

(1998) 12 PAT CK 0051
In the Patna High Court
Case No : Criminal Appeal No. 326 of 1997

Prakash Mandal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 24-12-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 109, 376

Citation : (1999) 1 PLJR 513

Hon'ble Judges : Ravi Nandan Sahay, J

Bench : Single Bench

Advocate : Rama Kant Sharma, Rajesh Kumar, in Cr. Appeal No. 326 of 1997, I.K. Saran, Manoj Kumar Jha and Sanjay Kumar, for the Appellant; Suresh Prasad Sinha and Ganesh Pd. Jaiswal, for the Respondent

Judgement

Ravi Nandan Sahay, J.—By this judgment two criminal appeals (Cr. Appeal No. 326/98 and Cr. Appeal No. 65/98). which have arisen from Sessions Trial No. 465 of 1997 on the file of 3rd Additional Sessions Judge, Bhagalpur, are being disposed of.

2. Munna Mehtar @ Munna Sweeper, who has preferred Cr. Appeal No. 65/98 has been convicted u/s 376 I.P.C. and sentenced to ten years imprisonment. He has also been directed to pay fine of Rs. 10,000/- and in default, to undergo R.I. for two years. Appellant Prakash Mandal, who has preferred Cr. Appeal No. 326/97, has been convicted u/s 376/109 I.P.C. and has been sentenced to seven years imprisonment and to pay a fine of Rs. 5,000/- and in default, to undergo R.I. for one year. Both the Appellants were employed as sweepers in Government Hospital, Bhagalpur. The prosecutrix Miss Nirola Murmu and her sister Helena Murmu were also employed in the same hospital.

3. The prosecution case has been narrated by the trial court as follows:

On 13.2.97 at 12.30 P.M. one Miss Nirola Murmu daughter of Late Sukul Murmu, resident of village Bena Gara P.S. Shikaripara, District-Dumka, at present posted

as 4th grade employee in Sadar Hospital Bhagalpur gave her fardbeyan, before the Kotwali Police Station that she is an unmarried girl aged about 29 years. Nirola was appointed on 4.1.97 in Jai Prakash Narain Sadar Hospital, Bhagalpur as 4th Grade employee. She was residing with her sister Helena Murmu in the Hospital premises. On 12.2.97 at 12 noon after finishing her duty in the Hospital she was about to go, the same time accused Munna forcefully tried to give the key of outdoor Hospital to Nirola. On refusal by Nirola to take the key one Hriday Narain who is the Compounder in the same Hospital asked her to take the key and that will create no problem. Nirola took the key and went to her residence. At about 4.00 P.M. Munna Mehtar came to the residence of Nirola and told that Civil Surgeon Shaheb and other are standing on the gate and asked her to expeditiously to go with key there. It is further stated that Nirola tried to give the key to Munna but he did not take it and asked her to go there. It is further stated that Nirola went to the outdoor but she saw none there. She went behind the outdoor Hospital and, searched Munna Sweeper where she found Munna there. She gave the key to Munna and she was about to return back but Munna told her to wait for ten to fifteen minutes because Shaheb was about to come. It is further stated that Nirola and Munna sat there. Then Munna told her to open the windows. She went to open the windows. In the meantime, Munna came from behind and took her into his grip and asked her to marry with Munna. Munna further told that he wants to see her whole body bare and he started forcefully dragging her. In the meantime accused Prakash Mandal came with a revolver and gave it to Munna and went outside. It is further alleged that Munna at the point of Pistol told Nirola that if she will make any protest or alarm he will shot at. Then Munna threw Nirola on the ground, torn her Shalwar and underpant. He also opened his own pant and penetrated his penis inside vagina of the victim and committed rape. The informant victim has further alleged that she kept mum due to fear and accused Munna committed rape against her and told that wherever and whenever Munna will call Nirola she must make herself present for Munna. The victim came to her residence and told the occurrence to her sister and her sister told regarding the occurrence to neighbouring staff. It is further stated that due to late night and absence of any male member in the house and due to fear of accused persons the delayed report was given to the police.

4. The material witnesses are employees of the Hospital. The victim girl Nirola Murmu was attached to Outdoor. It would be pertinent to note that rape was committed in the afternoon of 12.2.1997 but the First Information Report was lodged by the victim girl on the next day at 12.30 P.M. at Kotwali Police Station which is at a distance of one kilometer from the hospital. Helena Murmu, sister of the prosecutrix, admitted that there are several houses at 50 yards from her residence in the hospital premises. No body could know about the occurrence except the night Guard. Helena also admitted that the female Police Station is also situated at the gate of the Hospital.

