
(2017) 04 JH CK 0080
In the Jharkhand High Court
Case No : 211 of 2002 (R)

Ramjivan Purty

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 17-04-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 161](#), [Section 164](#) - Examination of witnesses by police - Recording of confessions and statements
[Indian Penal Code, 1860](#), [Section 354](#)

Citation : (2017) 04 JH CK 0080

Hon'ble Judges : Rongon Mukhopadhyay

Bench : SINGLE BENCH

Advocate : S.K. Laik, R.C.P. Sah

Judgement

1. This application is directed against the judgment dated 22.3.2002, passed by the learned 1st Additional Sessions Judge, Bokaro in Cr. Appeal No. 96 of 2000, whereby and whereunder the appeal preferred by the opposite party no. 2 against the judgment and order of conviction dated 19.9.2000, passed by the learned Judicial Magistrate, 1st class, Bokaro at Chas in G.R. Case No.1324 of 1995, convicting the O.P. No. 2 for the offence under section 354 of the Indian Penal Code and sentencing him to undergo S.I. for one year has been allowed and the opposite party no. 2 has been acquitted from the charges leveled against him.

2. An FIR was instituted by the petitioner, in which it was alleged that the opposite party no. 2 on 30.8.1995 at about 2.10 P.M. had touched the front portion of the body of his daughter. It has been alleged that the victim had disclosed that the opposite party no 2 had pressed her breast and had fondled her thigh several times. Based on the aforesaid allegations, B.S. City P.S. Case No. 433/1995 was instituted under sections 354/351 of the Indian Penal Code.

3. After investigation culminated in submission of chargesheet, cognizance was

taken by the learned Chief Judicial Magistrate, Bokaro on 29.3.1996 under section 341/354 of the Indian Penal Code and the case was transferred to the court of Shri B. Prasad, learned Judicial Magistrate, 1st class, Bokaro. After charges were framed trial commenced. Learned Judicial Magistrate, 1st class, Bokaro at Chas by judgement dated 19.9.2000 was pleased to convict the opposite party no. 2 for the offence under section 354 of the Indian Penal Code and had sentenced him to undergo simple imprisonment for one year. The appeal preferred by the opposite party no. 2 being Cr. Appeal No. 96 of 2000 was allowed by the learned 1st Additional Sessions Judge, Bokaro by judgment dated 22.3.2002 and the opposite party no. 2 was acquitted from the charges leveled against him. Being aggrieved by the order of acquittal passed by the learned appellate court, the petitioner has preferred the present application.

4. Heard Mr. S.K. Laik, learned counsel for the petitioner and Mr. R.C.P. Sah, learned counsel for O.P. No. 2.

5. It has been submitted by the learned counsel for the petitioner that the learned appellate court without considering the oral evidence adduced by the witnesses on behalf of the prosecution had passed an order of acquittal. It has further been submitted that consistent evidence has been given by P.W-3, the victim, which has been corroborated by two school students being P.W-1 and P.W-2, who had also given statements under section 164 Cr.P.C. Learned counsel further submits that the learned appellate court had highlighted the minor contradictions and discrepancies appearing in the prosecution case to set aside the order of conviction and sentence. It has also been submitted that since the prosecution had been able to establish its case beyond all reasonable doubts, the judgement passed by the learned appellate court deserves to be set aside.

6. Mr. R.C.P. Sah, learned counsel for O.P. No. 2, supporting the impugned judgment has stated that there is a delay of 2 days in lodging the FIR without there being any plausible reasons for such delay. Learned counsel submits that the statements of the victims as well as P.W-1 and P.W-2 were never recorded by the police under section 161 Cr.P.C. Learned counsel submits that the Investigating Officer of the case had failed to establish the place of occurrence. It has been submitted that only in order to malign the reputation of the opposite party no. 2 who was a Vice Principal in St. Xaviers School, Bokaro, FIR had been instituted.

7. In course of trial, seven witnesses were examined on behalf of the prosecution.

8. P.W-2-Sukanya Chakraborty has deposed that at the time of incident, she was in class IX in St. Xaviers School, B.S. City. She has further stated that 4-5 days prior to her half yearly examination in the year 1995 she could come to know about indecent and obscene act done by the opposite party no. 2, who was the Vice Principal of the School. This witness has also stated that she could come to know that a signature campaign was conducted by the class IX students against opposite party no. 2. This witness goes on to add that she was refused admission

in class XI in the school because of her giving statement under section 164 Cr.P.C. She has admitted to have given statement before the learned Magistrate.

9. P.W-2-Richa Arora is also a student, who was studying in class IX when she came to know about the episode. This witness has admitted recording of her statement under section 164 Cr.P.C. She has further stated that in spite of securing 91% marks in her Board Examination, she was not given the Admission Form in the school. P.W-2 has gone on to add that the opposite party no. 2 had a tendency to get near the girl students.

