

(1999) 10 PAT CK 0057

In the Patna High Court

Case No : Criminal Appeal No's. 247 and 252 of 1997 (R)

Maresh Karmali @ Ramesh Karmali and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 06-10-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164

Evidence Act, 1872 — Section 118

Penal Code, 1860 (IPC) — Section 120B, 376, 380

Citation : (2000) CriLJ 2945

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

Bench : Single Bench

Advocate : Arun Kr. Sinha, Laljee Sahay, Chandra Shekhar Prasad and T.K. Mishra, for the Appellant; Ashok Kumar Sinha, APP, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Prasad, J.—Both the criminal appeals were heard together as they arise out of the same judgment of conviction and sentence, passed in Sessions Trial No. 128/ 94 whereby the learned Addl. Sessions Judge, Hazaribagh convicted the appellants under Sections 376 and 380, I.P.C. and both the appellants were sentenced to undergo rigorous imprisonment for ten years u/s 376, I.P.C. and two years" rigorous imprisonment u/s 380, I.P.C. Both the sentences were ordered to run concurrently. Both the appeals are being disposed of by this common judgment.

2. The case of the prosecution in a nutshell is that the informant, Parvati Devi after the death of her husband was working as labourer in the Sirka Colliery of C.C.L. and was living in a quarter of the colliery situated at Argada with her ten years old son Rakesh Kumar. It is alleged that in the night of 25-8-93 when the informant and her son were sleeping in the quarter at about 10.30 p.m., accused Gouri Paswan came and asked the informant to open the door, but the informant refused to open the door and thereafter he pushed the door as a result of which

the door was broken and thereafter the accused persons, namely, Gouri Paswan, Surendra Singh, Nandkishore Mahto (appellant) Ramesh Karmali (appellant) and Naresh Kumar Gupta entered into the quarter. They were duly identified in the electric light. The accused Gouri Paswan took the informant, Parwati Devi to the next room adjacent to the bed-room and thereafter the accused, Gouri Paswan, Naresh Kumar Gupta and Surendra Singh raped her, whereas accused Ramesh Karmali and Nandkishore Mahto were searching her bedroom. It is further stated that all the above five accused persons took her into a jungle nearby and the accused Gouri Paswan, Ramesh Karmali (appellant) and Nandkishore Mahto (appellant) again committed rape on her forcibly. It is further alleged that the co-accused Janki Paswan was seen standing in front of his quarter. It is further alleged that the accused persons threatened her for dire consequences if the incident would be disclosed. It is further alleged that after committing rape on the informant, the accused persons got her private part and cloths washed in the water of nearby stream. The informant also found that two of the accused persons were searching her bedroom and they had taken away gold, silver ornaments worth Rs. 25,000/-. It is further stated that out of fear the informant on the next morning of the occurrence went to Ramgarh and she narrated the incident to one Rajendra Prasad Sharma who was a friend of her deceased-husband and thereafter she reported the matter before the police and her fardbayan was recorded. The FIR was lodged accordingly u/s 376, 380/120B, I.P.C. The police investigated into the case and submitted charge-sheet against the accused persons, including the appellants. All the accused persons including the appellants appeared before the Court of Additional Sessions Judge, Hazaribagh and accordingly charges were framed against all the accused persons including the appellants to which they pleaded not guilty. The witnesses were examined in the lower Court and after considering the evidence on record, the learned Court below convicted the accused persons including the appellants for the offences charged and sentenced to undergo R.I. in the manner, as stated above.

3. Being aggrieved by the impugned judgment both the appellants preferred the appeals alleging therein that they have been falsely implicated in this case out of enmity and the learned Court below committed error in convicting the appellants as there is also much contradiction in the evidence of the witnesses.

4. The learned counsel for the appellants submitted that the whole prosecution case has been concocted as the FIR has been lodged after much delay of the occurrence in which there is no explanation. It is further argued that there is no corroboration of the evidence of the informant, Parwati Devi and this case has been lodged at the instance of her paramour Rajendra Prasad Sharma. It is also submitted that the Investigating Officer did not examine the second place of occurrence where the rape said to have been committed and, as such, the judgment of the lower Court is fit to be set aside.

5. On the other hand, the learned counsel on behalf of the prosecution submitted

that the learned Court below has rightly convicted the appellants as all the witnesses including the minor son of the victim has fully supported the case of the prosecution and a sufficient explanation has already been assigned in the FIR for lodging the case on the next day of the occurrence and there is no illegality in the impugned judgment to be interfered with.

