

(2005) 08 PAT CK 0085

In the Patna High Court

Case No : Cr. Appeal Nos. 456, 486 and 505 of 2001

Chandra Shekhar Singh @ Chandra Shekhar Kahar and
Another, Ram Uday Tanti and Others and Ashok Tanti

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-08-2005

Acts Referred:

Citation : (2005) 08 PAT CK 0085

Final Decision : Dismissed

Judgement

Rekha Kumari, J.—The above three appeals are directed against the same judgment dated 22.8.2001 passed by Sri Ramesh Kumar Rateriya, 4th Addl. Sessions Judge, Begusarai in S. Tr. No. 205 of 1991 by which he has convicted all the appellants u/s 376(2) of the Indian Penal Code for gang rape and under Sections 323 and 451 of the Indian Penal Code and against the order dated 27.8.2001 by which the learned Addl. Sessions Judge has sentenced all the appellants to undergo RI for 12 years and to pay a fine of Rs.5,000/- each to be paid to the victims as compensation for the offence committed u/s 376(2), IPC and RI for six months u/s 323, IPC and RI for six months u/s 451, IPC with the direction that the substantive sentences would run concurrently.

2. As all the above appeals arise out of the same judgment, they have been heard together and are being disposed of by this common judgment.

3. The prosecution case, as disclosed from the fardbeyan (Ext. 2) of the informant (Prosecutrix), is that on 22.3.1989 Jogira songs were being sung in her village. Her brother protested whereupon there was altercation between her brother and Sugan Tanti of her village. At that time Sunil Singh, who looked after cultivation of her master, was present. He intervened, when the appellant Bharosi Tanti assaulted Sunil Singh on his head with the butt of his pistol and thereafter all of them dispersed. However, Rajendra Tanti, Bhola Tanti, Ramchu Tanti, Dwarik Tanti, all belonging, to her village, decided to convene a panchayati alleging that she (Prosecutrix) and her sister were entangled with Sunil Singh

and so they used to allow him to sit in their house. Accordingly, on 23.3.1989 at 9.00 p.m. a panchayati was convened. Her father and brother Fulo Tanti were called in the panchayati. Her father and brother went to attend the panchayati. At that time her mother also went to her younger brother for giving him food. Only the prosecutrix, her younger sister and her two sisters-in-law, Pawan Rekha and Gita Devi, remained in the house, when the appellants Ram Uday Tanti, Bharosi Tanti, Ragho Tanti, Ashok Tanti, Bijay Singh, Chandra Shekhar Singh came to her house. The prosecutrix and her sister were taking their meal and their sisters-in-law were sitting there. The appellant Ragho Tanti started dragging the prosecutrix by pulling her locks. She was not ready to go. She was hence assaulted by fists and slaps. All the appellants started taking her away. Her younger sister protested, when she was also forcibly taken away. They took the two sisters to the chilly and Andy field of one Naresh Singh in Bishunpur Bandh.

In that field the appellant Bijay Singh and Chandra Shekhar Singh kept her (Prosecutrix) detained and other four appellants took her sister inside the field and all of them forcibly committed rape on her. The appellants Bijay Singh and Chandra Shekhar Singh tried to rape her (Informant) but on account of her resistance, they could not succeed, Then the appellant Bharosi Tanti came and committed rape on her. Thereafter they left the place. At about 11.00 p.m. the two sisters returned to their house and narrated the incident to their father and the brother. It is also alleged that the appellants had assaulted both the victims with pistol.

4. On 24.3.1989 at 2.00 p.m. the fardbeyan was recorded by the Officer In - charge, Muffasil P.S. at Muffasil Police Station. On the basis of that fardbeyan, the case was registered at Matihani P.S. District Begusarai. The police investigated the case and after completing investigation submitted charge-sheet against the appellants.

5. All the appellants were charged u/s 376(2)(g) read with Explanation I for gang rape and u/s 323, IPC for assaulting the informant as also u/s 451, IPC for committing house tres-pass with an intent to cause hurt and take away the two victims to commit rape.

