

(2011) 09 JH CK 0088

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 826 of 2007

Pradip Hazam @ Pradip Pramanik

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-09-2011

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 464

Penal Code, 1860 (IPC) — Section 34, 342, 363, 376(2), 376(G)

Citation : (2011) 09 JH CK 0088

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Upadhyay, J.—This criminal appeal is directed against the judgment of conviction and order of sentence dated 10.05.2007 and 15.05.2007 respectively, passed by Sri Ram Narayan Singh, Additional Judicial Commissioner, F.T.C., Khunti in Sessions Trial No. 92 of 2005 whereby and whereunder the sole Appellant Pradip Hazam @ Pradip Pramanik has been held guilty for the offences punishable u/s 363, 376 (G) & 342 of the Indian Penal Code and accordingly sentenced to undergo R.I. for 10 years u/s 376 (G) I.P.C. and to pay a fine of Rs. 2000/- and in default S.I. for three months, R.I. For three years u/s 363 and R.I. for six months u/s 342 I.P.C. and the sentences so passed were directed to run concurrently.

2. The prosecution case, as it appears from the written report, is that on 28.06.2004 at about 2.00 a.m. the informant went out of the house to answer call of nature but she was apprehended by Shankar Singh Munda at the time of her return. Her mouth was gagged with a cloth as a result she could not raise alarm. In the meantime, accused Pradip Hazam and Surju Mohan Swanshi also appeared at the place and they all forcibly took the informant to the house of Shankar Singh Munda where she was subjected to rape by Shankar Singh Munda. Thereafter Appellant Pradip Hazam @ Pradip Pramanik entered into the

room and he also committed rape on her. The informant was kept confined in the house with a threat not to raise alarm. On the following night, i.e. on Tuesday accused Surju Swanshi again committed rape on her. On Wednesday evening somehow she managed to escape from the place and disclosed the incident to her parents and family members. The matter was brought to the notice of villager Kamalkant Singh Munda and thus on 01.07.2004 a panchayati was held in which it was decided to lodge a case against the accused persons. Accordingly a written report was lodged on the basis of which Bundu, Sonahatu P.S. Case No. 28 of 2004, u/s 342 & 376/34 I.P.C. was registered against accused Shankar Singh Munda, Pradip Hazam @ Pradip Pramanik and Surju Swanshi.

3. The Investigating Officer, at the conclusion of trial, submitted chargesheet against Appellant Pradip Hazam @ Pradip Pramanik u/s 363 and 376 (G)/34 I.P.C. and kept the investigation continued against other accused who were absconding.

4. On 29.03.2005 charges were framed against Appellant Pradip Hazam @ Pradip Pramanik u/s 376(G), 363 & 342 I.P.C. to which he pleaded not guilty and claimed to be tried.

5. The prosecution, altogether examined four witnesses whereas the Investigating Officer Rajdev Prasad has been examined as CW-1.

6. The defence of the accused is of total denial of the allegations levelled against him and also of false implication.

7. PW-1 Kamal Kant Singh Munda has not supported the prosecution case and he has been declared hostile. He also refused to accept his earlier statement recorded u/s 161 Code of Criminal Procedure. when it was referred to him.

8. The prosecutrix has been examined as PW-2. She has supported the prosecution case and deposed that on 28.06.2004 in the night at 2.00 a.m. she went out of the house to answer call of nature. While she was returning she was intercepted by accused Shankar Munda who gagged her mouth and forcibly took her to his house with the help of Pradip Hazam @ Pradip Pramanik (Appellant) and Surju Swanshi. She was subjected to rape by all the three, one after another. In her statement in para-2 she has disclosed about one more accused Bhupesh Mahto who also committed rape on her. She was threatened not to raise alarm and kept confined in the said house. On the following night again she was subjected to rape by those accused persons. On third day in the evening at about 7.00 p.m. she got opportunity and escaped from the place and disclosed the incident to her parents and relatives. On Thursday evening a meeting was held in the village and after that the matter was reported to police. She has further disclosed that her statement was written by Kamla Kant Munda which was handed over to the police. She has proved signature of her father Chaitan Singh Munda on written report which has been exhibited as Exhibit 1/1. She had identified the accused in Court. In her cross-examination she says that she had lodged case against four persons including Bhupesh Munda. The written report

was prepared on Thursday evening but it was given to police on Friday. She admits that a panchayati was held in which the accused persons were imposed a fine of Rs. 21,000/- and Shankar Munda was suggested to marry the victim but he did not agree. The victim has also explained the identity and details of the accused persons in her further deposition. She has also explained the place of occurrence where she was kept confined and the manner in which she escaped from the place.

