

(2016) 11 JH CK 0134

In the Jharkhand High Court

Case No : Govt. Appeal No. 07 of 2001 (Against the judgment and order of acquittal dated 5.3.2001 passed by 1st Additional Sessions Judge, Chatra in Sessions Trial No. 354 of 1994)

State of Jharkhand

APPELLANT

Vs

Binod Singh

RESPONDENT

Date of Decision : 24-11-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 378

Penal Code, 1860 (IPC) — Section 148, Section 149, Section 149, Section 366, Section 376, Section 396

Citation : (2017) 1 AIRJharR 828 : (2017) 1 ECrC 461 : (2017) 1 JBCJ 1 : (2017) 1 JLJR 8

Hon'ble Judges : Pardeep Kumar Mohanty, ACJ. and Mr. Ananda Sen, J.

Bench : Division Bench

Advocate : Mr. A.K. Kashyap, Senior Advocate, for the Respondents; Mr. Pankaj Kumar, APP, for the Appellant

Final Decision : Dismissed

Judgement

Pradip Kumar Mohanty, A.C.J. - The Government Appeal and the Criminal Revision, preferred by the State and the informant respectively, are directed against the judgment and order of acquittal passed by learned 1st Additional Sessions Judge, Chatra in connection with Sessions Trial Case No.354 of 1994 on 5.3.2001 corresponding to Chatra PS Case No.146 of 1992, whereby and where under the respondents-accused persons have been acquitted of the charges levelled against them.

2. The case of the prosecution in brief is that in between the night of 29/30.07.1992 some criminals came to the house of the informant Chandra Kishore and at about 11.00 p.m. they entered into the compound by uprooting the Farki (door). It is stated that the informant, his aunt and his cousin were sleeping in a room which was closed from outside by these dacoits. Further, it is stated that Badri Mahto and Kaushal Kishore, who were sleeping in the Verandah,

were assaulted by the miscreants which was seen by the informant in the torch light through window. The informant and other family members raised Hulla but those miscreants threatened them for keeping silence and after that they committed dacoity and on threat, they compelled them to open the door and then two of them entered into the house, who had covered their face by clothes. Further it is stated that one of the miscreants assaulted the informant with fists and slaps and another assaulted his aunt, as a result of which she fell down and when she stood, these dacoits caught her and brought in the courtyard and snatched her ornaments and they were also asking about cash and then they took away two boxes from the house and caught his aunt and took her with themselves and they shut the door of the informant's room from outside. The informant had seen four dacoits in the courtyard and two were in Varandah who were assaulting his brother and grandfather. Further, he said that his aunt returned at 4.00 a.m. and said that they were asking her about cash and ornaments. When the informant asked his aunt about the identification of the dacoits, she said that she did not identify and said that one of the dacoits gave her lathi blow on the leg. He further said that before returning of his aunt, on his Hulla villagers had gathered at his house and his neighbour Ramotar and his mother reached there and opened the door and after that he came out and saw that his grandfather had died and his cousin was senseless and there was bleeding injury in his ear and nose and other parts of the body. The villagers took him to Chatra hospital where the doctor declared him dead. Further, he said that one of the stolen boxes was thrown in the western side of the house and clothes were scattered there. It is said that different articles valued at Rs.600/- was looted and he said that he and his aunt and Sunil can identify those dacoits. Accordingly, written information about the occurrence was given by the informant Chandra Kishore, on the basis of which Chatra PS Case No.146 of 1992 was registered and the police after due investigation submitted charge sheet for the offence under Section 147, 148, 149, 380, 366, 376 & 302 of the Indian Penal Code against all the accused persons and accordingly cognizance of the offence was taken and case was committed to the court of Sessions, where it was numbered as S.T. No. 354 of 1994.

3. The plea of the defence is complete denial of the allegations.

4. The trial court after framing the charge under Sections 148, 366/149, 376/149 and 396/149 IPC, started trial of the case and examined the witnesses.

5. In order to prove the charges against the accused, the prosecution has examined altogether ten witnesses, including the doctor (PW-9), who conducted autopsy on the person of the deceased. However, the defence has not examined any witness.

6. The trial court after considering the entire materials on record and also considering the evidence of the prosecution witnesses, came to a conclusion that the accused persons have falsely been implicated in the case inasmuch as there is not even a single independent witness in this case to justify the case of the

prosecution as to why these accused, who are neighbours and known to the victim since before the occurrence, have not been named in the FIR.

7. Mr. Pankaj Kumar, learned Additional Public Prosecutor, has assailed the judgment of the learned trial court on the following grounds:

(I) The learned trial court ought to have appreciated the materials on record and the evidence so far adduced in this case in its right perspective.

