
(2003) 08 PAT CK 0068
In the Patna High Court
Case No : Criminal Appeal No. 314 of 2002

Ajju @ Ajay Manjhi

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 363, 366, 376

Citation : (2003) 3 BLJR 1912 : (2003) 4 PLJR 162

Hon'ble Judges : Indu Prabh Singh, J

Bench : Single Bench

Advocate : Sanjay Kumar and Sudhir Kumar, for the Appellant; Rudradeo Kumar Sinha, Addl. P.P., for the Respondent

Judgement

I.P. Singh, J.—The sole appellant has been convicted u/s 363 of the Indian Penal Code (in short the Code) and was sentenced to undergo R.I. for five years. He was further convicted u/s 366 of the Code and was sentenced to undergo R.I. for seven years and also convicted u/s 376 of the Code and was sentenced to undergo R.I. for eight years and also with a fine of Rs. 2000. In default of payment of fine, he was to undergo R.I. for six months. However, all the sentences were ordered to run concurrently.

2. The prosecution case, in short, is that the Officer-in-charge of Hayaghat Police Station, District-Darbhanga recorded his statement on 25-5-1993 at 10.00 P.M. in village-Sajhauti of that P.S. at the house of Mukhiya Baidya Nath Yadav stating therein that on 25-5-1993 he heard rumour that in village-Sajhauti Sighiyahi Tola, a girl was kept in the house of Ram Badan Manjhi as a boy brought that girl from Laxmi-Sagar, Chunabhathi, Darbhanga after eloping with her. Thereafter, he entered it into station diary entry No. 398 dated 25-5-1993 and to verify the rumour he proceeded for the house of Ram Badan Manjhi along with A.S.I. Hawaldar and Homeguard. After reaching there, in presence of Mukhiya Baidya Nath Yadav and other villagers, they searched the house of Ram Badan Manjhi and found a girl named Ragani Kumari, daughter of Sri Gagandeo Jha of village-

Basawanpatti, P.S.-Karjain, District-Supaul. It has been stated that her father was posted in Public Relation Department. Laheri asarai, Darbhanga and residing at present at Laxmisagar Chunabhathi in the house of Dr. B.N. Tarun. It has been further stated that the girl formed him that the appellant Aju @ Ajay Manjhi, son of Ram Lakhan Manjhi, a student of I.A. and resident of same locality enticed her and on 17-5-1993 while she was going from her house to Poor Home to attend the course of Silai Training Centre, then Aju along with Umesh Paswan took her to marry with her and both brought her half kilometer west to Parsa Chauk in District-Begusarai and kept her in the house of Nathuni Paswan. She lived there along with Aju Manjhi, the appellant and Umesh Paswan returned on the same. After two days i.e. on 19-5-1993 Umesh Paswan came along with Ram Narayan Manjhi, own brother of Aju Manjhi and on the same day Ajay Manjhi, Umesh Paswan and Ram Narayan Manjhi brought herto Hayaghat Railway Station by a Taxi Jeep. She spent the whole night at hayaghat Station along with Ajay Manjhi and Ram Narayan Manjhi and on 25-5-1993, next morning, at 6.00 A.M. they walked to village-Sanjhauti Sighiyahi Tola and came to the house of Ram Badan Manjhi, who is Mama of Ajay Manjhi, the appellant, and Ram Narayan Manjhi went away on the same day. She also informed him that the appellant, Aju @ Ajay Manjhi committed sexual intercourse with her by inducing to get married with her. On the basis of this statement, Hayaghat P.S. Case No. 343 of 1993 was lodged under Sections 363, 366A & 376/34 of the I.P.C. The police started investigation and after its completion submitted charge-sheet against the accused persons. On the basis of charge sheet, the C.J.M. took cognizance of the offence and the case was committed to the Court of sessions for trial. Ultimately, trial concluded in the manner as indicated above. The appellant pleaded not guilty and has stated that he had been falsely implicated in this case.

3. The prosecution in support of its case examined altogether nine witnesses. P.W. 1 is Sheo Shankar Sahni, who has been declared hostile. P.W. 2 is Sahadeo Yadav, who has been declared hostile. P.W. 3 is Dular Chand Yadav. He has also been declared tender. P.W. 4 is Dr. A.R. Kishore. He has examined the victim, P.W. 7 (Ragani Kumari). P.W. 5 is Sone Lal Paswan, Chaukidar. He has also been declared hostile. P.W. 6 is Baidya Nath Yadav, Mukhiya. He has also been declared hostile. P.W. 7 is herself the prosecutrix Ragani Kumari. P.W. 8 is Jinder Manjhi, who has also been declared hostile. P.W. 9 is Raj Narayan Yadav, a constable. He has also been declared hostile. The Court has also examined C.W. 1 Ram Kishore Jha.