9. PW-3 Dr. Chandrawati Boipai had examined the victim on 05.07.2004. According to opinion of the doctor rape was committed and dead spermatozoa were found. The age of the victim on the date of her examination was opined as 16 years. In her cross-examination she has stated that life of spermatozoa after its discharge in vagina is 2 to 4 hours and after intercourse dead spermatozoa can be found within 10-12 hours in vaginal part.

10. There are two Investigating Officers in this case. PW-4 Satya Narayan Rai is part Investigating Officer. He had submitted chargesheet and he did not examine any witness whereas Rajdev Prasad, who has been examined as CW-1 is the main Investigating Officer. PW-4 Satya Narayan Rai submitted chargesheet against Appellant Pradip Hazam @ Pradip Pramanik. He has proved formal F.I.R. and signature of Rajdev Prasad as exhibit 3 and 4 respectively. In his cross-examination when his attention was drawn towards F.I.R. he has stated that the victim had disclosed that on the first night two persons had committed rape and on the next night 3rd accused had committed rape. According to the statement of CW-1 the victim had given written report on 03.07.2004 at 1300 hours on the basis of which this case was registered against the accused persons. He had examined the place of occurrence, recorded the statement of witnesses and sent the victim for her medical examination. In para-7 he has stated that on 01.07.2004 the victim had disclosed before him that Shankar Munda, Saurju Swanshi and Pradip Hazam @ Pradip Pramanik had committed rape on her after giving threat and in this connection a panchayati was called at the instance of Kamla Kant Singh (PW-1). The prosecution story find support from the statement of this witness.

11. Learned Counsel for the Appellant has challenged the findings of the learned Additional Judicial commissioner on the ground that charge framed is defective and it has caused prejudice to the Appellant. There is no offence as Section 376(G) in the Indian Penal Code but the charge has been framed for that offence. The next point the Learned Counsel raised is that the informant in her written report has levelled allegation that Shankar Munda, Pradip Hazam and Surju Swanshi had forcibly took her to the house of Shankar Munda where she was kept confined and subjected to rape by them. But in her deposition in Court she has introduced a new story in which name of 4th accused Bhupesh has appeared. The name of 4th accused Bhupesh is also unknown to the investigation. Furthermore, in her deposition in Court she says that all the accused, on the very same night committed rape one after another which is not

appearing in her written statement. She has stated that the information with regard to the occurrence was given to the police on Thursday but again she says that it was prepared on Thursday but handed over to police on Friday. The victim has stated that after she escaped from the house of Shankar Munda she narrated the incident to her father and villager Kamlakant and after that a panchayati was held in the village but said Kamlakant (PW-1) has not supported the prosecution case and father of the victim has not come forward to depose in favour of the prosecution. There is delay in lodging the F.I.R. which has not been properly explained. The evidence of doctor is also contradictory to the findings given by her in the medical report. The doctor has stated that dead spermatozoa can be found within 10-12 hours in vaginal part. The admitted case of the prosecution is that the occurrence took place on 28.06.2004 but the matter was reported to police on 03.07.2004 and the victim was examined by the doctor on 05.07.2004, i.e. after a lapse of one week. But the doctor, in her evidence says that dead spermatozoa were found which could not be relied upon. Last, but not the least, it was submitted that the Appellant has already remained in custody for more than seven years whereas other accused are absconding and the investigation against them is still continue. The minimum punishment prescribed u/s 376(2) (g) I.P.C. is 10 years but the proviso speaks that lesser punishment could be awarded after assigning special reasons. In this regard he has relied upon the following judgment 2010 (2) AIR Jhar Rule 857 (Bhupen Mandal v. State of Jharkhand), AIR 2010 (3) Jhar 341 (Mukdeo Naik v. State of Bihar), 2007 (4) LJLR 690 (Budhram Gope v. State of Jharkhand) and AIR 2007 (1) Jhar 278 (Gunadhar Yadav v. State of Bihar).

12. Learned Counsel appearing for the State has vehemently opposed the argument and submitted that the prosecutrix has well established the prosecution case against the Appellant. She is a village girl and the written report was prepared by one of the villager. The victim or her father are not very much conversant with Hindi language and therefore, some omission or addition in the statement of victim, who belongs to remote village of Jharkhand, is always expected and it is quite natural. The medical officer as well the Investigating Officer have fully supported the prosecution case and the learned A.J.C. has considered and discussed all the aspects and the impugned judgment needs no interference.