10. P.W-3-Dolan Bose is the victim, who has stated that on the date of occurrence she was in class IX. She has further stated that on 30.8.1995, she had gone to the office of the opposite party no. 2 along with Neha as the opposite party no. 2 had called both of them along with the school diary. P.W-3 further states that the opposite party no.2 had started scolding and had told them to concentrate on their studies. Since Neha had started crying, she was sent back to her class. It is said that opposite party no. 2 caught her hand and asked her to come closer and thereafter started pressing her breast and caressing her thigh and was also trying to lift her skirt. This witness has deposed that somehow she saved herself and ran back to her class where she started crying. Subsequently, she went home and disclosed about the occurrence to her mother. On the next date, the occurrence was disclosed to her teacher Mrs. Bajaj who told her to bring her parents. Parents had met the Principal, who assured them that the matter will be enquired into. It has also been deposed that on hearing the incident, one Mrs. Chandrika Ray had disclosed about the past exploitation of opposite party no. 2 and that whoever had complained against him were thrown out from the school. This witness has also stated that a signature campaign was undertaken by Smt.Deepshikha Das Gupta and Smriti against opposite party no. 2. P.W-3 has proved her statement recorded under section 164 Cr.P.C.

11. P.W-4-Tapan Bose is the informant and the father of P.W-3. He has stated that he had heard about the incident from his wife to whom P.W.-3 had made such disclosure. On 1.9.1995, he had met the Principal along with his wife, who assured them of conducting an investigation. On 25.10.1995, the O.P. No. 2 virtually threatened him and asked him to write a letter that whatever has been published in the newspaper, Bokaro Mail was false. Fearing about the future of his daughter, this witness had written a letter but ultimately at the insistence of P.W-3, a written complaint was made to the Superintendent of Police, Bokaro.

12. P.W-5-Raj Ballav Yadav is one of the Investigating Officer, who had submitted charge sheet.

13. P.W-6-Sita Ram Singh is also an Investigating Officer who had taken the statement of the witnesses, visited the place of occurrence and had over all conducted the investigation.

14. P.W-7 is the Judicial Magistrate who had recorded the statement of P.Ws. 1, 2

and 3 under section 164 Cr.P.C. .

15. The learned appellate Court has been very unsavoury in its handling of the appeal. The first circumstance considered by the learned appellate court is of absence of any other person to have seen the occurrence, although, the door and window of the office of the school was opened but it was surrounded by Room Nos. 6 and 7. What failed to draw the attention of the learned appellate court was the fear psychosis, which was prevalent in the school which could be gathered from the statement of P.W-3. Retaliation was an imminent danger. Both P.Ws. 1 and 2 were denied admission in class XI because of their statements having been recorded under section 164 Cr.P.C. Absence of any eye witness from amongst the employees of the school cannot and should not have been treated to be fatal to the prosecution.

16. The second circumstance considered by the learned appellate court is the failure of the prosecution to establish as to whether the victim was standing on left or right, front or back of the opposite party no.2. Further obstacle in the mind of the learned appellate court in sustaining the order of conviction was whether the opposite party no. 2 touched the body of P.W-3 in a sitting or standing position. These factors may cause minor hiccups for the prosecution in proving its case but will not be fully disadvantageous to the prosecution. Instead of concentrating on minor contradictions, the learned appellate court should have discussed the oral evidence adduced on behalf of both the sides. The only point to be considered at the threshold by the appellate court was whether the incident had indeed occurred or not. Failure of the Investigating Officer to indicate whether P.W-3 was standing or whether opposite party no. 2 had touched the body of P.W-3 in a sitting or standing position could not have acted as a defence as the appellate court was required to consider the case in its entire perspective and not in a piecemeal fashion.

17. The third circumstance was non recording of the statement under section 161 Cr.P.C. by the Investigating Officer of P.Ws. 1, 2 and 3. This may have been an important circumstance if the statement of P.Ws. 1, 2 and 3 were never recorded under section 164 Cr.P.C. The statements recorded under section 164 Cr.P.C. were incorporated in the case diary and if their statements under section 161 Cr.P.C. were never recorded, such failure cannot act as an impediment to the efforts of the prosecution in proving its case more so when P.Ws. 1, 2 and 3 have all proved their 164 Cr.P.C. statements.

18. The Fourth circumstance is the failure of prosecution to bring on record the written complaint made to the Principal. The evidences of the witnesses itself reveal about the occurrence and the written complaint surely must not be containing accolades written in favour of the opposite party no. 2. The appellate court has left aside the larger and only issue to be decided by not even considering the oral evidence of the witnesses. Non submission of the written complaint made by P.W-4 to the Principal on the part of the prosecution is of no consequence considering its little probative value.

19. The Fifth circumstance is the delay in lodging the FIR. Sufficient and reasonable explanation has been given by the prosecution, which is absolutely believable and trustworthy. None of the circumstances enunciated by the learned appellate court were sufficient to demolish the edifice built by the prosecution. The appellate court on improper and inept consideration of the records of the case passed a judgment of acquittal which requires reconsideration.

20. Consequent to the discussions made herein above, this application is allowed and the impugned judgement dated 22.3.2002 , passed by the learned 1st Additional Sessions Judge , Bokaro in Criminal Appeal No. 96/2000 is quashed and set aside and the matter is remanded back to the learned appellate court to pass a fresh order in accordance with law after hearing the parties and based on the materials available on record. The exercise, indicated above , should be completed within a period of three months from the date of receipt/production of a copy of this order.