

(2015) 03 JH CK 0078

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 828 of 2009

Dineshwar Ram

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 12-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 4 AJR 433 : (2015) 3 JLJR 83

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : A.K. Trivedi, for the Appellant; P.K. Appu, APP, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard the learned counsel for the appellant Mr. A.K. Trivedi and the learned A.P.P. for the State Mr. P.K. Appu.

2. This appeal is directed against the judgment dated 18.08.2014 passed by the learned District and Sessions Judge, Latehar in S.T. No. 29 of 2007 in which the appellant was convicted for the offence under Section 376 of the Indian Penal Code and was sentenced to undergo R.I. for 7 years and a fine of Rs. 10,000/- and in default of payment of fine, he was further sentenced to undergo R.I. for 6 months.

3. The prosecution story as would appear from the Fard Beyan of the informant namely, Kail Khuian who is P.W. 1 is that, his daughter Pratima Kumari aged about 16 years is not mentally sound and she is not able to speak very clearly. It has been alleged that the appellant Dineshwar Ram was working as a Fitter in the Railways and had illicit relationship with one Lalo Devi. It is also stated in the Fard Beyan by the P.W. 1 that since the mental faculty of his daughter is not very sound as such, the appellant - accused Dineshwar Ram taking advantage of her disability caught hold of her and committed rape upon her.

4. After institution of the case, investigation was conducted by the police and on finding the case true, charge-sheet was submitted against the accused person namely, Dineshwar Ram (appellant) and after the supply of police paper and the commitment of the case to the Court of Sessions, charge was framed against the appellant under Section 376 of I.P.C. to which the appellant pleaded not guilty and claimed to be tried.

5. During the course of the trial, the prosecution examined 4 witnesses in support of its case. The defence did not produce any witness in support of its case.

6. Kail Bhuian who happens to be the informant as well as the father of the victim Pratima Kumari (P.W. 2) in course of examination has denied the factum of occurrence and has deposed that the appellant did not commit any wrong with his daughter. This witness has also stated that the appellant and one Lalo Devi are residing together in one house and Lalo Devi is the wife of the appellant. This witness has further stated that he along with his wife came to the police station and lodged the case and the police has also recorded the statement of his daughter - P.W. 2, but such statement was not recorded in his presence. This witness has denied the fact with respect to the commission of rape by the appellant upon the victim - P.W. 2. On the prayer of the prosecution this witness was declared hostile.

7. P.W. 2 - Pratima Kumari is the victim girl and the daughter of the informant (P.W. 1). She in her examination has given a vivid description of the manner in which the appellant had undressed her and thereafter committed rape upon her. This witness has also identified the appellant by face and by name. In course of examination of P.W. 2, the learned trial court had recorded the mental and physical condition of the victim and had come to a finding that she is not in mentally sound position and while expressing herself, she stammers and her physical appearance does not suggest her age. In the cross-examination of P.W. 2, she had stated about her blood stained clothes which she had given to her parents, but her parents did not forward it to the police for necessary action. She has also submitted that on her cry, several people from the vicinity had rushed to the place of occurrence. She has also deposed that since the appellant was married to her sister, therefore, her relationship with the appellant is strained and since, there was an act of assault she had gone to the police station to report about that assault.

8. P.W. 3 - Dr. Seema Rani Prasad had examined the victim Pratima Kumari on 15.11.2006 at 3:30 P.M. On examination, this witness did not find any external injury over any part of the body of the victim. On pathological examination according to this witness no spermatozoa was found in her vaginal swab and a pregnancy test was also conducted which was found to be negative. This witness had assessed the age of the victim girl as below 15 years.

9. P.W. 4 - Anil Kumar is the Investigating Officer who had conducted the

investigation pursuant to the case lodged by P.W. 1 and after finding the case true has submitted charge-sheet against the appellant. He during his examination submitted that after taking over the investigation, he has visited the place of occurrence which was shown to him by the victim - P.W. 2 and she had given description of the place of occurrence. This witness has also stated that he had found the victim to be mentally ill and somehow or the other she was able to express herself in her own words and by gestures. The act of commission of rape had been disclosed to this witness by victim through signs for which this witness had deciphered that rape was committed upon P.W. 2. In cross-examination, this witness had denied the fact that the victim P.W. 2 had told him about how the appellant caught hold of her and had undressed her and committed rape upon her. This witness also stated that P.W. 2 had denied the factum of occurrence to him.

