
(2010) 02 JH CK 0130
In the Jharkhand High Court

Mukdeo @ Mukhdeo Naik

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 341, 342, 376

Citation : (2011) 5 RCR(Criminal) 809

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Pradeep Kumar, J.—The appeal is directed against the judgment of conviction and order of sentence dated 16th February, 1999 passed by Shri Tarkeshwar Prasad, Sessions Judge, Gumla in Sessions Trial No. 74 of 1998, by which judgment he found the appellant guilty u/s 376 of the Indian Penal Code and sentenced him to undergo R.I. for 10 years.

2. It is submitted by the learned Counsel for the appellant as amicus curie that although the first place of occurrence has been proved by the evidence of the witnesses, but the second and third place of the occurrence has not been proved. Moreover, the doctor-P.W.8, who examined the victim girl and found no sign or symptom of forcible sexual intercourse act and the victim girl was major and used to sex, in that view of the matter, the conviction of the appellant u/s 376 of the Indian Penal Code is bad in law and fit to be set aside.

3. On the other hand, learned Counsel for the State has supported the prosecution case and stated that all the witnesses have proved beyond reasonable doubt that the first place of occurrence was near the paddy field where the victim lady was raped by the accused-appellant, Mukdeo @ Mukhdeo Naik and the doctor found dead sperm in vaginal swab, in that view of the matter, the conviction of the appellant is proper and requires no interference by this Court.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbyan given by the victim, Manju Kumari stating therein that she was aged about 17 years and on the last evening i.e. on 13.9.1997 she had gone with her cattle along with Sudhir Bhagat-P.W.4, Etwa Bhagat-P.W.1 and Balender Mahto-P. W.2 and other small children of the village for grazing cattle at about 12.00 in the noon. Then, this accused-appellant came there and asked all the P.Ws and other children to go back to their house with their cattle as it is becoming evening. When the prosecutrix Manju also wanted to go with them, this appellant caught hold of her hand and asked her to stay. Then, she wanted to raise "Hullah", but she was threatened by this accused that he will commit her murder and he dragged her towards Basa river where he committed rape upon her. Thereafter, the accused-appellant took her across the Basa river to his house and kept her in his house for whole night. At about 4.00 a.m. This accused-appellant released her and directed her to go to her friend's house, Ansu. The prosecutrix, Manju went to the house of her friend, Ansu but at that time Ansu and other girls were going to river to immerse "Karma". So Manju also accompanied them. At the river Manju met her mother, who took her to her house. Then, Manju told her mother about the occurrence. Manju's father is lame and her brother Sunil was not in house. When her brother, Sunil returned house then he along with Manju went to the police station and lodged the first information report.

5. On the basis of the said fardbeyan, the police registered a case under Sections 341/342/376 of the Indian Penal Code and after investigation the police submitted charge-sheet against the accused-appellant under the aforesaid Sections. Since, the case was exclusively triable by a Court of Sessions, the learned Chief Judicial Magistrate after taking cognizance of the case, committed the same to the court of sessions and lastly the case was tried by the Sessions Judge, who found the appellant guilty as aforesaid.

6. It is important to note that in course of trial, the prosecution has examined 9 witnesses. P.W.1, Etwa Bhagat, P.W.2, Balendra Mahto, P.W.3, Sumitra Devi, P.W.4, Sudhir Bhagat, P.W.5, Bhaua Oraon, P.W.6, Manju Kumari-victim girl, P.W.7, Sunil Bhagat, P.W.8, Dr. Sarla Singh, who conducted medical examination of the victim girl and P.W.9, Ramchandra Prasad, I.O. Of the case.

7. P.W.6, Manju Kumari-victim girl has fully supported the prosecution case in Court and stated that on the date of occurrence she had gone with her cattle along with Sudhir Bhagat-P.W.4, Etwa Bhagat-P.W.1 and Balender Mahto-P.W.2 and other small children of the village for grazing cattle at about 12.00 in the noon. Then at about 5.00 P.M.in the evening this accused-appellant came there and started rebuking the P.Ws and other small boys and asked to go back to their house with their cattle as it is becoming evening. When the prosecutrix Manju also wanted to go with them, this appellant caught hold of her hand and started threatening her that he will commit her murder, if she would raise hullah and he dragged her towards Basa river near Singhi Tungari where he committed rape

upon her. Thereafter, she made Hullah, but nobody came there to listen her. Thereafter the accused-appellant took her across the Basa river to his house and detained her in his house for whole night committed rape upon her in the night. At about 4.00 a.m. this accused-appellant released her and directed her to go to her friend's house Ansu. The prosecutrix, Manju went to the house of her friend, Ansu but at that time Ansu and other girls were going to river to immerse "Raima". While going to her friend Ansu Kurnari house she and other family members met on the way who were going towards the river for final emerging Karma tree and at the river side she met her mother, who took her to her house. Then, Manju told her mother about the occurrence. Manju's father is lame she could not go to police station and her brother Sunil was not in house. When her brother Sunil returned home then he along with Manju went to the police station and gave her Fardbeyan, where she and her brother put their signatures, which is marked as Ext. 1 and 1/1. She also gave her skirt, handkerchief pant and blouse to the police on which semen had fallen. She identified her signature on the seizure-list, which is as Ext. 1/2 and 1/3.

