
(2007) 03 JH CK 0031

In the Jharkhand High Court

Case No : Criminal Appeal No's. 12, 72, 84 and 201 of 2005

Ram Kumar Singh @ Babua, Suresh Mahto, Tableshwar Das
@ Munna and Tableshwar Das @ Munna and Kamal Kishore
Mukhi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 01-03-2007

Acts Referred:

Penal Code, 1860 (IPC) — Section 366, 376

Citation : (2007) 3 JCR 67

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Advocate : B.M. Tripathy, K.S. Nanda, M.K. Dey, B.V. Kumar, M. Khan and D.K. Karmkar, for the Appellant; Jawahar Prasad, APP, for the Respondent

Final Decision : Allowed

Judgement

D.P. Singh, J.—Since all the appeal, arise out of common judgment, are herd together and are being disposed of by this common judgment.

2. All these appeals are directed against the judgment of conviction and order of sentence dated 18.12.2004 and 20.12.2004 passed by Sessions Judge, Chaibasa, West Singhbhum in Sessions trial No. 233/2003, whereby and whereunder the learned Sessions Judge held all the appellants guilty under Sections 366 and 376(2)(g) IPC and sentenced them to undergo RI for ten years and a fine of Rs. 2000/- for the offence u/s 366 IPC and in default of payment of fine to undergo RI for three months and further undergo RI for ten years and a fine of Rs. 5000/- u/s 376(2)(g) IPC and in default of payment to undergo RI for six months. However, both the sentences were directed to run concurrently.

3. The brief facts leading to these appeal are that one Fulmani Mundari, a tribal girl of village Meromgut, P.S. Bandgaon has arrived at Chakradharpur Railway Station in the morning of 24.7.2003. The victim girl was standing outside the railway station on the same evening when she was approached by four persons

with purposely to accompany them in a maruti van. The prosecutrix refused to accompany them on the ground that they were strangers. However, they forcibly dragged her inside a white maruti van and drove towards a lonely place. Further stated that the said vehicle was stopped in a pump road and she was subjected to rape. However, the prosecutrix could manage to flee during the commission of rape and reached at the house of Ex- MP Vijay Singh Soy. The police guards in the house informed the police, which arrived immediately and examined her.

4. According to the prosecution case, the police acting swiftly on the statements made by the prosecutrix, arrested three of the appellants from their respective houses same night and further could recover a motorcycle bearing No. BR-16-5141 from parking lot of Chakradharur railway station as well as a white maruti van bearing No. BR-16K-7140 from village Asantalia on disclosure made by the appellants. The police recorded the statement of the appellants and forwarded the prosecutrix for her medical examination by PW 13. The medical examinations confirm the allegation that the prosecutrix, PW 8 was subjected to sexual abuse. The prosecutrix identified all the appellants before the police and finally charge sheet was submitted against all of them under Sections 366 and 376(2)(g) IPC.

5. The appellants pleaded not guilty of the charges and claimed false prosecution. They have specifically asserted that they were not involved in the alleged offences and the prosecutrix was made to identify them without any supporting evidence. The learned sessions Judge having considered the prosecution and defence versions, held all of them guilty and sentenced them as aforesaid.

6. The present appeals have been preferred on the ground that the findings of the learned court below are perverse and contrary to the facts on record. It is also asserted that all witnesses examined by the prosecution have failed to support the prosecution version. Mr. B.M. Tripathy, the learned Counsel for the appellant Ram Kumar Singh @ Babua submitted that the identification of the appellants was apparently unsustainable. According to the learned Counsel, the appellants have been specifically named in the fard beyan recorded at 00.45 hours in the night of 24.7.2003 though the prosecutrix was admittedly ignorant about their identity before this occurrence. According to the learned Counsel, the police arrested the appellants from their respective houses after registration of the case. Their name appearing in the fard beyan itself creates a reasonable doubt regarding their identification. As such the learned trial court should have accepted the defence plea that PW 8 has falsely claimed to identify the appellants before the police and later on before the trial court. Similar pleas were made by the learned Counsel for the other appellants.

7. To appreciate the argument advanced by the learned Counsel for the appellants, it is required that the findings of the learned court below and the reasons behind it is discussed. The learned Sessions Judge has dealt with all these facts at length in elaborate manner in judgment delivered by him. Certain

