

(2009) 01 JH CK 0121
In the Jharkhand High Court

Gopal Lohra and Others

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2009) 01 JH CK 0121

Hon'ble Judges : Pradeep Kumar, J; Narendra Nath Tiwari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. These two appeals arose out of the common judgment of conviction and sentence dated 21.7.1997, passed by Sri D.P. Singh, 4th Additional Judicial Commissioner, Ranchi whereby the accused namely Gopal Lohra, Jitwahan @ Jitendra Oraon and Jagdish Sao (Appellants in Criminal Appeal No. 215/97(R)) were found guilty u/s 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and accused namely Surendra @ Jhirga Sahu and Sarju Oraon @ Surju Oraon @ Suraju Oraon (Appellants of Criminal Appeal No. 216 of 1997(R)), though, were also found guilty u/s 376 of the Indian Penal Code, have been sentenced to undergo rigorous imprisonment for 10 years.

2. The prosecution case briefly stated, is that on 11.5.1995, the informant, had gone to "Jatra Mela" at village Cambo, P.S. Mandar, District- Ranchi (Her full name and identity has been concealed). Two other girls namely Kripa and Sushmita of the same village were also with her. The accused, Jitwahan @ Jitendra Oraon and Jagdish Sao teased her in Mela. He was in the company of other 6/7 boys. The informant reacted and abused Jitwahan. In the evening, while she was returning to her village Kurkura along with the aforesaid two girls, accused, Jitwahan, Jagdish Sao and Gopal Lohra who were, following them, stopped them. Jitwahan & Jagdish Sao took the informant to certain distance towards "Don" under a Mango tree leaving the other two girls in the care of co-accused, Gopal Lohra and under the threat of life, Jitwahan forcibly committed

rape on the victim/informant. The accused, Jagdish Sao, Gopal Lohra, Surju, Temba, Sachindra and Surendra also came there one by one and committed rape on her, which continued up to 10 P.M. The said accused, thereafter, took her to nearby Doctor at village Cambo as she was bleeding and had pain in her belly. The doctor gave some medicine and she was left in the house of one familiar lady at village Cambo, who belonged to village Kurkura. There she met with the other two girls who had escaped. The informant/victim had explained that since the accused persons had threatened dire consequences for disclosing the incident, hence she did not report the matter to anybody or to her family members. After staying at village Cambo, she returned home the next morning. After two days her brother, Anup got some hint about the incident. He persuasively inquired from the informant. The informant then disclosed everything to her brother. Anup along with other villagers of Kurkura went to the village of Jitwahan and caught hold of him along with Jagdish & Surju. All of them were brought to village Kurkura and kept in confinement. The accused, Jitwahan anyhow managed to escape. When the other accused Jagdish and Surju were being taken to Mandar Police Station, accused Gopal and Sachindra were caught hold near Terhy Bridge. The villagers met the local M.L.A. at the house of one Ajay Ekka and narrated the incident, whereupon he called the police and on the statement of the victim/informant, the police registered a case against the said accused person u/s 376/34 of Indian Penal Code. The police thereafter took up investigation. On completion of investigation, the police submitted charge sheet against all the accused/appellants u/s 376/34 of Indian Penal Code.

3. The accused, namely, Sachindra Sahu was found to be minor and his case was split-up and sent to Juvenile Board. The case of the remaining accused persons was committed to the court of Sessions.

4. The prosecution altogether examined eight witnesses. P.W. 6, Bhora Oraon, P.W.7, Jhano Oraon were declared hostile. The informant was examined as P.W.1. She supported the prosecution version. P.W.2, Kripa Kujur, P.W.4, Sushmita Kujur who were accompanying the victim/informant corroborated the prosecution version. P.W.3, Dr. N.K. Bonik, the village doctor who had given some medicines for stomach pain etc to the informant proved and corroborated the prosecution version. P.W.5, Anup Kujur, brother of the victim/informant also supported the prosecution case. Even after extensive cross examination of the witnesses, nothing material could be elicited by the defence. P.W.8, Dr. Manju Kumari who held the medical examination of the victim/informant after five days of the occurrence, found the girl menstruating since last two days and could not found any injury on the private part of the victim or any other evidence of rape.

5. The defence denied the charge and claimed that they have been falsely implicated. Bikha Oraon who happened to be the tribal priest of village Cambo has been examined as Defence witness No. 1 to say that he had not heard about any such incident in the village during the relevant time, whether on the date of occurrence or till 3/4 days thereafter.

6. Learned trial court after thorough discussion of the facts and evidences on record found that it was the case of gang rape on the girl of tender age (doctor's assessment was 17-19 years) under the threat of life and held the accused-appellants guilty of the aforesaid charge and convicted them u/s 376/34 of the I.P.C.

