
(2009) 08 JH CK 0090
In the Jharkhand High Court

Dadul Dhobi @ Dadul Baitha and Others	APPELLANT
Vs	
The State of Jharkhand	RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

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

Citation : (2009) 08 JH CK 0090

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Jaya Roy, J.—Both the appeals arise though from two different judgments but from the same Majgoan P.S. Case No. 28 of 1990 corresponding to G.R. Case No. 209 of 1990. As the appellant Ram Sundar Baitha (appellant in Cr. Appeal No. 1514 of 2005) absconded for long time, his trial was separated.

2. The case of the prosecution is short as appeared from the fardbayan of the victim cum informant Kabutari Devi (P.W.4) recorded on 25.5.1990 at about 10 P.M. where she has stated that on last Saturday 20.5.90 at about 9.P.M., she after taking meal with her daughter-in-Jaw Bachiya Devi (P.W.3), was slept in a room having no door whereas her daughter-in-law slept in another room having its door situate at village Raja Ghatwa, at that time six persons came to her house to whom she had identified as Ram Sundar Baitha, Dadul Dhobi, Suresh Sao, Bihari Chamar, Prasad Mahto and Ramesh Mehto (all the appellants) as they were known to her since before and they asked for water and Bena (hand-fan). After drinking water, they asked for to make a bed for them. Upon this, as there was no male member in the house, she requested them to leave the place but they did not. Ram Sundar Dbobi had a big gun in a hand and Dadul Dhobi also has a small gun. Accused/appellants Ram Sundar Dhobi, Dadul Dhobi and Suresh Sao remained with her whereas accused/appellants Bihari Chamar, Prasad Mahto and Ramesh Mahato forcibly entered into the room of her daughter-in-law Bachiya Devi (P.W. 3) and closed the door from the inside thereafter. When she

was trying to protect herself, Ram Sundar Dhobi pressed her neck and skirted scratching her on her neck, shoulder and cheek and forcibly raped her. Ram Sundar Dhobi, Dadul Dhobi, and Suresh Sao committed rape upon the informant one by one. Thereafter, they left the place. Other three persons came out from the room of her daughter-in law left the place by threatening them. After the departure, the daughter-in-law of the informant stated her that all the three accused persons forcibly raped her one by one on which she was suffering pain on her waist, neck, throat and shoulder. On the following morning, she narrated about the said occurrence to the villagers Nanak Paswan (P.W.I) and Bndhiya Paswan but the said persons told her that all the accused persons were Gundas and it is the matter of prestige. On this, she did not go to the police station on that day. It is further stated that her husband and son of the informant were not present in the house in the night of alleged occurrence. On the basis of the fardbeyan, a case was registered against the aforesaid six accused appellants and after investigation charge sheet has submitted against all of them u/s 376/34 I.P.C. As the accused person Ram Sundar Baitha (appellant in Cr. Appeal No. 1514 of 2005) absconded for long time, his trial was separated.

3. The prosecution has examined seven witnesses to prove its case. Out of them P.W. 1, Nanhak Paswan is declared hostile, P.W. 2, Shyam Sundar Paswan is tendered, P.W. 3, Bachiya Devi is the victim and daughter-in-law of the informant, P.W. 4, Kabutri Devi is victim cum informant of this case, P.W. 5, Doctor Sudhakar Lai and P.W. 6, Doctor Rum Naresh Singh Diwakar who have examined the victims by constituting the medical board. Two injury reports and an order for constituting the Medical Board are marked as Exhibits-1, 1/1 and 2 respectively. P.W. 7 is son of the informant, who is a hearsay witness. Defence of the appellants is false implication due to land dispute and they claimed to be tried.

4. The learned Counsel of the appellants submits that there was delay in lodging F.I.R. and no proper explanation has been given by the prosecution. There are numbers of contradictions in the evidence of the P.Ws. 3, 4 and 7.

5. Having heard the learned Counsel for the appellant and the State and on perusal of the record, I find the P.W. 4 the victim cum informant has deposed in her evidence that about 10 years ago at 9-10 P.M. she was present in her room and her daughter-in-law was also present in another room, in the mean time the aforesaid six appellants came to her house and they asked for water and (Bena) hand fan. She gave them. Thereafter, they asked her to give them bed but she refused on the ground that there was no male member in her house. She has further stated that Ram Sundar had a gun in his hand and Dadul had a big gun in his hand. Thereafter Ram Sundar, Suresh and Ramesh forcibly raped on her one by one. Firstly, Ram Sundar raped her when she objected Ram Sundar pressed her neck and also assaulted her, result of which she received injuries on her person. In this contest the learned Counsel of the appellant submits that the P.W. 4 has not mentioned in her cross-examination the name of the Ram Sundar, she

has deposed that she was left down by Suresh and thereafter Ramesh. Both of them raped her. But I find from the record that the P.W. 4 has very specifically stated about Ram Sundar that he has committed rape on her and assaulted her also in her statement which she has also stated in her fardbeyan. Therefore, it is very normal for the witness when she has deposed after 9-10 years of the occurrence, she can missed to mention name of one of the accused persons at one point of time. Further more, the evidence has been taken after nearly ten years of the occurrence as such it is impossible for witness specially for a illiterate village woman to remember the entire incidence in detail. Therefore the court should examine the broader probabilities of a case and not get swayed by minor contradictions.