5. Mr. I.K. Saran, learned (senior counsel appearing on behalf of the Appellant

Munna Mehtar, argued with full force that delay in lodging the case on the next day though female police station was near the gate of the Hospital creates serious doubt on the veracity of the prosecution case.

6. It would be necessary to bring on record the evidence of the material witnesses which was accepted by the trial Judge, for holding the Appellants guilty of the offence they were charged with.

7. Hridaya Narain Sah (P.W. 3) was working as Dresser in the Lok Nayak Hospital. His duty was at the Outdoor. Munna Mehtar and Nirola Murmu on that day were working in the Outdoor. There used to be two keys of the main gate of the Outdoor, one key was kept by Hridaya Narain while the other one was to be kept by Sweeper Meghnath. Meghnath was on leave on 12.2.1997. Munna Mehtar wanted to give the key to Hridaya Narain but this witness told Munna to hand over the key to some other Sweeper since one key was already with him. Munna offered the key to Nirola Murmu, who declined to accept it. This witness told her to take the key and then she accepted the key. This witness was declared hostile.

8. Helena Murmu (P.W. 2), who is a Nurse, lived with her sister Nirola Murmu in the hospital quarter. She had gone to Bazar. She returned at 6.00 P.M. and found her sister distevelled. She was weeping. Her Shalwar was torn. Nirola disclosed that Munna Mehtar called her with the key to Outdoor. Munna told her to open the door of the Outdoor since Shaheb was to come. She unlocked the door and went inside. Munna Mehtar entered in the Outdoor room and pounced upon her. Prakash Mandal handed over a revolver to Munna Mehtar and left the room. Munna at the point of revolver committed rape on her by force. Nirola Murmu also told that Prakash Mandal was sitting outside. This witness narrated the event to several persons. This witness" stated that Outdoor Hospital was opened till mid day.

9. The main witness Miss Nirola Murmu (P.W. 4) the prosecutrix has by and large supported her version of the occurrence in the F.I.P. At the time of occurrence she was employed in the Hospital. She was taking training of Nurse at the time when she appeared in court. She has passed Intermediate Science in 1995. She is unmarried. She was appointed in the Hospital on 4th January, 1997. She lived with her sister Helena in the Hospital quarter. On the fateful day she was on duty from 8.00 A.M. to 12 Noon in the Outdoor. She was returning to her residence, in the meantime, Munna offered her the key of the Outdoor. She was not ready to accept it but on being told by Hridaya Narain she took the key. The hospital was closed on the second part of the day on account of Saraswati Puja. At about 4.00 P.M. Munna Mehtar visited her residence. Her sister had gone to Market. Munna told her that Civil Surgeon and others had come to the Hospital and he asked her to go there with the key. Munna did not accept the key. This witness went at the Outdoor but no body was seen there. Munna was there. She wanted to hand over the key to him but Munna told that Shaheb will be arriving within 10-15 minutes. This witness stayed there awaiting the arrival of Shaheb. Munna Mehtar told her

to open the door and windows of the outdoor. No sooner Munna came inside, pounced upon her. He told her to marry him. He started dragging her. In the meantime, Prakash Mandal came with a revolver and handed it over to Munna. Munna pointed the revolver and warned her that if she resisted, she would be killed. She fell on the ground. Munna torn her Shalwar and undergarments. She was made naked. Munna also became naked and committed rape on her. After she was raped. Munna again threatened her. She started weeping and came out with the torn clothes and saw Prakash Mandal outside. Her sister came at 6.00 p.m. She narrated the occurrence to her sister. In the morning, her sister went to women Police Station, which is in the Hospital premises but there was no officer there. Then she went to Kotwali Police Station. She gave her fardbeyan She was medically examined at Jawaharlal Hospital. This witness has admitted that Prakash Mandal was not known to her from before. She was unable to say that Prakash was attached to ward. She learnt the name of Prakash Mandal from her sister.

10. According to the evidence of Dr. Sharda Ram, Nirola Murmu was examined on 13.2.1997. She found following things:

(i) Height 58.6, weight 46 Kg., Teeth 14/14 identification mark one till below the chin left side and second small till over neck right side.

(ii) Menstrual History-Last menstrual period 30.1.97. Cycle 2- 3/26-28 days.

(iii) Secondary sex character well developed.

(iv) On examination no injury on the external part of the body.

