month in lodging the FIR in itself raises a grave doubt about the truthfulness of the allegations made by the prosecutrix. In support of these submissions, learned counsel has placed reliance upon the judgments of the Hon'ble Apex Court passed in the cases of *Rai Sandeep v. State (NCT of Delhi)*, reported in (2012) 8 SCC 2021 and *Manoj Kumar Sharma v. State of Chhattisgarh*, reported in (2016) 9 SCC 1.

13. Mr. Abdul Mannan Khan, learned counsel appearing for the appellants Munni Khatoon @ Munni Nisha (A-2) and Jamal Akhtar (A-1) adopts the above submissions made by learned counsel appearing for the appellant Serajul Dealer (A-3). Learned counsel further submits that the prosecution case as described in the FIR is highly unbelievable and the evidence of prosecutrix is



self-contradictory and even her own evidence has fully demolished the prosecution case.

Submissions on behalf of the Respondents/State : -

14. On the contrary, Mr. Binod Bihari Singh, Mr. Parmeshwar Mehta and Mr. Abhimanyu Sharma, learned Additional PPs for the State have vehemently opposed these appeals and submitted that it is settled principle of law that conviction can be based solely on the evidence of the prosecutrix and in the instant matter, the prosecutrix was gangraped by the accused/appellants A-1 and A-3 with the active assistance of the appellant A-2 and the delay in lodging the FIR was properly explained by the prosecutrix and the contradictions pointed out by the counsels of the appellants are minor and ignorable and the appellants have rightly been convicted for the offences charged and these appeals are liable to be dismissed.

Analysis and Discussion :-

15. We have heard both the sides and gone through the materials available before this Court. The offences involving sexual assault are generally committed when the victim is found alone or at an isolated place where the victim is taken by the accused, so, in most of such cases, the victim alone is found to be an eye-witness of the offence and often regarded as a sterling



witness. Though, in the offences of sexual assault, conviction can be based merely on the basis of prosecutrix's evidence if the same is wholly reliable, natural and consistent with the case of prosecution but where some material inconsistency appears in her evidence or some material contradictions appear in her testimony or there are some other circumstances such as delay in lodging the FIR, non-corroboration with the medical evidence then in the presence of any of such situations, the victim's testimony should be scrutinized carefully.

16. The Hon'ble Apex Court in the case of ***Rai Sandeep (supra)*** made an important observation regarding who can be said a "sterling witness" in paragraph 22 of this judgment which is being reproduced as under :-

"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.”

17. On the question of what would be the effect of delay in lodging the FIR, the Hon’ble Apex Court in the case of **Manoj Kumar Sharma (supra)** observed in para 30 that “ *Delay in lodging the FIR often results in embellishment, which is a creature of an afterthought. On account of delay, the FIR not only gets bereft of the advantage of spontaneity, danger also creeps in of the introduction of a coloured version or exaggerated story. In our opinion, such extraordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by Respondent 2 herein against the appellants, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, Respondent 2 herein has tried to rope the appellants in criminal proceedings. We are of the confirmed opinion that continuation of the criminal proceedings against the appellants pursuant to this FIR is an abuse of the process of law. Therefore, in the interest of justice, the FIR deserves to be quashed.*”

18. While making the above observation, the Hon’ble Apex Court followed its earlier decision arrived in the case of **Jai Prakash Singh v. State of Bihar**, reported in **(2012) 4 SCC 379**, wherein it was held that :-

“ **12.** *The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting*



upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.”

19. In the instant matter, the prosecutrix, herself, lodged the FIR. As per the allegations levelled by her in the FIR, the appellants A-3, A-1 and co-accused Sheikh Hasmuddin (now deceased) raped her in which the appellant A-2 assisted the other appellants. The prosecutrix stated in the examination-in-chief that one Ishrafil also raped her in the alleged occurrence. But, in the beginning of the examination-in-chief, she did not reveal the name of the said person as being one of the perpetrators and even she did not reveal his name in the FIR. In this way, it is apparent that the prosecutrix improved her version before the trial court and in this



regard, she did not give any explanation which raises a serious doubt in the credibility of her allegations.