6. The appellants pleaded not guilty to the charges. Their defence as gathered from the suggestions given to the PWs is that no occurrence as alleged took place and that the two victims had illicit relationship with Sunil Singh and for that the panchayati was convened and as in the panchayati punishment was imposed, this case was falsely instituted.

7. During trial the prosecution examined six witnesses to prove the charges. Among them, PW 1 is Pawan Rekha Devi. PW 2 is Geeta Devi PW 3 is the younger sister of the informant. PW 4 is the informant. PW 5 Uma Kant Mishra and PW 6 Sita Ram Sharma are formal witnesses and have simply proved the formal FIR (Ext. 1) and the fardbeyan (Ext. 2).

8. The appellants did not examine any witness. They only filed a certified copy of

the deposition of the informant in a proceeding u/s 107, Cr PC (Ext. A).

9. The learned lower Court after considering the evidence on record convicted the appellants and sentenced them as mentioned above.

10. The learned counsel for the appellants submitted that in this case neither the brother nor the father of the informant nor any villager has been examined to corroborate the testimony of the prosecutrix. The I.O. has also not been examined nor there is any medical evidence to support the prosecution case. Therefore, only on the evidence of PWs 1 to 4, who are interested witnesses, the prosecution case cannot be said to have been proved.

11. In order to appreciate the argument of the learned counsel I have gone through the entire evidence.

12. PW 4 (informant) has deposed that on the alleged night at 9.00 she was taking food in the Angan alongwith her sister and her sisters-in-law were sitting there, when the appellants came to her Angan and started dragging her by pulling her locks. She protested, when they started beating her. Her sister and sisters-in-law then also protested but the appellants took her and her sister to Bishunpur Bandh. The appellants Bijay Singh and Chandra Shekhar Singh kept her seated on the ridge of the land in which the chilly and Andy were grown and the remaining four appellants took her sister inside the field, one Bans away from her and they felled her down and all the four raped her sister one by one, and then after leaving her the appellants Bharosi Tanti, Chandra Shekhar Singh and Bijay Singh committed rape on her and thereafter they left the place giving threats that if they disclosed anything to the villagers, they would be killed. The witness has further stated that then both the sisters returned to their house and narrated the incident to both the sisters-in-law and on the next day her father told the villagers and requested the Mukhiya and Sarpanch to decide the matter, and the Mukhiya directed them to institute the case, and then the case was lodged and they were sent to the hospital for examination. In cross-examination she has stated that at the time of committing rape on her the other appellants used to catch hold of her legs and hands and that when her sister was being raped she (PW 4) also tried to raise alarm, but her mouth was gagged. She has stated that after 10 minutes of their return, her father came from the panchayati and that while returning to their house, her sister told her as to who had raped her, and she also told her sister as to who had raped her. She has denied the suggestion that they got false medical certificate procured.

13. PW 3 the younger sister of the informant has stated that on the alleged night at 9 p.m. she and her sister were taking meal in the Angan and the sisters-in-law were sitting there. One Dibiya was burning and the night was also moonlit, when all the appellants among whom appellants Ragho Tanti and Bharosi Tanti were armed with pistols, came and started dragging her sister by pulling her locks and when she resisted the appellant Bharosi Tanti assaulted her and then both the sisters-in-law protested, when they were also assaulted and then she went to the