(v) On per vaginal examination hymen ruptured and laceration present in the vaginal orifice. Swab taken from the posterior vaginal wall and from the cervical DS and sent to the pathology Deptt. for examination especially to see the presence of spermatozoa.

(vii) On examination pathology Deptt. reported vide memo No. 21 of 14.2.97 spermatozoa not found.

(viii) Victim sent to the radiology Deptt. for X-Ray of wrist and pelvis for confirmation of age. The report of radiology Deptt. was submitted to me according to which the epiphysis of wrist and iliac pressed having faded completely hence age is above 18 years.

(ix) Victim was brought to me by Mrs. Reshma Devi Const. No. 564 and Inspector Mr. K.D. Chaudhary, Kotwali. The injuries found on the inner part of the vagina of victim might be caused by penetration. No injury was found on the neck or back of the victim.

11. The case was investigated by Miss. Seema Kumari, Sub-Inspector of Police, Kotwali. She inspected the place of occurrence 13.2.1997 at 1.10 P.M. There were some quarters at some distance from the hospital. There was a Women Police Station near the Hospital but this Police Station was in dilapidated

condition, it was being run in a Tent. No constable was found in the Tent when the I.O. visited there. She searched the house of the Appellants to recover pistol allegedly used by Munna Mehtar but she failed to recover the same. No witness has stated that Prakash Mandal was ever seen with the pistol.

12. I have carefully examined the evidence of the prosecutrix. Her evidence is cogent and convincing. She never faltered in her cross-examination. In my considered opinion, her evidence is strong enough to prove the charge of rape against Appellant Munna Mehtar. It is significant to note that in her cross-examination, there is no suggestion of false implication. She had joined the Hospital service only recently. She was well acquainted with the manner of the Appellant. She has no enmity with this accused. Of course there is some delay in lodging F.I.R. but in face of convincing evidence of the prosecutrix, delay does not matter. It is common experience that in cases of rape delay is bound to occur particularly in this case where there was no male member. The victim was hesitant to rush to Police Station for fear of publicity. The culprit was own colleague of the prosecutrix. As stated by the, Investigating Officer, although there was a Women Police Station but it was non-functional. I have no hesitation in coming to the conclusion that the victim was raped in the manner alleged by her. She has spoken the details of what happened from start to finish. I, therefore, affirm the conviction of the Appellant Munna Mehtar u/s 376 of the Indian Penal Code. However, considering the fact that the Appellant Munna Mehtar has small children to support, I am inclined to reduce the sentence from 10 years to five years imprisonment, Fine of Rs. 10,000/- imposed by the trial court is also set aside. Criminal Appeal No. 65 of 1998 is disposed of accordingly.

13. So far Criminal Appeal No. 326 of 1997 is concerned, on review of the evidence I feel that this Appellant Prakash Mandal should be given benefit of doubt. The victim girl in her evidence admitted that she did not know this Appellant by name. It is not explained how she named this Appellant in the First Information Report. It appears that she must have been prompted by some body. As the evidence indicates Munna Mehtar has planned in advance to commit rape on Nirola Murmu the victim girl and he would have obtained the revolver beforehand. The evidence is that the Appellant Prakash Mandal gave pistol to Munna Mehtar in the Outdoor room. Munna Mehtar was holding the revolver while indulging in sex with the prosecutrix. The prosecutrix has, however, not stated as to what happened to the pistol after she and Munna Mehtar left the room. There is no evidence that Prakash Mandal used to carry any pistol. He did not try to molest the prosecutrix. The Investigating Officer did not make effort to recover the pistol. Prakash Mandal should have been taken on remand for recovery of pistol. Even if the evidence is accepted that he handed over the pistol to Munna Mehtar, it is doubtful that this will constitute abatement in the evidence of rape. Munna Mehtar was a grown-up man and he need not require any firearm to carry out the nefarious act. In any view of the matter, the evidence against Prakash Mandal is not free from doubt. He is, therefore, given benefit of doubt and is acquitted of the charges. Sentence of fine is also set aside. He is ordered

to be released forthwith, if not required in any other case 14. In the result, Cr. Appeal No. 65 of 1998 is dismissed with modification in sentence. The Appellant Munna Mehtar @ Munna Sweeper shall serve out the remaining period of sentence. Cr. Appeal No. 326 of 1997 is allowed and conviction of the Appellant Prakash Mandal is set aside giving him benefit of doubt. He is acquitted of the charge. He shall be released from custody forthwith, if not required in any other case.