

(2001) 05 JH CK 0007

In the Jharkhand High Court

Case No : Criminal Appeal No. 90 of 1995 (R)

Jhirga Oraon

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 10-05-2001

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2001) CrLJ 3812 : (2001) AIR Jhar HCR 317 : 2001 BLJR 3 1794 : (2002) 1 CRIMES 660 : 2001 EastCriC 2 408

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : T.K. Mishra and M. Hatim, for the Appellant; S.N. Sinha, Assistant Public Prosecutor, for the Respondent

Judgement

Deoki Nandan Prasad, J.—All the three appellants preferred this appeal against the judgment of conviction and sentence dated 28/29-9-1995 passed by 3rd Additional Judicial Commissioner, Ranchi in S.T. No. 257/92 under which the learned Sessions Judge convicted the appellants u/s 376(b) of the Indian Penal Code and sentenced each of them to undergo R.I. for 10 years.

2. The case of the prosecution in brief as stated that the Informant Birsi Kumari (P.W. 4) claimed to have gone to her aunt's house, namely, Birsi Orain to celebrate Sarhul festival which is situated in her own village and slept in the night in the house of her aunt with Nagia Oraon and Chaiya Oraon. In the midnight at about 12 a.m. the appellants entered into house and all of them lifted the informant and took her away, when she also raised alarm at which Nagia and Chaiya Orain also woke up and they objected, but even the appellants threatened to keep quiet and thereafter they took her to Patra jungle one kilometer from village and thereafter all of them committed rape one after another. It is further alleged that the appellants after committing rape brought her in the village and thereafter they fled away whereas the informant went to the house of her aunt and slept there.

Accordingly, the F.I.R. was lodged. The police investigated into the case and submitted charge-sheet. The witnesses were examined from both sides.

3. Having heard both parties, the learned trial Court convicted and sentenced of the appellants in the manner, as stated above. The appellants preferred this appeal on the ground that the trial Court has committed error in convicting the appellants as there was no cogent and independent witnesses to support the prosecution case as well as the doctor was not examined. It is also claimed that Nagia and Chhaiya, who were the competent witnesses have not supported the prosecution case and they were examined as the witnesses of defence and as such the whole prosecution case becomes suspicious as the genesis of the occurrence itself falsified.

4. The learned counsel appearing on behalf of the appellants submitted that there is no independent witness to corroborate the story of rape in the manner as alleged as well as the independent witnesses, Nagia and Chhaiya have denied that the informant had ever slept in the said night with them. It is also submitted that the doctor has not been examined which makes the whole prosecution story doubtful and as such the judgment of conviction and sentence is fit to be set aside.

5. On the other hand, the learned A.P.P. contended before me fairly that the independent witnesses, Nagia and Chhaiya have not supported the prosecution story that the Informant actually slept in their house on the day of occurrence.

6. P.W. 1 is the mother, who stated that Birs (Informant) had gone to her aunt's house on the day of occurrence. She further stated in her cross-examination that her daughter also sustained injury on her person. But, admittedly, the doctor who claimed to have examined the victim has not been examined by the prosecution.

7. P.W. 2 is the father. According to him, his daughter had gone to her aunt's house on the date of occurrence. He further stated that his daughter gave her statement before the police. P.W. 3 is the brother of the Informant. He is also hearsay witness and the FIR was lodged in his presence.

8. P.W. 4 is the Informant. She stated that all the appellants entered into the house and thereafter they took her away on the point of pistol and Chaku. But, there is no such whisper in the FIR and she does not speak about Chaku or pistol at the early stage of her statement. She further stated that Nagia and Chhaiya were also sleeping there and they woke up at the relevant time but they were threatened by the appellants.

It may be mentioned here that those girls Nagia and Chhaiya have already been examined from the side of the defence and they have denied that the Informant had ever slept with them on the day of occurrence. The Informant also claimed that her Fufu also woke up at the relevant time, but the prosecution has not examined her to corroborate such story. She (P.W. 4) further stated that after

coming back with the appellants she slept silently in the said night and she did not narrate anything to anybody. She woke up at about 6 a.m. morning but she has not stated anything to her aunt, Nagia or Chhaiya. She further stated that she was examined by the lady doctor. She had also sustained scratches on her person.

9. P.W. 5 is the investigating Officer. According to him, the Informant, Birsi did not show any injury to him. He further deposed that Chaiya and Nagia have never been made witnesses in the charge-sheet as they had not supported the prosecution case. He further stated that he had not found bangle, blood stain or any sign of violence at the place of occurrence.

10. D.W. 1 Chhaiya deposed that Birsi (Informant) has not slept with her on the date of occurrence. D.W. 2 Nagia also stated that Birsi (Informant) has never slept in her house on the day of occurrence.

11. It is apparent that there is no independent witness coming forward to corroborate the story as propounded by the Informant. The independent witnesses, D.W. 1 and D.W. 2 flatly denied about the fact that the Informant had ever slept with them on the day of occurrence. The Doctor has also not been examined by the prosecution. There appears much contradiction in the testimony of P.W. 4 as well, as there is no allegation about Chaku and pistol in the F.I.R., which has been developed in her evidence. Moreover, the Investigating Officer, P.W. 5 admitted that D.Ws. 1 and 2 and Fufu were not made witnesses in the charge-sheet because they had not supported the prosecution case. Non-production of the injury report also makes the whole prosecution case suspicious.

12. Thus, it is evident that the whole prosecution case suffers from infirmity and suspicion and for which the appellants deserve for the benefit of doubt. In the result, I find that the prosecution has failed to establish charge against the appellants beyond all reasonable doubts. Hence, I do not find the appellants guilty for the offence charged and accordingly they are acquitted. The Judgment of conviction and sentence passed by the trial Court is, hereby, set aside.

The appellants are on bail, therefore, they are also discharged from the liability of their bail bonds.