

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.219 of 2006**

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Muzaffar Mian @ Md. Muzaffar Mian @ Muzaffar Alam, son of Abbas Mian,
resident of Dhuriyakba, P.S.-Jhajha, District-Jamui

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 197 of 2006

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Reyaz Mian @ Md.Reyez, son of Alauddin Mian, resident of Village-
Dharikwa, P.S.-Jhajha, District-Jamui

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 219 of 2006)

For the Appellant/s : Mr. Anil Kumar Tiwary, Adv
Mr. Murlidhar Mishra, Adv
Mr. Anand Kumar Tiwari, Adv
Mr. Nishikant, Adv
Mr. Harshit Ranjan, Adv
Mr. Amit Kumar Mishra, Adv

For the Respondent/s : Mr. Mukeshwar Dayal, APP

(In CRIMINAL APPEAL (SJ) No. 197 of 2006)

For the Appellant/s : Mr. Md. Nasrul Huda Khan, Adv

For the Respondent/s : Ms. Anita Kumari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT**

Date : 11-03-2024

Heard learned counsel for the appellants and
learned A.P.P for the State.

2. The present appeals have been filed against
the judgment of conviction dated 31.01.2006 and order



of sentence dated 03.02.2006/04.02.2006 passed by the learned Additional District & Sessions Judge, F.T.C-III, Jamui in connection with Sessions Trial No. 889 of 2003, arising out of Jhajha P.S. Case No. 09 of 2003, whereby and whereunder the appellants were found guilty and convicted for the offences punishable under Section 323, 324, 376, 458 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for ten years and fine of Rs. 25,000/- and in default of making payment, the appellants were further directed for imprisonment of one year.

3. The prosecution case as per the F.I.R is that on 28.01.2003 when the informant and her husband were sleeping after taking night meal, at about 12-12.30 A.M, the door of the informant was broken. The informant and her husband wake up and in the deem light, they identified the appellants. The appellants thereafter assaulted the husband of the informant with iron rod on his head and the informant as well. When



the informant raised alarm, appellant Muzaffar Mian exploded bomb near the house of the informant to create threat. Thereafter, on pointing pistol, the appellants dragged the informant from her house to a lonely place and both the appellants committed rape upon the informant. The appellants left the informant after two hours when the condition of the informant became deteriorated. The informant came to her house and narrated the incidence to her husband and other members.

4. On the basis of the aforesaid fardbeyan of the informant, Jhajha P.S. Case No. 09 of 2003 was registered against the appellants for the offences punishable under Sections 323, 342, 376, 458/34 of the Indian Penal Code and Sections 3/4 of the Explosive Substances Act.

5. After completion of the investigation, cognizance was taken and the case was committed to the Court of Sessions for trial.



6. During the course of trial, altogether nine prosecution witnesses were examined on behalf of the prosecution.

7. P.W. 1 Bibha Singh had examined the victim and found the following conclusion:-

(i) Bruise on the upper end of right scapula 1" x 1/2"

(ii) Bruise on the forehead in the left side-one inch diameter.

(iii) two scratch mark on the right side of upper chest.

On Pelvic Examination

(i) No injury on the private parts.

(ii) No foreign hair found.

(iii) Vagina admitted two finger loose, as she is mother of two children.

Laboratory report of vaginal swab shows absence of spermatozoa either alive or dead

Upper findings do not show signs of forceful coitus.

8. P.W. 2 Sahdeo Manjhi is the independent witness who has not supported the prosecution case and he has been declared hostile.



9. P.W. 3 Dwarika Manjhi is the husband of the informant who has stated in his examination-in-chief that at about 12 O'clock in the night, the appellants exploded bomb and entered into his house after breaking the door. The appellants assaulted and on the point of pistol they dragged his wife with them. His wife returned home after 2 hours of the occurrence and narrated the incidence to him that the appellants have committed rape one by one. Thereafter, they went to the police station where the Sub-Inspector had recorded the statement of the victim.