In her cross-examination, she stated that she was a student of Class-X and this accused-appellant was never student of her school. She stated in her cross-examination in para 6 that she had gone with her cattle along with Sudhir Bhagat-P.W.4, Etwa Bhagat-P.W.1 and Balender Mahto-P.W.2 and other small children of the village for grazing cattle at about 12.00 in the noon. Then at about 5.00 P.M. in the evening this accused-appellant came there and started rebuking the P.Ws and other small boys and asked them to go back to their house with their cattle as it is becoming evening. When the prosecutrix Manju also wanted to go with them, this appellant caught hold of her hand and started threatening her that he will commit her murder, if she would raise hullah and he dragged towards Basa river near Singhi Tungari where he committed rape upon her. Her clothes were stained with sperm.

8. P.W.1, Etwa Bhagat, P.W.2, Balendra Mahto and P.W.4, Sudhir Bhagat all have fully supported the prosecution case and stated that all the three boys who had gone with the informant/victim girl to graze their cattle to Sarna Tanr. On the alleged date of occurrence at about 5 P.M. this accused-appellant came there scolded and chided them and asked them to go with their cattle and out of fear they collected their cattle and began to return to their village, informant Manju Kumari also wanted to return her village but she was stopped by this accused-appellant and they saw that the accused-appellant dragged the victim girl towards Basa river and they came to village and told about the alleged occurrence to the informant's brother. Then, the informant's brother along with some of them went to search out his sister.

P.W.3, Sumitra Devi, the mother of the victim girl, stated that on the alleged date of occurrence it was Saturday her daughter had gone for grazing the cattle along with Sudhir Bhagat-P.W.4, Etwa Bhagat-P.W.1 and Balender Mahto-P.W.2 and other small children of the village. They returned to their village and informed

her that this accused-appellant was taking her daughter by force towards the Base river. Her husband is a lamb man, hence he could not go. Then, her son along with one more persons of the village went out in search of victim girl, but could not find her anywhere and on his return to his house he saw his sister in the house from whom he knew about the alleged occurrence that she was raped by this accused-appellant thrice. She identified this accused-appellant in Court.

P.W.5, Bhaua Oraon, father of the victim girl, has also supported the prosecution case.

P.W.7, Sunil Bhagat, the brother of the victim girl, stated that he was informed that this accused-appellant had taken his sister by force towards Basa river. Then, he along with his friends went in search of his sister towards the Basa river till 12 noon, but could not find her anywhere and the early morning he again went out to search her but could not find and on his return to his house he saw his sister was weeping in his house and she told about the occurrence that she was raped by this accused-appellant and he kept her in his house for whole night. Then, he took her sister went to the police station where she gave her statement. She and her brother put their signatures. She also presented handkerchief pant, skirt and blause on which simen had fallen, which were seized and seizure"ilist prepared by police.

In his cross-examination, he has fully supported the prosecution case.

P.W.8, Dr. Sarla Singh, who examined the prosecutrix on 15.9.1997 and stated that the victim girl was aged about 20 years and she was used to sex. However, she found no sign of rape and there was no injury on her external part and on her internal part and vaginal smear was sent for pathological examination and dead sperm was found. She has categorically stated that the victim girl had sexual act(coitus) within 24 to 72 hours as dead sperm was found in her vaginal smear. She proved her medical report, which is as Ext. 2.

9. The statement of the prosecutrix and other witnesses, has not been corroborated by the evidence of the doctor and I.O.

10. Thus, from the evidences, it appears that the prosecution has proved the charge u/s 376 of the Indian Penal Code against this accused-appellant beyond reasonable doubt and the learned Sessions Judge rightly found u/s 376 of the Indian Penal Code.

11. Learned Counsel appearing for the appellant as amicus curie has submitted that the appellant has remained in custody right from the time he surrendered in Court i.e. on 13.9.1997 till 28.11.2002 when he was granted bail by this Court in a Criminal Appeal and thereby he has remained in jail custody for about 5 years 2 months. It is further submitted that the doctor has found no sign of rape and there was no sign of any forceful intercourse and the victim girl was used to sex from before and she was major aged about 20 years. In that view of the matter, there is a chance that although, she protested, but the protest was not made and

she was in a way protesting cum consenting party. There is also a chance that they were known to each other from before having some love affairs, hence the sentence of the appellant may be reduced to the period of 5 years and 2 months already undergone by him. Learned Counsel further submitted that although u/s 376 of the Indian Penal Code the minimum sentence is seven years, but the proviso said that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

12. I find that the appellant as well as the victim lady both are co-villagers and doctor found that the victim girl was used to sex from before and no forceful rape was committed upon her and the appellant has already remained continuously in custody for 5 years and 2 months. In that view of the matter, in my opinion, in the special circumstances of the case, the conviction of the appellant is reduced to 5 years and 2 months, already undergone by him in custody.

13. With the aforesaid alternation in the sentence, the appeal is dismissed.

14. The appellant is on bail, he is released from the bondage of his bail bond.