13. I have carefully gone through the entire case record, the impugned judgment and the evidence adduced on behalf of prosecution. It is true that some addition has cropped up in the deposition of victim in the Court and she has added name of one more accused who is not named in the written report. It is apparent that the written report was prepared by PW-1 who has not supported the prosecution case. The victim or her father have little knowledge about Hindi and for that reason they took help of PW-1. Be that as it may, only because name of fourth accused has been disclosed by the victim in her deposition in Court, the entire incident as disclosed by the victim against present Appellant, could not be thrown away and that too in a situation that no indicating circumstance for false

implication of the accused has come on record. I do not find any reason as to why a girl aged 16 years would disclose a fact that she was ravished by 3-4 persons and she was kept confined in a room for 2-3 days. Furthermore, the evidence of doctor is also corroborative. Dead spermatozoa, which according to medical jurisprudence could be detected even within 8-10 days of the incident. So far the delay in lodging the case is concerned, it is evident that the girl was kept confined for three days and then she escaped after getting opportunity. As usual practice prevailing in tribal community of Jharkhand, the meeting was convened after which the matter was reported to police. In a case of rape delay, as alleged to have been occurred in the case at hand, it does not appear to be a matter of much importance and on that score alone the entire prosecution case, which is otherwise consistent, reliable and trustworthy, could not be thrown away. I do not find any reason on record for false implication of the Appellant.

14. Now coming to the point raised with regard to framing of defective charge. Mere omission or defect or wrong mention of section in the form of charge, unless it causes prejudice to the accused, will not vitiate the trial. Section 464 Code of Criminal Procedure. appears relevant to quote here which reads as follows:

Effect of omission to frame, or absence of, or error in, charge.-

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charge unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may-

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommenced from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.

15. Admittedly, there is no offence known as 376(G) in the I.P.C. and the appropriate section is Section 376(2)(g) I.P.C. in which punishment is prescribed for gang rape. So it is apparent that in the form of charge, instead of mentioning Section 376(2)(g), Section 376(G) has been indicated. Let us look at the content explained to the accused at the time of framing charge for that offence which is as under:

That you, on or about the 28th day of June, 2004 at Landupdih in the house of Shankar Munda, P.S. Sonahatu, Dist.-Ranchi, did commit rape on Rewati Kumari jointly one by one and thereby committed an offence punishable u/s 376 (G) of the Indian Penal Code and within my cognizance.

Thus, the content of charge explained to the accused is very clear and I do not find that it has caused prejudice to the accused in any manner during trial. Cross-examination to the witnesses has been done knowing full well that the charge levelled was for the offence of gang rape.

16. Learned Counsel for the Appellant has lastly prayed to reduce the sentence from the minimum inflicted to the period already undergone. It is true that no universal principle for inflicting sentence has been laid down and therefore, any individual Court while inflicting the sentence uses their discretion within the purview of prescribed punishment and it may vary from one judge to another but we have to keep in mind that the sentence inflicted must be proportionate to the nature and gravity of the offence and also considering the allegation levelled and charges proved against the convict. In the case at hand in which a minor girl aged 16 years was kidnapped by the accused persons named in the F.I.R. She was forcibly taken to the house of one of the accused where she was kept confined for three days and during that period she was subjected to gang rape. The Apex Court in the judgment reported in *Dinesh @ Buddha Vs. State of Rajasthan*, has given guideline that in offences committed against women and minor children should be dealt with hard hand and adequate punishment should be inflicted. The sentencing courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. The courts must hear the loud cry for justice by society in cases of the heinous crime of rape on innocent helpless girls of tender years, as in this case, and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum on the Appellant. Considering heinous nature of offence and the allegation levelled against the Appellant, I do not feel inclined to give special reason to reduce the sentence from minimum inflicted u/s 376(2)(g) of the Indian Penal Code.

17. In the result, I don't find any merit in this appeal. Accordingly this appeal stands dismissed. The judgment of conviction and sentence dated 10.05.2007 and 15.05.2007 respectively, passed by Sri Ram Narayan Singh, Addl. Judicial Commissioner, F.T.C., Khunti in Sessions Trial No. 92 of 2005 is confirmed without making any interference with impugned judgment of conviction and sentence.