
(2004) 02 PAT CK 0056

In the Patna High Court

Case No : Criminal Appeal No. 62 of 2002 (SJ)

Paramhansh Choudhary @ Paramhash Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 04-02-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2004) 1 BLJR 504 : (2004) 2 PLJR 68

Hon'ble Judges : Braj Nandan Prasad Singh, J

Bench : Single Bench

Advocate : Raghubansh Singh, Ashok Kumar Singh, Satyapal Singh and Rajnish Kumar Choubey, for the Appellant; B.N.P. Gupta, APP, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The sole appellant suffered conviction u/s 376 of the Indian Penal Code (IPC) on being tried by the 1st Additional Sessions Judge, Gopalganj and on that count he was sentenced to suffer rigorous imprisonment for a term of seven years.

2. The accusations are that in early hours of 24th August, 1999, while Sunita Kumar (PW 4), had gone north to her house to respond to the nature's call and was about to come back to her house, the appellant lifted her, took her to the maize field, thrashed her on the ground and violated her person. On alarm raised by her, Tetari Devi (PW 2) rushed there when the appellant leaving the prosecutrix, made good his escape. A police case had been registered on behest of Sunita Kumari, pursuant to which, investigation commenced and the Police Officer finding sufficient evidence to put the appellant on trial, laid charge-sheet against him. In the trial that followed, prosecution examined six witnesses including the prosecutrix, Police Officer and other witnesses. The doctor, however, who examined the prosecutrix, had not been examined at trial.

3. Defence of the appellant had been that of innocence and it was suggested to

the witnesses that the appellant had been reprimanding the prosecutrix, who was of easy virtue, and hence a false case had been foisted on him. No witness, however, was examined by the defence. Trial Judge believing the prosecution witnesses, particularly, the prosecutrix and PWs 6 and 7, recorded finding of guilt and sentenced the appellant in the manner stated above.

4. Primarily, two-fold contentions were raised on behalf of the appellant and it is contended that though Tetari Devi (PW 2) happened to be none else but the aunt of the prosecutrix, who was suggested to be the first person to have rushed to the place of occurrence on alarms raised by her, she had not corroborated the prosecution version about commission of sexual assault on Sunita Kumari, by the appellant. Non-examination of the doctor at trial, who clinically examined the prosecutrix, was also highlighted at Bar and the submission is that since finding recorded by the doctor had not lent assurance to the prosecution assertion about there being evidence for commission of sexual assault on the prosecutrix, the doctor had been purposely withheld by the State. Referring to the evidence of Kailash Choudhary (PW 6), submission is that though in examination-in-Chief, he did not claim to have witnessed sexual assault on the prosecutrix, in cross-examination, he stated to have noticed the appellant lying over the prosecutrix and though he made endeavours to apprehend him, he was out of his reach. Contentions were raised that attention of this witness had also been drawn by the defence towards his previous version, there being no such parallel statement during investigation. While commenting on credibility of Phulmati Devi (PW 5), submission is that in view of narrations made by the prosecutrix, she too could not have been witness to the appellant making good his escape allegedly after commission of sexual assault on Sunita Kumari. Failure of the Investigating Officer to seize wearing apparels of the prosecutrix, which could have suggested presence of dried semen was also taken to be a ground to discredit the prosecution version. 5. Harihar Choudhary (PW 1) and Tetari Devi (PW 2) had turned volte face to the State about the incident in question. Reiterating her earliest version, Sunita Kumari (PW 4) would state about commission of sexual assault on her by the appellant when she had gone to respond to the nature's call in the field, of Harihar Choudhary. Though the prosecutrix states that the appellant had accomplished sexual assault on her by the time the witnesses happened to come there. Phulmati Devi (PW 5) was quite emphatic that when she rushed there, she found the appellant committing sexual assault on Sunita Kumari. Though attention of Kailash Choudhary (PW 6) was drawn by the defence, these questions remained unanswered by the Investigating Officer, he having not been controverted with denial made by the witness. Be that as it may, he had claimed to have witnessed the appellant making good his escape where sought to be placed by the learned counsel for the appellant on a number of decisions prominent of which was a decision of the Apex Court of the land reported in *Dilip and Anr. v. State of M.P.* 2001 (2) PCCR 394 However, I find that the case under consideration was not identical to the facts of the case cited at Bar as in that case, the maternal aunt of the prosecutrix to whom the prosecutrix

had narrated the incident soon after commission of rape on her, had given a different version and hence the Court found it difficult to rely on the truthfulness of the version of the prosecutrix. The doctor, true it is, had not been examined despite all endeavours made by the trial Court. This fact, however, cannot be lost sight of that the prosecutrix in a sexual offence was not an accomplice and she was rather an injured witness who deserves all credence. Though Tetari Devi (PW 2) had not corroborated version of Sunita Kumari, there has been corroboration from Phulmati Devi (PW 5) and Kailash Choudhary (PW 6). As usual, suggestion of character assassination of the prosecutrix was made by defence, as it was suggested to the witnesses that since appellant was reprimanding the prosecutrix, who was of easy virtue, a false case had been pitted against him. This suggestion remained only a bald suggestion without there being any corroboration. No explicit animosity either with the prosecutrix or with the witnesses was suggested at trial. The Investigating Officer had acknowledged that he had not made any probe about character of the prosecutrix during investigation. Even if it be accepted for a moment that the family of Sunita Kumari was bereft of means on account of her father having married another lady and making no provision for children of his first wife, that was not adequate ground to draw inference that Sunita Kumari, in the circumstances, must be of easy virtue. It is argued that the appellant was in custody since about last four years. In the circumstances, regard being had to the facts and circumstances of the case and also evidences available on the record, while finding of guilt recorded by the Court below against the appellant is upheld, sentence is reduced to five years.

6. This appeal is accordingly dismissed with modification in sentence, as indicated above.