

(2005) 09 JH CK 0005

In the Jharkhand High Court

Case No : Criminal Appeal No's. 263 and 275 of 1994 (P)

Chandan Hembram and Badri Yadav

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 27-09-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 511

Citation : (2006) 1 JCR 180

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : Ranjan Kumar Singh, in Cr. Appeal No. 263/1994P and Ranjan Kumar Singh, Amicus Curiae in Cr. Appeal No. 275/1994P, for the Appellant; Jawahar Prasad, APP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—As both the appeals arise out of the common judgment, they are taken up together and are being disposed of by this common judgment.

2. These appeal are directed against the judgment of conviction and order of sentence dated 4.8.1994 and 6.8.1994 respectively, passed by Shri Shyama Prasad Singh, learned Sessions Judge, Deoghar in Sessions Case No. 118 of 1992, convicting the appellants u/s 376/511, IPC and sentencing them to undergo R.I. for three years each.

3. The prosecution case in short is that the informarit-Amabati Marandi, aged between 15-16 years, was coming alone at 1 a.m. in the night of 3/4.4.1991 after attending the marriage. Both the appellants had also gone there. The appellants followed her. When she reached near the house of one Litan Besra; appellants put a "gamchha" around her neck from behind; gagged her mouth and commanded her not to raise alarm at the threat of killing her. Appellant-Badri Yaclav, thereafter, put "gamchha on her mouth and Chandan Hembram told to take her near Kali temple. She struggled hard to rescue herself but the

appellants gave fist blows and terrorized her. They took away her near the Kali temple where Badri Yadav removed the "gamchha" from her mouth and she started raising alarm, whereupon Badri Yadav assaulted her by fist and threatened her to kill. Out of fear, she kept mum. Chandan Hembram asked her to go inside the temple and take an oath in presence of the deity to marry him, to which she denied. Appellant-Badri Yadav, thereafter, removed her sari and tore her "soya". In spite of her efforts, she could not do anything. Appellant-Chandan Hembram, thereafter, removed her entire clothes including the undergarments, gagged her mouth and took her away towards the field. Appellant-Badri Yadav remained standing near the temple. Appellant-Chandan Hembram committed rape upon her in spite of her struggle. She felt intense pain. She wanted to drink water and when the appellants proceeded to fetch water, she raised alarm loudly and the villagers rushed towards the place of occurrence. Appellant-Badri Yadav removed her silver chain, took away her sari and both the appellants escaped. Villager, PW 3 reached near her and gave her his "dhoti" finding the informant naked. After wrapping "dhoti," she went to the village and narrated the entire occurrence to her parents.

4. Mr. Singh submitted that the prosecution examined nine witnesses. PW 1, the brother-in-law of the informant, PW 2 the father of the informant and PW 3, who is an independent witness, said to have offered his "dhoti" to the victim when she was found naked, have not supported the prosecution case and they have been declared hostile. He further submitted that PW 4, Doctor, has not found any internal or external injury or any sign of rape on the informant. PW 5, the sister of the informant, stated that she and the informant had gone to the marriage house for dancing and that she learnt from the informant that appellants put "gamchha" on her neck and thereafter Badri Yadav outraged her modesty. He further submitted that PW 6, the mother of the informant, stated inter alia that informant told her that both the appellants outraged her modesty, Mr. Singh submitted that prosecution could not prove the case of rape but only on the basis of the oral evidence of the victim, appellants have been convicted u/s 376/511, IPC. He submitted that the prosecution has failed to prove the charges u/s 376/511, IPC beyond all reasonable doubts. Mr. Singh lastly submitted that Ext-A is a compromise petition which was filed before the bail was granted to the appellants in the learned Court below and the same was shown to the victim also at the time of her deposition which she did not deny.

5. Mr. Jawahar Prasad, learned Counsel appearing for the State, submitted that there is nothing to suggest false implication of the appellants and they cannot take advantage of some contradictions in the evidence. He further submitted that, learned trial Court has rightly not considered Ext-A as the offences were not compoundable.

6. I am convinced with the submissions of learned Counsel for the appellants that prosecution has not been able to prove its case beyond all reasonable doubts. The informant alleges that she was assaulted and rape was committed

but no sign of assault or rape is found by the doctor though she was examined within 12 hours of the alleged occurrence. PW 1 is the brother-in-law and PW 2 is the father of the informant, but they have not supported the prosecution case. PW 3, who is an independent witness, has also not supported the prosecution case. The version of the informant about the manner of occurrence is contradicted by her sister, PW 5 and mother, PW 6, on material points. The informant was taken to Kali Mandir and she was asked to take oath for marrying with Chandan Hembram, to which, she denied.

7. In the circumstances, I am satisfied that the appellants can be given benefit of doubt.

In the result, these appeals are allowed and the judgment of conviction, under appeal, is set aside. The appellants are discharged from their bail bonds.