
(2019) 01 JH CK 0080
In the Jharkhand High Court
Case No : Criminal Appeal (SJ) No. 8 Of 2008

Sushil Murmu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 29-01-2019

Acts Referred:

Indian Penal Code, 1860 — Section 324, 341, 376
Code Of Criminal Procedure, 1973 — Section 161, 313

Citation : (2019) 01 JH CK 0080

Hon'ble Judges : Pramath Patnaik, J

Bench : Single Bench

Advocate : Rajiv Sharma, Nitu Singh, Azeemuddin

Final Decision : Allowed

Judgement

Pramath Patnaik, J.

1. This appeal is directed against the judgment of conviction dated 06.09.2007 and order of sentence dated 11.09.2007, passed by the learned Sessions Judge, Dumka (SP) in Sessions Case No. 259 of 2005, whereby and whereunder the Court having found the appellant guilty for the offences punishable under Sections 376/341 and 324 of the Indian Penal Code and sentenced him to undergo 7 years for the offence under Section 376 of the Indian Penal Code and no separate sentence has been passed under Section 324 I.P.C. and 341 I.P.C.

2. The prosecution case, as has been projected on the basis of the written report by the victim, Hema Muni Soren (PW3), which was lodged at Jarmundi on 06.05.2005 at about 10:45 am on the allegation that the father of the victim, namely, Rushi Lal soren (PW2) went to Bartand market and on being late at about 9 pm, she went outside a little far from the village to see her father. In the meantime, the appellant who hails from the same village caught hold her and committed rape on her. On being chided, the appellant caused teeth bite on her lips by assaulting her and she became senseless.

3. On the basis of the written report, a formal FIR (Exhibit 3) was drawn. Thereupon, the I.O. after due investigation, submitted chargesheet. Cognizance of the offence was taken against the appellant.

4. When the case was committed to the Court of Sessions, the appellant was put on trial, during which prosecution examined altogether six witnesses. Of them, P.W. 1 is the Doctor, P.W. 2 is the father of the victim, P.W. 3 is the victim, P.W. 4, hostile witnesses, P.W. 5, Kishore Hembrom, P.W.6 is the I.O. One Defence witness, D.W. 1 has also been examined as a Defence witness.

5. On closure of the prosecution case, when the incriminating evidences appearing against the appellant, was put to him under Section 313, Cr.P.C., he pleaded innocence.

6. Thereupon, the learned trial court having placed implicit reliance on the testimonies of the witnesses, namely, the victim (P.W. 3) being corroborated by the medical evidence of P.W. 1 did find the appellant guilty of committing rape of the P.W. 3 by recording the order of conviction and sentence, which is under challenge.

7. Mr. Rajiva Sharma, learned senior counsel being assisted by Ms. Nitu Singh, learned counsel appearing for the appellant vehemently submits that there are contradiction in the statement under Section 161 Cr.P.C. and the deposition in the Court by the P.W. 3 and the evidences of the P.W. 3 is at variance with the F.I.R. version, therefore, the appellant is entitled to the doctrine of benefit of doubt. Learned senior counsel further submits that due to previous enmity, the present appellant has been roped in the alleged offence of rape under Section 376 of the Indian Penal Code. Learned senior counsel further submits that the prosecution has failed to prove the delay in lodging the FIR, which is fatal to the prosecution.

8. As against the submissions of the learned senior counsel for the appellant, learned counsel appearing for the State submits that from the statement made by the victim, P.W. 3, it would appear that there is absolutely no contradiction and the statement of P.W. 3 has been corroborated by the medical report of the P.W. 1. Learned counsel further submits that in view of the overwhelming, unimpeachable testimony, which unerringly point to the guilt of the appellant, therefore, the learned trial court was justified in recording the order of conviction and the order of sentence, which does not warrant to be interfered with.

9. Having heard the learned counsel appearing for the respective parties and on perusal of the record, I find that P.W. 3 (victim) has deposed that it was the month of 'Baisakh' and the day was Wednesday at about 9'o clock in night, she was going in search of her father, who went to market (Hatia), a little far away from the village, the appellant finding her alone has wrapped the 'Saree' around her neck and dragged her and put her on the ground and committed rape. She further deposed that she protested but the appellant become angry and assaulted her and caused teeth bite upon her lips and thereafter she come back

to her home and told her father about the incident and next day she informed the Police.

10. In the cross-examination, she has deposed that she has two sisters and one younger brother and all are living together with their father. At the time, when she was going to search her father, she met Sushil Murmu on the bridge. Sushil Murmu caught her from her back due to which she could not see him. She further deposed that before catching her, she also has not seen him. It was dark, so she could not see more. She further deposed that she was dragged and at the time of dragging, she was behind Sushil Murmu and her neck was wrapped with towel 'Gamcha'. The medical report by the P.W. 1 is not definitive with regard to commission of rape.

11. Though, in the Fard-beyan, it has been mentioned that the victim became senseless after the occurrence, but in the deposition, this fact is conspicuously absent and the omission amounts to contradiction creating a serious doubt about the truthfulness of the victim.

12. The Hon'ble Apex Court in the case of Rai Sandeep alias Deepu-Vs.-State (NCT of Delhi) reported in (2012) 8 SCC 21, in paragraphs 32 and

33 has been pleased to observe as under :-

"32. In the decision in Krishan Kumar Malik v. State of Haryana in respect of the offence of gang rape under Section 376 (2) (g) IPC, it has been held as under in paras 31 and 32 : (SCC p.138) "31. No doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality. But, in the case in hand, the evidence of the prosecutrix, showing several lacunae, which have already been projected hereinabove, would go to show that her evidence does not fall in that category and cannot be relied upon to hold the appellant guilty of the said offences"

33. Applying the said principles to the facts of the case on hand, we find that the solitary version of the chief examination of PW 4, the prosecutrix cannot be taken as gospel truth for its face value and in the absence of any other supporting evidence, there is no scope to sustain the conviction and sentence imposed on the appellants."

13. Regard being had to the entire facts and circumstances, I do find the statement of P.W. 3 appears to be prevaricating, being not fully supported by the medical evidence of the P.W. 1, therefore, the appellant is entitled to the benefit of doubt. Accordingly, the judgment of conviction dated 06.09.2007 and order of sentence dated 11.09.2007, passed by the learned Sessions Judge, Dumka (SP) in Sessions Case No. 259 of 2005 is set aside and the appellant is acquitted of the charges and he be set at liberty, if not required in any other case.

14. The instant Cr. Appeal (SJ) No. 8 of 2008 stands allowed.