rescue of her sister and she was also dragged; and the appellants took both of them to Bishunpur Bandh and on the ridge of chilly and Andy field of Naresh Singh, the appellants Chandra Shekhar Singh and Bijay Singh kept her sister seated and the appellants Ashok Tanti, Ram Uday Tanti, Ragho Tanti and Bharosi Tanti took her inside the field and felled her down and Ashok Tanti caught hold of her hands, Ragho Tanti caught hold of her legs and Bharosi Tanti raped her, and when he left, Ram Uday Tanti raped her and then Ragho Tanti and Ashok Tanti also raped her, and when Ashok came to rape her she told that he was her relative and on this he gave her slaps and committed the act. The evidence of this witness then is that the appellant Bharosi Tanti then went to her sister, and from the sister she could know that Bharosi Tanti, Chandra Shekhar Singh and Bijay Singh committed rape on her. Then the appellants left the place giving threats that if they told about the incident to anybody, they would be killed. The further evidence of this witness is that both of them returned to their house and narrated the entire incident to their sisters-in-law and after some time their father and brother came and they told them about the incident and in the next morning they told about it to the villagers. This witness then has stated that one day prior to the occurrence Sagun, Bharosi and others had come to sing Yogira and were hurling obscene abuses, when his brother protested, whereupon they assaulted his brother and when Sunil protested he was also assaulted with the butt of the pistol. Her evidence also is that in the next morning Mukhiya, Sarpanch came and then they went to the police station to lodge the case from where they were sent to the hospital.

14. PW 1 Pawan Rekha Devi has stated that on the alleged date at 9.00 p.m. r- he alongwith her Gotani Geeta Devi and sisters-in-law were sitting in their house and two sisters-in-law (victims) were taking their food, when the appellants Bharosi, Ragho Bijay, Ram Uday and Chandra Shekhar came, among whom Ram Uday, Ragho and Bharosi were armed with pistol and they forcibly started taking away the informant by catching hold of her hand. On this, they raised alarm and the appellants assaulted them and then they took away both the sisters. Her evidence further is that at about 11.00 in the night both the victims returned and the younger sister told them that the appellants Ragho, Bharosi, Ram Uday, Ashok had committed rape on her and the appellants Bijay and Chandra Shekhar raped the informant. She has stated that after the two victims were taken away they had gone to the door of Ramchu and informed their father-in-law whp was found tied there but nobody went to search the victim. Her evidence also is that one day prior to the occurrence people had come to sing Jogira and hurling obscene abuses which was objected to by her brother-in-law, and the panchayati was held in respect of that incident. In cross-examination she has stated that both the victims were assaulted by the appellants with lathi and butt of the pistol.

15. PW 2 Geeta Devi has deposed that on the alleged date at about 9.00 p.m. she was in her Angan alongwith her Gotani Pawan Rekha Devi and two Nanada (sisters-in-law) were eating food. The night was moonlit and a Dhibri was burning, when the appellants came and they brought the prosecutrix to the

Angan and began to take her away. She was not ready to go. They tried to release her, when they (appellants) caught hold of the younger sister also and they took both the sisters towards Bishunpur Band. They then went to the door of Ramchu, where panchayati was being held to inform their father-in-law where they found the hands of their father-in-law and the husband tied at the back. The Panches chided them and they returned to their house. Further evidence of this witness is that the two Nanada returned at 11.00 in the night and the younger sister told that the appellants Bharosi, Ram Uday, Chandra Shekhar had committed rape on her and the elder sister told that Bijay, Chandra Shekhar had committed rape on her and at that time her father-in-law and husband came and they were informed that both the sisters were raped at the Andy field of Naresh Singh. The witness has also stated that Sagun and the appellants were singing Jogira in her house in which they were uttering obscene abuses which was protested by her husband for which her husband was assaulted and on the date of occurrence panchayati was being held in that connection.

16. Thus, it appears that both the victims have corroborated each other and supported the prosecution case. Their evidence is corroborated by the evidence of their sisters-in-law (PWs 1 and 2). Both the victims (PWs 3 and 4) have been cross-examined at length and I do not find reasonable ground to disbelieve their testimony.