(II) PW-2, the victim, having been raped by the accused persons, became mentally abnormal for certain period and only after her recovery from the illness she disclosed the name, but the trial court has not considered the evidence of PW-2.

(III) PWs 1, 2 and 11, who are natural witnesses, have fully supported the case of the prosecution.

(IV) The trial court has not considered the statement of PW-2, recorded under Section 164 Cr.P.C. and unnecessarily highlighted to the extent that the accused were dacoits.

(V) PW-2 (victim) has specifically disclosed the factum of rape committed upon her by the dacoits and due to fear she could not disclose their names to her husband at the time of registering First Information Report and has stated that most of the witnesses are reliable and therefore, the judgment passed by the learned trial court is bad in law, illegal and liable to be set aside.

8. Learned counsel for the informant appearing in Cr. Revision No. 150 of 2001 has also supported the argument advanced by the learned Additional Public Prosecutor in Govt. Appeal No. 07 of 2001.

9. Learned counsel appearing for the respondents in Govt. Appeal No. 07 of 2001 submitted that there is no infirmity or illegality committed by the learned trial court in acquitting the respondents of the above charges. He has vehemently contended that by taking the evidence in its entirety, the case of prosecution appears to be false. No independent witness has been examined by the prosecution and though the accused persons are neighbours, the informant has not disclosed their names in the FIR. He has further contended that PW-2 has specifically stated that she has disclosed the names of the accused persons after consulting her husband. Moreover, Investigating Officer has not been examined in the case. Thus, there is no infirmity or illegality committed by the learned trial court in acquitting the present respondents from the above charge.

10. Perused the lower court records and gone through the evidence minutely.

11. PW-1 Jai Narayan Prasad, who is the father of deceased and son of another deceased Badri Prasad, was not present at the place of occurrence, as at that point of time he was at Chitarpur, Hazaribagh. He was informed by the Post Master Yugeshwar Singh that his son Kaushal Kishore is admitted at Chatra Hospital. This witness has further stated that while he was returning after

cremation of dead bodies of the deceased, his wife (PW-2) told him that she was raped by accused Chandradeo Singh, Vinod Singh, Ratan Singh and Shyamdeo Singh and also stated about the role played by the above accused persons.

12. PW-2 Raj Kumari Devi is mother of deceased Kaushal Kishore and wife of PW-1. She has deposed that on the date of occurrence, her father-in-law and son-Kaushal Kishore were sleeping near the door of the house and she along with Chandra Kishore and Sunil was sleeping inside the house. Chandradeo Singh (accused), who is next door neighbour, came along with 4-5 persons and after opening the door, entered into the courtyard. This witness woke up and sat on her bed. On the direction of Chandradeo Singh, Binod Singh poked knife in the chest of Badri Prasad. This witness and Chandra Kishore raised alarm and then three persons flashed torch light on her and threatened her not to raise Hulla and directed her to open the door, whereupon she opened the door and the accused persons started assaulting Chandra Kishore with knife. On the demand of accused persons, she gave her golden ear ring and nose pin to them. Thereafter, three persons took her to the other room, to whom she could not identify due to darkness, and queried about the money. They gave two-three Danda blow to her father-in-law (deceased Badri Prasad) and also Kaushal Kishore (another deceased) from the back side of spade. She identified Chandradeo Singh, Vinod Singh, Ratan Singh and Shyamdeo Singh. Thereafter eight persons came to her house and took her towards the school and undressed her. Ratan Singh, Shyamdeo Singh, Binod Singh and two other persons committed rape upon her. The accused persons thereafter fled away. After the accused fled away, she went to the house of Doman and Prakash (PW-5 and PW-4 respectively), where mother of Doman gave her cloth. After wearing the cloth, she went to her house with Indradeo Singh and Baleshwar Singh. When she came to her house, she saw the dead body of her father-in-law and her son Kaushal Kishore was lying in a pool of blood, who was admitted to hospital, where he succumbed to his injuries. In cross- examination, she admitted that due to darkness nothing was seen. After ten months of the incident, she narrated the incident to the police. She had not told the police earlier about the name of the persons who had committed rape upon her. She had also admitted that she had talked with her husband as to whose name would be disclosed to the police. She has also admitted that she had not stated before the Magistrate about the name of the person who had committed rape upon her. She had identified Binod in the light of lamp which was enlightened in the courtyard. She also admitted that she had not stated anything about the murder and rape committed on her before the police. She had also admitted that she had not said anything to the police that she had seen the accused assaulting her father-in-law and son in the light of torch from the window. She had also admitted that the doctor had not examined her private parts.

