
(2006) 05 JH CK 0101

In the Jharkhand High Court

Case No : Criminal Appeal No. 212 of 1994 (P)

Munna Mian

APPELLANT

Vs

State of Bihar (Now State of Jharkhand)

RESPONDENT

Date of Decision : 02-05-2006

Acts Referred:

Penal Code, 1860 (IPC) — Section 225, 376, 511

Citation : (2006) 3 JCR 410

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajiv Sinha, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—The appellant Munna Mian has filed this appeal against the Judgment and Order dated 08.07.1994 passed by Sessions Judge, Deoghar in Sessions Trial No. 120 of 1992 whereby, the Sessions Judge convicted the appellant u/s 376/511 of the Indian Penal Code and sentenced him to undergo Rigorous Imprisonment for a period of five years. The other four accused namely Salim Mian, Babu Mian, Bomber alias Khalil Mian and Aslam Mian, who are not appellant herein, were convicted u/s 225 of the Indian Penal Code and were sentenced to undergo Rigorous Imprisonment for a period of one year each.

2. The prosecution case in short is that the informant Suraj Mani Soren (victim) recorded her Fard Bayan on 23.06.1990 at 2:30 P.M. alleging therein that on the preceding day i.e. 22.06.1990, at about 5:30 P.M., she was washing her hands and feet in the "Joria (Rivulet)" situated on the south of the village, after throwing away the cow-dung. In the mean time, the appellant Munna Mian came there from Southern direction and caught hold of her from behind and thereafter, pulled her down on the ground and then attempted to commit rape on her. She started struggling for her release and in that process, her blouse was also torn away. She raised alarm whereupon, Sahdeo (P.W.-1), Nabo Marandi (P.W.-5),

Jageshwar Soren (P.W.-6) and others rushed there. Munna Mian wanted to escape but the aforesaid persons chased him and caught and thereafter, when he was being brought to Madhupur Police Station, in the mean time, the other accused persons namely Salim Mian, Babu Mian, Bomber alias Khalil Mian and Aslam Mian arrived and forcefully rescued the appellant Munna Mian. Due to fear, the informant did not go to the Police Station in the night and then, in the following morning, the information was sent to the Police Station and after the Police arrived there, her Fard Bayan was recorded.

3. The defence case is of total denial of the occurrence and the charges levelled against them.

4. In order to establish charges, altogether 7 P.Ws. were examined on behalf of the prosecution out of whom, P.W.-1 Sahdeo Hansda, P.W.-2 Loba Ram Marandi, P.W.-4 the informant and P.W.-6 Jageshwar Soren are the material witnesses. P.W.-3 Sitalal Tudu is a hearsay witness. P.W.-5 Nabo Marandi has been tendered whereas P.W.-7 Chandra Shekhar Singh is a formal witness. The Investigating Officer of the case has not been examined by the prosecution.

The learned Trial Court, on the basis of the evidence adduced by the prosecution, convicted and sentenced the appellant as stated in the preceding paragraphs.

5. The learned Counsel for the appellant, challenging the conviction and sentence passed against the appellant has submitted that the story put forward by the prosecution was absolutely concocted and improbable. It was further submitted that the prosecution witnesses have badly contradicted each other on all material points which clearly makes the prosecution case doubtful. It was further submitted that in view of the evidence of the victim (P.W.-4), the presence of P.W.-1, P.W.-2 and of P.W.-6 at the place of occurrence becomes very doubtful.

6. P.W.-1 Sahdeo Hansda has stated that at the relevant time, he was washing his hands in the "Joria (Rivulet)" where from he heard the alarm of the informant and then, he came out and saw that scuffle between the appellant Munna Mian and the victim Suraj Mani Soren (P.W.-4) was going on. In the mean time, the husband of victim Suraj Mani Soren also arrived there with whose help, Munna Mian was caught and was being brought to the Police Station but, the other accused persons forcibly rescued him. He further stated that the torn blouse of the victim was seized by the Police in his presence.

He further stated that no injury was present in the body of the victim. He specifically stated that when he was rushing to the place of occurrence, the appellant Munna Mian started running away towards his village but, with the help of Jageshwar Soren, who had also arrived at the place, Munna Mian was apprehended after chase.

