

(2010) 04 JH CK 0149
In the Jharkhand High Court

Sawna Gope

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2010) 04 JH CK 0149

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amareshwar Sahay, J

1. Since both the appeals have been filed by the same appellant Sawna Gope against the same impugned judgment of conviction and order of sentence and, as such, they have been heard together and are being disposed of by this common judgment.

2. These two appeals have been filed by the appellant Sawna Gope from the jail against the judgment dated 28.7.2003 in ST. No. 206 of 2001 passed by the Additional Sessions Judge, Simdega, whereby and whereunder the appellant was convicted for committing offence u/s 376 of the Indian Penal Code for committing rape on the prosecutrix Fulmani Devi on 18.5.2001 in his village and thereby he was sentenced to undergo R.I. for a period of 7 years and to pay a fine of Rs. 500/- and in default of payment of fine to undergo R.I. for three months.

3. Prosecution case in nut- shell is that on 18.5.2001 at about 6.45 P.M. prosecutrix Fulmani Devi (P.W. 2) was coming with one Budhua Gope (not examined), who was related to her as brother in law. At that time the appellant said to have approached the prosecutrix and told her to come to his house and when she refused then he caught hold her hands and took her to his house forcibly. Though she tried to rescue herself, but she was forcibly taken inside the room by the appellant, where son and daughter of the appellant were present.

The appellant asked son and daughter to get out and thereafter closed the room and then committed rape on the victim girl for the whole night. P.W. 1 Johan Dungdung protested against the act of the appellant, but he was also thrashed out by the appellant. The prosecutrix was allowed to go in the morning and then she reported the matter to Munni Devi, Kartik Gope, Bahura Gope and others(all of them have not been examined by the prosecution) and then she went to the police station and lodged the report.

4. The police after completion of investigation submitted charge sheet and thereafter the appellant was put on trial.

5. In course of investigation the prosecutrix victim was also examined by the Doctor P.W. 3 and as per the report of the Doctor, two scratch marks were found on the right neck region of the prosecutrix i.e. 3"x ? " & 3"x ? " and old scar mark ? "x ?" on right cheek with sign of recent sexual intercourse.

6. In order to establish the charge altogether 7 witnesses were examined on behalf of the prosecution, out of whom P.W. 1 Johan Dungdung, who is said to have seen the appellant forcibly taking away the prosecutrix to his house, P.W. 2 Fulmani Devi is the prosecutrix herself, P.W. 3 Dr. H. Kiran, who has medically examined the victim, P.W. 4, Urmila Devi and P.W. 5 Balmuni Devi have been declared hostile by the prosecution, who were said to have been informed about the occurrence by the prosecutrix after the occurrence in the next day, P.W. 6 Sangita Kumari is the daughter of the appellant aged about 10 years, who has not supported the case of the prosecution, P.W. 7 S.I. Rajeev Nayan is the Investigating officer of the case.

7. The trial Court on consideration of the evidence of the prosecution witnesses and material on record found the appellant guilty for the offence u/s 376 of the Indian Penal Code and thereby sentenced him to undergo R.I. for 7 years and to pay a fine of Rs. 500/- and in default of payment of fine to undergo R.I. for 3 months.

8. Mrs. Lili Sahay (A.C.) for the appellant argued that the prosecution has miserably failed to establish its case beyond every reasons of doubt, but the trial Court has wrongly convicted the appellant for the aforesaid charge. It is further submitted that the statement of the victim lady is unbelievable and untrustworthy, because in her statement she has stated that she informed about the occurrence to P.W. 4 and P.W. 5, namely, Urmila Devi and Balmuni Devi, but they did not support the version of the prosecutrix, which makes the version of the prosecutrix doubtful. It is further submitted that as per the evidence of the Investigating Officer (P.W. 7), the house of the appellant as well as the house of the prosecutrix are situated at a distance of 10 yards only and are situated opposite to each other they are neighbours. It has further come in the evidence that the wife of the appellant had died 7 years ago whereas the husband of the prosecutrix also died 4 years ago. It has also come in evidence that they were on visiting terms and therefore it can very well be inferred that the lady, who was

living alone with her child, was a consenting party to the act of such sexual act with the appellant. She further submitted that the statement of P.W. 1 Johan Dungdung is also doubtful and not trust worthy in view of his conduct and behaviour because of the fact that when he saw the appellant taking away the prosecutrix forcibly to his house and when he asked from the appellant as to why he was forcibly taking Fulmani Devi inside his house, then he was thrashed out by the appellant, then he came back to his own house. This conduct of P.W. 1 is against the normal conduct and behaviour of a common man or villager. If, in fact, he would have seen the appellant taking away the prosecutrix, then he must have reported the matter to any of the villager or to the police, but he remained silent. Therefore, the statement of this witness cannot be believed. Alternatively it is argued that even the statement of P.W. 1 is taken to be true that he saw the appellant taking the prosecutrix to his house then also it could appear from his evidence that since both of them were on visiting terms with each other and, therefore, there could be no such occasion for the appellant to drag the prosecutrix to his house. Learned Counsel further submitted that as per the evidence of the prosecutrix she caused some injuries by her nails and teeth on the person of the appellant at the time of commission of rape in order to save herself from the clutches of the appellant, but curiously enough that the appellant was not medically examined. Therefore, this statement of the prosecutrix that she caused injuries on the person of the appellant could not be established. Therefore, it appears that the prosecutrix was a consenting party to the sexual intercourse with the appellant.

9. In order to test these submissions of the learned Counsel for the appellant, I have minutely examined the evidence of all the P.Ws. particularly P.Ws. 1, 2 and 3 and on considering the arguments advanced on behalf of the appellant, I find force in the argument of the learned Counsel for the appellant. The evidence on record, atleast creates doubt on the prosecution version that the appellant forcibly committed rape upon the victim lady on the date and time of occurrence. Therefore, I am inclined to give benefit of doubt to the appellant.

10. In the result, both the appeals are allowed and conviction and sentence passed by the trial Court against the appellant is hereby set aside. The appellant, if he is in custody, is directed to be released forthwith if not wanted in any other case.