
(2018) 07 JH CK 0076

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 823 of 2002

Sikandar Badhai, Sikandar Sharma

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-07-2018

Acts Referred:

Indian Penal Code, 1860 — Section 376

Citation : (2018) 07 JH CK 0076

Hon'ble Judges : B.B.MANGALMURTI, J

Bench : Single Bench

Advocate : Ashish Verma, Azeemuddin

Final Decision : Allowed

Judgement

1. This appeal is directed against the judgment of conviction dated 20th November, 2002 and order of sentence dated 23rd November, 2002 passed by Additional Sessions Judge, Fast Track Court No.III, Garhwa in Sessions Trial No.480 of 2000 holding the appellant guilty under Section 376 of the

Indian Penal Code and sentenced him to undergo rigorous imprisonment for eight years with fine of Rs.5000/-.

2. Heard Mr. Ashish Verma, Amicus Curiae and Mr. Azeemuddin, A.P.P. appearing on behalf of the State.Â

3. The prosecution case, in short, is that the prosecutrix aged about 12 years while going with her aunt Bimal Devi, Basmatiya Devi and Bhagwaniya

Devi for planting paddy in the field of Habib Miya at about 10.00 a.m. They reached near Tildag village, and prosecutrix gone for attending call of

nature under Peepal tree. Her three aunt went forward and she was left behind. Meanwhile, one person under the threat of murder committed rape

upon her in a lonely place and while he was washing hand, she managed to

escape. She went to a nearby field where some ladies were working and disclosed the incident. They also searched for the person committed rape but by that time the appellant was not found there. Thereafter, victim returned to her residence and narrated the entire incident to her grandmother Bigni Devi who in turn informed her grandfather Budhu Choudhary. Since it was evening so her grandfather could not go anywhere. On next date, her grandfather went to village Tildag and tried to get knowledge then he was informed that it was the work of Sikandar Badhai who had fled away from the village. After his return, he will be put for identification, on this assurance her grandfather returned from Tildag. Further case is that in the morning i.e. on 20.08.2000 around 10 persons of Tildag village came to her residence and disclosed to her grandfather that they had caught Sikandar Badhai and have kept there. Thereafter, victim along with her grandfather and other villagers went to Tildag where she identified Sikandar Badhai. Her grandfather enquired the name of appellant. The persons present there stated that after much effort, Sikandar Badhai has been caught while he was trying to flee and in that course he also got some injuries. The villagers of Tildag handed over Sikandar Badhai to the villagers of victim. As the area of her village was falling under Chainpur Police Station so they handed over the appellant to the Police. The informant as well as Balmiki Choudhary, Dulari Choudhary have put their thumb impression on it. This fardbeyan was forwarded to Garhwa Police for institution of case under Section 376 of the Indian Penal Code. On that very basis, a formal F.I.R. being Garhwa (Sadar) P.S. Case No.159 of 2000 was instituted on 21.08.2000 under Section 376 of the Indian Penal Code corresponding to G.R. Case No.558 of 2000.

4. After investigation, the charge-sheet was submitted against the sole appellant. After framing of charge under Section 376 of the Indian Penal Code, the appellant pleaded not guilty and claimed to be tried. During trial, altogether ten witnesses were examined on behalf of the prosecution.Â

5. P.W.1 is prosecutrix herself, who had narrated the entire incident that while in the morning she was going for planting paddy along with Basmatiya

Devi, Bimli Devi and Bhagwaniya Devi to Tildag village, she stopped for a while for easing herself. The covillagers gone forward from that place. She

further stated that accused Sikandar committed rape upon her. She identified the

accused standing in the court pointing towards him that he had committed rape upon her. She also stated that later on accused Sikandar was caught hold by the villagers who was handed over to the Police where her statement as well as the statement of his father Balmiki Choudhary and uncle Dulari Choudhary were also recorded. Upon which, she has put her thumb impression which has been marked as Ext. X, X/1 and X/2 for identification. She also stated that her medical examination was done in Daltonganj hospital. During cross-examination, she replied that she do not remember when her statement was recorded by the Police after the incident. She also replied that she had resisted during commission of rape. She also stated that the place of occurrence was near the canal of dam. She also replied that she was knowing the appellant before the occurrence as he was doing the work of carpenter but he had never worked in her house. She was recognizing the appellant while passing each other on the roads. She also stated that the villagers have indicated that he is the person who had committed rape. She denied the suggestion that since the appellant had worked in her residence and he demanded his wages then he was falsely implicated in this case.Â Â