6. It is an admitted position that the informant, Parwati Devi, who is a widow, has been residing in CCL quarter at Argada along with her minor son aged about ten years. It is also clear that the informant, Parwati Devi was examined by the doctor on 26-8-93 at about 4.30 p.m. and the doctor, who examined Parwati Devi, found that the rape has been done. The doctor also found injuries on the person of the informant being bruise and swelling as per the injury report (Ext. 5). The doctor who examined the victim, Parwati Devi died due to cancer and there is no denial or rebuttal on this score.

7. P.W. 1 Rajendra Prasad Sharrna is a hearsay witness. According to him, Parwati Devi came to his house on 26-8-93 at about nine a.m. and narrated the incident. She disclosed before him that the accused persons including the appellants committed rape on her and she had identified them in the light of electric bulb. He claimed to be a friend of her husband as they were working together in the Army but the husband of Parwati Devi died about four years ago. He had seen swelling on the face of the victim, Parwati Devi at the relevant time. He denied about any illicit relationship with Parwati Devi. According to him, Parwati Devi did not inform anybody in the night out of fear.

8. P.W. 2 Rakesh Kumar, the son of the victim, Parwati Devi stated in very clear terms that he along with his mother was sleeping in the house when somebody knocked the door but they could not open the door and the miscreants started breaking open the door and, as such, the door was opened and thereafter all the accused persons including the appellants, entered into the quarter and he had identified all the accused persons in the light of the electric bulb. He further deposed that his mother disclosed that she was raped by the accused persons. He further stated in his cross-examination that other witnesses namely Lakhan Chauhan and Lalan Mahto were not examined by the police in his presence. He further deposed that they have not concealed their face at the relevant time. According to him, they raised Hulla at the time of occurrence but none had come to the spot out of fear.

9. P.W. 3 is the Judicial Magistrate who recorded the statement of Parwati Devi u/s 164, Cr.P.C. and he proved the said statement (Ext. 2).

10. P.W. 4, Parwati Devi the victim, stated that she, along with her son, aged about ten years was present in her quarter when the accused persons entered into the house forcibly and thereafter they committed rape on her. She also stated that some articles were also taken away by them. According to her, all the five accused persons, including the appellants committed rape on her one after another. She further stated that they had taken her to the jungle nearby and she

was threatened to be killed. She further deposed in paragraph 6 that the accused persons Nand Kishore, Ramesh and Gouri again committed rape on her there and they used to get her cloths and private part washed away from the water of stream situated nearby. She further deposed that she had not disclosed the incident to any other person in the said night out of fear and on the next morning she went to the house of Rajendra, P.W. 1 to whom she narrated the incident and thereafter she lodged the FIR. She claimed in her cross-examination that all the accused persons, including the appellants are residing in the vicinity and they were known to her from before. According to her, there are several quarters situated nearby. She claimed to have raised Hulla when the accused persons were trying to break open the door but none had reached to the place of occurrence out of fear.

11. P.W. 5 Ashwani Kumar Sharma claimed that Parwati Devi narrated the incident to Rajendra Prasad Sharma. He appears to be the hearsay witness as he was present at the house of P.W. 1 when Parwati Devi was narrating the incident.

12. P.W. 6 Sri Narain Tiwari is the Investigating Officer who claimed to have recorded the fardbayan of Parwati Devi (Ext. 3) and thereafter the FIR (Ext. 4) was registered. He examined the witnesses and also inspected the place of occurrence and thereafter submitted the charge-sheet. According to him, the doctor, Smt. Lalita Prasad, who examined the victim Parwati Devi, died about one and half years ago due to cancer.

13. Two witnesses have also examined from the side of the defence. D.W. 1 claimed that Parwati Devi is a questionable lady but he admitted in his cross-examination that he was in jail custody in the year 1996 in a case of theft and there was no visiting term with Parwati Devi at the time of occurrence. This witness does not appear to be specific on the point.

14. D.W. 2 is a formal witness who proved the copy of the marriage register.

15. P.W. 4, the victim Parwati Devi and P.W. 2 her son, can be said to be the eyewitnesses on the point of occurrence. P.W. 2 was aged about ten years at the time of occurrence and he claimed to have identified all the accused persons including the appellants during the commission of crime and they were duly identified in the light of the electric bulb. P.W. 4 the victim lady is also very consistent in disclosing the occurrence. All the accused persons including the appellants are known to the victim and her son from before as they are residing nearby and, as such, there would not be any ambiguity or doubt in identification of the appellants. As regards the commission of rape by all the accused persons including the appellants, the victim P.W. 4 is also very consistent which has fully been corroborated by the medical evidence as the doctor found about the commission of rape. The victim also sustained injury on her person. There is no reason as to why the victim lady, who is a widow, would implicate the appellants falsely. Not a single chit of paper nor any cogent evidence brought on the record from the side of the appellants for rebuttal or showing any enmity from before.

