
(2011) 09 PAT CK 0103

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 453 of 2007

Hari Charan Manjhi @ Harichan Manjhi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 09-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2011) 09 PAT CK 0103

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—The solitary Appellant was put on trial after being charged of committing offence u/s 376 Indian Penal Code in Sessions Trial No. 815 of 2006 by the learned Presiding Officer of Fast Track Court-IV, Nalanda at Bihar Sharif. By judgment dated 14.03.2007 the Appellant was convicted of committing the offence and by the order of sentence passed on the same day, the Appellant was directed to suffer rigorous imprisonment for ten years. The Appellant has preferred the present appeal to bring into question the findings of guilt recorded by the learned trial Judge as also the sentence passed upon him.

2. Fardbeyan(Ext-2) of P.W.3 Kishori Manjhi was the basis of drawing up the FIR Ext-3 of Deepnagar P.S. Case No. 91 of 2006. It was stated by the informant that his four year old daughter was playing and during that course she disappeared. The informant along with his neighbour Mantu Manjhi set out on search of the child with some other neighbours, like Karoo Manjhi(not examined), Uday Manjhi(not examined) and Gajar Manjhi(not examined). While they were on a hunt for the child and had reached the field towards the tube-well of one Panditjee, the informant and Ors. picked up the sound of weeping of the child coming from the pump-house. The informant and Ors. ran towards it. The informant stated that he and Ors. saw the present Appellant committing rape upon the little child and seeing the informant and Ors. he ran away towards

north.

3. On reaching near the child the informant found her bleeding from per private part and she was weeping and wreathing. The informant stated that he and his companions attempted to arrest the present Appellant but he succeeded in making good his escape. The informant brought the child to his house and informed the police who reached there and recorded the fardbeyan(Ext-2) of the informant.

4. P.W.4, S.I. Lalan Prasad stated that he had reached the house of the informant and recorded Ext-2 and thereafter, took up the investigation of the case. During that course, he recorded further statement of the informant and inspected the place of occurrence, besides he issued the injury certificate for obtaining the injury report from the doctor.

5. P.W.1 Dr. Krishna who was posted as a Medical officer in Sadar Hospital, Bihar Sharif had examined the victim on 10.07.2006 at 10.15 P.M. and found the victim aged in between three to four years. On examination of the person of the victim P.W.1 found a perineal tear extending upto anus. Anus was also ruptured. Rectum was found ruptured and the vagina was found filled with blood clots and was found torn laterally and medially as a result of the injury the victim child was referred to Patna Medical College Hospital for needful. The opinion of P.W.1 was very clear that the child was brutally raped.

6. After concluding the investigation the Appellant was sent up for trial.

7. During the course of the trial in addition to P. Ws.1 and 4, the doctor and the investigating officer of the case, two witnesses, namely, P.W.2 Sadhu Manjhi and P.W.3 Kishore Manjhi the informant were examined.

8. Two D. Ws. were also examined by the defence. D.W.1 Vijay Kumar Das and D.W.2 Anandi Manjhi gave evidence on the fact that no occurrence had taken place as was alleged and the Appellant had falsely been implicated.

9. It was contended by Sri Ajay Mishra, the learned Amicus Curiae that no one had really seen the commission of the act upon the little child as both P. Ws.2 and 3 have stated in their cross-examination that when they reached they saw the Appellant running away from the place. It was contended that other witnesses who were accompanying the informant did not come to support the charges and there could be a chance of false implication inasmuch as the doctor also did not find any spermatozoa while examining the victim. It was contended that the defence witnesses have stated that money was borrowed by the informant from the present Appellant and the informant was not ready to pay the money back and for putting criminal pressure, the informant had filed the false case. It was, lastly, contended that the I.O. of the case did not seize the wearing apparel of the victim.

10. As against the above, the learned A.P.P. has vehemently resisted the above submissions by contending that it is not a case in which there could be

availability of eye witnesses inasmuch as the place where the victim was ravished was very secluded one, which was surrounded by fields and was a pump-house of a boring meant to irrigate crops. The description of the place of occurrence as given by P.W.4 in paragraph-1 of his evidence may indicate as if it was a highly secluded place where it could not be easy for some one to go normally. The Appellant has chosen such a secluded place for brutalizing the little child. The evidence of two witnesses, it was contended, coupled with the evidence of the doctor proved the charge to the hilt.

