
(2009) 01 JH CK 0102
In the Jharkhand High Court

Kartik Mahto and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 15-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156
Penal Code, 1860 (IPC) — Section 376

Citation : (2009) 01 JH CK 0102

Hon'ble Judges : R.K. Merathia, J;Ajit Kumar Sinha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ajit Kumar Sinha, J.—This appeal has been preferred against the judgment dated 4.7.1992 passed by Sri R.D. Roy. Sessions Judge, Giridih in Sessions Trial Case No. 309 of 1988 whereby and whereunder the appellants have been convicted u/s 376(g) of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution, in brief, is set out as under:

The prosecutrix Kunti Devi is minor girl who was married with one Shiv Shankar Mahto, however, due to disappearance of Shiv Shankar Mahto she had no conjugal relation and was residing with her parents. In the month of January, 1987 accused-appellants Kartik Mahto along with Sahdeo Mahto approached her father Bholi Mahto and projected Sahdeo Mahto as a widower and suggested to marry his daughter with him. The father of the prosecutrix agreed to the proposal and on 21.1.1987 Chumawan ceremony was fixed. Accordingly both the accused-appellants appeared for the Chumawan ceremony and also told the father of the prosecutrix not to call the villagers for the ceremony and rather they will marry the girl at Shiva Mandir and will take her to his house. Then Bholi Mahto purchased new Dhoti, shirt, utensils etc. and proceeded with the victim girl along with the articles in the company of the accused-appellants herein. After reaching the village one of the appellant Kartik Mahto asked Bholi Mahto to go

back and said that he will carry the girl to Shiva Mandir and will get her married at the temple. Bholi Mahto being innocent rustic went back leaving his daughter and articles. The accused-appellants traveled from Kurumudiha to Kobar. Thereafter, the first appellant Kartik Mahto asked the second appellant Sahdeo Mahto go to his village and forced the prosecutrix to ride in a bus and disclosed that Sahdeo Mahto was his Sala and will come after 2-3 days at Bagahara and will take her back.

According to the prosecution the prosecutrix was taken away under coercion and threat and was detained there till Falgun Shivratri. The first appellant committed rape for one and half months on her regularly and did not allow her to escape and also kept her in confinement and thereafter he took her to his village Ganiadih, to the house of the second accused-appellant Sahdeo Mahto where both Kartik and Sahdeo forcibly committed rape on her and on the 9th day accused-appellant No. 1 Kartik Mahto again brought her back to his house at Bagahara and forcibly detained her and continued to ravish her although both the accused appellants were married and their wives were alive.

3. A few days after Holi the father of the prosecutrix Bholi Mahto visited his married sister's house to a adjacent village where he learnt that Kartik Mahto, appellant No. 1 herein did not perform Chumawan ceremony of her daughter with accused appellant No. 2 Sahdeo Mahto, as promised and has deceitfully carried the prosecutrix to his house and has forcibly confined her. Accordingly, Bholi Mahto rushed to the house of appellant No. 1 Kartik Mahto and found his daughter under confinement and in some difficulty. He managed to release her and brought her to his house where she narrated the horrible picture of confinement and rape committed on her against her wishes and the prosecutrix thereafter filed a complaint before the C.J.M., Giridih who transmitted the same to Bengabad P.S. u/s 156(3), CrPC and accordingly Bengabad P.S. drew up a formal FIR on the basis of complaint and registered the case.

4. During the course of investigation the police examined the witnesses, visited the place of occurrence and collected the materials and finally charge-sheeted the accused appellants u/s 376(g), IPC. Accordingly, the CJM, Giridih was pleaded to take cognizance of the offence and vide its order dated 16.7.1988 and subsequently vide its order dated 12.9.1988 committed the case to the Court of Sessions directing the accused-appellants to stand trial. The charge was framed u/s 376(g), IPC and read over and explained to the accused- appellants to which they pleaded not guilty and claimed to be tried.

5. In order to substantiate its case, the prosecution has examined as many as 9 witnesses. PW 5 Kunti Devi is the prosecutrix herself, while PW 6 Bholi Mahto is her father, PW 4 Budhani Devi is her mother, PW 3 is Lalo Mahto, PW 2 is Ganesh Pd. Mahto and PW 1 Mani Mahto are the witnesses concerning the occurrence.

6. PW 7 Basudeo Hansdah is a tendered witness, who has not been cross-examined at length.

7. PW 8 Somar Das is a formal witness, who has proved the formal FIR (Ext. 1), while PW 9 Mohan Das is another formal witness, who has proved the complaint (Ext. 2). In this case the I.O. could not be examined on account of his non availability.