Therefore, according to this witness, at the place of occurrence, only the victim (P.W.-4), her husband Jageshwar Soren (P.W.-6) and Sahdeo Hansda (P.W.-1) were present and no other witness was present at the place of occurrence at the

relevant time and when he was coming to the place of occurrence, the appellant started running from the place of occurrence.

7. P.W.-2 Loba Ram Marandi has also posed himself to be an eye witness though, he was not named as such in the F.I.R.. He has stated that when he reached at the place of occurrence, he saw the appellant Munna Mian mounted on the body of the victim Suraj Mani Soren and she was raising alarm and was trying to get herself released from the clutches of the appellant Munna Mian.

In paragraph - 8 of his evidence, he stated that on interrogation, Suraj Mani Soren disclosed about the occurrence.

Therefore, it is clear that this witness was not an eye witness to the occurrence rather he learnt about the occurrence from the victim, therefore, he is a hearsay witness.

8. P.W.-3 Sitalal Tudu is also a hearsay witness and he has stated whatever was disclosed to him by the victim.

9. P.W.-4 is the victim lady. She has stated in her evidence that while she was washing her hand and feet at Joria (rivulet), the appellant arrived near her, caught her and then pulled her down and then mounted upon her. She started raising alarm whereupon, her husband and other villagers arrived and caught the appellant Munna Mian.

She has further stated that the accused was subsequently forcibly released by the other accused persons. It was further stated by her that the accused did not succeed in committing rape but he attempted to commit rape and in that course, he tore away her blouse. She further stated that the appellant forcibly pulled her down and dragged her near the bank of Joria (rivulet) and she was struggling hard to release herself from the clutches of the appellant.

According to the victim, after she raised Halla, her husband Jageshwar Soren (P.W.-6) and Haula Hansda came there and they caught the appellant.

In paragraph-12 of her evidence, she has stated that when she fell on the ground, her face was upward and she was struggling for release and at that time, the surface was rough and small stone chips were on the ground.

This witness has not stated that P.W.-1 Sahdeo Hansda arrived at the place of occurrence along with her husband P.W.-6 Jageshwar Soren rather she has named one another person namely Haula Hansda who had arrived at the place of occurrence on her alarm and he caught hold of the appellant. There is nothing on the record to show that Haula Hansda and Sahdeo Hansda are the same person because none of the prosecution witnesses have stated like that. Even P.W.-1 Sahdeo Hansda has not stated that he was also known as Haula Hansda. Therefore, the evidence of P.W.-1 Sahdeo Hansda cannot be said to be the statement of an eye witness to the occurrence and as such, no reliance can be placed on his evidence.

It is very significant to note that the victim girl had no injury at all on her person though, according to her, she was forcibly thrown on the ground and when the accused mounted on her body, she was struggling for her release from the clutches of the appellant and the surface was hard and rocky. Therefore, in such a situation, if such an occurrence would have at all taken place, as narrated by the victim, then she must have received some kind of injury on her person but, curiously enough, no injury on her person was found and therefore, the case of the prosecution appears to be somewhat doubtful and improbable.

10. One more significant fact in the case is that though, according to the prosecution, in course of scuffle between the appellant and the victim, the blouse of the victim was torn and the said blouse was seized by the Police but, neither any seizure list nor the torn blouse which was allegedly seized by the Police, was brought on record to establish the said fact. This also creates doubt on the veracity of the prosecution case.

11. Admittedly the Investigating Officer has not been examined by the prosecution and therefore, these facts and the contradictions in the evidence of the P.Ws. could not be brought on record by the defence by drawing the attention of the Investigating Officer.

12. Therefore, in my view, the defence was greatly prejudiced due to non examination of the Investigating Officer. The facts and circumstances discussed above are enough to create reasonable doubts on the case of the prosecution. The evidence of the prosecution adduced during trial are so weak that on such a weak evidence, the conviction of the appellant under Sections 376/511 of the Indian Penal Code cannot be based.

13. In view of the discussions and findings above, I hold that the prosecution has not been able to establish charges beyond all reasonable doubts against this appellant.

Consequently, this appeal is allowed. The conviction and sentence passed against the appellant by trial court is hereby set aside. The appellant who is on bail, is discharged from the liability of his bail bonds.