17. PW 4 is the victim and is thus the most competent witness. The fardbeyan (Ext. 2) corroborates her testimony in material particulars. The occurrence had taken place on 23.3.1989 and the case was lodged on 24.3.1989 at 2.00 p.m. There is, hence, some delay in lodging the case. But the evidence shows that the occurrence took place at 9.00 p.m. and the victims returned to their house at 11.00 p.m. There was, hence, reasons for not going to the P.S. on 23.3.1989. The evidence of PW 4 further, which is corroborated by her sister, is that in the next morning her father approached the Mukhiya and Sarpanch for a decision into the matter, and when the Mukhiya advised her father to go to the police station, they went to the police station. The evidence of PW 3 further is that from the police station they went to the Superintendent of Police and then the case was registered. So, the delay is well explained. In the fardbeyan it is indeed not mentioned that in the next morning the father of the prosecutrix approached the Mukhiya and Surpanch, but this is a minor omission and does not affect the evidence of the witness. Again in the fardbeyan it is not mentioned that the appellants Chandra Shekhar, Bijay had also committed rape on her. Her statement therein, on the other hand, is that they attempted to rape her but did not succeed, and only appellant Bharosi raped her whereas in her evidence she has stated that all the three committed rape on her. But only for this development in the evidence the entire testimony of the witness cannot be rejected. The only conclusion that can be drawn from these two versions is that actually only the appellant Bharosi had committed rape on her and though the other tried but could not succeed in raping her. The evidence of this witness also shows that the other appellants had taken her sister about a Bans away from her

inside the field and the evidence of PW 3 shows that Andy plants were 6" high. The time was also night. So, it was, of course, difficult for this witness to say as to who committed rape on her sister. But, she has stated that from her sister she could also know as to who committed rape on her. The evidence of this witness, hence, is very natural. This witness in her cross-examination has stated that in the next morning Mukhiya Sarpanch came and all of them discussed the matter and thereafter the case was lodged. The learned counsel has argued that this shows that the case is actually false and after due deliberation the story was concocted. But I do not agree with the contention of the learned counsel. The evidence of this witness in examination-in-chief is that her father had called the Mukhiya and Sarpanch to settle the matter. Therefore, the above evidence simply shows that after giving their thoughts they decided that the case should be lodged in police station. Hence, from this it cannot be said that they concocted this case. The appellants have also filed the certified copy of the deposition of the witness recorded in a proceeding u/s 107, Cr PC (Ext. A) to show that the witness did not mention therein that the appellant Bharosi had committed rape on her. But when in the fardbeyan which is the earliest version and in the trial Court the witness has stated that the appellant Bharosi had committed rape on her, only on the basis of the above omission it cannot be said that the evidence of the witness that Bharosi had raped her is not reliable.

18. PW 3 is another victim and as such, is also the most competent witness. Her evidence shows that the police recorded her statement with her elder sister. So, she was also examined promptly by the I.O. There is nothing material in her evidence to show that there is any consistency in her evidence. During her examination the witness was asked whether she had stated before the I.O. that both the sisters narrated the occurrence to their sisters-in-law as has been stated by her in Court. She had answered it in affirmative. Similarly, she was asked whether she had stated before the I.O. that when the appellant Ashok started raping her, she told her that he was her relative and answered this question also in affirmative. But the I.O. has not been examined to show whether she made such statements before the police. But even if it be assumed that the witness omitted to make the above statements before the I.O., the omissions are not vital to impeach the credibility of the witness. There is nothing else in her testimony to disbelieve her.

19. I, thus, find that both the victims (PWs 3 and 4) are reliable witnesses. The law is also settled that it is reasonable to assume that no woman would falsely implicate a person in sexual offence as the honour and prestige of that woman would be at stake. In this case, it appears that the assumption would be greater because the evidence of PW 1 shows that the victims were married. The evidence of PW 2 recorded on 17.12.1997 further shows that Duragaman of the elder sister has been performed but Duragaman of the younger sister has not been performed. The evidence of the victims is that the marriage were not consummated. So, it appears that the victims were newly married at the time of occurrence. Therefore, it is not expected that they would stake their future by

falsely implicating the appellants by making such filthy allegations.