admitted facts on record are that the prosecutrix, a tribal girl, has left her house informing her mother that she was going to apply for employment in Railways on 19.7.2003. However, she remained confined in the vicinity of her village, as her friend has already left for Delhi. According to her version, in the morning of 24.7.2003 she left for Chakradharpur on way for Manoharpur to meet her relatives. She has further asserted that she remained at Chakradharpur till the evening when she was approached by four persons to accompany them. When she refused to accompany them she was dragged forcibly inside the a white maruti van. This incident was reported to the police by some persons, on the basis of which PW 12, Nandan Choudhary, the IO of the case, went in search of Maruti van. According to PW 12, he started searching the maruti van along with officer-in-charge at about 11.45 hours and reached at Chakradharpur police station, where they could learnt that a maruti van bearing registration No. BR-16K-7140 was used by four parsons to abduct the girl. They could learn that the said van has gone towards the forest depot and they followed that route, however they could not find the vehicle there. According to this witness, when they were returning people informed them that a girl has just gone to the house of Ex MP Vijay Singh Soy, where she may be available. The IO arrived at the house of Ex MP and found the victim. He recorded the statement of the victim, vide Ext. 4. This witness immediately prepared to start investigation with the officer-in-charge. After which he along with the victim girl arrived at Chakradharpur railway station and seizes one red motor cycle bearing registration No. BR-16N-5741 in presence of PWs 3 and 4. They further proceeded to Chakradharpur railway colony, quarter No. G-115/3 and arrested the appellant Ram Kumar Singh @ Babua. They further arrested appellant Tableshwar Das @ Munna from quarter No. G-115/1. This witness went in search of maruti van and arrested appellant suresh Mahto from his house situated in village Asantalia and on his disclosure the maruti van bearing registration No. BR 16K-7140 was recovered from the same village in presence of PWs 5 and 7. The seizure of the clothes of the victim and her medical examination are undisputed fact on record. The defence has not disputed these facts but assailed them as being implanted to implicate the appellants falsely by the police.

8. The fact remains that PW 8 was dragged forcibly in a maruti van in the evening of 24.7.2003 and further subjected to sexual intercourse against her will by four persons, has been confirmed by the medical opinion. The appellants have challenged their identity before the trial court and also before me pointing out contradiction in the prosecution version. Much stress has been laid on the points that the names of the appellants appeared in the fard beyan are causes a reasonable doubt on the prosecution version, particularly in admitted fact that the victim did not know them from before nor she has claimed that she had seen them prior to this occurrence. The circumstances in which the appellants were arrested immediately after registration of the case from their respective houses, except appellant Kamal Kishore Mukhi, has been questioned at several stages. On this point the evidence of PWs 8 and 12 has been criticized by the consol for

the appellants. The learned Counsels have pointed out specifically that the victim was forced to identify and name the appellants by the police. In this context, my attention was drawn towards the admission of the victim in para 1 of her examination, in which way she identify the appellants in the dock without naming them. They further drew my attention towards the admission of the victim in para 17 that she did not know the appellants before this occurrence nor has seen them earlier. It is further pointed out that in para 18 she claimed to identify appellant Tablesdwar @ Munna in her own style, which was further elaborated vide para 19 that she has not named the appellants before the police. My attention was further drawn towards the admission of the victim, vide para 22 that by that time the police has arrested one of the appellants but she could not say from where he was arrested, which become more clear in her admission, vide para 23 that she did not know the names of the accused-appellants till the fard beyan was recorded. However, she continued to assert that the accused persons, present in the court, were the assailants who dragged her in the maruti van and subjected her to sexual intercourse.

9. Learned Counsel for the appellants have stressed and highlighted the point that if the prosecution relies upon the fard beyan of the victim, PW 8, it was recorded at 00.45 hours in the night in which specific names of the appellants have been given. According to the learned Counsel, this naming of the appellants itself is doubtful because the informant has admitted in clear words, vide para, 18, 19, 22 and 23 in her evidence, that she did not know the appellants prior to this occurrence. It was further pointed out that PW 8 has admitted in her evidence that her fard beyan was recorded at the police station and there she saw the appellant No. 1, Ram Kumar Singh @ Babua. Therefore, the false implication of the appellants is not ruled out. In this context my attention was drawn towards the admission of PW 12 that the appellants were arrested from their hosues, vide para 40. As such, when the fard beyan was recorded the identity of the appellants by the victim, PW 8, disclosing their full names is after thought and should not be accepted.

10. Learned Counsel for the State opposed on the ground that the IO of this case acting swiftly on the basis of statement recorded by him and started searching the accused persons and got them arrested on the identification of the victim. My attention was drawn towards para 2 to 6 of the examination in chief of PW 12.

11. I have gone through the statement of PWs 8 and 12 minutely in this context. I further went through the case diary available on record. The IO recoded the fard beyan at 00.45 hours in the guard room of Vijay Singh Soy. Thereafter he started investigation at 2.35 hours to seize LML scooter No. BR-16N-5741 from Chakradharpur Railway Station, car parking area. He has arrested appellant Ram Kumar Singh @ Babua at 3 AM same day from his house along with appellant Tablesdwar Das @ Munna from Qr. Nos. G-115/1 and G-115/3. Thereafter, he goes to village Asantalia at 4.30 AM, arrested appellant Suresh Mahto and further seized white maruti van No. BR-16K 7140. Therefore, the arrest of the

