

(2001) 02 PAT CK 0032
In the Patna High Court
Case No : Cr. Appeal No. 427 of 1989

Ram Niwas Sahu and Rajendra Sharma	APPELLANT
Vs	
State of Bihar	RESPONDENT

Date of Decision : 20-02-2001

Acts Referred:

Citation : (2001) 02 PAT CK 0032

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Both the Criminal appeals; Cr. Appeal No. 427 of 1980 and Cr. Appeal No. 42 of 1999 arising of the same judgment have been heard together and are being disposed of by this common judgment.

2. Appellant Rajendra Sharma of Cr. Appeal No. 42 of 1990 and Appellant of Cr. Appeal No. 427 of 1989 Ram Niwas Sharma have been sentenced to undergo rigorous imprisonment for ten years under Sections 376/34 of the Indian Penal Code and rigorous imprisonment for two years u/s 456 of the Indian Penal Code. However, both the sentences were directed to run concurrently.

3. The prosecution case in short is that the informant Kanti Devi was sleeping inside her house in between the night of 22/23.11.88. It is stated that the husband of the informant had gone to witness drama show, which was being staged in the village. It has been alleged that at about mid night both the Appellants scaled over the boundary wall of the house of the informant and entered into her room where she was sleeping alone. It has been further stated that the Appellant Ram Niwas Sahu caught hold the hands of the victim lady and pressed her mouth and the Appellant Rajendra Sharma committed rape on her. Thereafter the Appellant raised alarm upon which one Jamuna Seth came there and she narrated about the incident and he communicated this news to her husband. Thereafter, one Chowkidar and her husband Nathuni Sah along with covillagers came there and she narrated about the alleged occurrence to them also. The fardbeyan of the informant was recorded by the police and after completion of investigation, charge sheet was submitted against both the

Appellants under Sections 456 and 376/36 of the Indian Penal Code (hereinafter to be referred to as the I.P.C.). Cognizance was taken and accordingly, the case was committed to the court of Sessions and finally the trial concluded with the result as indicated above. The Appellants pleaded not guilty and stated that they have been falsely implicated in this case due to enmity.

4. The prosecution in support of its case examined altogether six witnesses including the victim lady; informant. P.W. 2 and P.W. 10 Nathuni Sah, the husband of the informant. P.W. 2 is Kanti Devi, informant herself. P.W. 3. is Jamuna Seth, P.W. 4, Bhikhari Seth. Both P.W. 3 and P.W. 4 has become hostile. P.W. 5 is Ram Bharosa Das. He is the I.O. of the case and P.W. 6 is Dr. Nandani Prama, who examined the prosecutrix.

5. P.W. 2, the informant has fully supported the case of the prosecution as narrated to the first information report. She has stated that she was sleeping in her room at the relevant time, when both the Appellants came over there, after scaling over the boundary wall of her house. According to her, accused Ram Niwas Sah caught hold her hand and pressed her mouth and Rajendra Sharma committed rape on her. She has stated that she raised alarm, on which the mother-in-law of agnatic relation came there, to whom she narrated about the occurrence. She has also stated that her mother-in-law, informant, her husband, who has gone to witness the drama show, one village Chawkidar and villagers came there and she narrated about the alleged occurrence to them also. Thereafter her husband went to the police station and after some time, he came along with the A.S.I, of police, who recorded her statement, then she was sent to Sasaram by A.S.I, of police for medical examination by the lady doctor, P.W. 6.

6. P.W. 1, Nathuni Sah, the husband of the informant has also supported the case of the prosecution as stated by the prosecutrix. He has stated that he has gone to witness the drama show in his village and his wife Kanti Devi was left alone in her house. According to him at about mid-night, the information was broadcasted from the microphone that there was some disturbance in his house, therefore, he must leave for his home. He accordingly came to his house, where his wife narrated about the alleged occurrence. Thereafter he proceeded to police, station at Baghaila, where he informed the officer in charge about the alleged occurrence and the officer-in-charge recorded the statement of his wife at his house. He also stated that his wife was referred by the police to Sasaram for her medical examination.

7. P.W.5 Ram Bharosa Das, who is the I.O. of the case has stated that on 23.11.88, he was officer in charge of Baghaila P.S. and on that day at about 1.30 A.M. Nathuni Sah along with village Chowkidar came to the police station and informed that Appellant Rajendra Sharma has committed rape on his wife, whereas Ram Niwas Sah has pressed her mouth. On this information he proceeded for the place of occurrence along with Dafadar Sanmukh Singh and Chowkidar Ram Awatar Ram. He reached to village Suara at about 2.30 A.M. and recorded the statement of the prosecutrix in her house. He has proved the

fardebayan which is Ext. 1. He has also proved the formal F.I.R., which is Ext. 2 in this case. He has further stated that he visited the place of occurrence as indicated by the prosecutrix. According to him, it is a tiled house made of clay and it faces east. He has further stated that the prosecutrix was sleeping in the northern room and the gates were not closed from inside. He also found a cot lying in the room upon which it was stated that the prosecutrix was sleeping at the relevant time. He also found a "Lewa" which was lying on the ground. He referred the victim lady to Sasaram hospital along with the husband for medical examination at about 10 A.M.