11. The witnesses, both P. Ws.2 and 3, have stated that after finding that the child had disappeared while she was playing, a search was made of her, but they were not getting the child. They had searched the child at all possible places and after getting frustrated on account of not having traced her out the two witnesses P. Ws.2 and 3 traded into the fields when they found the cries of the child emanating from the pump house of the boring. They went there and found the Appellant committing rape upon the child. It is true that in cross-examination both the witnesses have stated that when they went near the pump-house they found the Appellant leaving the house and running away from there. As such, it was rightly submitted that it may be a doubtful proposition that the two witnesses P. Ws.2 and 3 could have really seen the real part of the occurrence. However, the very evidence of the two witnesses that when they picked up the cries of the child and rushed towards the pump-house, they found the Appellant ejecting from the pump-house and to run away, specially when an attempt was made by the two witnesses to catch him, indicates a circumstance very strongly in favour of the prosecution. It was a secluded place and no other person appears found around that place, even working anywhere in any of the fields. The two witnesses appear not subjected to cross-examination on that line and it appears that the defence was also concluding that the circumstance was strongly in favour of the proof of charges.

12. Moreover, there does not appear any fact brought on record or introduced through the cross-examination of P. Ws.2 and 3 to point out to the court as to for what special reasons the informant will be dropping the real culprit of such brutal an offence so as to implicating really an innocent person. The story is of commission of rape upon a child and that story does not appear as a figment of imagination inasmuch as the injuries recorded by P.W.1 on the part of the body of the child could convince any conscientious mind that those acts could not have been done by any other means than by the act which was opined by P.W.1 to have been committed upon the little child. These are the reasons which convince me that P. Ws.2 and 3 were telling the truth and they had no compelling reasons to implicate the Appellant falsely.

13. Contention was that the investigating officer had admitted that he had not seized the clothes of the little child which might be bearing the evidence of rape by way of trace of blood or trace of human semen. It was also contended that P.W.1 Dr. Krishna was also not finding any trace of semen in the form of motile or

dead spermatozoa. What I want to note is that the investigating officer might have been incompetent and as such he had handled the investigation in the most casual a manner. May be, that he was sure that the story which was there to be investigated into was so good and perfect on account of the victim being a four-year-old child that he was not investigating the case deeply and properly. Besides, P.W.4 might be completely an untrained investigating officer giving little importance to seizing the wearing apparel of a victim of an offence specially when the injuries indicate that the victim must have bled heavily and profusely. The inept handling of the investigation or even dishonest investigation of a case are known not to affect the merit of a case or, as such, a judgment of conviction. Cases could never be thrown out on account of the incompetence of the police officer who could have investigated the case or due to his dishonest act if it could be appearing from the records. The court has to consider the evidence of witnesses and read the probabilities arising there from and seek the sustenance to charge which could have been slapped upon the accused. I have already noted that P. Ws.2 and 3 appear to me trustworthy witnesses. Above all, the defence does not appear suggesting that the child had not been raped. A question was put to P.W.1, the doctor, in her cross-examination that if the child had fallen on a sharp and pointed substance, she could have received those injuries and the doctor replied in the affirmative. I regret my inability in accepting the evidence of P.W.1 to that extent as the same would never be acceptable to any reasonable person inasmuch the fall of a child on a sharp pointed weapon could be causing an injury which could be going duper up her body through her private parts and could be rupturing the other surrounding structures and organs. This is the reason that the answer given by P.W.1 to that particular question could never be acceptable to me specially when she had already expressed her opinion that the nature and extent of the injuries surely pointed out towards one conclusion as was recorded by her that the child had been brutally raped.

14. Thus, on consideration of the evidence of the prosecution, I find that the prosecution has succeeded in improving the charges as such defence evidence of D. Ws appear to be simply an attempt by the evidence to digress the attention of the court as regards the proof of the charges by virtue of the evidence which was adduced by the prosecution.

