
(2014) 12 PAT CK 0075

In the Patna High Court

Case No : Criminal Appeal (SJ) No.506 of 2013 (Arising Out of PS.Case No.-188
Year-2009 Thana-GOGRI District - KHAGARIA)

Puttu Kumar Laheri

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 02-12-2014

Acts Referred:

Citation : (2015) 1 BLJud 120

Hon'ble Judges : Gopal Prasad, J.

Bench : Single Bench

Advocate : Mr. S.M. Shabir Alam, Advocate, for the Appellant; Mr. Binod Bihari Singh, APP, for the Respondent

Final Decision : Allowed

Judgement

Gopal Prasad, J. (Oral) - The appellant has been convicted under Section 376 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years.

2. The prosecution case, as alleged by the informant, Rani Devi, that on 08.11.2009 at about 04.00 p.m. she went to offer worship Shiv Mandir at Jamalpur Vinay Dharamshala along with her five years old grand daughter, Muskan Kumari. While she was offering prayer, Puttu Kumar Laheri enticed has grand daughter and took her in a gali (bye lane) behind the temple. When she got up from offerings she made out a search of her grand daughter, then, she saw, behind the temple, in a gali (bye lane), her grand daughter, Muskan Kumari, lying in unconscious state and the blood was oozing from her private part so she took her to a doctor, Dr. Nasim Ahmad, who treated her grand daughter. Since, there was no male member and on 12.11.2009 his gotia and neighbours came to her from Bengaluru, then, they took the victim to file petition in the Police Station and it is alleged that Puttu Kumar Laheri has committed rape upon Muskan Kumari.

3. On the written report of the informant, Rani Devi, first information report

lodged and investigation proceeded.

4. After investigation charge sheet submitted, cognizance taken, case committed to the Court of sessions and subsequently the charge was framed.

5. During trial, eight witnesses were examined by the prosecution, who are P.W. 1, Neeraj Kumar, P.W. 2 Sonu Kumar, P.W. 3 Subodh Kumar Sah, P.W. 4, Rani Devi, the informant, P.W. 5, Pramod Kumar Paswan, P.W. 6, Umesh Chaubey, the investigating officer, P.W. 7, Dr. Jyotsna Kumar Sinha, and P.W. 8, Muskan Kumari, the victim.

6. Three defence witnesses have also been examined as D.W. 1, Om Prakash Laheri, D.W. 2, Ajay Kumar Sah, and D.W. 3, Ashok Kumar Jha.

7. The defence of the accused person is that he has falsely been implicated in the case alleging that the informant has taken rupees fifty thousand on credit and the police case has been instituted for demanding the money.

8. The documentary evidences, adduced, are Exhibit 1, seizure list, Exhibits 1/1 and 1/2 the signatures of the witnesses on the seizure list and signature on the formal first information report of the Officer-in-Charge, Exhibit 2, the seizure list, Exhibit 3, the injury report, Exhibit 4, the Forensic Science Laboratory report with regard to the panty sent for chemical examination.

9. The trial Court, taking into consideration the evidence of the victim, convicted the appellant as mentioned above.

10. The learned counsel for the appellant, however, contends that in this case there is no eye witness to the occurrence. The evidence of victim, itself, does not inspire confidence as she has stated that she identified the appellant at the instance of the informant, who has tutored her to identify the person in dock. It has, further, been contended that the evidence of the doctor, who examined the victim did not find any injury nor find the hymen ruptured and there is no objective evidence found by the doctor with regard to the offence.

11. It has, further, been contended that the informant herself has stated that the blood was oozing out from the private part, the panty besmeared with blood and the panty sent for chemical examination, but, the Forensic Science Laboratory report does not find any blood on the panty. There is no eye witness to the occurrence. It has, further, been contended that except the evidence of the informant, who is not an eye witness to the occurrence, there is no corroboration or supporting evidence with regard to the offence, hence, it is submitted that the prosecution has not been able to prove the charges beyond reasonable doubt and the order of conviction and sentence recorded by the lower Court is not substantiated.

12. The learned counsel for the State, however, supported the order of conviction and sentence recorded by the lower Court.

13. Having regard to the respective submissions of the learned counsel for the

parties, I proceed to consider that P.W. 1 is a chance witness, who has stated that when he came he saw Puttu Kumar Laheri playing with the children, including the victim, P.W. 2 is only the hear-say witness that he learnt about the rape. P.W. 3 is the witness of seizure list. P.W. 4 is the informant and her evidence is that she went to Shiv Mandir along with the victim, her grand daughter, she only says that Puttu Kumar Laheri was sitting in the premises of the temple and she went in the temple for Puja (offering) and her grand daughter remained playing in the premises of the temple and when she came out after offering puja, she did not find her grand daughter, she made out a search and it was disclosed that one boy took the victim behind the temple and when she went behind the temple, saw the victim in unconscious state and the blood oozing out from her private part, she took her to the clinic of Dr. Nasim Ahmad. She has, further, stated that she has reported the matter after four days and gave the blood stained panty to the police, hence, from her evidence, it is apparent that she is not an eye witness to the occurrence nor she has seen the appellant, Puttu Kumar Laheri going with the victim nor she is witness to rape. However, she has stated that she took the victim to a doctor, Dr. Nasim Ahmad, but, the said doctor has not been examined as a witness. P.W. 5, is, again, a formal witness, who has formally proved the signature. P.W. 6 is the investigating officer is not an eye witness, P.W. 7 is the doctor, who examined the victim after lodging of the first information report. However, in the evidence of the doctor it has come that he did not find any injury on the private part. He found hymen intact and has reserved opinion and proved the injury report, hence, from the evidence of the doctor it is apparent that he has not found any sign of rape on the person of the victim and he did not find any injury on her private part. P.W. 8 is the victim herself though she has stated that some occurrence has been done with her by Puttu Kumar Laheri and blood oozing out and she got unconscious. However, in her cross examination she has stated that dadi has disclosed her what she has to say and it is stated that her dadi is at the gate of Court and has tutored her that she shall identify the person standing in the dock. Hence, from the evidence of this witness, who is only a child of seven years old, as she stated, whereas the occurrence is about a year back and the probability of her being tutored is there being a child witness is apparent from her evidence.

14. However, taking into consideration these evidences, it is apparent that only evidence on the point of occurrence is the evidence of P.W. 8 and there is no eye witness to the occurrence. However, the evidence of P.W. 8 is also not clear and, further, in cross examination she has stated that she has been tutored by her grand mother, however, the prosecution case that after the occurrence the informant saw the blood oozing out and she took the victim to the clinic of Dr. Nasim Ahmad, but, the said doctor has not been examined. It is stated that the panty was given to the police and the police seized it. A report of Forensic Science Laboratory with regard to the clothes has been marked as exhibit 4 and it is reported that blood can not be detected in any of the exhibits. Hence, the victim is not specific, there is no eye witness nor there is any corroboration either

by medical evidence or other supporting evidence. The evidence of doctor is also against prosecution as no injury found and hymen intact.

15. Having regard to the facts and circumstances of the case, the prosecution has not been able to prove the charge beyond reasonable doubt and it is apparent that the learned lower Court misdirected in convicting the appellant on the basis of sole testimony and it did not take into consideration the other fact like panty has not been examined and the fact that the evidence of P.W. 4 the informant that blood oozing out from the private part and the panty besmeared with blood, but, the Forensic Science Laboratory report does not inform about any blood stain.

16. Hence, the order of conviction, recorded by the lower Court is set aside and the appeal is allowed. The 2nd day of December, 2014,