10. P.W. 4 Ashoka Devi is the victim and informant of the case who has stated in her examination-in-chief that at 12 O'clock in the night, the appellants exploded bomb in her door and broke open the door. The appellant Reyaz Mian was having iron rod while appellant Muzaffar Mian was having pistol in his hand. The appellants assaulted the informant and her husband and thereafter dragged the informant towards a



lonely place and committed rape one by one. The informant could not raise alarm since the appellants were armed with deadly weapons. The appellants released the informant after 2 hours. The informant (P.W.4) rushed to her house and narrated the incidence to her husband and neighbours. The informant informed the police station in the morning. Thereafter, her statement was recorded and she was referred for medical examination. The informant denied that at the behest of Biren Sah and Zasir Miya, she has lodged false case against the appellants.

11. P.W. 5 Sabiya Devi is the *Nanad* of the informant (P.W. 4) who has supported the case of the prosecution as narrated by the informant. However, this witness has stated in her evidence that after explosion and assault, his brother (P.W. 3) became unconscious and he was admitted in the hospital for ten days which completely contradicts the version of the informant (P.W. 4) and her husband (P.W. 3) who have stated in



their evidence that after release from the clutches of the appellants, they rushed to the police station and registered F.I.R against the appellants.

12. P.W. 6 Babulal Manjhi is the cousin brother-in-law of the informant (P.W. 4) who has stated in his examination-in-chief that on hearing explosion of bomb, he went to the house of the informant and found her husband Dwarika Manjhi (P.W. 3) in an injured and unconscious condition. He was taken to the hospital where he regained his consciousness after three days. This witness has stated that though the informant came after two hours of the incidence, but she did not narrate anything to anyone. The evidence of this witness also contradicts the evidence of the informant (P.W. 4) and her husband (P.W. 3).

13. P.Ws. 7, 8 and 9 namely Ganesh Prasad Yadav, Falguni Prasad Yadav and Birendra Kumar Singh are formal witnesses.

14. Learned counsel appearing on behalf of



the appellants have submitted that admittedly there is no eye witness to the occurrence. During the course of investigation, not a single witness has come forward to claim himself/herself to be the eye witness to the occurrence. The victim/informant is a married lady and even in the pathological examination of the victim (P.W. 4) no sign of rape was found by the doctor. There is also a contradiction in the evidence of the informant (P.W. 4) and her husband (P.W. 3) and the evidence of the P.W. 5 and P.W. 6 as the informant and her husband had stated in their evidence that after the incidence, they rushed to the police station and registered a case against the appellants whereas P.W.s 5 and 6 have stated that they saw the husband of the informant (P.W. 4) in an unconscious condition and he was taken to the hospital where he regained consciousness after three days of the occurrence. All the material P.W.s are closely related to the informant and are highly interested, hence, it is not safe to put reliance on their evidences, whereas the



independent witness (P.W. 2) has not supported the prosecution case and he has been declared hostile. In this case, the Investigating Officer has also not been examined by the prosecution. The factum of non-examination of the Investigating Officer by the prosecution goes to show that the prosecution has not come up before the Court with clean hands.

15. From perusal of the records and on going through the evidences, this Court finds that none of the prosecution witnesses except the informant (P.W. 4) have seen the occurrence nor any witness, during the course of investigation has come forward to claim himself to be the eye witness to the occurrence. The victim is a married lady and the doctor during the course of medical examination had not found any sign of recent sexual assault against the informant (P.W. 4). Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts with respect to the manner and motive of the occurrence. Moreover, there is



contradiction in the evidences of the prosecution witnesses and most of the witnesses are highly interested witnesses. Hence, the appellants are entitled to get the benefits of doubt.

16. In that view of the matter, the judgment of conviction dated 31.01.2006 passed by learned Additional District & Sessions Judge, F.T.C-III, Jamui in connection with Sessions Trial No. 889 of 2003, arising out of Jhajha P.S. Case No. 09 of 2003 is set aside and the appeals are allowed.

17. The appellants are acquitted of all the charges after getting the benefits of doubt.

18. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

19. Accordingly, the appeals stand allowed.

(Sunil Kumar Panwar, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	15/03/2024
Transmission Date	15/03/2024