4. P.W. 7, the prosecutrix Ragani Kumari has fully supported the case of prosecution. According to her, on 17-5-1993 she had left her house situated in Mohalla-Laxmisagar Chunabhathi, and was going to floor Home to attend the class in a Silai Training Centre. She has further stated that she was living with her father who is an employee in Public Relation Deptt. She has also stated that when she left her house for going to the Poor House and while on the way and when reached near Harahi Pokhar then two boys Aju alias Ajay Manjhi and Umesh Paswan followed her and came near her and took out a knife and

threatened her and asked her to come along with them. He also said that he would get married with her. Both brought her to Parsa Chowk of Dalsingsarai and kept in the house of Nathuni Paswan for two days. Umesh Paswan returned from there and she lived there with Aju Manjhi. After two days Umesh Paswan came along with Ram Narayan Manjhi. Thereafter all the three persons brought her to Hayaghat station and Umesh Paswan left for Darbhanga and next morning all three walked to Ram Badan Manjhi" house situated in village-Sanjhauti Tola-Singhiyahi. She was kept there for 5-6 days and during that stay the appellant Aju Manjhi after threatening her committed rape on her on three nights. Later on she came to know that the appellant wanted to sale her but in the meanwhile police reached there and family members of the house made an attempt to conceal her in Bamboo cluster but Police caught her and she was brought to the house of Mukhiya and her statement was recorded by the police. She was also examined by the Dr. Akhauri Rabindra Kishore. At that time, the doctor was posted as Associate Professor in the Department of Forensic Science, D.M.C.H. He examined the victim girl and came to the following findings-

Height:- 5" .0"

Injury and stain.--No injury, like bruise, scratches, abrasion or any suspicious stain or foreign hair could be found on any part of the body including breasts, inner side of thigh or perineum.

Genital Examination.--The labia majora were found in apposition covering the labia minora and vaginal orifice. The vaginal orifice admitted one finger loosely. One old tear at 7 O" clock position was present in the hymen with bruising Aspiration and swaps were taken from the vaginal canal and were examined microscopically immediately after collection of sample. No spermatozoa, motile, non-motile or broken could be found in the smear Examination.

Radiological Examination.--The X-ray plate No. 8 of Shahi X-ray, Hospital Road, Laheriasarai (signed by the radiologist and subsequently by me) of wrist joint shows presence of all carpal bone including pisiform, which appears by the age of 12 years. The head of the meta-carpals have fused which occurs by the age of 16 years.

The lower end of radius and ulna, have not fused. Complete fusion at these sites occurs by the age of 18 years. The greater trochanter and lesser trochanter of femur have appeared and fused. Fusion at these sites occurs by the age of 16 years. The is chial tuberosities and iliac crest have appeared but not fused.

Fusion at these sites occurs by the age of 20 years and 23 years respectively.

On the basis of the physical findings and radiological examination, the doctor opined that Ragini Kumari, the victim girl was aged between 16-17 years. He also opined that the presence of tear and bruising in the hymen is suggestive of sexual connection within 3 to 8 days from the date of examination i.e. 27-5-1993. This witness has proved his medical report regarding the

examination of the victim Ragani Kumari which is marked as Ext-1. P.W. 9, Raj Narayan Yadav, a Homeguard constable, who had gone with the raiding party has stated that from the police station they straight way went to the house of Mukhiya (Baidyanath Yadav), PW 6 but they did not go to the house of Ram Badan Manjhi. He has also stated that the girl was found in the house of Baidyanath Yadav where many persons had assembled.

5. Learned counsel for the appellant has submitted that there is a delay in lodging the F.I.R. There was no Sanaha and no F.I.R. was lodged till the victim girl was recovered by the police. It has also been submitted that the informant, who was the I.O. of the case, has not been examined by the Court. It appears that the case was lodged on the basis of the implication of the appellant after the recovery of the victim girl. Moreover, the victim girl, in her statement given u/s 164 of the Code of Criminal Procedure, has stated about her being kidnapped by the appellant and committing sexual assault on her. The victim girl has also stated in her statement that she was with the appellant for about a week and thereafter she was recovered from the house of Mukhia. Her age, according to the School Certificate, was 14 years but the doctor, who examined her, has established her age between 16-17 years. The doctor has also opined that the presence of tear and bruising in hymen is suggestive of sexual assault within 3-8 days from the date of examination i.e. 27-5-1993. Even if all the chargesheet witnesses did not support the case lent on the testimony of the victim girl, corroborated by the doctor, has fully supported the case of the prosecution. It is well settled that the victim is not a co-accused in a case of sexual assault, on her sole testimony the appellant can be convicted if her testimony is trustworthy. In such a case, why a girl shall falsely implicate a person, for sexual assault on her, risking her reputation in society and also her future marriage prospect. The submission of the learned counsel for the appellant is that the victim girl was a consenting party, as she had not raised Hullah while staying at Railway Station and travelling in the train. Even if she was the consenting party, that will also not help the appellant. Since the victim girl was below 18 years of age and she had been taken away from her house without taking permission from her Guardian with intention to have sexual relation with her on plea of marrying with her. According to provision u/s 375 of the Indian Penal Code, any sexual assault with a girl below 16 years of age, with or without her permission, constitutes the offence of rape. In this case, since the doctor has opined that the victim girl was between 16-17 years, the offence of rape is not constituted. As such the prosecution case is not made out u/s 376 of the Indian Penal Code. Accordingly, the conviction u/s 376 of the I.P.C. is set aside. But so far conviction under Sections 363 & 366 of the I.P.C. is concerned, the prosecution has proved the charge beyond all reasonable doubts.

6. I see no reason to interfere with the conviction and sentence passed u/s 363 & 366 of the I.P.C. Accordingly, the conviction and sentence passed under the aforesaid sections is upheld and this appeal is partly allowed.