

(2003) 08 PAT CK 0083
In the Patna High Court
Case No : Criminal Appeal No. 325 of 2002

Ganour Das

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Citation : (2003) 08 PAT CK 0083

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The facts of the case are too short for elaboration. However, before proceeding to examine credibility of the prosecution version it will be quite useful to take note of some broad features of the case which emerge from materials on the record. Salita Kumari, a minor girl, aged about 10 years had been to a local fair, from where she was picked up by Ganour Das, the Appellant who alluring her, on giving petty amount of Rs. 2/- and also balloons, took her to a nearby banana orchard and having thrashed her on the ground penetrated his genital organ in her private part and it was only on hearing screaming of Salita Kumari that the persons who collected there, took the Appellant in custody. They noticed that private part of Salita Kumari was bleeding profusely. The Appellant was brought to Police Station in custody with a written complaint of mother of Salita Kumari, pursuant to which first information report was drawn up and investigation commenced. In course of investigation, the Police Officer entrusted with onerous task of investigation, recorded statement of witnesses, visited place of occurrence, sent the victim, who was injured, to doctor for her clinical examination, seized her blood stained wearing apparels, on conclusion of investigation laid chargesheet before the court. In the eventual trial that followed, the State examined altogether 12 witnesses and they are prosecutrix, her mother, doctors, Police Officer, some witnesses who demonstrated familiarity with the incident and also those who turned volte face to the State. The defence of Appellant both before court below and this Court had been that of innocence and false implication for which no good reasons were however assigned. The trial court, however, on meticulous appreciation of evidences placed on the record,

principally relying on testimony of the victim and also the positive finding recorded by the doctors, recorded finding of guilt u/s 376 of the Indian Penal Code and sentenced the Appellant to undergo rigorous imprisonment for a period of ten years.

2. Manifold contentions were raised at bar on behalf of the Appellant to assail the finding of guilt recorded by court below and before I give my due consideration to the submissions made at bar, I consider it appropriate to first dilate and make analysis of evidences that has been adduced on behalf of the State.

3. Reiterating her earliest version which she rendered to set the Police in motion, Sheela Devi, mother of the victim, P.W. 2, states about the Appellant having allured her daughter, took her to a nearby orchard where he violated her person and shortly after he was apprehended, he was taken to the police station. Rajesh Kumar Mishra, P.W. 1, was in the fair. He heard screaming of a girl in banana orchard and when he rushed to the place, he noticed Appellant committing sexual assault, and though he made endeavour to make his escape, he was apprehended and after father of the victim was called, the Appellant was taken to the police station. Narrations in similar terms about commission of sexual assault on her person were expressed by the victim to him.

4. Adverting to the narrations made by Salita Kumari Roy, P.W. 10 whose age was assessed by trial court to be 10 years, while stating her woes stated that while she was in local fair, the Appellant alluring her, gave her Rs. 2/- and a balloon and took her to a nearby orchard where having thrashed her on the ground, penetrated his genital organ in private part, pursuant to which private part began bleeding profusely and on - her screaming, a good number of persons had collected there. The victim further states that the Appellant had put a piece of cloth in her mouth probably to prevent screaming. She was taken to a doctor for her clinical examination.

5. Dr. Vijay Shankar Prasad who happens to be prosecution witness No. 8 clinically examined the victim girl, found blood stains over medial aspect of both thighs. Dr. Shall Bala, the other doctor who assessed age of the victim to be 10 years, noticed blood stains discharge present on vulva, vagina, and medial side of both thighs, and there was rupture of hymen also which may be due to penetrating of hard blunt object in the private part of the victim. Though the doctor did not notice spermatozoa, in estimation of doctor, the same may vanish due to lapse of time. The doctor, however, did not render any positive finding about there being sign of rape. Another doctor who was examined by the State was Dr. Meena Mahaseth who happens to be Prosecution witness No. 12 and she brought on the record a treatment chart and bed head ticket which are exhibits, on the record, ostensibly to say that she was treated in the hospital and she was admitted to hospital on 27.9.1998.

6. I may take notice of other set of witnesses too, and they happen to be Bipin Kumar Mishra, P.W. 3, Sunil Kumar Mishra P.W. 4 and Vedanand Jha P.W. 5.

Though P.W. 3 and P.W. 4 turned volte face to the State on material particulars of the case about commission of sexual assault on the victim, they had not altogether denied incident, as narrations made by them evidently suggest sexual assault on the victim by the Appellant, though their knowledge was based on information received from others. Attention of these witnesses who had turned volte face to the State was drawn by the State counsel towards their early versions rendered before the police, and though they refuted suggestions made to them about suppressing truth, from evidence of the Investigating Officer, it seems that these witnesses were gained over, and they falsely deposed before the court, and to me it appears that when Investigating Officer met these witnesses after few days of the occurrence, the incident was still fresh and they had spoken truth before the Investigating Officer. However, when the matter came for trial after lapse of good deal of time, the witnesses had got enough time to resile from the previous version, and made their decision as such and played that part before the trial court accordingly. No much significance can be attached to narrations made by Uma Shankar Mishra, P.W.6, as though he says about seizure of blood stained wearing apparels of minor girl Salita Kumari, he had not knowledge as to from where the said material object was brought by the Police Officer, and as for P.W. 7, though he acknowledged his signature on the seizure memo, denied seizure of incriminating object by the Police Officer, in his presence.

7. Anil Kumar Srivastava who conducted investigation into incident, happens to be Prosecution witness No. 11, and he stated to have come in action on receipt of a written complaint of mother of the victim. Since it was cognizable offence, he took up investigation, and in course of collection of evidences he recorded statement of witnesses, visited place of occurrence, seized blood stained wearing apparels of the victim, secured injury report of the victim and on conclusion of investigation laid chargesheet before the court. This is all the evidence that has been adduced on behalf of the State.

8. One of the foremost submissions canvassed on behalf of the Appellant was that if narration made by the victim was to be given due consideration to judge her credibility, the impression which would be gathered, was that she was not making narration in court on her own volition, as what she was narrating was tutored version on behest of the family members and also the counsel who assisted her in identification of the Appellant in court, and on this score, reliance was placed on a decision of the Apex Court, reported in Prahlad Singh Vs. State of Madhya Pradesh, However, I find that the reliance placed on the decision cited at bar was quite misconceived, as in that case there was good evidence that before holding test identification parade, the Appellant was shown to the victim. Similar is not the case before me and the defence injury on his male organ, prosecution case was negatived on that score also. Though I wish that the Appellant should have been examined by the doctor, but since there is no evidence about examination of the Appellant by the doctor, hence decision cited at bar was not applicable to the instant case.

11. My attention has however been drawn to other mitigating circumstances and with all stress it is urged on behalf of the Appellant that the Appellant happens to be in custody since 26th September, 1998, from the date of incident, and hence he has served incarceration for more than four years, and considering long incarceration of the Appellant, his case may be considered with all humility by the court. However, regard being had to the nature of accusation attributed to the Appellant and the victim being none-else but a minor girl, I find that no word is enough to condemn the misdeed of the Appellant, and as for quantum of sentence too I am of the view that neither it was excessive nor harsh, and hence on this score too, submission made on behalf of the Appellant did not merit consideration.

12. In the result, there being no merit, the appeal is accordingly dismissed.