6. The another most important witness is P.W. 3 Bachiya Devi who is daughter-in-law of the informant and also a victim. Bachiya Devi has also stated in her evidence that when the accused persons came to her house, she slept in the room. Her mother-in-law got her awoke to give water to them. After giving water, she closed the door of her room and sat there. But she heard what the accused persons were talking. Thereafter three accused persons Dadul, Prasad and Bihari entered into her room and committed rape upon her one by one. Firstly Dadul, by showing his gun, lay down and committed rape upon her. When she tried raise to Hulla, she was threatened by the accused persons and also assaulted by them. She very rightly said in her cross-examination that she did not see who raped her mother-in-law. It is her mother-in-law who informed her. Considering the entire evidence P.W. 3 and 4 it appears their evidence is very natural and trustworthy. Not only that even the medical reports also corroborate the same.

7. I come to the evidence of the P.W. 7 the son of the informant who has stated in his evidence that he was working in Lamari on the date of the occurrence. He got information that his wife Bachiya Devi and his mother were raped by Ram Sundar, Ramesh, Suresh, Dadul, Bihari and Prasaad. He immediately returned to his house and on being asked, her mother and wife narrated the entire occurrence. Thus, he has fully supported the case of prosecution and the evidence of P.W. 3 and 4. There is nothing to discard his testimony.

8. The learned Counsel for the appellants, has further pointed out that though the P.W. 4, Kabutri Devi has stated in her fardbeyan and also in her evidence that no male member of the house was present at the time of occurrence but in para19 and 22 in her evidence she deposed that her father-in-law was present in the house and further her daughter-in-law had child with her aged about one year. Therefore, her evidence is not at all trustworthy. Scrutinizing her evidence, I find on the day of occurrence the father-in-law of P.W. 4 was very old, blind and unable to move. Therefore, P.W. 4 has not considered him as a competent male member who can protect them. Admittedly, on the date of occurrence neither the husband of the P.W. 4 nor his son (husband of Bachiya Devi) was not present in the house.

9. The learned Counsel for the appellants further raised the point that no independent witness has been examined though the P.W.4 went to the villagers including the Choukidar of the village and informed them about the occurrence. In this contest I like to mention the statement of P.W. 3 who has very clearly mention in para 14 of her evidence that in the next morning about 8-9 A.M. firstly her father-in-law and thereafter her husband came. They got the villagers assembled but the villagers advised them not to lodge any case. From this statement it is very clear that the villagers did not want to go against the accused-appellants persons whatever the reason behind it. In this situation I can not expect that any villager will come to the court and support the prosecution case.

10. Next contention of the counsel of the appellants is that the accused persons mostly aged about 25-30 years at the time of committing offence i.e. practically they were of the age of the son of the informant Kabutri Devi and it is improvable that they will commit rape upon her. For the commission of sexual offence, question of age does not arise unless the victim is very old. Therefore, I do not find much weight in this submission.

11 The learned Counsel for the appellants argued that non examination of the investigation officer (I.O.) the defence has been prejudiced to a great extent. In my opinion in view of the evidence of the P.Ws.3, 4, and 7, the prosecution has successfully proved its case against the accused appellants.

12. Lastly the learned Counsel for the appellants raised that the accused appellants have been implicated in this case due to land dispute between the parties. In this regard the P.W.7 has very clearly stated that before his birth i.e. 30-35 years ago the accused Ramesh Mahato has evicted them from their land for which a Panchayati was also convened. I think after 30-35 years of the said eviction, the informant family will not falsely implicate the accused persons in a case of rape (i.e. the present case) in which the reputation of the female members of their family is concerned.

13. In the recent pronouncement of the Apex Court reported in Moti Lal Vs. State of M.P., it has been held that:

12. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian woman has tendency to conceal such offence because it involves her prestige as well as prestige of her family.

14. In the light of the aforesaid discussion and taking overall views of the facts and circumstances of the case, I do not find any merit in both the appeals. Accordingly, both the appeals are dismissed and the conviction and orders of

sentence passed by the trial court in S.T. No. 208 of 1992 dated 19.9.2000 and in S.T. No. 208A/1992 dated 27.8.2005 are hereby, confirmed. As the appellants of both the appeals are on bail, their bail bonds are cancelled and the trial court is directed to take necessary steps against them.