20. In order to impeach the credibility of the prosecutrix, the appellants have mainly taken the grounds of her (prosecutrix) questionable conducts and influence of one, namely, Madhukar Rai with whom the deceased-accused Sheikh Hasmuddin had political rivalry. In this regard, learned counsel(s) for the appellants have drawn the attention of this Court to the depositions of the husband (P.W.-8) of the prosecutrix and the investigating officer (P.W.-9). On careful analysis of the evidence of both the witnesses, we find substance in the grounds taken by the appellants to impeach the credibility of the prosecutrix in respect of her allegations. From perusal of the written FIR (Ext.-3), it is clearly evident that the FIR was written by one Madhukar Rai who was shown as scribe of the FIR. PW.-4, Shahnawaz Mistri, deposed that the husband of the prosecutrix has friendship with one, namely, Tara Master and at the time of the alleged incident, the victim's husband was working as a driver under Madhukar Rai who had political rivalry with Sheikh Hasmuddin (deceased accused). The prosecutrix's husband, Noorul Hoda, who has been examined as P.W.-8, accepted the political rivalry running in between the accused Hasmuddin and



Madhukar Rai and also accepted that he was an employee of Mahdukur Rai during the relevant time of the alleged occurrence. This witness can be deemed to be an important witness as he is said to be husband of the victim and according to the FIR, this witness was the first person who got the information of the commission of the alleged occurrence from his wife. As per the testimony of this witness, there was a good relationship between him and his wife (prosecutrix) and she had been living with him as his wife since the time of marriage. His testimony shows that there was good relation in between this witness and the prosecutrix but the witness did not support the prosecution story and completely denied the allegations levelled by his wife. He stated in the examination-in-chief that he did not know anything regarding any incident which is said to have been committed with his wife four years back. He denied to have recorded his statement before the police. Though the witness was declared hostile but in the cross-examination made on behalf of the appellants, he clearly stated that nothing, as alleged, took place with his wife and Madhukar Rai got the thumb impression of his wife on a blank paper which was later used by him in lodging the FIR against the appellants with whom the said Madhukar Rai had political rivalry. In this way, the evidence of this witness completely goes against the



prosecution and makes the defences of the appellants, discussed above, strong.

21. Here, it is important to mention that the investigating officer, who was examined as P.W.-5, was also of the view that the prosecutrix lodged her case with malice intention and in this regard, he accepted that during investigation, some important persons, namely, Mahroon Nesha and Murtuza Khan (father of the prosecutrix) stated that the appellant A-1 and the accused (now deceased) Sheikh Hasmuddin had been falsely implicated. The witness stated in his testimony that for the verification of the character of the accused, he examined several persons but none of them supported the prosecution and according to them, the character of the accused/appellants was good. As such, the evidence of this witness also goes against the prosecution.

22. As per the testimony of the prosecutrix, one Ishrafil also committed rape on her with the accused Sheikh Hasmuddin and in that occurrence, the appellant A-2 assisted the other accused persons. The allegation of rape made by the prosecutrix against Ishrafil and Hasmuddin appears to be unbelievable as according to P.W.-2, Murtuza Khan, the father of the prosecutrix, the said Ishrafil is the son of appellant Munni Khatoon and the deceased accused Hasmuddin was the husband of the appellant A-2. If we



believe the prosecution story then it comes out that father and son both committed rape with the victim and in that occurrence, the mother/wife of the said accused persons assisted in the commission of rape which does not appear to be acceptable in the light of the evidence of prosecution witnesses.

23. The prosecutrix mentioned in her FIR that she, firstly, found Shiekh Hasmuddin and Ishrafil at the house of accused Shiekh Hasmuddin who immediately left the house on seeing the victim along with the appellant A-2 saying that her husband was coming on a vehicle. But such fact was not revealed by the prosecutrix before the trial court and she deposed that no one was present at the house of Sheikh Hasmuddin when she reached there along with A-2. Hence, a vital contradiction appears in between the story described by the prosecutrix in her FIR and the evidence deposed by her before the trial court in respect of the first meeting of the prosecutrix with the accused persons. The contradiction seriously affects the prosecution's case.