8. P.W. 6 Dr. (Mandani Prama, who examined the victim lady has stated that on 23.11.88, she was posted at Sadar Hospital at Sasaram on deputation as CAS. On that very day at 9.10 A.M. she examined Kanti Deyi, the informant, wife of Nathuni Sao of village Suara. She has stated that she found no seminal stains on her under cloths nor any mark of violence was present on any part of her body. No injury was found present on her vulva or inner side of her thigh. According to the lady doctor, there was no injury on her vaginal canal and hymen was absent. Vaginal swap was taken and-sent for pathological examination in the department of pathology, Sasaram and on receipt of pathological report spermatozoa were not found either dead or alive. She has opined that no definite opinion can be given whether she had been raped or not. She has stated that she also did not find any injury on her private part and hymen was absent. In paragraph-5 of her examination in chief she has stated that if the victim lady is married then in that case it is not necessary to find mark of injury on private part in case of rape. She has further stated that after her rape if the victim lady washes her private part then in that case spermatozoa cannot be found inside her private part. She has proved the report which is Ext. 3 in this case.

9. Learned Counsel appearing on behalf of both the Appellants have submitted that there is contradiction in the deposition of the prosecutrix and the other witnesses. The doctor, who examined the prosecutrix did not find any bruise on her hand, which was expected by the broken bangles. As alleged, the victim lady was examined only after nine hours of occurrence, but no stain of semen was found. It has been further submitted that there is no corroboration from the version of the prosecutrix and other witnesses. It has been also stated that there was no light in the room to identify the culprits and due to enmity they have been falsely implicated in this case.

10. The prosecution witnesses Jamuna Seth, P.W. 2 and P.W. 4, they have not supported the case of the prosecution and they have become hostile.

11. Though Lady doctor Dr. Nandani Prama, P.W. 6, who examined the prosecutrix next day at about 9.10.A.M. stated that she did not find any injury on her private part or her body. But at the same time she has further stated that she was a married, lady and she was habituated to sexual intercourse then in that case it is not necessary to find mark of injury on her private part in case of rape on her and that spermatozoa was likely to be washed away while attending

the call of nature by the victim lady in the morning. However the ocular evidence of P.W. 2, the victim lady is very specific that the Appellant Ram Niwas Sah caught hold of hands and pressed her mouth and Appellant Rajendra Sharma committed rape on her. As such there is no reason to disbelieve her testimony.

12. Learned Counsel has further contended that door of the room was open in the night and in case of absence of injury on the persons of lady it would be inferred that she was a consenting party. He has drawn my attention to the decision in the case of Kuldeep K. Mahato Vs. State of Bihar, and also at page 3131. In this case, the prosecutrix was taken to some places by the accused and it was not the case, of the prosecutrix that she was not put to physical strain at that place, where she was committed a rape and that she had ample opportunity to run away and also to take the help of neighbour. The medical evidence was that there was no injuries on her person and on private part. As such it was held that she was a consenting party and the apex court acquitted the Appellant. The aforesaid case is different from the case in hand. In this case the contention of the learned Counsel that the door of the prosecutrix was kept open only to invite the Appellant and that there was consent, of the prosecutrix does not stand to leg of but from the facts and circumstances it is clear that she had left the door of her room opened as her husband was to come back to sleep after completion of drama show. Learned Counsel has also relied on a decision reported in AIR 2000 S.C. 197 Joseph v. State of Kerala. In this case the accused was given the benefit of doubt. The Appellant was alleged to have committed the offence, since he was last seen together with the prosecutrix. The prosecutrix could not be examined and she was the sister of the wife of the Appellant. In the aforesaid case, it was held that though the injury on the body is not always a must or sine-qua-non to prove-the charge of rape but in view of the evidence recorded and as per the case of prosecution, the absence of injury cannot be completely lost sight of. In the aforesaid case, the case of the prosecution was that the victim has been subjected to brutal rape, as such injuries were very much expected, but the case in hand as per the case of the prosecution no violent and brutality is alleged as such she may not have basic injury being a married lady. So far the identification of the accused is concerned, the statement of P.W. 1 and 2 shows that the victim family was selling vegetables door to door and her husband was also cultivating land on batai, thus the victim was knowing both the Appellants, who were the resident of the same village and as such at the time of commission of the offence even though there was no light available, but since the Appellant as alleged was very close to the victim during the commission of offence as such it is very likely that she must have identified the Appellant. There was no chance of mistaken identity. There was no enmity to implicate the Appellant on false charge, no suggestion was put forth to P.W. 1 as two days back there was marpit (scuffle) between the accused and the prosecutrix, but later on it was suggested to the accused that Ram Niwas Sah and Nathuni Sao had some dispute for the flow of water to the field for irrigation. P.W. 1 and 2 made specific denial of this suggestion. The defence even did not choose to examine the witnesses in

support of the fact that there was enmity. Therefore, the alleged enmity cannot be the ground to malign the reputation of his wife by voluntarily implicating the Appellants only in order to settle the score.

13. From the discussions made above, it is amply clear that the prosecution has proved its case beyond all reasonable doubt and the court below has rightly convicted the Appellants for the offence punishable under Sections 456 and 376 of the I.P.C.

14. However coming to the question of sentence, the learned Counsel appearing on behalf of the Appellant has submitted that the occurrence took place in the year 1988 and the Appellants had remained in jail for more than one and half years. It has been further submitted that the doctor did not find any sign of rape and the Appellants are labourers and -are-bread earner of their family, therefore, some lenient view may be taken while awarding the sentence to the Appellant.

15. Having regard to the submission raised on behalf of the Appellant and in the facts and circumstances of the case, in my opinion, the ends of justice will be met if the period of sentence is reduced to the period they have already undergone in jail with a fine of Rs. 4000/- each to be deposited by them within three months from the date of receipt of a copy of this order. In default, they will have to further undergo rigorous imprisonment for two years. It is made clear that the amount of fine if and when deposited by these Appellants be paid to Kanti Devi, the; informant, P.W. 2 by way of compensation.

16. With the aforesaid modification in the sentence, these two appeals are dismissed.