
(2009) 03 JH CK 0029
In the Jharkhand High Court

Deo Nath Mahto

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 03-03-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 342, 376

Citation : (2009) 03 JH CK 0029

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.

By Court:

1. Heard the learned Counsel for the appellant and counsel for the State.
2. This appeal is directed against the conviction and sentence dated 8.5.2000 passed by Sri Rakesh Ranjan Verma, 5th Additional Judicial Commissioner, Ranchi in Sessions Trial No. 33 of 1999 by which the learned Sessions Court found the accused guilty u/s 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for eight years.
3. The prosecution case was started on the basis of fard beyan given by the informant Gahani Devi on 18.7.1998 near Block Chowk, Ormanjhi, District Ranchi, stating therein that on Wednesday on 15.7.1998, she had gone for grazing the goats to Dhageewan Jangal, villager Deo Nath Mahto had also gone there for grazing the goats. The place was lonely. Suddenly, the accused Deo Nath Mahto caught hold her and dragged her to a ditch. She tried to save herself by hulla but the accused closed her mouth and committed rape upon her. After committing rape, the accused Deo Nath Mahto threatened her, that if she discloses the occurrence to anybody in the village, then he would kill her. She came back weeping, leaving goats in jungle and disclosed the occurrence to her

family members. She wanted to go to police station but Deo Nath Mahto threatened her that if she discloses then she would be murdered. On finding occasion, she went to the police station and gave her statement to the police and the case was registered under Sections 376 and 342 of the Indian Penal Code and after investigation, the police submitted chargesheet under the aforesaid sections. Since, the case was exclusively triable by the Court of Session, the learned Magistrate after taking cognizance of the case committed the same to Sessions. The case was then transferred to the court of learned 5th Additional Judicial Commissioner, Ranchi, where the trial was held.

4. In course of trial, the prosecution had examined nine witnesses. P.W.1 Dr. Veena Sinha, who conducted medical examination on the victim girl, P.W.2 Tulsi Mahto, father-in-law of the victim girl, P.W.3 Ram Chandra Mahto P.W.4 is Usha Kumari, Nanad of the Informant, P.W.5 is Rairo Devi, mother-in-law of the victim girl, P.W.6 is Saraswati Devi, P.W.7 is Mahesh Mahto who has been declared hostile, P.W.8 is Sri Raj Kumar Singh, Judicial Magistrate, 1st Class, Ranchi who recorded 164 Cr.P.C. statement of the victim lady, P.W.9 is the Investigating Officer of the case.

5. The defence has also examined two witnesses. D.W.1 is Ghana Mahto and D.W.2 is Funda Sahu.

6. The prosecution has proved the medical report as Exhibit-1. The Statement recorded u/s 164 Cr.P.C. as Exhibit-3, the Fard Beyan as exhibit 4 and the F.I.R., exhibit-5. After hearing the parties, the judicial commissioner found the accused guilty and sentenced him as aforesaid.

7. It has been submitted by learned Counsel for the appellant that the place of occurrence and the manner of occurrence as stated by the victim, Gahni Devi in the fard beyan is not supported by the statement of the Investing Officer with regard to the place of occurrence and it is also contradicted by the other witnesses. It is further submitted by the counsel for the appellant that it appears from the medical report that the Doctor found neither sign of injury nor any sign of rape in the person of the victim lady, which is unnatural seeing the manner of occurrence. In such situation, he stated that the appellant has been falsely implicated in this case due to land dispute and previous enmity and the prosecution case is bad and the appellant is entitled to be acquitted from the charges leveled against him.

8. On the other hand, learned Counsel for the State submitted that difference between the statement of the prosecutrix in the fard beyan and the statement of the other witnesses including the Investigating Officer is minor in nature. The investigating Officer has stated that there is no ditch by the side of the rock (Chattan) at the place of occurrence but in fact in the village, the land below the "chattan" is called ditch and the prosecution has proved the case beyond reasonable doubt.