24. The prosecutrix revealed in her FIR that the accused had been torturing her husband and pressurizing her to establish sexual relation with them and owing to that harassment, she had to shift her rented accommodation several times. But before the trial court, the prosecutrix made a contradictory statement to the said



fact. She stated in the cross-examination in paragraph-5 that she had been living at *Mishkar Toli* with her husband since the time of their marriage till the institution of the case. She did not reveal the name of the owner of her rented accommodation when she was asked about it. Here, it is important to mention that the prosecutrix stated in paragraph-6 of the cross-examination that she never visited even once the residence of the accused. The statement goes against the prosecution story narrated in the FIR.

25. As per the prosecutrix, she was raped by the accused persons for two days continuously and three persons raped her and on reaching at Muzaffarpur after escaping from the clutch of the accused, she took some medicines after arranging some money through begging. She stated in paragraph-7 of the cross-examination that she was not treated at Ramnagar and Muzaffarpur but in the same paragraph she stated that she had stated in her statement under Section 164 of Cr.P.C. that her husband got her treated in a private hospital at Ramnagar. In this way, the prosecutrix did not remain consistent regarding her medical treatment and furthermore, no documentary evidence was given by the prosecution regarding the said treatment at Ramnagar.

26. As per the prosecution story, the accused raped the victim continuously day and night for two days at the residence of



accused Sheikh Hasmuddin. The Investigating Officer, P.W.-9, inspected the place of occurrence and found that the house of the accused Hasmuddin has two storey and there are two rooms on the first floor at where the alleged occurrence of rape was committed. According to him, the place of occurrence is situated in the crowded market and he recorded the statements of some persons who have their shops near the alleged place of occurrence. The prosecution failed to produce any of them to record his evidence as being neighbour of the accused Hasmuddin. The evidence of these persons might be relevant to prove the suspicious activity in the house of the accused Shiekh Hasmuddin during the relevant time of the occurrence and it goes against the prosecution. Here, it is important to mention that as per the testimony of the Investigating Officer/P.W.-9, the senior police official (Dy. S.P.) opined in his supervision note that the prosecutrix lodged her case with malice intention on account of political rivalry and he recommended to submit the police report in favour of the accused showing the alleged occurrence to be a false case. Though, the Investigating Officer was not bound by the said opinion but he did not show cogent materials on which basis he chargesheeted the accused.

27. It has been argued by learned counsel appearing for the appellants that the prosecutrix has no good character and in



this regard, the attention of this Court has been drawn to the evidence of PW-2, father of the prosecutrix, who admitted that the prosecutrix was married to one namely, Imteyaz Khan and from their wedlock, two children were born out. The witness further stated that after the birth of two children from Imteyaz Khan, his daughter (prosecutrix) fled away with Noorul Hoda and then she was brought back but she again fled away with the said Noorul Hoda. According to this witness, the accused Hasmuddin and A-1 (appellant) helped in the recovery of the prosecutrix. Similar evidence was given by prosecutrix's mother (PW-3). Both the witnesses, who have close relationship as being parents of the prosecutrix, did not say anything about the matrimonial relationship between the prosecutrix and Noorul Hoda, who is said to be husband of the prosecutrix as per prosecution story. The prosecutrix stated in her evidence that there had been divorce in between her and her former husband Imteyaz but in this regard, she did not lead any documentary evidence. In this regard, Anwarul Haque/PW-6 deposed that the informant/prosecutrix is wife of Noorul Hoda and he made his signature upon their *Nikahnama* and the marriage (*Nikah*) of the informant took place just one or two months before the commission of the alleged occurrence. But the prosecutrix did not produce the said