15. It was submitted by Sri Mishra at this stage that non-examination of the victim was material and it was materially affecting the judgment of conviction. There is no dispute in the fact that the child was aged about four years. One could recall the experience of ordinary human evolution to infer and know that she could not even have developed the faculty of retaining the fact of being ravished by a grown up man of 20 years and the other faculty of reproducing those facts before a court of law. Moreover, a witness is a witness and that category includes a victim also. If the witness is incapacitated by any natural phenomenon, that incapacity of a witness could never have any bearing on the result of the trial, specially, when the court has sufficient materials coming through the mouths of competent witnesses which are satisfying its inquisition or

enquiry about the truthfulness of the occurrence, then even if a witness could not have been examined in the special facts of a case that is not going to have any bearing on result of the trial.

16. Having regard to the discussion of the evidence and the nature thereof, I find that the trial court was fully justified in passing an order of conviction upon the Appellant. However, what has pained this Court the most is that the trial Judge was simply insensitive to the most important aspect of the trial and he was, probably, proceeding mechanically to pass the order of sentence. Sentencing jurisdiction is as vital as it could be the jurisdiction of recording a finding either of acquittal or of guilt. In fact the sentencing jurisdiction is more serious for a Judge because the Judge is called upon to pass a sentence upon a convict after considering the circumstances attending upon the commission of the offence and simultaneously after considering the extenuating circumstances which might be the circumstances in the life of a convict. The importance of passing an appropriate sentence is enshrined in it that a Judge has an obligation towards the society to inflict appropriate sentence commensurate with the nature of the act which may appear committed by a convict considering that the society at large, has a heavy stake in such offences. When it comes to a case of present nature then what is required of a Judge who is likely to inflict a sentence upon a convict is that he should recall his sensitivity and the situations surrounding the commission of an offence and then weighing the situations, the position of the victim and the accused simultaneously besides considering the impact of the offence on society and its safety should consider passing an appropriate sentence. He has to be very proportionate in his order of sentencing, else there could be a chance that justice may suffer.

17. If the learned Judge could have the sensitivity and could have counted the circumstances of the case vis-?-vis the status of the accused and the circumstances in his life I am sure, he must not have been as lenient as he was when he was directing the Appellant to undergo imprisonment for ten years. The Appellant was aged around 20 years and the victim was a child of four years. There is no evidence on record that the Appellant was married or not but even if the Appellant could have been married he could be the father of a child of that age. He was one of the co-villagers of the informant and as such he was under a social obligation and responsibility as well. Not only that, he could not only have taken care of the child to shield her from all adverse circumstances by behaving in a fatherly manners towards the child. Whether it is either a male or a female child, it is always the asset of the society and, as such, remains attached, not bodily but mentally to every citizen of the society and, as such, the seriousness of the offence that the Appellant was digressing from his social responsibilities and good behaviour and was indulging in the most inappropriate and perverted act which was unbecoming of a fatherly figure towards a four-year-old-child.

18. The learned trial Judge was simply untrained in sentencing jurisprudence and as such, he was proceeding to inflict a very lenient sentence upon a convict who

had indulged in the most heinous of offences on planet earth. But, the difficulty with me is that against the leniency of sentence the state did not prefer an appeal nor did this Court, while hearing the appeal, issued notice for enhancement of sentence. Above all, the learned Counsel who had filed the appeal did not choose to assist the court by showing up in the court room. If I revise the sentence after hearing the learned Amicus Curiae who has been moved by a sense of duty of standing up for the case of justice then, in my opinion, it may not be proper. I find that there could be no other option for me than to confirm the sentence which was passed upon the Appellant by the learned trial Judge.

19. After having said what I have, I find no merit in the appeal and I dismiss it.

20. Sri Ajay Mishra, learned Amicus Curiae has assisted the Court and he deserves one fee of argument, which is directed to be paid by the Patna High Court Legal Services Committee for which purpose, let a copy of the first and the last pages of the judgment be made over to him.