
(2005) 04 JH CK 0051

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 274 of 1990

Sudhir Mandal

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 28-04-2005

Acts Referred:

Penal Code, 1860 (IPC) — Section 342, 376

Citation : (2005) 2 BLJR 1438 : (2005) 3 JCR 214

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Shaila Minz, Amicus Curiae, for the Appellant; A.B. Mahato, APP, for the Respondent

Final Decision : Allowed

Judgement

Amareshwar Sahay, J.—This appeal arises against the judgment dated 5th July, 1990 passed by the Additional Sessions Judge II, Deoghar whereby the appellant was convicted under Sections 342 and 376 of the Indian Penal Code and was sentenced to undergo RI for a period of 6 months u/s 342, IPC and RI for a period of 10 years u/s 376 of the Indian Penal Code,

2. The prosecution case, in brief, is that wife of the first informant, namely, Anand Rana was cooking food inside her house on 3.5.1989 at about 8 p.m. At that time she sent her daughter, Rita Kumari aged about 7 years to fetch water from a nearby well. Rita Kumari reached at the well and at that time the appellant, Sudhir Mandal caught hold of her, brought her to his room and thereafter closed the room from inside and he gagged the mouth of Rita Kumari and then committed rape on her, due to which the girl started bleeding and thereafter the appellant is said to have fled away. The prosecutrix put on her underwear and came back to her mother, where she narrated the story of rape by the appellant. The mother of the prosecutrix went to the parents of the appellant, but they started abusing her and threatened her with dire consequences. Thereafter the mother of the prosecutrix came back to her house

and sent one Sudhir Rana to Barakar where her husband was working as Carpenter. Sudhir Rana informed the first informant and then he came down to his village on 7.3.1989 and then lodged the FIR. After completion of the investigation, charge-sheet was submitted. The charges were framed against the appellant under Sections 342 and 376, IPC. The appellant pleaded not guilty and claimed to be tried.

3. In all 8 witnesses were examined on behalf of the prosecution. Out of whom PW 1, Govind Mandal, in his examination-in-chief, has stated that he accompanied the informant to the police station and put his signature on the FIR. However, in cross-examination he specifically stated that Anand Rana (informant) did not give any statement in his presence and when Anand Rana was being examined he had gone to the market. He further admitted in his cross-examination that the contents of the FIR was not read over to him and put his signature at the instance of the Investigating Officer.

Therefore his evidence is of no avail to the prosecution.

4. PW 2, Anand Rana, who is the father of the victim, Rita Kumari in his cross-examination, has stated that his daughter, Rita Kumari was aged about 7-8 years. He further stated that one person by name Sudhir Rana gave information to him about the alleged occurrence. At this he came to his house and then the inmates of the house started crying. He further stated that the underwear of the prosecutrix was handed over to him by his nephew. Ram Lal Rana (not examined) and then the informant went into the police with Ram Lal, Govind Mandal and his daughter, Rita and there he lodged the FIR. However, he has stated that the contents of the FIR was not read over to him. He has further stated that his daughter had told him that in the night of Wednesday at about 8 p.m. while her mother was cooking the food and at that time she had gone to fetch water from the well of one Ganesh Mandal, in the meantime the appellant, Sudhir Mandal caught hold of her and took her to a nearby room where he gagged her mouth and then he committed the rape on her, due to which her female organ started bleeding. In cross-examination this witness has admitted that Govind and Ram Lal went to Sarath Bazar after they reached the police station and from the market they came back after 1-1 1/2 hrs.

5. PW 3, Sudhir Rana, was declared hostile.

6. PW 4, Panchu Rana was tendered.

7. PW 5, Suma Devi (mother of the victim), was declared hostile. She has stated that she did not state before the police that Sudhir Mandal had committed rape on her daughter.

8. PW 6, Rita Kumari (victim girl), was also declared hostile by the trial Court. However, in her cross-examination she has stated that the appellant, Sudhir Mandal pushed her, due to which she fell down and then got injuries on her private part. She has further stated that she did not state before the police that

the appellant had committed rape on her.

9. PW 7, Dr. Citi Bishwas, who medically examined the victim and has stated that she found recent sign of intercourse.

10. PW 8 is the Investigating Officer, who after completion the investigation and submitted charge-sheet.

11. Two defence witnesses were also examined i.e. PW 1, Madhusudan Yadav, who was a formal witness, who proved in Ext. 1. PW 2, Jeet Narain Rai was formal witness, who proved Ext-B.

12. From the evidence adduced on behalf of the prosecution as discussed above, I find that the material witnesses are PW 5, Suma Devi, the mother of the victim, PW 6, victim herself and PW 7, the Doctor, who examined the victim girl. The informant is a hearsay witness.

13. PW 5, the mother of the victim, has been declared hostile. As noticed earlier, she has flatly denied that the appellant has committed rape on her daughter (PW 6). Similarly to victim girl (PW 6) has also stated that the appellant has not committed rape on her. In view of the statement of PW 5 and PW 6 the whole prosecution case falls on the ground. There is no evidence at all on the record so as to arrive at a conclusion that the appellant either confined the prosecutrix wrongfully or committed rape on her.

14. In view of above facts the conviction and sentence passed by the trial Court cannot be sustained. Consequently this appeal is allowed, the conviction and sentence passed against the appellant by the trial Court is hereby set aside. The appellant is on bail, and as such he is discharged from the liability of his bail bonds.