
(2010) 01 JH CK 0165
In the Jharkhand High Court

Mahabir Manjhi

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 28-01-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 34, 354, 376

Citation : (2010) 4 JLJR 191

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the appellant and learned Counsel for the State.

2. This appeal is directed against the judgment of conviction dated 18.09.2001 and order of sentence dated 20.09.2001 passed by Shri Alakh Kumar Dubey, learned Sessions Judge, Bokaro in Sessions Trial No. 223 of 1999, by which judgment, he found the sole appellant, Mahabir Manjhi guilty for the offence u/s 376(g) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years.

3. It is submitted by learned Counsel for the appellant that the conviction of the appellant u/s 376(g) of the Indian Penal Code is bad in law and fit to be set aside. It is also submitted that the prosecution case has not been supported by the employer of the victim-prosecutrix, who accompanied her to the police station and the investigating officer also found no connecting materials like the rope, by which the husband of the prosecutrix was tied nor he recovered the lantern, by which the prosecutrix has claimed to identify the accused, and as such, the conviction of the appellant for the offence u/s 376(g) of the Indian Penal Code is bad in law. Moreover, it is submitted that the doctor also found no sign of rape and hence his conviction is only fit to be set aside.

4. On the other hand, learned Counsel for the State has opposed the prayer and submitted that both the prosecutrix, P.W.4 and her husband, PW.5. have fully

supported the prosecution case and even the investigating officer, P.W.6 has corroborated their evidences, and as such, the appellant has rightly been convicted u/s 376(g) of the Indian Penal Code.

5. After hearing both the parties and after going through the evidences on record, it appears that the prosecution case was started on the basis of a written report given by the victim lady namely Chinta Devi, the wife of Ram Bachan Yadav, P.W.5 stating therein that she was working along with her husband in the garden of her employer, Bhrigu Nath Singh and on the date of occurrence i.e. in the midnight of 05.05.1999, she was sleeping in the garden house, when at about 12.00 P.M. in the midnight somebody gave a call to her husband, Ram Bachan Yadav to open the door and her husband opened the door, then three persons entered the house and firstly they captured her husband and tied his legs and hands She identified one of the accused as Mahabir Manjhi, who was previously working in the field of Bhrigu Nath Singh as a "Majdoor" After tying the hands and legs of her husband, they caught hold of her and thereafter putting her on the ground, they committed rape upon her one after another. She stated that after committing rape, they left the house giving threat that they should leave the place, otherwise she will be raped again and again It IJ stated that she went to her employer, Bhrigu Nath Singh Thereafter, along with him, she and her husband went to the police station and gave the written report.

6. On the basis of the said written report, police registered a case for the offence u/s 376(g) of the Indian Penal Code along with Section 34 of the Indian Penal Code and after investigation submitted charge sheet against the sole accused, Mahabir Manjhi, since, the other two unknown persons could not be traced out.

7. Since, the case was exclusively triable by the court of Sessions, learned magistrate, after taking cognizance committed the case to the court of Sessions and finally the learned Sessions Judge, Bokaro himself tried the accused Mahabir Manjhi and found him guilty as aforesaid.

8. It appears that in course of trial the prosecution has examined six witnesses

P.W. 1 is Bhrigu Nath Singh, who is the employer of the prosecutrix.

P.W. 2 is Daya Shankar Yadav, who has declared hostile.

P.W. 3 is Dr. Arti Shukla, who examined the victim-prosecutrix.

P.W. 4 is Chinta Devi, who is the prosecutrix herself.

P.W. 5 is Ram Bachan Yadav who is the husband of the prosecutrix.

P.W. 6 is Awadh Kumar Yadav, I.O. of the case.

9. It is important to note that the employer of the prosecutrix, Bhrigu Nath Singh has not supported the prosecution case and stated that Ram Bachan and his wife came and informed him that two persons came to then house and they misbehaved with the wife of Ram Bachan They never said that rape was committed

upon the wife of Ram Bachan Yadav.

P.W. 2, Daya Shankar Yadav also turned hostile, although he had also accompanied with the prosecutrix to the police station along with PW.1, Bhrigu Nath Singh.

P.W. 3, Dr Arti Shukla, who examined the victim lady, Chinta Devi on the same day i.e. on 05.05.1999 and she found that Chinta Devi is a married lady and used to sex. Her vaginal swab does not contain any spermatozoa, no foreign hairs were found in her private part She found no injury on her external or internal part of body and she opined that she found no sign of rape upon the victim lady.

10. P.W. 4, Chinta Devi, the prosecutrix has fully supported her case and stated that on the date of occurrence at about 12 PM in the night when she was sleeping with the husband, then somebody gave a call to her husband, Ram Bachan Yadav to open the door and her husband opened the door, then three persons entered the house and firstly they captured her husband and tied his legs and hands. She identified one of the accused as Mahabir Manjhi, who was previously working in the field of Bhrigu Nath Singh as a "Majdoor". After tying the hands and legs of her husband, they caught hold of her and thereafter putting her on the ground, they committed rape upon her one after another. She stated in her cross examination that in course of commission of rape, her sari and saya (peticot) both were stained.

11. P.W.5, Ram Bachan Yadav has also fully supported the prosecution case and stated that on the date of occurrence, in the night at about 12.00 P.M. some persons came and gave a call to him to open the door and he opened the door, then three persons entered the house and firstly they captured him and tied his legs and hands. After tying his hands and legs, they caught hold of her wife and thereafter putting her on the ground, they committed rape upon her one after another. He denied the fact that he falsely implicated the accused in the case because he was told to do so by his employer i.e., Bhrigu Nath Singh, since, he removed the accused from service about fifteen days back without giving any payment to him.

12. P.W.6, Awadh Kumar Yadav, the investigating officer has also tried to support the case and proved the formal F.I.R. as also writing on the written report as Ext.2 and 3. He admitted in his cross examination that he found neither rope at the place of occurrence nor he has given description to the place, where the prosecutrix's husband was tied. He also stated that during investigation, he found no lantern, candle or "diya" at the place of occurrence.

13. Thus, from the evidences discussed above, it appears that although the prosecution case has been supported by P.W.4 and P.W.5, but the prosecution has failed to prove that during commission of rape, peticot and sari of the victim lady was stained, since the investigating officer found no stain on the peticot and sari produced by the victim lady. The doctor, also found no sign of rape. Even,

the witnesses of the F.I.R., P.W.1 and P.W.2, have also not supported the case of rape and they had also supported that the victim lady was only criminally assaulted and there was no report of rape, since the doctor and investigating officer have not supported the case of rape.

14. In that view of the matter, I find from the evidences adduced by the prosecution, that only a case u/s 354 of the Indian Penal Code is proved against the appellant-accused. Accordingly, his conviction u/s 376(g) of the Indian Penal Code is set aside and he is found guilty for the offence u/s 354 of the Indian Penal Code and the appellant is sentenced to undergo rigorous imprisonment for two years.

15. It appears from the record that the appellant has remained in custody right from the date of occurrence i.e. on 05.05.1999 till date. Thus, he has remained in custody for about 11 years. In that view of the matter, he has remained in custody for more than the sentence, which should have been passed against him. In that view of the matter, he is directed to be released forthwith.

16. With the aforesaid alteration in the sentence, this appeal is allowed in, part. The trial Court is directed to release him forthwith if not wanted in any other criminal case.