

(2004) 02 PAT CK 0085
In the Patna High Court
Case No : Criminal Appeal No. 663 of 2002

Koka Das

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 16-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2004) 3 PLJR 407

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Rajesh Kumar Sinha No. 1, for the Appellant; Din Bandhu Singh, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—Though the proceeding witnessed four Investigating Officers who took charge of investigation on transfer of their predecessors, many a good questions remained unanswered which ought to have been a matter of deep probe by the Police during investigation. The basic features of the prosecution case: shorn of unnecessary details can be noticed with brevity. Allegedly, on 16th June, 1997 when Janaka Devi had gone to ease near a pond, the Appellant came running, fell her on the ground and committed sexual assault on her. When her mother-in-law came on hearing her screaming, the Appellant made good his escape relieving her of her silver ornament from neck, of value of Rs. 1600/- but her grievance is that though she had. taken to public authority, as Police was reluctant to register a case, she had taken recourse to the judicial authority. A police case was eventually registered by the Police on behest of the Court and in course of collection of evidences during investigation, the police recorded statement of witnesses, visited place of occurrence and eventually on direction of Supertendent of Police laid charge sheet before the court. In the eventual trial that followed, State examined altogether nine witnesses including the prosecutrix, her brother-in-law and other witnesses and also (sic) of Police

Officers who partly contributed the investigation.

2. The defence of the Appellant both before the court below and this Court had even that of innocence and he ascribed his (sic) implication due to dispute persisting between the parties due to flow of water (sic) house of the prosecutrix. The defence, however, had not chosen to exam (sic) any witness and the trial Judge while (sic) plea of innocence of the Appellant recorded finding of guilt and (sic) the Appellant to suffer rigorous (sic) for a term of 10 years u/s 376 of the Indian Penal Code and sentenced him to pay a fine of Rs. (sic) in default of which he was further (sic) to suffer simple imprisonment (sic) a term of six months.

3. To appreciate contentions raised on behalf of the Appellant, a brief resume of (sic) made by the witnesses can be noticed at the threshold. Reiterating her (sic) version which she rendered before (sic) Police, the prosecutrix (P.W. 4) states (sic) commission of sexual assault on her (sic) the Appellant when she had gone to (sic) near a pond, pursuant to which she was also relieved of her ornament by the Appellant. Though Rubia Devi (P.W.1), Brother-in-law of the prosecutrix had tried (sic) project herself to be an eye witness, she (sic) knowledged in no uncertain terms that, he came to the place of occurrence after (sic) half an hour of the alleged occurrence and she due to acknowledgement made by her, can neither be an eye witness of the sexual assault on the prosecutrix nor there was occasion for her or alarm, raised by the prosecutrix, to be audible to fetch her to the place of occurrence. Nakul Das (P.W. 2) seems to have seen the Appellant making good his escape and he came to know about the events from the prosecutrix. Jhabbar Das (P.W. 3) and Gauri Das (P.W. 5) had not stated in court as expected by the prosecution, they having turned volte face to the State, and it seems from evidences on record that they were hear-say witnesses even before the police during investigation. There are host of Police Officers who happened to be the Investigating Officers and had contributed partly to the investigation and they happen to be Bishwanath Singh (P.W. 6), Zakir Hussain (P.W. 7), Nagina Paswan (P.W. 8) and Hira Lal Prasad (P.W. 9). Among these Police Officers, it was Zakir Hussain, P.W. 7, who on conclusion of investigation had laid charge sheet before the court and significant part of investigation was that of Hira Lal Prasad, P.W. 9, who had visited place of occurrence, had taken steps for apprehension of accused and also took necessary steps for collection of evidence.

4. Highlighting, inter alia, the fault that has surfaced in the narrations made in the prosecution witnesses including that of the prosecutrix, contentions raised on behalf of the Appellant was that considering evidence of Rubia Devi to be true assertion made by her, there cannot be occasion for this witness to witness any part of the event or even the prosecutrix raising alarm, she having come to the place of occurrence after half an hour of the incident. Submission is that though Jhabbar Das and Ganauri Das too were sought to be relied by the State, they had frustrated the object of the prosecution. Though the prosecutrix had refuted the suggestion made by the defence about instant case to be off shoot of

previous dispute, learned Counsel would urge that if evidence of Nakul Das, P.W. 2, was to be given credence, this witness, in no uncertain term would acknowledge dispute between parties with regard to flow of water and also there being irrigation dispute between them. Other argument is that from narration made by this witness it would appear that since son of Koka Das had died unnatural death, accusations were attributed to the prosecutrix about she being the cause of his death for having invited evil spirit.

5. Assertion made by prosecutrix was that apart from sexual assault made by the Appellant, she also suffered scratches/injuries on her person during commission of sexual assault on her in her bid to resist sexual violence unleashed by Appellant, but as has been acknowledged by her she did not offer herself for clinical examination by the doctor. True it is that even sole testimony of the prosecutrix can inspire confidence for recording finding of guilt against the rapist, but time without numbers, the courts have reiterated in no uncertain terms that the said solitary testimony of the prosecutrix must be free from all blemishes, and that apart, court must exercise prudence to find out as to whether solitary testimony of the prosecutrix had been corroborated by medical finding of the doctor. As has been noticed, apart from the physical injury which she suffered in her bid to resist violence, her wearing apparels too had got torn, but Investigating Officer says that no torn clothes of the prosecutrix was ever made over to him when he interrogated her. This may not be of much significance the Investigating Officer had not found even sign of any violence at the place of occurrence. Even those who were projected as eye witnesses had not stated before the court in terms of expectation of the prosecutrix. Suggestions were given to the prosecutrix that though Chakai hospital was not at insignificant distance, she had not rushed for medical and or her clinical examination as was expected of her. Even the Investigating Officer had not taken pains to get the prosecutrix examined by the doctor. Though animosity Between the parties was suggested to the prosecutrix, which had been acknowledged also by one of the witnesses, no probe was made by the Investigating Officer on this score and other evidence which is highlighted by learned Counsel was that if evidence of Bishwanath Singh, P.W. 6, was to be given any credence though the Deputy Superintendent of Police, shortly on conclusion of investigation had recommended submission of final form finding the case untrue against the Appellant, without sound reasoning finding of Deputy Superintendent of Police was overruled by the Superintendent of Police directing, inter alia, submission of charge sheet against the Appellant. There has been no good evidence as to what had weighed with the Superintendent of Police directing the Investigating Officer for submission of charge sheet. Be that as it may, I do not want to make any comment on this score.

6. However, in view of the infirmities that have surfaced in the version of the prosecutrix, there being animosity between the parties, considering attending circumstances of the case, I am of the view that it would be quite hazardous to place reliance on the testimony of the prosecutrix, and hence finding recorded by

the court below is accordingly set aside and Appellant is acquitted of the charge levelled against him. Since Appellant happens to be in custody, it is directed that he shall be released forthwith from custody if not wanted in any other case. The appeal thus succeeds.