8. The evidence of the prosecutrix Kunti Devi (PW 5) indicate that some five years ago since the time of her deposition, accused Kartik Mahto and Sahdeo Mahto approached her father Bholi Mahto and Sahdeo Mahto disclosed his intention to marry her and accordingly, she accompanied her father, Kartik Mahto and Sahdeo Mahto and reached Kurumdiha. The two accused managed to persuade her father to retreat from there after taking Thari, Lota, Glass, Dhoti and shirt assuring that Sahdeo Mahto will marry the girl. The two accused carried the prosecutrix to village-Kowad, where Kartik Mahto handed over the utensils and clothes to Sahdeo Mahto and asked him to go back and then Kartik Mahto boarded Giridih bound bus with the intention to carry her to Baghara, to which, she objected, but he forcibly dragged her and took to Baghara, where she was confined in his house for nearly one and half months where Kartik Mahto continued to commit rape over her, for the entire period. Subsequently, Sahdeo Mahto joined hands at Baghara and the two accused transported her to" Ganiadih. Her evidence went to reflect that the prosecutrix was confined at the house of accused Sahdeo Mahto at Ganiadih. where both the accused continued to rape her one after another regularly and from Ganiadih, the two accused again transported, her to Baghara and confined her in the house of Kartik Mahto, where both again continued to commit rape over her. Her evidence reveals that she intimated her Fua (father's sister) married in the adjacent village and then her father after getting information, rushed to Baghara, to whom she divulged the horrible story and atrocities committed over her and then her father managed to extricate her from the clutches of the accused and brought her back to his house, where she narrated the entire incident to her mother and other persons, who happened to assemble there. Her evidence goes to reflect that on account of fear of her prestige at stake, she swallowed the bitter incident of commission of sexual assault over her. In the meantime, Kartik Mahto again appeared at her house and attempted to take her back in his clutches, but his attempt was nullified and then she rushed to the Court and lodged a case before the CJM, Giridih. The prosecutrix has identified the two accused standing in the dock as well. The prosecutrix evidence further indicates that after lapse of some time the first accused-appellant Kartik Mahto again appeared at her house and wanted to take her back which is also corroborated by PW 6, the father of the prosecutrix, but he refused and that the appellant No. 1. hurled abuses and threatened and after a lapse of over one year a complaint petition was filed before the Chief Judicial Magistrate, Giridih who was pleased to transmit the same to Bengabad Police Station where the case was registered accordingly u/s 376(g), IPC.

9. According to the counsel for the appellants the occurrence has been shown in the FIR between 21.1.1987 to 20.3.1987. There was inordinate delay in lodging

the prosecution case and the same was filed almost in May, 1988, i.e. after one year and two months. The learned trial Court while dealing with the points of inordinate delay in lodging the complaint/FIR has erred in giving its own reason that the same may be due to financial problem or social problem which is unsustainable. It has also been contended that the I.O. was not even examined which was a vital lacuna and has prejudiced the defence of the accused-appellants. It has also been contended that nearly for three months the prosecutrix could not even get a chance to inform her father or any of the villagers even though she was taken from place to place.

10. It is further contended that when the father of the prosecutrix came to the house of the 1st appellant he was handed over the daughter and there is no dispute with regard to the factum of the recovery of the prosecutrix from the house of the appellant.

It was held that in such circumstances of false promises and or love committed sexual intercourse on the ground that they will get married the promise loses all significance and it is hard to believe that the rape could have been committed for good two and half months and even thereafter the prosecutrix awaited for one year to lodge the complaint.

11. I have considered the case of the prosecution as well as the defence and the evidences. The present case appears to be a case of inducement based on false promise and assurance to solemnize the marriage of the prosecutrix with the second appellant herein to which both the prosecutrix as well as her father agreed. It appears that based on the false promise of marriage the appellant had sex with the prosecutrix for nearly two and half months by shifting her from one place to another. It is further evident from the case of the prosecution as well as evidence of the witnesses that father of the prosecutrix came to the house of the appellant No. 1 and the prosecutrix was handed over and on bringing her back the appellants again appeared before the prosecutrix as well as her father and demanded that the prosecutrix be sent back along with them to which he refused. As per the evidence this took place within two months but strangely the complaint was filed after an inordinate delay of over one year. There can be no dispute that the prosecutrix and her father willingly went along with the appellants without any threat, coercion or inducement but they eventually misused the trust reposed in them which was to perform the Chumawan ceremony of the marriage.

12. There are material contradictions in the statement of PW 4 Budhani Devi, the mother of the prosecutrix, who in her cross-examination stated that one Kedar gave the proposal for marriage of prosecutrix with appellant No. 2. She has also stated that the appellant No. 2 Sahdev by playing fraud had taken her daughter and kept her daughter for one month and thereafter her husband brought her daughter back to the house. This vital contradiction, in the statement of PW 4 Budhani Devi has who according to PW 4 had come with the proposal of marriage, was examined by the prosecution nor the Fua (aunt) of the prosecutrix

from whom the prosecutrix got the information of wrongful confinement was examined. I also find force in the contention raised by the counsel for the defence that there was inordinate delay in lodging the prosecution case which is more than one year and the reasoning of the Trial Court is -self-imposed which cannot be sustained in the eyes of law. It is also clear that the case of the prosecution about gang rape u/s 376(g), IPC as upheld by the learned trial Court is not at all proved beyond reasonable doubt and thus the conviction u/s 376(g), IPC cannot be sustained in the eyes of law. There are discrepancies in the evidence with regard to period of confinement.

13. Considering the aforesaid facts and circumstances and the evidence on record, it is clear that the prosecutrix and the father of the prosecutrix willingly and without any force went along with the appellants in absence of any threat or inducement and thus, at best it can be a case of false promise, inducement and misuse of trust subsequently by the appellants and the conviction u/s 376(g), IPC cannot be made out and or sustain in the eyes of law. The law in this regard is well settled that in case of false promise and or in love leading to sexual intercourse on the ground that they will get married, the promise loses all its significance. It is hard and difficult to believe that rape could have been committed for good two and half months and even thereafter the prosecutrix waited for one year and two months to lodge the complaint. In such circumstances, the Judgment dated 4.7.1992 passed by Sri R.D. Roy, Sessions Judge, Giridih in Sessions trial Case No. 309 of 1988 whereby and whereunder the appellants have been convicted u/s 376(g) of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life cannot be sustained in the eyes of law and accordingly it is set aside. As the appellants are on bail, they are discharged from the liabilities under their respective bail bonds.

The appeal is thus allowed.

R.K. Merathia, J.

14. I agree.