7. In this appeal the appellants have assailed the said judgment of conviction and order of sentence on the following grounds:

i. There was inordinate delay of four days in lodging the F.I.R. which gives rise to serious doubts on the prosecution version.

ii. There was sufficient time for deliberation and false implication of the accused/appellants, iii. The doctor, P.W.8 has not supported the prosecution version. She had not found any positive evidence of rape.

iv. There are material contradictions in the oral testimony of the witnesses.

v. According to the prosecution except the prosecutrix nobody else was present. There is no corroboration of the testimony of the prosecutrix. It is unsafe to depend on the prosecutrix's version for convicting the appellants and severely sentencing them.

vi. The investigating officer has not been examined which has caused serious prejudiced to the defence.

vii. The finding of the learned trial court, thus is not sound and proper and the judgment of conviction and order of sentence is liable to be set aside.

8. Learned A.P.P. supported the impugned judgment and submitted that the prosecutrix, P.W.1 has given a vivid description of the incident and has fully proved the case. No contradiction could be elicited even after his lengthy cross examination. Evidences of other two witnesses P.W.2, P.W.4 as well as of the doctor fully corroborated the prosecution version. The delay in lodging the F.I.R. has been properly explained and the same has not caused any prejudice to defence. In presence of cogent evidence of the victim P.W.1, non examination of investigating officer has also not caused any prejudice to the appellants. The opinion of the doctor, P.W.8 that there was no evidence of rape was due to absence of any injury, but the absence of injury itself cannot be a ground to falsify the testimony of the victim. There are other cogent and weighty evidences on record. The impugned judgment of the learned trial court is sound and requires no intervention.

9. Learned Counsel for the appellants in course of his argument heavily relied on the decision in the case of Devinder Singh and Others Vs. State of Himachal Pradesh, to support the ground that in absence of any injury on the genital of the victim, the allegation of rape is not supported. He also relied on the decisions in the case of Surjan and Others Vs. State of M.P., in support of his submission that the solitary testimony of the prosecutrix has to be cautiously scrutinized. It can

be relied only if it inspire confidence. The said decision also favours the appellant on the point of un-explained delay in lodging the F.I.R.

10. Learned A.P.P. in order to support the impugned judgment of conviction of the appellants, referred and relied upon the following decisions:

- (i) Karnel Singh Vs. State of M.P.,
- (ii) State of Punjab Vs. Gurmit Singh and Others,
- (iii) Balwant Singh and Others Vs. State of Punjab, .

11. We have meticulously appraised and examined the evidences and material on record. We find that P.W.1, the victim girl has given clear account of every detail and has clearly proved as to how the accused/appellants forcibly ravished her and committed rape one after the other for several hours under duress. There is nothing in the cross examination so as to disbelieve or doubt her testimony. Her evidence has been further corroborated by the testimonies of P.W.2, Kripa Kujur, and P.W.4, Sushmita Kujur, who were accompanying the victim girl while she was on way to her village. P.W.3, a local medical practitioner has proved that on that day about 10 P.M. the victim was brought before her by 4/5 persons with the complain of abdominal pain.

12. The victim is the young lady gang raped by the accused persons in a lonely place under the threat of life. She has fully proved the prosecution case. Delay in lodging the F.I.R. has been properly explained by the P.W.1 and P.W.5. The testimony of the victim has been fully corroborated by the other two accompanying girls, P.W.2 and P.W.4. Medical examination held after 4/5 days of occurrence in course of menstruation of the victim girl was meaningless. The accused/appellants are identified by the prosecutrix in the dock. There is no reason for any false implication of the accused-appellant by the victim at the cost of defaming her modesty in the society. There is sufficient explanation for the delay in lodging the F.I.R and absence of injury in the evidence of P.W.1, P.W.5. and P.W.8. Since the victim was held captive by the number of (accused) persons, there was no scope for violent physical resistance and in process sustain injuries on her person. Whatever injuries could have been seen on her genital were not possible in course of her menstruation period and that too after 4-5 days of the incident. There is thus no reason to disbelieve that prosecution version in presence of such cogent evidence and to disturb the finding of the learned Trial Court.

13. However, so far as the order of sentence against the two accused Gopal Lohra, Jitwahan @ Jitendra Oraon and Jagdish Sao, (appellants of Criminal Appeal No. 215/1997(R) is concerned, there is anomaly and infirmity and the same warrants intervention. Learned Court below has sentenced the said appellant to undergo R.I. for life while other two accused Surendra @ Jhirga Sahu and Sarju Oraon @ Surju Oraon @ Suraju Oraon, appellants of Criminal Appeal No. 216 of 1997(R) have been sentenced to undergo R.I. for 10 years

without any visible point of difference in facts situation attracting different treatment. We, therefore, modify and reduce the sentence of the appellants namely Gopal Lohra, Jitwahan @ Jitendra Oraon and Jagdish Sao to R.I. for 10 years.

14. With the above modification in the sentence, we uphold the judgment of conviction of the learned Trial Court.

15. This appeal is accordingly, dismissed.