
(2010) 01 JH CK 0058
In the Jharkhand High Court

Bandhu Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-01-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 376

Citation : (2010) 4 JLJR 68

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the the judgment of conviction dated 16.10.2001 and order of sentence dated 20.10.2001 passed by Sri Dhruv Narayan Upadhyay, Special Judge cum Additional Judicial Commissioner, Ranchi in S.T. No. 428 of 2000 by which judgment the appellant has been found guilty for the offence u/s 376 of the I.P.C and convicted and sentenced to undergo R.I. for 7 years and to pay a fine of Rs. 1000/- and in default, further R.I. for 3 months.

3. It is submitted by learned Counsel for the appellant that it will appear from the evidences of the prosecutrix as given by her in the court and given by her to the police in her F.I.R that she had an affair with the accused from before and she was a consenting party and it is not a case of rape and accordingly, the doctor-P.W.5, who, examined the victim lady just after the date of occurrence found no sign of rape on her person. As such, the conviction of the appellant u/s 376 of the I.P.C. is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the stale as also learned Counsel for the informant has submitted that the appellant had committed rape repeatedly

upon the victim lady, Sohri Devi-P.W.4 and out of fear of his threat and since, he was a respectable and strong person of the village, she and her family members kept mum about the matter and finally when the matter went much over head, it was brought before the panchayat and before the police. The prosecution has proved beyond reasonable doubt about the using of superiority in the village, the appellant has committed rape upon the victim lady.

5. After hearing both the parties and after going through the evidences on record. I find that the prosecution case was started on the basis of the F.I.R given by the victim lady, Sohri Devi, P.W.4 stating therein that she was earlier married with one Sahjit Mahto of village Malsiringh, Police Station Kanke, Dist. Ranchi, but since last half year her husband had left her and thereafter she was living in her father's village and she was earning by selling vegetables. She has stated that half month back accused Bandhu Mahto had committed rape upon her in the field of Mukhia and thereafter he had given threat that she should not disclose the matter to anybody, otherwise she will be killed. Then again on 30.1.2000 when she was coming back from Ranchi after selling vegetables at Ratu Bus Stand, she met with Bandhu Mahto. She along with Bandhu Mahto came down from the bus at Kathi Tanr and came to the village. Then on the way near Tikratoli Usmatu, accused Bandhu Mahto again committed rape upon her at about 8.00 p.m. in the night. Subsequently, her bi other came with a torch searching for her and saw both of them together, whereupon, accused Bandhu Mahto asked him not to report the matter to anyone, otherwise he will be killed. Then out of fear he stated nothing and left the place of occurrence with her. Next day the matter was reported in the panchayat and since the panchayat failed to come to any conclusion, matter was reported to the police.

6. On the basis of the said F.I.R, police registered a case u/s 376 of the I.P.C. against the accused and after, investigation submitted charge sheet. Since, the case was exclusively triable by the court of Sessions, Learned C.J.M committed the case to the court of Sessions Judge and finally the case was trial by Additional Judicial Comissioner, Ranchi, who found the appellant guilty and convicted and sentenced him as aforesaid.

7. It appears that the prosecution has examined 7 witnesses to prove its case.

P.W.1 is Bagan Mahto, brother of the victim lady.

P.W.2 is Bal Chand Mahto, another brother of the victim.

P.W.3 is Matnu Mahto, father of the victim lady.

P.W.4 is Sohri Devi, informant of the case and victim lady.

P.W.5 is Dr. Reeta Lal, who examined the victim lady.

P.W.6 is Ashok Ram, Investigating Officer of the Case.

P.W.7 is Narayan Prasad Singh, J.M., who recorded the statement of the victim lady u/s 164 Cr.P.C.

8. It appears from the evidences recorded in the court that the prosecutrix, who was examined as P.W.4, firstly stated that when she was coming from Ranchi on 30.1.2000 at about 8 P.M and she had gone some yard, then accused Bandhu Mahto came and committed rape upon her by force. She stated that he had taken her to the field and she raised nulla and on her hulla her brother came with a torch and on his protest the accused gave threatening to his brother. She also stated in her examination-in-chief that half month before the accused, Bandhu Mahto committed rape upon her in the field of Mukhia and stated that if, she would disclose the matter to anybody, then she would be killed. She stated that after the second rape, panchayat was called. She stated that she gave a written report to the police which was written by her brother and she put her R.T.I on the same. The written report has been marked as Ext.1. She had given her statement before the Magistrate u/s 164 Cr.P.C.

9. It is important to note that in her cross examination she has contradicted her statement as given in examination in chief. In para 20 of the cross examination she admitted that she was knowing the accused, Bandhu Mahto right from her childhood who was living by the side of her house. She has also admitted in para 26 of the cross examination that Bandhu Mahto had assured her mother and father that he would arrange for "Indira Aawas House" for her. She also admitted in para 30 that she wanted to get a house of "Indira Aawas". Surprisingly, she also admitted at para 46 that Bandhu Mahto asked her to lay down and he was over her and after two minutes her brother came, then she got up and thereafter Bandhu Mahto had given threat to her brother only. She has also admitted in para 49 that she wanted to make hulla, then the accused asked her not to make nulla, but he did not close her mouth and she made no hulla. In para 50 she has stated that she made no effort to disentangle herself. At para 53 she stated that there was no injury caused to her on her body. She has also stated that after the first rape when she conceived, she never stated on the date of occurrence on 31.01.2000 that she was pregnant from him. The doctor, P.W.5 has opined that there is no sign of rape. According to her statement there was no injury on the body of the victim or on her private part. There was no stain in the private part. There was no foreign hair and in the pathological report, she found no dead or alive spermatozoa. Moreover, although, her brothers, P.W.1 and 2 have tried to show that they heard hulla and they went to the place of occurrence and found the accused giving threat to their sister, P.W.4, but her father, Matnu Mahto, P.W.3 has very clearly stated that when he heard hulla, then his son P.W.1, Bagan Mahto came and told him that Sohri and Bandhu Mahto are sleeping naked in the parti jamin of Dilu Mahto. This shows that the victim lady was a consenting party and it is not a case of rape. Only because the prosecutrix was subsequently, seen by her brother and matter was reported, otherwise she was having an affair with the accused from before which is apparent from her own statement where she had stated that she was knowing the accused from her childhood. In her F.I.R also she admitted that she and the accused were returning together-from Ranchi from the same bus and came to the village

together and on the way they got entangle with each other when the matter was seen by her brother and reported to her father. Hence, from the evidences discussed above, it is apparent that victim-Sohri Devi was consenling party and they had affair since last many years.

10. In the above facts and circumstances, it cannot be said that the appellant-accused, Bandhu Mahto committed rape upon Sohri Devi. Further, for the said illegal act, the accused-appellant has sufficiently been punished, since he was in jail custody for about two years. In that view of the matter, since the victim - P.W.4 was a consenting party, the conviction of the appellant-accused u/s 376 of the I.P.C is bad in law. Accordingly, the accused is given benefit of doubt and acquitted from the charge leveled against him.

11. In the result, appeal is allowed. Since, the appellant is on bail, he is released from the bondage of bail bond.