6. P.W.2 Budhu Choudhary is grandfather of victim, who stated that victim had disclosed while weeping that accused Sikandar Badhai committed rape upon her. This witness has identified the accused in court. He further stated that his statement was recorded by the Police as the villagers had caught the accused whom they handed over to the Police at Chainpur Police Station. During crossexamination, he stated that his grand-daughter has disclosed the name of rapist even the son of Dular Sao and other have also stated the name of accused as Sikandar. He further stated that he was knowing the accused before the incident who was working as carpenter. Accused had not worked in his residence. He denied the suggestion that since accused had demanded his wages therefore he has been falsely implicated in this case.Â Â

7. P.W.3 Balmiki Choudhary father of victim, who narrated the prosecution story in the similar manner that while her daughter was going to Tildag for planting paddy along with Basmatiya Devi, Bimli Devi and Bhagwaniya Devi then Sikandar Badhai committed rape upon her. When the victim returned to her house, she disclosed the incident to her mother. From her

mother, he could know the incident. He recognized the accused in the court.

During cross-examination, he replied that some distance from Tildage village, the rape was committed near a bush.

8. P.W.4 Bimli Devi and P.W.5 Basmatia Devi both have stated while they were going for planting paddy then on the way the victim girl went for

easing herself then all the three went forward. Thereafter, accused Sikandar had committed rape upon her which they could know from the victim at

her residence after they returned from work. During cross-examination, both replied that they had not seen the occurrence of rape.

9. P.W.6 Teju Choudhary uncle of victim is a hearsay witness who has narrated the prosecution story of committing rape. He also stated that he could

know the commission of rape by the victim. He also recognized accused in court. During cross-examination, he admitted that he is not an eye witness

but could know about the rape from the victim herself.Â

10. P.W.7 Ramjee Choudhary also deposed in the similar line as that of P.W.6 and recognized the accused in the court. In cross-examination, he

replied that he could know the name of accused after 3/4 days of the incident, from the villagers of Tildag.

11. P.W.8 Malik Khan also narrated the prosecution version of committing rape upon the victim by the accused. He also stated that after 2/3 days

Sikandar was caught and was handed over to Balmiki Choudhary (P.W.3), who in turn handed over to the Police. He recognized the accused in court.

During cross-examination, he also stated that he is not an eye witness. He further stated that there is no enmity with the sole accused.

12. P.W.9 Gorakh Nath Sao stated that victim has stated before him and others that Sikandar has committed rape upon her while she was going for

planting paddy at Tildage with other ladies. He also stated that Sikandar was handed over to Balmiki Choudhary who in turn was handed over to the

Police. He recognized the accused Sikandar in court. During cross-examination, he stated that he is not an eye witness but he has seen the accused

fleeing from the place of occurrence after commission of rape. He further stated that Sikandar is his co-villager.

13. P.W.10 Dr. Pushpa Sahgal, who is one of the members of the medical board, who had examined the victim prosecutrix and found the following:

â??On physical examination, average built, 4â??6â? height, 30 kg. weight,

axillary and pubic hair absent. Breast not well developed. Teeth, upper jaw 14 and lower jaw 14. All are permanent i.e. third upper teeth is not erupted. On external examination no external injury found on her body.

Internal examination- No external and internal injury found on her private part. No foreign hair found on her private part. Vagina admitted two finger easily. Hymen ruptured (old one). Vagina swab taken for microscopic examination as per pathological report no.16 dated 21.08.2000, no spermatozoa was found.

The conclusion arrived at by the doctor that no sign of recent sexual intercourse was found. This report was marked as Ext.1 and the pathological report was marked as Ext.2.

