
(2007) 04 JH CK 0101
In the Jharkhand High Court

Baldeo Sao

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 02-04-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 376, 395, 448, 450
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3, 4

Citation : (2007) 2 JLJR 496 : (2007) 4 EastCric 206 : (2007) 3 JCR 376 : AIR
2007 Jhar 171 : (2007) CriLJ 3992 : (2007) 3 JCR 376

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Sole appellant Baldeo Sao stands convicted for the offence punishable under Sections 376 and 450 of the Indian Penal Code and sentenced to serve rigorous imprisonment for ten years and five years respectively, by the Special Judge, Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Hazaribagh in Sessions Trial No. 415 of 1996.

2. Brief facts leading to this appeal are that in the evening of 12.4.1996 while informant-victim Punam Kumari was in her house, the appellant alongwith one Dilip Sao, since declared juvenile, forcibly caught hold of the victim and sexually violated her at the point of dagger. According to her version, the appellant left her lying in injured condition when her bhabhi returned.

3. The matter was reported to Ichak Police next day at 9.00 a.m. with a written report prepared by Ranvijay Singh, on the basis of which, Ichak Police Station Case No. 29 of 1996 under Sections 448/376/34 of the Indian Penal Code and Section 3(1)(i-xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act was registered against two accused persons. The police started investigating the case, sent the victim for medical examination and finally submitted chargesheet. The trial of the appellant was committed to the Court of

Sessions where he was charged under Sections 450 and 376 of the Indian Penal Code read with Sections 3(2)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act on 5th of March, 1997. The appellant pleaded not guilty and claimed false prosecution. However, the trial Court after examining the witnesses found and held the appellant guilty for the offences as mentioned above and sentenced him to serve rigorous imprisonment as stated above.

4. The present appeal has been preferred mainly on the grounds that the learned trial Court has not considered the improbability of the prosecution case. It was also asserted that the doctor (PW 3) did not find any sign of rape and in absence of probable witness of the occurrence, the reliance placed by the learned trial Court on sole statement of the prosecutrix is misplaced. Mr. P.P.N. Roy, learned senior counsel appearing on behalf of the appellant, submitted that the reason behind this false prosecution has been admitted by PW 1 and PW 2 during their statements before the trial Court. According to learned Counsel, further in absence of the investigating officer, the defence has been prejudiced. Therefore, the appellant may be acquitted to the charges.

5. I have gone through the evidence on record. The prosecution story depends upon the sole statement of PW 1, the victim. According to her, the appellant alongwith Dilip Sao entered in the house on pretext of water and forcibly committed rape while nobody was in her house. She has given the details of the occurrence and thereafter stated that she became unconscious. According to her version, when her bhabhi returned after few hours, she was made conscious when she narrated the entire incident to her bhabhi and brother. She further admitted that the same night they went to Ichak Police Station where her statement was recorded by Ranvijay Singh vide Ext. 1. However, she admitted during cross-examination that her brother PW 2 Hemjraj Turi was an accused in a case u/s 395 of the Indian Penal Code in which the father of the appellant. Tulsi Turi, has given evidence against his brother. She admitted vide paragraph-20 that her parents as well as two other brothers were alive. According to her version, she has got this experience of sexual intercourse for the first time and she got injured during rape. However, this fact has been disputed by PW 3 Dr. Kalpana Sharan, who found hymen with old rupture admitting two fingers and no sign of rape on 13.4.1996. She did not find any injury on other parts of her body PW 2, brother of the prosecutrix is hearsay witness of the occurrence. According to him vide paragraph-11, the father of the appellant has got a case registered against him for theft. He supported prosecutrix regarding her injuries on her body. He named four persons to have accompanied the victim to Police Station. However, no other witness has been examined before the trial Court though named in the chargesheet.

6. The learned trial Court has considered all these facts and discussed vide paragraphs-9 to 11. However, he has relied upon the sole evidence of prosecutrix and convicted the appellant in spite of the fact that PW 1 and PW 2 have admitted enmity between the families for a criminal case against PW 2 in which

the father of the appellant has deposed against him. The trial Court has disbelieved the version regarding the offence under Sections 3/4 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, but accepted the prosecution version from prosecutrix claiming that she has been subjected to sexual intercourse for the first time, the doctor (PW 3) contradict her. The doctor did not find any mark of violence on her private parts, which is against the prosecution version.

7. In the facts and circumstances discussed above where previous enmity between the families is admitted and in absence of any evidence to support the prosecution version that PW 1 has been subjected to rape by two persons, I find and hold that the prosecution in the facts of present case has not been able to prove beyond all reasonable doubts the charges against the appellant. Accordingly the present appeal has got merit and deserves to be allowed.

8. In the result, the present appeal is allowed and the judgment of the trial Court convicting the appellant is hereby set aside. The appellant is acquitted from the charge levelled against him and further discharged from the liabilities of his bail bonds.