
(2006) 06 JH CK 0033
In the Jharkhand High Court
Case No : Criminal Appeal No. 30 of 2000

Chandan, Nakul and Taruba	Vs	APPELLANT
The State of Bihar (Now Jharkhand)		RESPONDENT

Date of Decision : 13-06-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 354, 376, 511

Citation : (2007) CriLJ 1062

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Kanti Kumar Ojha, Rakesh Kumar and Dilip Kumar Sinha, for the Appellant; Manoj Kumar, APP, for the Respondent

Final Decision : Allowed

Judgement

R.R. Prasad, J.—All the three appellants though were charged under Sections 376/34 of the Indian Penal Code, the trial court found them guilty under Sections 376/511 of the Indian Penal Code and sentenced each of them to undergo R.I. for 4 years.

2. The case of the prosecution as has been given in the fardbeyan (Ext. 2) by Kiran Kumari (P.W.3) is that eight days before the occurrence while she was going to the house of her maternal uncle in the evening all the three appellants met her in the village and teased her, but at that time no case was lodged as prestige of her family was involved. Further case is that on 25.2.1994 at about 7 P.M. while she was going towards the river to answer call of the nature and came near the bamboo tree, all the appellants came and caught hold of her and kissed her and they also molested her and when she started crying villagers assembled then the accused persons fled away.

3. Kiran Kumari (P.W.3) on 26.2.94 at about 8.30 A.M. gave fardbyean upon which the case was instituted under Sections 354/34 of the Indian Penal Code thereafter matter was taken for investigation and the victim (P.W.3) produced

before the doctor for medical examination and one Priti Rani attached with a Government Hospital examined her. The said doctor though was not examined by the prosecution, but the signature made on the medical report given by said Priti Rani has been proved by the other witness.

After completion of the investigation, the Investigating Officer submitted chargesheet under Sections 376/34 of the Indian Penal Code and accordingly cognizance of the offence was taken and in due course when the case was committed to the court of Sessions charge was framed to which the appellants pleaded not guilty and claimed to be tried. It is worthwhile to mention here that though the P.W.3, in her fardbeyan, had stated that her modesty was outraged by the appellants and on the basis of which a case was instituted under Sections 354/34 of the Indian Penal Code, but the P.W.3 in her evidence came forward to depose that while she had gone to answer call of nature, all the three appellants caught hold of her and committed rape on her one by one as a result of which she had become unconscious and remained lying there for whole night and in the morning when her father came there by searching he found her lying in a field. On the same line Janardan Prasad father of P.W.3 and P.W.2 Gamleshwan Devi, mother of P.W.3 did depose that they came to know from P.W.3. that all the appellants did commit rape on P.W.3, The witnesses have further deposed that when they went to police station to give fardbeyan about the occurrence the police only took L.T.I, on a plain piece of paper and allowed them to go and then they came to know that the police has destroyed the case by not instituting the case u/s 376 I.P.C., rather for minor offence. The trial court did not believe the testimonies of the witnesses as according to the trial court had the matter been true either P.W.3 or her parents must have made protest before the court of before any other authority, but nothing was there and as such the trial court did not believe the version of the witnesses. However, the trial court did find the appellants guilty under Sections 376/511 of the Indian Penal Code of the suggestion given by defence that P.W.3 had made statement before the police upon which she had signed or put L.T.I. and thus according to the trial court the defence accepted the version made in the Fardbeyan. Approach of the trial, in my view, is not correct at all as any suggestion given by the defence to the prosecution witness can not take place of the evidence and moreover the suggestion given by the defence to the effect that she had made statement as in the fardbeyan never goes to show that the defence accepted the fact that they had outraged the modesty of P.W.3:

5. From perusal of the testimony of the witnesses, do find that P.W.3 in her evidence has never said that the appellants outraged the modesty or attempted to commit rape on her, rather P.W.3 as I have stated above has deposed that all the accused persons committed rape which the trial court disbelieved.

6. In this view of the matter, I do find that there has been no evidence that accused persons attempted to commit rape on P.W.3. Accordingly, the order of conviction and sentence is hereby set aside. Consequently, this appeal is allowed.