16. It has been given much emphasis by the learned counsel for the appellants that there is no corroboration of the evidence of the victim lady, P.W. 4. As noticed above, it is clear that the minor son, P.W. 2 corroborated the incident consistently. The medical report further corroborates about the occurrence and also commission of rape. Moreover, it is well settled that in a case of rape the evidence of the victim is sufficient to warrant the conviction of the appellants and there is no need of corroboration if the evidence of the victim is consistent and trustworthy. It has been held by the Apex Court in the case of Karnel Singh Vs. State of M.P., that "corroborating evidence is not essential. She is not an accomplice or in the category of child witness". The same view was taken by the Apex Court in the case of State of Punjab Vs. Gurmit Singh and Others, that "corroboration is not necessary. Conviction can be founded on her testimony alone unless there are compelling reasons seeking corroboration." I have already discussed above that P.W. 4, Parwati Devi and her son, P.W. 2 are very specific and definite in their deposition about the commission of crime in the manner as alleged. As such, the submission of the learned counsel for the appellants has got no substance and it is not sustainable. It is further submitted that the victim Parwati Devi narrated about the demand of Rs. 25,000/- and also various other matters in her deposition and she developed an another story in the prosecution case which are not described in the fardbayan and so the whole fardbayan can be said to be false. The first information report is not an encyclopedia in the sense that it should contain all the details of occurrence. The prosecutrix is a lady and she was under threat and so minor omission in such circumstance is quite natural. It is true that omission of important fact in the FIR is a relevant fact but it does not mean that it may contain minute detail. The informant had given out a detailed and true picture about the occurrence at the time of evidence adduced on oath. In the instant case, the victim and her son are quite competent and consistent in their evidence. Thus, the submission of the learned counsel for the appellant on this score is also devoid of legal proposition which cannot be entertained.

17. The Apex Court made an observation in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, that:

A prosecutrix of a sex-offence cannot be put. on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that the evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness u/s 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical violence.

18. In the instant case, the evidence of the prosecutrix, P.W. 4 has fully been corroborated by her son P.W. 2 who can be said to be a natural and competent witness at the time of occurrence as the victim, being a widow, has been residing in the said quarter along with her minor son. The medical report also substantiated the whole story of the prosecution including the injury caused to

the person of the victim. It is true that the FIR has been lodged after some delay for which cogent explanation has also been assigned by the victim lady and such delay in the case of rape, will not be of much consequence for the whole prosecution case which is very consistent and corroborative. Minor discrepancies regarding minute details of the incident including the sequence of event are quite possible even in the version of truthful witnesses and for such minor discrepancies the whole prosecution case cannot be thrown away when there is overwhelming definite and consistent evidence about the occurrence committed by the appellants who were duly identified at the relevant time.

19. Considering the above facts and circumstances of the case, it is evident that the prosecution has fully established the charges against the appellants beyond all reasonable doubts. Thus, it is held that the learned trial Court has rightly convicted the appellants for the offences under Sections 376 and 380 of the Indian Penal Code.

20. As regards the sentence awarded to the appellants, it is submitted by the learned counsel for the appellant that the appellant Mahesh Karmali alias Ramesh Karmali has already been in custody for more than five years and another appellant, Nandkishore Mahto has also been in custody for more than four years and they have been sufficiently punished for the offences. It is true that both the appellants are in custody since long. They have been sentenced to undergo R. I. for ten years u/s 376, I.P.C. and two years u/s 380, I.P.C. but the sentences of both the offences were ordered to run concurrently. The case was registered as back as in the year 1993. Hence, in my view, the sentence already undergone by the appellants will serve the ends of justice in the instant case. In the result, both the appellants, namely, Mahesh Karmali alias Ramesh Karmali and Nandkishore Mahto are sentenced to undergo rigorous imprisonment for the period already undergone in jail custody by them. Thus, both the appellants, namely, Mahesh Karmali alias Ramesh Karmali and Nandkishore Mahto, are directed to be released from the jail custody forthwith, if not required in any other cases. Accordingly, both the appeals are dismissed with modification in sentence only.