Nikahnama during investigation as well as before the trial court when she was cross-examined regarding her matrimonial relationship with Noorul Hoda. Here, it is relevant to mention that as per the prosecutrix, she had been residing with Noorul Hoda for two to three years before solemnizing the marriage with him. These facts as well as the evidence of the parents of the prosecutrix are sufficient to put a question mark on the conduct of the prosecutrix and would diminish the evidentiary value of her evidence

28. In the instant matter, the alleged occurrence is said to have been committed on 11.08.2011 and 12.08.2011 and as per the FIR, the victim managed to escape from the clutch of the accused persons two days after the occurrence but the FIR was registered by her on 11.09.2011, one month after the occurrence. Though regarding the said delay, the prosecutrix took the defence that she had attempted to lodge the FIR at the police station concerned just after escaping from the captivity of accused persons but her complaint was not registered on account of the influence of the accused and she deposed in paragraph No. '8' of her cross-examination that she lived for two days at Muzaffarpur and she alone went to police station to record her statement and she had gone for recording her statement one year after she came from



Muzaffarpur and during that period, she lived at Mishkar Toli. She further stated that she gave all details of the incident to the S.H.O. who noted down the details and took her thumb impression upon the writing, on that basis, the case started. From these statements, it does not appear that the police denied to record her statement when she approached the police and according to the prosecutrix, there is office of Deputy Superintendent of Police at Ramnagar where she was residing at the time of offence. From the evidence of the prosecutrix, it does not appear that she attempted to raise her grievance before the Dy. S.P. for not lodging her complaint by the police station concerned. Furthermore, as per the FIR, the informant met Deputy Inspector General of Police (D.I.G.) and on his direction, she submitted her written application. The said fact has been revealed by the informant to explain the delay in lodging the FIR as according to her, initially the police officer of the police station concerned did not lodge her FIR so, she had to appear before the D.I.G. But in this regard, she remained silent completely before the trial court while recording her evidence and she deposed that she made her husband aware of the alleged occurrence when she met him and thereafter, went to the police station and filed her application. As such, the prosecutrix made a contradictory statement regarding the factum of her going to



D.I.G. for lodging her FIR. Accordingly, we find that the prosecution failed to explain the inordinate delay having taken place on the part of the prosecutrix in lodging the FIR regarding commission of the alleged occurrence of rape while the prosecutrix's husband had good relation with a politically influential person Madhukar Rai who wrote the FIR which was later registered.

Conclusion :-

29. After having discussed the prosecution's evidences, we are of the considered opinion that there is sufficient material to show that the informant lodged her case under the influence of a political person who had political rivalry with the appellants and there are material inconsistencies in between the prosecutrix's evidence and the evidence of her close relatives. The prosecution failed to explain an inordinate delay of one month which took place on the part of the prosecutrix in lodging the FIR and the prosecution also failed to bring any documentary evidence regarding the medical treatment of the prosecutrix which is said to have taken by her in a private hospital with the assistance of her husband just some days after the commission of the alleged occurrence. There are sufficient material to draw an adverse opinion against the conduct of the prosecutrix. The trial court did not appreciate the evidences in the right perspective. As such, we



find the judgment and order impugned convicting and sentencing the appellants for the offences, for which they were charged, to be perversed and passed without proper appreciation of the prosecution evidences, so they are set aside and the appellants in all the appeals are acquitted of the charged offences giving them benefit of doubt. These appeals stand allowed.

30. The appellant Jamal Akhtar in Cr. Appeal (DB) No. 269 of 2023 and the appellant Serajul Dealer @ Serajul Ansari in Cr. Appeal (DB) No. 356 of 2023 are in custody, hence, they shall be released forthwith, if not wanted in any other case.

31. The appellant Munni Khatoon @ Munni Nisha is on bail, so she is discharged from the liability arising out of her bail bond.

32. Let the judgment's copy be sent immediately to the trial court as well as the jail authority concerned for information and needful compliance.

33. Let the LCR be sent back to the trial court concerned forthwith.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

annu/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.07.2024
Transmission Date	16.07.2024

