

(2024) 07 JH CK 0103

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 874 Of 2015

Hemendra Rajak

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 30-07-2024

Acts Referred:

Indian Penal Code, 1860 — Section 376

Citation : (2024) 07 JH CK 0103

Hon'ble Judges : Ananda Sen, J;Gautam Kumar Choudhary, J

Bench : Division Bench

Advocate : Rajesh Kumar Mahtha, Priya Shrestha

Final Decision : Allowed

Judgement

Ananda Sen, J

Heard the parties.

1. The appellant has preferred this appeal against the Judgment of Conviction dated 27.08.2015 and Order of Sentence dated 31.08.2015 passed by the Additional Sessions Judge-III, Seraikella-Kharsawan in Sessions Trial No.225 of 2013, whereby the appellant has been held guilty and convicted for the offence punishable under Sections 376 of Indian Penal Code and he has been sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.10,000/- for the offence under Section 376 of Indian Penal Code and has further been directed to pay compensation of Rs.50,000/- to the victim and in default of payment of fine and compensation amount to undergo further rigorous imprisonment for six months.

2. Learned counsel for the appellant submits that false implication of the appellant is writ large in the testimony of the Victim (P.W.4) as well as her mother (P.W.1). Testimony of the Victim that she had suffered extensive injuries has been falsified in the medical evidence. Place of occurrence is a ditch, which the investigating officer has stated to be filled with water. Mother has deposed

that the accused had been implicated in this case because he was of mischievous nature.

It is argued that as per the statement of victim, she sustained several injuries which were bruises and boils in her body including in her private part because of the act, yet the doctor did not find any injury nor any boils on her body which suggests the falsity of the case.

3. Learned counsel for the State has submitted that in these types of cases the statement of the victim herself is enough to convict the appellant. In this case, the victim has stated that appellant had committed rape on her not once but on repeated occasion for four days. She has also stated that there were bruises and boils on her body and in her private part because of this incident. She has also stated that the mother has also supported the prosecution case.

4. After hearing the parties, we have gone through the judgment. We have also read the entire evidence led by the prosecution. The most important evidence is of P.W. 4 (victim) who stated that she was taken by this appellant near a ditch in the village and was raped there. She stated that on four occasions and four days this occurrence had taken place. She came and narrated the incident to her mother and father also. She stated that because of this torture and assault, there were bruises on her body, there were boils in her private part also.

5. It is baffling that the incidence continued in the village for 3-4 days and no one intervened and she could not seek help from any of her villagers or family members. As per the medical report there was no external injury, but the doctor opined that intercourse had taken place. The doctor in paragraph 3 of his cross-examination has categorically stated that on examination of private part of the victim, no injury was found on the private part and did not find any sign of assault or any mark of violence and nothing was found. Further, no spermatozoa were found either dead or alive. Doctor did not find any boils also.

6. In sexual assault cases judgment of conviction can be returned on the solitary account of the victim, provided it is cogent, reliable and trust worthy. In the present case testimony of the prosecutrix does not inspire confidence to place absolute reliance without any corroboration. Part of her testimony has been falsified by the medical evidence, that she had suffered injuries all over her body in the commission of offence of rape. Further, the victim as a witness has stated that she is stating before the Court, what she was told by her parents to say.

7. P.W. 1 is the mother of the victim though initially she has supported the prosecution story of commission of rape upon the victim, yet in the last paragraph of her evidence, she has stated that this appellant used to commit mischief in the village that is why he has been implicated in this case. This statement of the mother of the victim creates a doubt in the mind of this Court about false implication of the appellant.

8. Further, so far as the place of occurrence is concerned, it is the consistent case

of the prosecution that the occurrence had taken place in a ditch near the village. The Investigating Officer (P.W.-9) in paragraph-1 has given description of the place of occurrence, which is a ditch. As per the Investigating Officer the ditch is 30 feet in width and 12 feet deep where there is water 3 to 4 feet deep. He also stated that there the villagers used to take bath and clean themselves there. Though the mother of the victim has stated that the victim was mentally not stable but the Trial Court did not find any such infirmity while recording the evidence of the victim.

9. Aforesaid evidence and the materials on record raises serious doubt on the veracity of the testimony of P.W. 1 and P.W. 4 and the appellant thus is entitled to benefit of doubt.

Judgment of conviction and sentence passed by the learned Trial Court is, accordingly, set aside.

The appellant, who is in custody, is directed to be released forthwith, if not wanted in any other case.

Appeal is allowed.

Let the Trial Court Records be sent back to the Court concerned forthwith along with a copy of this judgment.