appellants were made between 2.35 to 4.30 PM from different places. According to the IO, he was carrying the informant-victim during this period and on her identity the appellants were arrested. But the moot point remained unanswered how the victim, PW 8 could disclose the name of appellants to the police in her first statement at 00.45 hours. The doubt arises with the admission of PW 12, the IO of this case, vide para 37, 38, 43 and 44 wherein he admitted that he was not disclosed by anyone at the Chakradharpur Railway Station regarding the abduction of the girl and disclosure of the name of the appellants alongwith number of vehicle at that place. Therefore, the identity of the appellants as well as involvement of white maruti van No. BR 16K 7140 remains unexplained particularly in the circumstances where the victim does not claim to know the appellants from before the occurrence. She has admitted during her cross examination, vide para 17 that she did not know any appellants before the date of occurrence. Vide para 19 she admitted that before 24.7.2003 she had no knowledge about the names of the appellants. She specifically admitted that she has not disclosed the names of the appellants before the police, though she indicated that these were persons who committed the alleged offence with her. She further admitted in para 20 that she cannot say how the accused was brought by the police at the house of Vijay Singh Soy from where she identified them. Thus the facts on records are that PW 8 has no idea regarding the name and parentage of the appellants before they were brought by the police in her presence at the house of Vijay Singh Soy or police station. According to her admission, vide para 27, only one accuse was brought at the house of Vijay Singh Soy and she identified that accused as appellant No. 1. Ram Kumar Singh.

12. The learned trial court has considered all these aspects in the impugned judgment, vide para 18 at pages 21 and 22 that the names of all the accused persons were gathered by the IO from accused persons themselves. If this is accepted, then naming of the appellants in the fard beyan recorded at 00.45 hours in the house of Vijay Singh Soy becomes doubtful.

13. Learned court below, vide para 22, agreed with the defence counsel that the IO, PW 12 has created a sort of mystery by his admission in explaining this vital facts regarding the source of the information leading to arrest of the accused persons, However, vide para 23, the learned trial court held that "inference therefore is that at the time when the statement of the prosecutrix was finally recorded at the police station, three accused persons were present at the police station". Accordingly, the learned trial court has accepted the prosecution version and held the appellants guilty under Sections 366/376(2)(g) IPC.

14. The learned trial court further believed the IO, PW 12 that after arrest of appellant No. 1, the complicity of other co-appellants was disclosed by him before the police, which led to their arrest as well as identification by the informant immediately after the occurrence. According to the learned trial court, the details of the incident along with names of the appellants have been recorded by the police after their arrest in the police station, vide para 23 of the

judgment. In such admitted facts the learned court below apparently made out a new and different case. The prosecutrix, PW 8 being ignorant regarding the identity of the appellants could not have named them in the fard beyan as they were not brought before her by the police. Similarly the IO, PW 12, having no clue about the identity of the aggressor, should not have recorded their names in the fard beyan at 00.45 hours shown to have been drawn in the house of Bijay Singh Soy. In such view of the finding by the learned trial court that the names of the appellants were recorded by the police after their arrest in the police station itself gives a fatal blow on the prosecution version. On perusal of the case diary, as discussed earlier, the arrest of the appellants was made right from 3 AM to 4.30 AM much after recording the fard beyan. Therefore, I find that the circumstance in which appellants were named in the fard beyan just after 12th night and arrest of the appellants was made after three hours, after which their identity was ascertained, creates a very grave doubt on the authenticity of the fard beyan and the very basis of the allegation made against these appellants by the prosecutrix.

15. This aspect has been highlighted by the learned Counsel for the appellants suggesting that in such facts false implication of the appellants by the police is made out beyond doubts. Having gone through the materials on record and admitted fact, as discussed above, I find that the argument of the learned Counsel for the appellants has got merit in it and it cannot be brushed aside lightly. The moot question of identity of the appellants as the adductor and rapist alleged by the prosecutrix, PW 8, by naming them in the fard beyan itself is highly doubtful. The finding of the learned lower court also in this context creates a doubt regarding their identity either by the prosecutrix at the time of occurrence and later on when fard beyan was being recorded by the police and ultimately when they were produced by the police before her. It is true that the prosecutrix is the victim of heinous crime, the appellants deserve to be treated in accordance with law, when they were named by the prosecutrix and police arrested them immediately after the occurrence, should have been supported by the prosecutrix during trial. However, she has in unambiguous words admitted that she did not know their names and identified them as the offender, when they were produced by the police after arrest. Accordingly I find that the prosecution has not been able to establish beyond doubts the complicity of the appellants in the alleged offences and their identification remains doubtful.

16. Having considered the facts and circumstances, discussed above, I find and hold that the prosecution in the present fact has not been able to bring home the charges against all the appellants under Sections 366/376(2)(g) IPC. Accordingly, the conviction of all the appellants cannot be sustained.

17. In the result, these appeals are allowed and judgment of conviction and order of sentence dated 18.12.2004 and 20.12.2004 passed by the learned court below are hereby set aside. Appellants Suresh Mahto, Tableshwar Das @ Munna and Kamal Kishore Mukhi, who are on bail, are released from the liability of their

bail bonds. Appellant Ram Kumar Singh @ Babua, who is in custody, is directed to be released forthwith, if not wanted in any other case.