
(1999) 09 PAT CK 0149

In the Patna High Court

Case No : Criminal Appeal No. 60 of 1995 (R)

Laro Helarius Mukur @ Helarius Kujur and Dharo Oraon

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)(g)

Citation : (2000) 1 PLJR 537

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

Bench : Single Bench

Advocate : S.N. Das, for the Appellant; Ashok Kumar Sinha, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—This Criminal Appeal has arisen out of judgment of conviction and sentence passed by the then 6th Additional Judicial Commissioner, Ranchi in ST. No. 465/94, 41/94 under which the learned Judicial Commissioner, Ranchi convicted the appellants for the offence u/s 376(2)(g) of the Indian Penal Code and sentenced them to R.I. for 10 years each. The case of the prosecution in brief stated that victim girl Dil Kuer Kumari lodged an F.I.R. claiming therein that on 23.10.1993 at 8 P.M. she was alone in her house when both the appellants, namely, Dharo Oraon and Laro Helarius who were residents of the same village came to her house and Helarius caught her hand and threatened to kill her. It is further alleged that both the appellants forcibly took her to a dilapidated house of one Karma Oraon and thereafter they removed the Janghiya of the victim girl and made her to lie down on the floor and thereafter appellant, Dharo Oraon forcibly committed rape on her. Thereafter, other appellant, namely, Laro Helarius also committed rape forcibly. They also threatened her not to make Halla. Thereafter, both the appellants fled away from the place of occurrence and the victim girl returned to her home and she narrated the incident to her mother. Her brother also went to the house of villagers and informed about the incident. Thereafter, the F.I.R. was lodged.

2. The police investigated into the case and submitted chargesheet against both the appellants. Both the appellants appeared in the lower court. The charge u/s 376(2)(g) IPC was framed against both the appellants which was read over and explained to them to which they pleaded to be not guilty.

3. The defence case as alleged that both the appellants have been falsely implicated in the case and they have committed no offence. The witnesses were examined in the lower court and after considering the evidence on record, the learned Judicial Commissioner convicted the appellants for the offences as mentioned above and sentenced them to undergo R.I. for 10 years by the impugned judgment.

4. On being aggrieved by the impugned judgment, the appellants preferred this appeal on the ground that the lower court committed error in convicting the appellants without appreciating the evidences properly.

5. The learned counsel appearing on behalf of the appellants, at the very outset, submitted that both the appellants are in custody since 11.3.1994 as they have surrendered in the lower court and as such they have already served the sentence of more than five years. It is further argued that the witnesses have not supported the prosecution case in the manner as alleged and there is also much contradiction.

6. Before appreciating the contention of the learned counsel for the appellants, it is appropriate to analyse the oral evidence coupled with the medical evidence in respect of the occurrence as alleged. There is a specific allegation in the F.I.R. that both the appellants took the victim to a lonely place in the night and both of them committed rape on her forcibly. The production list also proves to the fact that one Janghiya with blood stains was produced before the police. Doctor also examined the victim Dil Kuer Kumari, but it is obvious that the occurrence took place on 23.10.1993 at about 8 P.M. whereas the victim girl was examined by the doctor on 26.10.1993 and so it is quite natural that nothing could be found after lapse of three days of the occurrence.

7. PW-1, victim girl consistently supported the prosecution case in the manner as alleged. She narrated the incident in very specific manner as both the appellants took her away and both of them committed rape on her forcibly. She also claimed that her father was not present in the house on the day of occurrence and as such there was some delay in lodging the F.I.R. It is also stated in para-11 of the cross-examination that both the appellants entered into her house at the time of alleged occurrence when she was alone and she was taken away at the point of Chhura. According to her, blood also oozed out from her private part by committing rape, which substantiate the story by the production list also.

8. PW-2, the brother of the victim girl admitted that he came to know about the incident from his mother and thereafter he went to Mukhiya and narrated incident to him and thereafter the case was lodged. PW-4 stated that the F.I.R. was lodged in his presence and he also put his signature in F.I.R. (Ext.2). He

further stated that the blood stained Janghiya was produced before the police in his presence and he put his signature on the production list, Ext. 2/1. PW-5 claimed that she was also sitting there when both the appellants took the victim girl forcibly and thereafter she came to know about the occurrence. PW-7 is the Investigating Officer, who claimed to have written the F.I.R. on the statement of the victim girl. He investigated into the case and submitted the changesheet. According to him, both the appellants surrendered in the lower court on 11.3.1994. He also admitted to have seized the said blood stained Janghiya which was produced by the Informant.

9. All the witnesses examined by the prosecution are consistent in respect of prosecution case. The victim herself is very particular and definite in her statement and claimed that both the appellants committed rape on her forcibly. PW-5, being the eye witness also claimed that victim was taken away forcibly by the appellant, namely, Helarius. Thus, it is clear from the evidence on record that both the appellants committed rape on victim girl on the day of occurrence forcibly. It is also settled that in case of rape of a girl, the sole evidence of the victim is sufficient to hold the accused guilty for the offence and there is no need for corroboration of the evidence of victim girl, when it is found that the victim girl is trustworthy and there is no suspicion or doubt on her narration.

10. In the instant case, there is no material to show that as to why the victim girl would falsely implicate the appellants. Moreover, PW-5, who can be said to be the eye witness when the victim girl was taken away forcibly by the appellants. It is true that the doctor did not find any sign of rape or any injury on the private part, but admittedly she was examined after three days of the occurrence, so it is natural that no injury could be found after lapse of three days. However, the oral evidence and the evidence of the victim are very consistent on the point of occurrence and in this view of the matter, I find that the prosecution has fully established the charge against both the appellants for committing rape.

11. In the result, I find that the learned Judicial Commissioner, Ranchi has rightly convicted the appellants for the offence u/s 376(2)(g) of the Indian Penal Code.

12. As regards the sentence, it has been argued on behalf of the appellants that both the appellants have surrendered in the lower court voluntarily, as soon as they came to know about the occurrence and they are in custody since 11.3.1994 and as such they have already sufficiently punished. It is obvious from the records that both the appellants are in custody for more than five years. In this view of the matter, I find that period undergone punishment will meet the ends of justice and as such the sentence awarded to the appellants is modified to the extent that they are sentenced to undergo R.I. the period already undergone by them in the jail. Accordingly, the appeal is dismissed subject to the modification in the order of sentence only, and the appellants are directed to be released forthwith, if not required in any other case.