
(2010) 02 JH CK 0069
In the Jharkhand High Court

Narayan Mandal, Chando Mandal and Rewat Mandal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 157
Penal Code, 1860 (IPC) — Section 323, 34, 341, 376

Citation : (2011) 2 Crimes 100 : (2011) 1 JLJR 55

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction dated 31.3.2000 and order of sentence dated 1.4.2000 passed by Sri Dhruv Narayan Upadhyay, 1st Additional Sessions Judge, Giridih in Sessions Trial No. 518 of 1989 by which judgment all the three appellants were found guilty u/s 376/34 of the I.P.C. and sentenced to undergo R.I. for 7 years and also to pay a fine of Rs. 500/- each and in default to undergo S.I for one month.

3. It is submitted by learned Counsel for the appellants that the prosecution case is false and fabricated. There is admitted enmity and land dispute between the parties from before and it will be apparent from the evidences of the witnesses as also from the F.I.R (Ext.3) that the occurrence took place at 4 p.m. on 6.8.1989, but it was reported on the next day at 16.00 hrs i.e. at 4.00 p.m. and this delay of 24 hours has not been explained by the prosecution. Moreover, it will also appear from the F.I.R itself in column No. 3 that the F.I.R was admittedly sent to the court by special messenger, but the same reached the court of C.J.M and signed by the C.J.M on 10.8.1989, after two days. The two vital days delay made by the prosecution makes out the entire prosecution case false and, fabricated. Learned Counsel has relied upon the decision reported in Criminal Law Journal 1976 page 1883 in the Case of Ishwar Singh v. State of Uttar

Pradesh. It is further submitted that independent witnesses of the village has also not supported the prosecution case and according to the independent witnesses only some scuffle took place between the victim-P.W. 7, Yasoda Devi and female members of the accused persons, but the same was distorted and real F.I.R was not produced in the court. In that view of the matter, prosecution case is full of doubts and conviction of appellants are bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the state has supported the prosecution case and stated that prosecution has examined 8 witnesses including the Investigating Officer and Doctor and all of them supported the prosecution case. In that view of the matter, the conviction of the appellants are well founded and requires no interference by this Court.

5. After hearing both the parties and after going through the evidences on record, I find that the prosecution case was started on the basis of the fardbeyan given by the informant-prosecutrix, P.W.7, Yasoda Devi on 7.8.1989 at 16.00 hrs. i.e. 4.00 p.m. that on 6.8.1989 at about 4.00 p.m. when she was grazing her catties at Marghatia Tanr, which is north of her village, then suddenly Narayan Mandal, Chando Mandal and Rewat Mandal came and caught hold of her and they lifted her and took her near the river. She made hulla to disentangle herself, but Rewat Mandal closed her mouth. Narayan Mandal, after snatching small stick from her hands, assaulted her. Thereafter, they brought her down. Rewat Mandal caught hold of her hands and legs, then Narayan Mandal committed rape upon her. After completing his rape he left her and closed her mouth, then Chando Mandal also committed rape upon her. Hearing her hulla in between, her brother-in-law, Dhanpat Mandal also came shouting her name towards the place of occurrence. Then the accused persons left her and ran away. Her dever also saw the accused persons running away. She stated that since the police station was far away from the village, she has come today to report the matter. She has stated that her blouse, petticoat which she was wearing were kept in the home and she will give it to the police.

6. On the basis of the said farebeyan, police registered a case u/s 376G, 341, 323 of the I.P.C. and started investigation. It is also stated in para 3 of the formal F.I.R that the F.I.R was sent by special messenger on 8.8.1989 itself. After investigation police submitted charge sheet in the case Since, the case was exclusively triable by the court of Sessions, Learned C.J.M. after taking cognizance committed the case to the court of Sessions which was tried by 1st Additional Sessions Judge, Giridih who found the appellants guilty and convicted them as aforesaid.

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

P.W.1 is Dr. Mrs. Manju Jha, who examined the victim.

P.W.2 is Debi Mandal

P.W.3 is Jiblal Mandal, husband of the informant

P.W.4 is Lakhan Mandal

P.W.5 is Dhanpat Mandal, brother-in-law of informant

P.W.6 is Kisuh Pandey

P.W.7 is Yashoda Devi, victim lady and informant of the case.

P.W.8 is Nagendra Singh, Investigating Officer of the Case.