9. After hearing the parties and going through the evidences of appellant that

the prosecutrix Gahni Devi has not been examined by the prosecution and it was stated by he father-in-law, P.W.2, Tulsi Mahto at para-3 that his "Patohu" Gahni Devi died after this occurrence. She used to say nothing and she had become a silent dead person after the occurrence. Although, she has not been examined, but the statement of the deceased prosecutrix has been proved as exhibit-3 in the trial by the Judicial Magistrate Raj Kumar Singh, P.W.8.

10. It appears from the statement of the prosecutrix as given in her fard beyan that she was raped by the accused inside the jungle where she had gone for grazing goats, the accused Deo Nath Mahto dragged her at a lonely place in a ditch and committed rape upon her. In her Statement u/s 164 Cr.P.C which has been proved by the Judicial Magistrate, P.W.8, she stated that on 15.7.1998, she had gone to the jungle with ten goats, Deo Nath Mahto had also gone to the same jungle with his goats for grazing and she reached near a sand Garha, then Deo Nath Mahto caught her back and threw her in a ditch and committed rape upon her. He closed her mouth due to which she could not make much alarm and after the occurrence the accused threatened her that if she discloses the occurrence then she will be killed. In her statement in 164 Cr.P.C., she stated that Deo Nath Mahto is related to her and he is cousinin- law and she never thought that he will do like this with her.

11. There are two main witnesses P.W.2 father-in-law and P.W.5 motherin-law of the deceased. P.W.2 Tulsi Mahto stated that on 15.7.1998, when he was ploughing his land at about 10 A.M., he heard hulla from his house and he went the house and his daughter-in-law Gahni Devi told him that at Jhagjivan jungle, Deo Nath Mahto threw her in a ditch and committed rape upon her. Deo Nath Mahto is his gotia cousin brother. P.W.5 motherin- law stated in court that on the date of occurrence at about 10 A.M. heard her daughter-in-law that she had gone to the jungle with goats at about 12 P.M. and she came back weeping, leaving the goats behind and on enquiry, she stated nothing about the place of occurrence. The third witnesses regarding the place of occurrence is naturally the Investigating Officer, who was examined in the case as P.W.9 has stated in para-4 of his statement that the place of occurrence is about ten kilometers West from Dhagjeevan jungle, a pugdandi Road near a chattan (Rock) where the accused committed rape upon the victim lady. Describing the Place of occurrence, he has stated that there is a "Bargad Per" along the West, there is Jungli Rasta for going to Jasidih. In his crossexamination, he stated that as per the fard beyan of the victim girl, the place of occurrence is by the side of Chattan (rock), there is vacant land by the side of the said Chattan. He also stated that there is no ditch or sand near the place of occurrence, which falls as far as the occurrence is concerned, the evidence of prosecutrix as well as P.W.6 becomes contradictory to each other. Moreover, the doctor P.W.1 who had examined the victim lady has stated that she did not find any external or internal injury nor she found any sign of rape on the person of victim girl.

No doubt, the victim lady was a married lady and she was being examined after

three days but the manner of occurrence is disputed that whether she was thrown in the ditch and rape was committed upon her. The Investigating Officer, who had examined her at the time of recording her fard beyan, has also stated in Para-15 that at the time of recording of fard beyan, he found no injury on the face or body of the victim lady. She has also stated that at the place of occurrence she also found no mark of forcible rape and broken bangle etc. Because it has come in the evidence of P.W.6 Saraswati Devi, that at the time of occurrence, the victim lady had plenty of bangles in her hand. The mother-in-law of P.W.5 stated in her cross-examination in Para-10 that the victim girl had swollen mouth and there was injury on the cheeks, even her lips were swollen but the same has not been corroborated by the Investing Officer, who recorded her statement just after three days. The Investing Officer has stated that P.W.2 Tulshi Mahto had stated to him that Gahni devi had swollen mouth. The contradiction at the place of occurrence and the manner of occurrence as stated above has created serious doubts in the prosecution case and the benefit of doubt is to given to the appellant.

12. In that view of the matter, the accused/appellant is granted benefit of doubt and acquitted from the charges leveled against him. Accordingly, the judgment of conviction and sentence passed by the trial court is set aside.

13. This appeal is allowed. The appellant is on bail and he is discharged from the liability of the bail bond.