
(2009) 07 JH CK 0099
In the Jharkhand High Court

Lalan Jhaku

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 376
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2010) CriLJ 1545 : (2010) 5 RCR(Criminal) 111

Hon'ble Judges : Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

Bench : Division Bench

Judgement

1. The appellant having been convicted for an offence u/s 376 of the Indian Penal Code read with Section 3(2)(V) of the S.C. /S.T. (Prevention of Atrocities) Act for committing rape upon a minor girl, namely, Asho Kumari, aged about 6/8 years, was sentenced to undergo imprisonment for life.

2. The case of the prosecution is that on 12.8.1994 at about 12:00 O'clock at Noon while the informant, Parvatia Devi, P.W. 2, was grazing her pigs along with her daughter, Asho Kumari, the pigs strayed down to a guava orchard, belonging to one Ramyash Prasad. The informant along with her daughter (victim) came to the orchard in order to drive the pigs out of orchard and took away the pigs but Asho Kumari stayed at the orchard for picking up Guavas which had been fallen down on the ground. After some time, the informant, P.W. 2, heard sound of screaming of her daughter and then she came back and saw the appellant committing rape of her daughter by putting her on the ground. The appellant on seeing the informant coming fled away from there and then the informant, P.W. 2, did notice rush of blood coming out of private part of her daughter who had fallen unconscious. Thereafter, the informant, P.W. 2, brought the victim-Asho Kumari to her house and informed about the occurrence to her husband, Babulal Turi, when he came home. Thereafter the informant as well as her husband and also other persons took Asho Kumari (victim) to Barhi Police Station at 4:00 O'clock where the fard beyan (Ext. 2) of the informant, Parvatiaa Devi, P.W. 2,

was recorded. Thereafter, the police sent them to Hazaribagh Sadar Hospital where doctor, Kalpana Sharan, P.W. 4, did examine the victim-Asho Kumari at about 11:30 p.m. on 12.8.1994 and found first degree tear on the private part and also found the hymen torn. The blood was found oozing. On examination, the doctor came to the opinion that the rape has been committed and accordingly, injury report (Ext. 1) was issued.

3. After completion of the investigation, Investigating Officer, P.W. 5, Uma Shankar Singh, submitted charge-sheet upon which the cognizance of the offence was taken against the appellant. On committal of the case, charges were framed to which the appellant pleaded not guilty and claimed to be tried.

4. In course of trial, the prosecution in order to prove its case examined as many as 5 witnesses. Of them, P.W. 2, Parvatia Devi, is the informant, whereas her husband, Babulal Turi, P.W. 3, is a hearsay witness. P.W. 1, Basudeo Turia, is a witness who came to the place of occurrence and saw the appellant fleeing away from there. The prosecution did not examine the victim-Asho Kumari as witness. However, the trial court by putting its implicit reliance on the testimonies of P.W. 2, the informant, and the other witness particularly P.W. 1 getting corroboration from the medical evidence did find the appellant guilty and hence recorded the order of conviction and sentence against him.

Being aggrieved with that, the appellant has preferred this appeal from jail.

5. Mr. M.I. Khan, appointed as Amicus Curiae, submits that the prosecution has utterly failed in establishing the place of occurrence, as the informant, P.W. 2, in her fard beyan has stated about the Guava orchard as the place of occurrence, whereas in her evidence, she speaks about the place of occurrence as that of place situated near a canal and that the prosecution also failed to examine the most important witness victim-Asho Kumari and as such, the prosecution can never be said to have established his case beyond all reasonable doubts, still the trial court has recorded the order of conviction and sentence against the appellant, which is fit to be set aside.

6. On the other hand, learned Counsel appearing for the State submits that there has been no reason to disbelieve the testimony of the informant, Parvatia Devi, P.W. 2, mother of victim-Asho Kumari, who saw the appellant committing rape upon her daughter and the factum of commission of rape gets corroboration from the medical evidence and hence the trial court was absolutely right in recording the order of conviction and sentence as aforesaid.

7. Having heard learned Counsel for the parties and on perusal of record, we do find that victim-Asho Kumari, 6/8 years old daughter of Parvatia Devi, P.W. 2, has been ravished sexually by the appellant and the unfortunate mother, who has been examined as P.W. 2, has seen the appellant committing offence on her minor daughter. According to her, while she was grazing her pigs, she heard sound of screaming of her daughter coming from toward a canal where she went and saw the appellant committing rape of her daughter by putting her on the

ground. As soon as the informant, P.W. 2, came at the place of occurrence, the appellant fled away from there and then the informant saw rush of blood coming out of private part of her daughter, who had fallen unconscious, as a result of which, underpants of her daughter got drenched with blood. Thereafter, she brought her daughter to her house from where she took her to the Police Station along with her husband and gave her fard beyan. It is true that this witness in her evidence has spoken about the place of occurrence near the canal, whereas in her fard beyan she has said that the occurrence took place in a guava orchard, but these two versions never do suggest about the different place of occurrence, rather same place of occurrence has been described at two occasions differently; one with reference to canal and other with reference to orchard which get indication from the evidence of P.W. 1 where he has testified that there has been trees near the canal. Moreover, the guava orchard has been found by the Investigating Officer to be the place of occurrence. That apart, suggestion given on behalf of the defence to P.W. 2 to the effect that the appellant had come to the guava orchard to rescue the victim, as the victim had fallen down from the guava tree and had sustained injury does sufficiently indicate about the place of occurrence as guava orchard. Above all, nothing has been brought on behalf of the defence to suggest that the place of occurrence as described by P.W. 2 in her evidence as near canal is different than guava orchard.

8. Thus, we do not find any material whatsoever to disbelieve the testimony of P.W. 2. Moreover, the testimony of P.W. 2 gets corroboration from the evidence of P.W. 1, Basudeo Turia, who, as per his evidence, when came to the place of occurrence, saw the appellant fleeing away and at the same time, he also noticed blood coming out of the private part of victim-Asho Kumari which fact was also noticed by the doctor in course of examination of victim, wherein she not only found the first degree tear over the private part but hymen was also found to be torn and ultimately, comes to the conclusion that the victim has been ravished.

9. Faced with the situation, the appellant came with defence plea by way of giving suggestion to the witness that the victim on account of fall from the guava tree sustained injury, but this plea does not get approval from the evidence of the doctor, as the doctor has categorically opined that the kind of injury, which the victim has suffered, is never possible due to the fall.

It would be noted here that the victim has not been examined by the prosecution but non-examination of the victim, in view of the testimonies of the witnesses, as discussed above, which find corroboration from the medical evidence, does not effect the prosecution adversely in any manner.

10. Thus, we do find that the prosecution has been able to establish fully that the appellant committed rape upon the victim, but nothing is there on the record to establish that the appellant did commit offence u/s 3(2)(V) of the S.C./S.T. (Prevention of Atrocities) Act, as it is never the case of the prosecution that the appellant did commit rape upon the victim only with the view that the victim happens to be a member of the Scheduled Castes or of Scheduled Tribes

Community.

11. In that view of the matter, the trial court committed illegality in convicting the appellant u/s 3(2) (V) of the S.C. /S.T. (Prevention of Atrocities) Act. Accordingly, the conviction recorded under the aforesaid offence is hereby set aside, whereas the conviction recorded u/s 376 of the Indian Penal Code is hereby confirmed.

12. Under the aforesaid circumstances, sentence awarded of life imprisonment by the trial court is reduced to the period already undergone.

13. Consequently, the appellant is directed to be released forthwith, if not wanted in any other case.

14. In the result, this appeal is partly allowed.