20. PWs 1 and 2 though interested are natural witnesses. They were the female inmates of the house and also sisters-in-law of the victims and so, it was most natural that the victims would speak about such happening to them. There is also nothing material in their evidence to disbelieve their testimony. There is, of course, some inconsistency in the evidence of these witnesses and the evidence of the victims as to who among the appellants had actually committed rape on the victims, but they were not eye-witnesses and were deposing in Court after so many years. Therefore, such inconsistency is natural and does not affect their credibility. The evidence of both these two witnesses also show that after the victims were taken away by the appellants, they went to inform their father-in-law about the same where the panchayati was being held. This is also normal human conduct. PW 2, of course, has stated that when they went there, the Panches rebuked them whereas PW 1 has not made such statement, but this inconsistency is also of minor nature.

21. It appears from the evidence of PW 1 that when the appellants forcibly took away the victims several neighbours saw it. The evidence of PW 3 also is that when her father, brother came they narrated the occurrence to them and in the morning Mukhiya, Sarpanch came and they were told about the occurrence. None of these witnesses have, however, been examined in this case. Learned counsel, hence, submitted that adverse inference should be drawn from their non-examination. But, in this case the main allegation is of rape and none of them are eye-witnesses to that incident. The evidence of PW 1 also shows that female neighbours had seen the occurrence taking place in Angan. But the experience shows that they are not ready to come to Court. So, non-examination of those persons does not affect the prosecution case.

22. Then the evidence of the victim shows that their bangles were broken when they were being taken by the appellants. Their clothes were stained with semen on account of rape which were shown to the I.O. and some chilly plants at the P.O. were damaged. But the I.O. has not been examined in this case. Learned counsel, hence, has argued that in absence of examination of the I.O. it could not be ascertained as to whether he had actually seen the bangles broken, plants damaged, marks of semen in the clothes and also could not take the contradictions in the evidence of the witnesses and therefore, the appellants have been greatly prejudiced. In this case the doctor has also not been examined. Learned counsel, hence, has argued that in the absence of medical evidence it cannot be said that actually the victims, were raped.

23. The lower Court records, however, shows that despite efforts made the attendance of the I.O. and the doctor could not be procured. Therefore, the evidence of these two witnesses were not deliberately suppressed. On a perusal of the evidence of the witnesses it also appears that the intended contradictions are minor in nature and so, no prejudice has been caused to the appellants in this regard for non-examination of the I.O. Besides this, it is well settled that in a

rape case the sole testimony of the victim can be the basis of conviction if the same is safe, reliable and worthy of acceptance. I have already discussed that the evidence of both the victims are quite reliable and their evidence corroborate each other and their evidence finds corroboration from the evidence of their sisters-in-law. Therefore, even if the doctor and the I.O. have not been examined, the evidence on record is sufficient to convict the appellants.

24. The defence of the appellants is that the victims had illicit, relationship with Sunil Singh and hence, the panchayati was held and as in the panchayati punishment was awarded the case was falsely lodged. PW 4 has admitted that the father of appellant had convened the panchayati alleging that they had illicit connection with Sunil Singh. The evidence of PWs 1 and 2 also show that when they went to the door of Ranchu where panchayati was being held, they found the hands of the father and brother of the victims tied at the back. But it cannot be believed that only for such punishment the father and the brother of the victims would stake the marital life of not only one but both the victims. The evidence of the victims also show that they had no enmity with the appellants from before. In the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, , the Supreme Court has held that "if the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence." In this case also I do not find any strong motive to falsely implicate the appellants. Therefore, there cannot be any hesitation in accepting the prosecution version.

25. On a careful consideration of evidence on record I, thus, also find that the prosecution has been able to prove that the appellants went to the house of the prosecutrix and forcibly by assaulting her took her and her sister away and committed rape on them as alleged. Though it is doubtful that the appellant Bijay and Chandra Shekhar had committed rape on the prosecutrix, the evidence on record is sufficient to show that all the appellants had a common intention to commit rape on the two victims. Therefore, even if it be held that they did not commit rape, in view of Explanation i of Section 376(2), IPC they would also be held liable for gang rape.

26. The learned lower Court, hence, was justified in convicting the appellants under Sections 376(2) and Section 323 and 451, IPC.

27. In the result, there is no merit in these appeals and the same are hereby dismissed.