
(2002) 05 PAT CK 0003

In the Patna High Court

Case No : Criminal Revision Case No's. 96 and 137 of 2001

Raja Giri @ Rajaram Giri and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 24-05-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 354

Citation : (2003) CriLJ 2347 : (2003) 4 PLJR 467

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Mahesh Narayan Prabat and Ved Prakash Srivastava, for the Appellant; B.P. Gupta, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—The incident, out of which the prosecution case arises, happened in the evening on 27th June, 1996 when Rita Kumari (PW 3), was returning after attending, to nature's call. It was alleged that she was intercepted by Raja Giri, Arjun Giri and Tarkeswar Giri, who having relieved her of torch, lay her on the ground, ostensibly with an object to commit rape or her. On alarms being raised by Rita Kumari when house inmates came Parshuram Giri, Dudhanath Giri and Parmeshwar Giri too came there who assaulted victim, when she disclosed Complicity of Raja, Arjun and Tarkeswar to them. The aggrieved victim took recourse to judicial authority by filing a petition of complaint before the Court of the Chief Judicial Magistrate, Chapra, which was, eventually, transmitted to the police for institution of a police case. After police case had been drawn up, the police recorded statement of witnesses and, eventually, laid charge-sheet before the Court. In the eventual trial, that commenced, the prosecution examined altogether three witnesses and those examined by the State were the victim, her mother and also maternal uncle of PW 2.

2. The defence of the petitioners before the Court below and also this Court had

been that Rita Kumari was a lady of questionable character for which her family members were ousted from the village and for that there had been false implication of the petitioners. However, the trial Court, on consideration of evidence of the witnesses and also rival contentions raised on behalf of the parties, while negating their plea of innocence, rendered verdict of guilt finding Raja Ram Giri, Arjun Giri and Tarkeshwar Giri guilty under Sections 341 and 354 of the Indian Penal Code and sentenced them to suffer rigorous imprisonment for six months and also to pay a fine of Rs. 1,000/- each of which rupees eight hundred was to be paid to the aggrieved lady. Parshuram Giri along with Dudnath Giri and Parmeshwar Giri suffered conviction u/s 323 of the Indian Penal Code and were sentenced to pay fine of Rs. 500/- each out of which rupees 400/- was to be paid to the aggrieved lady and in default of payment of fine they were to suffer imprisonment for four months.

3. Before discussing evidence, arguments canvassed on behalf of the petitioners to assail the finding recorded by the appellate Court may be noted. It seems that after the appellants challenged their conviction before the appellate Court in Criminal Appeal No. 63 of 1998/30 of 1999, the appellate Court too on appraisal of evidence endorsed the finding recorded by the Court below. Now it is urged on behalf of the petitioners that, evidence of witnesses were incompetent and since investigating officer was not examined, contradictions taken out from witnesses could not be placed on the record. The contentions were raised that the mode of incident was quite inconsistent running throughout the evidence of witnesses. Admittedly enmity between the parties was also taken to be a ground to assail the finding recorded by Court below and the last argument canvassed on behalf of the petitioners was that, in view of the relationship which the petitioners had with the victim, it was quite unlikely that they would indulge in commission of such offence.

4. Learned counsel for the State resisting contentions raised on behalf of the petitioners urged that the State had led good and positive evidence and since incident happened in the evening, there was no possibility of other witnesses.

5. Now delving upon the evidence which has come on the record one may notice Rita Kumari, PW 3, reiterating her earlier, version stated in petition of complaint filed before the Chief Judicial Magistrate, about Rajaram Giri, Arjun Giri and Tarkeshwar Giri intercepting her when she was returning after attending nature's call and laying her on the ground with an object to commit rape on her. She could state about arrival of the other three persons who did assault on Rita Kumari. The other witness examined on behalf of the prosecution is Parmeshwar Giri, who happens to be maternal uncle of Maina Devi. He stated to have reached place of occurrence on hearing alarms raised by Rita Kumari when he noticed Rajaram Giri, Tarkeshwar Giri and Arjun Giri grappling with her. He noticed that they were making attempts to lay her down on the ground and when he went for rescue, sustained assault by Parmeshwar Giri, Dudhnath Giri and Parshuram Giri. Almost similar narrations were made by Maina Devi, PW 2, who stated to have

rushed to the place of occurrence, while she was cooking the meal. She stated to have noticed Rajaram Giri, Arjun Giri, Tarkeswar Giri, Parmeshwar Giri. Dudhnath Giri Purshuram Giri catching hold of Rita Kumari and with an object to commit offence on her and when she came for rescue, she too sustained assault. This is all the evidence that has been adduced on behalf of the State. While considering credibility of evidence one may not fail to notice that where Rita Kumar was the victim, Maina Devi, PW 2, happened to be her mother. About Sudama Giri (PW 1) it is stated that he does not hail from the same village and, hence, he is a chance witness and there was no possibility for him to witness the incident, as even those, who were residing in the village were not suggested to have flocked to the place of occurrence. However, I find that the narrations made by even Sudama Giri and Maina Devi barring some minor variations, did not effect broad features of the prosecution case. Non examination of the doctor which is highlighted at bar to be a serious infirmity, was not such vital factor which could militate against bona fide of the prosecution case and, in that backdrop, I find that the narrations made by the witnesses did not suffer serious infirmity on which the finding recorded by Court below can be seriously challenged. It has been brought to my notice that even though Rajaram Giri, who was convicted by the trial Court, did not press his appeal preferred before the Court below, finding was recorded by the appellate Court. Be that as it may, he has challenged the finding recorded by the appellate Court in this revision. True it is that some of the appellants are closely related with Rita Kumari (PW 3), but commission of such offence, in view of the explicit narrations made by the witnesses, cannot be discounted.

6. However, as there has been no evidence about confinement of the victim by all petitioners, finding recorded by Court below convicting Rajaram Giri and Arjun Giri u/s 341 of the Indian Penal Code was not sustainable and, on consideration of the petitioners having suffered trauma of protracted prosecution for about six years, the sentence awarded to Rajaram Giri and Arjun Giri is reduced to four months though sentence of fine is maintained . So far Parshuram Giri is concerned, I consider it expedient to extend him the beneficial provision of Section 360 of the Code of Criminal Procedure and it is, accordingly, directed that he shall be released on probation of good conduct and be released on entering into a bond with two sureties of the like amount each, as directed by the trial Court, and to receive sentence when called upon during such period, and, in the meantime, to keep peace and good behaviour.

7. Having given by anxious consideration to the facts and circumstances of the case and also the evidences placed on the record, the finding recorded by Court below is upheld and both the revisions with modification, as indicated above, are dismissed.