8. P.W.1, Dr. Manju Jha, who examined the victim lady on the date of occurrence itself at 7.00 p.m. stated that she found several bruises and abrasion on the body of the victim. She found dead spermatozoa in her vaginal swab, but no foreign hair was found in her private part. Stain of mud was present in her petticoat. Injuries were simple in nature caused within 12 hours. The victim lady was young and married woman aged about 25 years and presence of spermatozoa shows that she had recent sexual intercourse. The doctor has proved the medical report marked as Ext. 1. P.W.7, Yashoda Devi is the prosecutrix herself who has supported the statement given by her in the F.I.R and stated that on the date of occurrence on 6.8.1989, while she was looking after her cattle at Marghatia Tanr, which is north of the village at about 4.00 p.m. then suddenly Narayan Mandal, Chando Mandal and Rewat Mandal came there and overpowered her and thereafter, they took her to the river side and after throwing them committed rape upon her one by one. She further stated that hearirigher hulla her dever came towards the place of occurrence calling her name, then the three accused persons ran away. After that her dever brought her back to the house and on the way she met with her husband. She also told him about the occurrence. She stated that next day morning, she went to the police station with her husband. The again she says that they had gone to the police station with her husband in the next day in the first half. She identified the accused persons in the court. In para 8 she has stated that she does not know any male member of her village. The prosecutrix's husband, Jiblal Mandal was also examined as P.W.3. He has also tried to support the prosecution case and stated that on the date of occurrence i.e. on 6.8.1989 at about 4.00 p.m. he came back at 5 p.m. When he found his wife absent in the house, he inquired his mother, who stated that she had gone to the Tanr with the cattles, then he went towards Marghatia Tanr. On the way he saw his brother, Dhanpat Mandal earning with his wife, Yashoda who was "badhawas" and had injury in her hand and right leg. His brother stated accused, Narayan Mandal, Rewat Mandal and Chando Mandal, suddenly appeared from bush and overpowered Yashoda and took her towards the river. Thereafter, all the three accused persons committed rape upon her. He has stated that in search of his Bhabhi, his brother reached the place of occurrence calling her name where he saw the accused persons running away and after that his brother was bringing his wife towards the house. He asked his wife, then she also told about the occurrence to him. Since, it had become evening and dark by that time, he went to the police station on the next day

morning with his wife where his wife gave her statement. Thereafter, finding the statement correct his wife put her R.T.I. In para 6 of his deposition he has admitted of land dispute with the accused persons with his father and the three accused persons and a case is going on in the court at the time of occurrence. Otherwise, he has got no enmity with the accused persons. P.W.2, Debi Mandal has only stated that he heard the hulla from his nephew, Dhanpat that his bhabhi, Yashoda has been raped by three accused persons, namely, Narayan Mandal, Chando Mandal and Rewat Mandal. He has proved his signature on the seizure list of the clothes of Yashoda Devi marked as Ext.2. P.W.4, Lakhan Mandal has stated that he was told by Dhanpat Mandal that when his bhabhi, Yashoda was grazing cattle on 6.8.1989 then the three accused persons committed rape upon her one by one. He has also proved his signature on the seizure list of the clothes of the victim lady marked as ext. 2/1. P.W.5, Dhanpat Mandal is the brother-in-law of the victim, who has stated that on the date of occurrence he had gone to search her Bhabhi at 4.00 p.m. He stated that as her bhabhi was not present at Marghatia Tanr, he started shouting her name, then suddenly he saw the accused, Narayan Mandal, Chando Mandal and Rewat Mandal running away from the place of occurrence and when he went near the ditch from where he was hearing the sound of weeping of his Bhabhi, he saw his Bhabhi is unconscious and her clothes were also in bad condition. Then he put water on her face. She stated that Narayan Mandal, Rewat Mandal and Chando Mandal suddenly came out from the bush and after overpowering her, they took her towards river. They also assaulted her from a small stick which she was holding. Thereafter, firstly, Narayan Mandal, then Chando and after that Rewat Mandal committed rape one by one. Then while, taking his bhabhi towards his house, he met with his brother Jiblal Mandal. He told about the occurrence to his brother also. Next day he along with his brother and Bhabhi went to the police station where she had given her statement. He also admitted in para 5 that there is a land dispute with the accused and their family members. P.W.6, Kisun Pandey has not supported the prosecution case and stated that there was land dispute between both the parties. On the date of occurrence, Darshan Mandal, father-in-law of the informant-victim has stated to him that his daughter-in-law has been assaulted by the accused persons and he had seen the injury on the person of his daughter-in-law, Yashoda Devi. In his cross examination, he has stated that before the Investigation Officer also he has stated that Darshan Mandal told him that Narayan Mandal, Chando Mandal, Rewat Mandal assaulted his daughter-in-law. He has also stated to the Investigating Officer that he had seen the injured and his daughter-in-law was in great pain. P.W.8, Investigating Officer of the case has stated in the court that the fardbeyan was recorded in the court by him. He has proved the fardbeyan as formal F.I.R as Ext. 3, he also gave the detail of the place of occurrence. After investigation he has submitted charge sheet in the case. He has stated that he had prepared the seizure list of the sari, saya etc. of the victim lady and proved the seizure list as Ext.4.