10. The accused was examined under 313 of Cr.P.C. and he had merely denied the commission of rape, but in the examination under Section 313 of Cr.P.C., he has not put forward any defence with respect to his allegedly false implication.

11. The learned counsel for the appellant Mr. A.K. Trivedi has submitted that the Fard Beyan was recorded on 14.11.2006 and the date of occurrence has been stated to be 2 months prior to the date of recording of the Fard Beyan and the prosecution could not come up with any plausible explanation with respect to the delay in lodging the present case. The learned counsel for the appellant in this context has referred to the case of State of Andhra Pradesh v. Jalpathi Subbarayudu and Ors. reported in 2002 (2) Eastern Criminal Cases 292 (SC), wherein it was held as follows:

"4. It is no doubt true that in these matters the delay by itself cannot be fatal to the case of the prosecution, but that will depend upon other facts and circumstances of the case"

He has further referred to the case of "Subhas Das v. State of Bihar (now Jharkhand) reported in 2004 (1) Eastern Criminal Cases 152 (Jhr.), wherein it has been held that "delay in lodging the FIR often results in embellishment which is a creature of an after thought and on account of delay the FIR not only gets bereft of the advantage of spontaneity danger also creeps in of the introduction of a coloured version or exaggerated story."

12. Learned counsel for the appellant has further stated that the entire conviction has been based on the sole testimony of the P.W. 2, the victim which has neither been corroborated by the witnesses nor has the same been corroborated by the medical evidence. In this context, he has further submitted that it would be dangerous to convict an accused on the basis of sole testimony of a witness. In this context, he has referred to the judgment rendered by the Hon"ble Supreme Court in the case of Alamelu and Another Vs. State represented by Inspector of Police, AIR 2011 SC 715 : (2011) 1 JCC 239 : (2011) 1 JT 265 : (2011) 1 RCR(Criminal) 498 : (2011) 1 SCALE 575 : (2011) 2

SCC 385 : (2011) 1 SCC(Cri) 688 : (2011) 2 SCR 147 : (2011) AIRSCW 650 : (2011) 1 Supreme 388 ". Continuing with his argument, learned counsel for the appellant has also submitted that in fact, P.W. 1, the father of the victim has turned hostile and even P.W. 4, the Investigating Officer has clearly stated that at the time of recording the statement of P.W. 2 under Section 161 of Cr.P.C., she denied the factum of rape having been committed upon her by the appellant. He has further submitted that although the learned trial court even at the time of deposition of P.W. 2 had come to a finding that she was mentally ill, but no efforts were made by the learned court below to get her mental condition certified by a professional. While referring to the age which has been determined by P.W. 3 as 15 years, learned counsel for the appellant has referred to Modi's Medical Jurisprudence and Toxicology in which the main factors which would establish the accurate age would be the ossification test as well as the test with respect to teeth, height and weight. He has submitted that while determining the age as 15 years, none of the tests as per medical jurisprudence has been conducted and as such no final estimation of age can be determined and P.W. 3, the Doctor has estimated the age of P.W. 2, the victim on the basis of presumption. Learned counsel for the appellant also submitted that as per the medical examination, the hymen of the victim girl was present which belies the allegation of rape.

13. Shri P.K. Appu, learned A.P.P. for the State opposes this appeal and submits that so far as the version of P.W. 2 is concerned, she has given a graphic description of the manner of occurrence which cannot be disbelieved merely on the ground that there has been no corroborative evidence in that regard. He has further submitted that while coming to a just conclusion, the quality of evidence and not the quantity of evidence has to be looked into. With respect to the examination of the victim - P.W. 2 by the Doctor, he has submitted that her examination was made after 2 months from the date of occurrence as such, it was expected that no sign of rape would be found upon the victim girl.