13. PWs-3, 4, 5, 6, 7 and 8 are the villagers and neighbours, who were declared hostile. PW-9 is Dr. H.K.P. Jaiswal, who has conducted autopsy over the dead bodies of the deceased and found the following injuries :-

Injury found on the dead body of Badri Mahto

- (i) Stab wound over lateral side of eye 1" x ?" x bone deep;
- (ii) Incised cut over right side of scalp 1" x ?" x scalp deep;
- (iii) Incised cut over right side of face 5" x ?" x bone cut ;
- (iv) 3 incised cuts over neck upper one 5" x 1" x muscle deep.

Middle one 4" x 1" x muscle deep, lower one 2" x spindle shaped x muscle deep ;

All wound caused with blood and wound merging red in colour.

Findings:

Rigor mortis present in upper and lower limbs, absent in neck , mouth closed, eyes closed, both lungs pale, heart wall pale and all chambers empty, stomach contained semi digested food particles, liver pale , spleen pale , kidney pale.

In the opinion of the doctor, cause of the death was due to hemorrhage and shock by above injuries caused by sharp weapon. Time elapsed about 24 hours.

Injury found over the dead body of Kaushal Prasad

- (i) Bruise and swelling over right cheek right side of forehead and right temporal area of scalp 12" x 8" size
- (ii) There was subcutaneous hematoma under neath the scalp 10" x 8" ;
- (iii) Cranial cavity contained blood and fracture of right temporal bone and right side of frontal bone;
- (iv) Extramural hematoma over right side of brain 2" x 3" .

Findings:

Rigor mortis present in both upper and lower limbs, blood coming through right ear, face pale, body pale, eyes closed.

In the opinion of the doctor, cause of the death was due to hemorrhage and shock due to above injuries caused by sharp weapon.

14. PW-10-Madhesh Singh is a Constable, who has proved two inquest reports, FIR and two seizure lists. He has also proved the injury reports.

15. PW-11 Chandra Kishore is the informant of the case. This witness has stated that he was sleeping in the house along with his aunt and cousin brother. In the courtyard, his grandfather and Kaushal were sleeping. On hearing Hulla, he woke up at about 11.00 a.m. He also raised Hulla and then the accused persons threatened them not to raise Hulla. The accused persons caught his hair and slapped him and when they tried to cut the neck, his aunt told the accused persons not to beat him and take anything. This witness has further stated that the accused persons took his aunt into the house and looted the articles and

when he came out of the house he saw the dead bodies of his cousin brother and grandfather lying there. In his cross-examination, this witness has stated that he has lodged the case in the morning and in the Fardbeyan he has stated what had been seen by him and what had been stated by her aunt.

16. From scanning the evidences and the materials available on record, it is clear that all the witnesses are interested witness and all belonged to one family. No independent witnesses has corroborated the testimony of the above witnesses. PW-2, for the first time, introduced the story of rape after ten months of the occurrence. In her statement, she has stated that the accused persons took her towards the school and undressed her and committed rape upon her. Thereafter she went to the house of Doman and Om Prakash (PWs-5 and 4) and collected cloth from the mother of Doman. But, PWs-4 and 5 have been declared hostile. PW-2 also stated that she had taken Saree from Mutari Devi (PW-3), but this PW-3 has also turned hostile. Pws 6 and 8 have also turned hostile. PW-7-Ramawtar Ram has proved the Inquest Report (Ext.3) and PW-9, who is doctor, has conducted autopsy and proved the post mortem reports (Exts.4 and 5).

17. The entire case of the prosecution rests upon the evidence of Raj Kumari Devi (PW-2). In her cross-examination, she has admitted that due to darkness, nothing was seen but after ten months she narrated the incident to the police. She has also admitted that she had not stated the name of the accused either to the police or to the Magistrate, who had committed rape upon her. Thus, from the above, it is crystal clear that this witness is not a reliable witness and has developed the story from time to time and has disclosed the factum of rape only after ten months. Even the informant of the present case has specifically stated that he has stated what had been seen by him and what had been stated by her aunt (PW-2). Moreover, it has also come in evidence that all the accused persons are neighbours and known to the family, but neither the informant nor PW-2 had named the accused persons.

18. From the above evidence, it is clear that the victim (PW-2) disclosed the name of accused persons to her husband only after ten months. In fact, it is a double murder case but the prosecution has miserably failed to prove the charges. Moreover, the incident was occurred in the year 1992 and charge was framed on 9.7.1997 and hearing of the case was commenced and judgment was delivered on 5th March, 2001 and by now more than 24 years have passed.

19. In the result, Government Appeal as well as Criminal Revision both are hereby dismissed, as there is no infirmity or illegality committed by the learned trial court in acquitting the respondents from the above charges.

Ananda Sen, J :- I agree.