9. The defence has also examined 7 defence witnesses (D.W.s).

D.W.1 is Singha Mian

D.W.2 is Bichu Mian

D.W.3 is Hasan Ali Mian

D.W.4 is Bhairo Mian

D.W.5 is Rojan Mian

D.W.6 is Dulal Mian

D.W.7 is Yugal Kishore Prasad

10. All the defence witnesses have stated that they are all neighbouring witnesses of the informant and a fight took place between the accused and Jiblal Mandal and his father, Darshan Mandal and subsequently, while Yashoda Devi, informant had gone for grazing cattle and since the cattle entered the field of the accused persons, female members of the accused persons had fight with Yashoda Devi, who was assaulted causing injury on her body.

11. After hearing the parties and after going through the evidences on record, I find that no doubt the prosecution witnesses i.e. P.W.7, P.W.3, P.W.5 as also P.W.2 and P.W.4 have supported the prosecution case and stated that on the date of occurrence at about 4 p.m. on 6.8.1989, three accused persons committed rape upon Yashoda Devi. But, it is important to note that all the aforesaid witnesses belonged to the same family and it has been admitted by P.W.3 and P.W.7 that enmity between them and the accused is going on. The only independent witness examined by the prosecution, P.W.6 Kisun Pandey had not supported the prosecution case, rather he has supported the statement given by the defence witnesses that only fight took place between the two parties in the evening and when the victim lady had gone to graze the cattle, a fight took place between victim-Yashoda Devi and family members of the accused which fact has also been stated to the police. So the case of the defence has also been supported by the evidence of P.W.6. It is important to note that defence has tried to examine a charge sheet witness, D.W.2, Bichu Mian, who has stated during investigation as also in the court that no case of rape seen by any of the villagers rather on the date of occurrence there was a fight between the family members of the accused with the prosecutrix, Yashoda Devi and accused had assaulted her causing injury on her person.

12. Considering the facts that even the prosecution independent witness have supported the defence version and considering on the other hand, the claim of the defence that ample time given to the police by the prosecution in creating the case, since the occurrence took place on 6.8.1989 and it is apparent from the F.I.R that the matter was reported after 24 hrs. on 7.8.1989 at 16 hrs for which the prosecution has got no explanation. Moreover, doubt has also been created by the evidence of P.W.3 as also the evidence of P.W.7 that shows in their examination in chief itself that next day morning they went to the police and

lodged the F.I.R. If any F.I.R was lodged in the morning of 7.8.1989 then the same has not been brought before the court. The F.I.R which was brought before the court was recorded at 16 00 hrs i.e. at 4 p.m., which means in the afternoon and not in the morning. Moreover, it is apparent from the F.I.R in column No. 3 that the F.I.R was sent by special messenger on 8.8.1989, but it appears that the same was placed before the C.J.M on 10.8.1989 i.e. after two days. Learned Counsel for the appellant has relied upon a decision reported in *Ishwar Singh Vs. State of U.P.*, In the said decision it has been stated that as per Section 157 Cr.P.C cognizable offence recorded in any of the F.I.R should be sent forthwith to the competent Magistrate for taking cognizance of the offence and extraordinary delay in sending the F.I.R is a circumstances which provides a legitimate basis for suspecting that the F.I.R was recorded much later than the stated date and hour affording sufficient time to the prosecution to introduce improvements and embellishments and set up a distorted version of the occurrence. In this case the suspicion hardens into a definite possibility when the case made in court differs at least in two very important particulars from that narrated in the F.I.R. In such a case, the evidence of the eye witness cannot be accepted at its face value. In this case also the aforesaid suspicion become strong since, from the evidence it appears that the F.I.R was recorded in the morning of 7.8.1989 while the prosecution F.I.R was recorded in the afternoon of 7.8.1989 and it was sent to the court after two days In that view of the matter the prosecution case has become doubtful and benefit of doubts must go to the appellants.

13. Accordingly, the benefit of doubt is given to the accused-appellants and they are acquitted from the charge leveled against them.

14. In the result, the appeal is allowed and the judgment of conviction dated 31.3.2000 and order of sentence dated 1.4.2000 passed by Sri Dhruv Narayan Upadhyay, 1st Additional Sessions Judge, Giridih in Sessions Trial No. 518 of 1989 is set aside. Since, the appellants are on bail, they are released from the bondage of bail.