14. After hearing learned counsel for the parties and after perusing the Lower Court Records, I find that the FIR was instituted on the basis of fardbeyan of P.W-1-Kail Bhuian, who happens to be the father of the victim girl. In the fardbeyan, it had clearly been stated by P.W-1 that the appellant taking advantage of the mental condition of his daughter committed rape upon her. He, however, had resiled from his statement before the police and had denied the occurrence in totality in the trial. In such circumstances, it has to be deciphered from the evidence of P.W.-2, the victim girl, as to whether the same is consistent, reliable and believable. P.W-2 in her evidence had stated about how the appellant had caught her and after getting her undressed committed rape upon her. In fact, during course of her evidence, it was recorded by the learned trial judge that the witness does not appear to be mentally very sound and she speaks with a stammer. However, the evidence of P.W-2 clearly reveals the fact of commission of rape upon her by the appellant. Much stress has been given by learned counsel for the appellant that the entire conviction is based on the sole

testimony of P.W-2 and in absence of any corroboration the same becomes an unreliable piece of evidence. In this context, reference may be made to the case of Alamelu and Another Vs. State represented by Inspector of Police, AIR 2011 SC 715 : (2011) 1 JCC 239 : (2011) 1 JT 265 : (2011) 1 RCR(Criminal) 498 : (2011) 1 SCALE 575 : (2011) 2 SCC 385 : (2011) 1 SCC(Cri) 688 : (2011) 2 SCR 147 : (2011) AIRSCW 650 : (2011) 1 Supreme 388 and the relevant portion is quoted here in below:--

"51. This Court in Rameshwar V. State of Rajasthan declared that corroboration is not the sine qua non for a conviction in a rape case. In the aforesaid case, Vivian Bose, J. speaking for the Court observed as follows: (AIR p. 57, para 19)

"19.... The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge..... The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

52. The aforesaid proposition of law has been reiterated by this Court in numerous judgments subsequently. These observations leave no manner of doubt that a conviction can be recorded on the sole, uncorroborated testimony of a victim provided it does not suffer from any basic infirmities or improbabilities which render it unworthy of credence."

15. Therefore, it would mean that the conviction can be sustained on the basis of evidence of a solitary witness provided what has been deposed by the witness is cogent and reliable. The court has to make a qualitative assessment and not a quantitative assessment of the evidence so recorded. As has been indicated above, since the evidence of P.W-2 inspires confidence and is a reliable piece of evidence, the learned trial court did not commit any illegality in convicting the appellant by relying on the sole testimony of P.W-2. So far as the question of delay in instituting the FIR is concerned, reference may be made to the case of Om Prakash Vs. State of Haryana, AIR 2011 SC 2682 : (2011) 8 JT 69 : (2011) 3 RCR(Criminal) 616 : (2011) 7 SCALE 396 : (2011) 7 SCR 1080 : (2011) AIRSCW 4245 : (2011) 6 Supreme 244 , wherein it was held that once a reasonable explanation is rendered by the prosecution then mere delay in lodging an FIR would not necessarily prove fatal to the case of the prosecution. In the present case, reasonable explanation has been given by the prosecution to the effect that the appellant is related to the victim and considering the indignity faced by a girl or her family in the Indian Society in a case of rape, delay in instituting the FIR has been properly explained. Moreover it seems that one of the other reasons which led P.W-1 to institute the case was that it was thought that the P.W-2 had become pregnant and thereafter the matter came to light. Although the pregnancy test conducted upon P.W-2 yielded a negative result but the

circumstances enumerated above would lead to a conclusion that the delay in institution of the case has sufficiently been explained by the prosecution. So far as the mental condition of the victim P.W-2 is concerned, the same had been noted down by the learned trial court in course of her deposition but nothing has been put forward by the defence in order to disbelieve her testimony. The learned counsel for the appellant has sought to rely upon certain contradictions, which are emanating from the evidence of the witnesses and in such context, it would be apt to refer to the judgement of "Om Prakash v. State of Haryana" (supra), wherein it was held as follows:--

"Every small discrepancy or minor contradiction, which may erupt in the statements of a witness because of lapse of time, keeping in view the educational and other background of the witness, cannot be treated as fatal to the case of the prosecution. The Court must examine the statement in its entirety, correct perspective and in light of the attendant circumstance brought on record by the prosecution".

16. Therefore, adding up the circumstances referred to in the foregoing paragraphs, this Court is of the view that the prosecution has been able to establish its case beyond any reasonable doubt and in such circumstances, this Court is not inclined to interfere in the said judgment. Accordingly, there being no merit in this appeal, the same is hereby dismissed.

17. Since the appellant is on bail, his bail bonds are cancelled and the appellant is directed to surrender forthwith before the learned trial court to serve out the remaining period of his sentence.