
(2007) 02 JH CK 0042
In the Jharkhand High Court

Hiralal Mirdha

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107
Penal Code, 1860 (IPC) — Section 376, 452

Citation : (2007) 2 JLJR 248 : (2007) 2 JCR 291 : AIR 2007 Jhar 515 : (2007) CriLJ 3077

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—The appellant has preferred this appeal against the order and judgment dated 21st December 1996 passed by 5th Additional Sessions Judge, Dumka in Sessions Case No. 16 of 1995 whereby and whereunder the appellant stand convicted under Sections 376 and 452 of the Indian Penal Code sentenced to imprisonment for seven years u/s 376 of the Indian Penal Code and one year u/s 452 of the Indian Penal Code. Both the sentences shall run concurrently.

2. Brief facts leading to this appeal are that in the night of 18.8.1993 the appellant forcibly committed rape upon the complainant Sill Mirdha. According to the prosecution case the complainant was sleeping on the veranda of her house while her husband and mother-in-law were sleeping inside the room, then the appellant forcibly gagged her and committed rape against her will. The complainant raised alarm after the rape on which PWs 1,2 3 and 6 rushed to her house to see the appellant fleeing away. However they could not catch hold of the appellant. According to the prosecution case when PWs 4 and 6 went to police station their complaint was not entertained, as such a complaint case was filed by PW 4 in the Court of CJM, Dumka on 25.8.1993. The learned CJM, Dumka dismissed the complaint case. However after revisional order cognizance was taken in this case u/s 376 of the Indian Penal Code. The appellant was

accordingly summoned and charged to face trial. The appellant claimed false prosecution due to previous enmity. In this context Ext-A, a proceeding u/s 107 of the Cr PC between the son of the appellant and the husband of the complainant has been brought on record. However the learned Court below believing the prosecutrix and witnesses found and held him guilty u/s 376 of the Indian Penal Code and sentenced him to serve R.I. for seven years.

3. The present appeal has been preferred on the ground that the learned trial Court has not considered the improbability of the prosecution version. It is further asserted that the delay in lodging the complaint case of seven days along with the admitted enmity between the husband of the complainant and the son of the appellant should have been accepted by the trial Court. It is also submitted by the learned Counsel for the appellant Mr. Sunil Kumar Mahto that witnesses PW 1,2,3 are apparently inimical and improbable because none of the neighbouring house inmates came to support the prosecution case. Therefore the appellant may be acquitted of the charges.

4. I have considered the submissions made on behalf of the appellant along with the materials on record. It is admitted fact on record that the complaint has been lodged after a week which was dismissed by order dated 8.10.1993. However the dismissal of the complaint petition was set aside in Cr Revision No. 190 of 1993 on 28.2.1994 with direction to hold further enquiry and proceed in accordance with law. Thereafter the cognizance was taken on 26.5.1994 in this case. The charge were framed on 5.4.1995. It has also come on record that the prosecutrix has alleged that she was raped for about half an hour by the appellant and she could not raise alarm because of her gagging during this period. However when the appellant fled away she raised alarm and PWs 1, 2, 3 as well as PW 6 saw the appellant fleeing away. PW 6 the husband of the complainant admittedly sleeping with 5-6 feet from the place of occurrence. According to him he was sleeping in side the room with his ill mother while the prosecutrix was sleeping out side on the veranda where the occurrence took place. The husband has admitted that when he came out of the room he saw the appellant fleeing PWs 1,2 and 3 are admittedly inmates of the house situated at a distance. According to PW 1 he was sitting on his veranda at about 11 p.m. when alarm was raised by PW 4. He reaches there and was informed by her what has happened. Then he saw the appellant fleeing away in the light of his torch. PW 2 Shabha Singh was coming from some place and reached near the house of the complainant to witness that the appellant was fleeing away from the house of the complainant with a dagger in his hand. He was also Informed by PW 4 regarding the Incident. However this witness admitted during cross examination that he slept after that without informing any one regarding the incident. This witness exaggerated the size of the dagger in the hand of the appellant PW 3 is son of PW 1 who also reaches at the place of occurrence on hulla and saw the appellant fleeing with danger in his hand. This witness has further admitted that his house was situated at about 1/2 k.m. from the place of occurrence. Therefore the possibility of PW 1 and 3 coming on hulla to witness the fleeing appellant becomes remote. All this

witnesses have admitted that none of the neighbouring house inmates came out PW 4 the prosecutrix supported her complaint petition asserted in her examination-in-chief vide para 4 that when appellant fled away she raised alarm. She further admitted during cross examination that as she was gagged, she could not raise alarm and she has got four issues aged between 25 years and 3 years. According to her version the appellant entered in the veranda after breaking open the tati and she raised alarm immediately when the appellant came near her but none of the witnesses came to her rescue for half an hour. She has not been examined medically neither she narrated the incident to Mukhia and villagers etc. She admitted that between her husband and the son of the appellant a proceeding u/s 107 of the Cr PC was pending.

5. The defence has produced a photocopy of the non-FIR Case No. 677 of 1993 and got it marked as Ext-A which is apparently for an occurrence dated A 18.8.1993 between husband of the complainant and the son of the appellant a proceeding u/s 107 Cr PC was initiated.

6. The prosecution case as available on the records is that on 18.8.1993 when PW 4 was sleeping on her veranda, the appellant forced entry in the veranda and committed rape. She has further asserted that as soon as the appellant neared her she raised alarm and thereafter for half an hour she was raped but* neither her husband nor any of the witnesses examined could arrive at the place of occurrence. This fact itself causes reasonable doubt on the prosecution story. If the witnesses could arrive after hulla immediately, and particularly her husband sleeping within 5-6 feets, the rape could not have been committed. The factum of rape further appears not proved in absence of neighbouring house inmates as well as reluctance of the prosecutrix to inform the villagers next day even the Mukhiya. It has come on record that PWs 1 and 3 are father and son while PW 2 is a chance witness who arrived after sometime when hulla was raised. Therefore the possibility of their identifying the appellant fleeing away becomes doubtful. Further more the lodging of the complaint petition after seven days as well as initiation of the criminal proceeding u/s 107 Cr PC between the son of the appellant and the husband of the complainant for an occurrence dated 18.8.1993 causes grave doubts.

7. Having considered the above mentioned facts and circumstances, I find that the prosecution in the present facts has not been able to prove beyond doubts that the appellant has committed the offences under Sections 376 and 452 of the Indian Penal Code in the manner alleged. Accordingly, I find that the present appeal has got merit in it and deserves to be allowed.

8. In the result this appeal is allowed and the conviction of the appellant is set aside. He is further released from the liabilities of his bail bond.