14. Learned Amicus Curiae appearing on behalf of the appellant submitted that the prosecution could not able to prove the case as there are discrepancy in the fardbeyan and the evidence of the victim as well as other prosecution witness. Elaborating his point, he submitted that as per the fardbeyan, the victim claimed that she was not knowing the name of rapist but later on the villagers disclosed the name of appellant then she could know about the name of the appellant, although F.I.R. was lodged making the appellant as named accused. He further submitted that there is delay in lodging the F.I.R. as the occurrence is of 14.08.2000 but the F.I.R. was lodged after much delay on 21.08.2000. The victim claimed to have identified before the villagers and had disclosed the name of accused. Although the place of occurrence was of lonely place and even accompanying ladies were not present there. Out of three ladies, two have been examined as P.W.4 Bimli Devi and P.W.5 Basmatia Devi but both are not eye witness of this case as they have admitted that they got knowledge of occurrence after they returned to their residence and was informed by the victim. All other witnesses who have been examined by the prosecution are hearsay witness only. P.W.9 has claimed seeing the appellant fleeing from the place of occurrence but there is no corroboration from the other prosecution witnesses. Even it does not corroborate with the evidence of the victim who had deposed that after the occurrence she disclosed these facts before the persons/ villagers working in the nearby field and they also tried to search the appellant who fled away by that time and lastly he submitted that formal F.I.R. has not been brought on record. Therefore, the appellant deserves

benefit of doubt.Â

15. Learned Additional P.P. appearing on behalf of the State submitted that although Investigating Officer of this case has not been examined but the prosecution has proved the case as the victim girl herself narrated the incident and other witnesses have also corroborated to that part of story which was before and after the incident. Since these type of occurrence are committed mostly in a lonely place therefore normally there is absence of eye witness in the case. He further submitted that since the matter was reported late but the delay has been properly explained and immediately after the lodging the case, the victim girl was examined by the medical board and the board has also found her as minor.Â

16. Having heard learned counsels for both the parties and on consideration of the evidence brought on record, it manifest that there is delay in lodging the F.I.R. Although the prosecution tried to explain the delay as the accused has fled from the village and when he was caught hold by the villagers, the victim was informed and when they went there, the victim identified the accused and thereafter accused was handed over to the Police and law was set in motion. In the fardbeyan, it has been claimed that villagers of Tildag had caught hold of the appellant where the victim identified and then the victim could aware the name of the appellant, whereas in her evidence before the court she had admitted that she was knowing the appellant well before the incident. During cross-examination, she had admitted that she was knowing this appellant well before the incident and recognized each other even while crossing on roads. There is contradiction in the evidence of other prosecution witnesses with regard to who had informed that it was the appellant who had committed rape and those villagers were not examined by the prosecution. In the fardbeyan, it was stated that the victim accompanied with other ladies were going for planting paddy in the field of Habib at village Tildag. P.W.8 Malik Khan has been examined who had stated that the victim and other ladies were going towards his field for planting paddy although as per fardbeyan all were going for plantation of paddy in the field of Habib Mian. This has also created doubt about the prosecution case. Lastly, the non-examination of Investigating Officer, the formal F.I.R. and fardbeyan could not be brought on record. The prosecution could not also establish the exact place of occurrence. As per fardbeyan, it was

near about Tildag village where the victim was easing near Peepal tree but while she was examined as P.W.1 stated during cross-examination that the

place of occurrence was near the canal of dam. P.W.3 Balmiki Choudhary, father of victim, during cross-examination stated that it was some distance

from Tildag village near a bush, the rape was committed. In these circumstances, the appellant deserves the benefit of doubt.Â 17.Â Therefore, due

to these reasons the judgment of conviction dated 20th November, 2002 and order of sentence dated 23rd November, 2002 passed by Additional

Sessions Judge, Fast Track Court No.III, Garhwa in Sessions Trial No.480 of 2000, is hereby set aside. Sole appellant is given the benefit of doubt and

he is acquitted of the charge. The appellant who is on bail, is discharged from the liabilities of his bail bond.Â

18. Before parting with this judgment, I must record the able assistance given by Mr. Ashish Verma, learned amicus curiae in the case. Therefore, the

Secretary, High Court Legal Services Committee is directed to make the payment of the prescribed remuneration to the learned amicus curiae. Let a

copy of this judgment be sent to the Secretary, High Court Legal Services Committee for the needful.

19. In the result, this appeal is allowed. Let the Lower Court Records be sent back to the court concerned along with a copy of this judgment.Â