
(1998) 04 PAT CK 0013

In the Patna High Court

Case No : Criminal Appeal No. 43 of 1988

Swarath Singh @ Ram Swarath Singh.

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 29-04-1998

Acts Referred:

Penal Code, 1860 (IPC) — Section 354, 364, 376

Citation : (1998) 3 BLJR 1660 : (1998) 2 PLJR 292

Hon'ble Judges : Aftab Alam, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aftab Alam, J.—This appeal is directed against the judgment and order passed by the trial court convicting the appellant u/s 354 of the Penal Code and sentencing him to undergo rigorous imprisonment for two years. It may be stated at the outset that the appellant was put on trial for the offence of rape but at the conclusion of the trial, the trial court deemed it fit to find and hold him guilty of the lighter offence u/s 354 of the Penal Code and to sentence him as indicated above.

2. The prosecution case was instituted on the basis of the fardbeyan (Ext.2/1) of one Uma Devi, the prosecutrix, recorded at Kaila Police Out Post on 17.9.1980 at 5 p.m. A formal F.I.R. (Ext.2) was later drawn up incorporating the fardbeyan and giving rise to Barbiga P.S. Case No. 6, dated 16.9.80. The prosecutrix stated in her fardbeyan that on 16.9.80 at about 5 p.m. She along with one Leela Devi, daughter of Bihari Paswan was going to collect fire wood. She was walking a few steps ahead of her companion Leela Devi. When they reached near a Rahar field, the appellant came out suddenly picked up the prosecutrix in his lap and forcibly carried her to the Rahar field. There having overpowered her, he committed rape on the prosecutrix. In the fardbeyan she further stated that the alarm raised by her attracted the attention of one Jethu Choudhary who had climbed up a toddy palm tree nearby the Rahar field for tapping toddy and who

also witnessed the occurrence from his perch. It was also stated in the fardbeyan that 2, 3 villagers from the village Sarai who were grazing their cattle in the nearby field also saw the accused fleeing away after committing the offence. After the occurrence the informant came back to her residence and narrated the occurrence to Asha Dusadh, Singheshwar Dusadh, Baudhu Dusadh who lived in the same Mohalla. As by the night had set in, she could not go out to lodge the case and on the next day she went to the Police Out Post to report the matter. The contents of the fardbeyan were read out to her and on finding them correct she put her signature on it. The police after investigation submitted charge sheet on the basis of which the appellant was put on trial for the offence u/s 376 of the Penal Code.

3. The prosecution in support of its case examined six witnesses. PW. 1 is the prosecutrix herself. PW. 2 is Jethu Choudhary, the toddy tapper whose name is mentioned in the fardbeyan and who at the time of the occurrence had climbed over a toddy palm tree near the place of occurrence. PWs 3 and 5, Baudhu Paswan and Singheshwar Paswan are also named in the fardbeyan as the persons living in the same Mohalla with the prosecutrix and to whom she had narrated the occurrence after returning to her home. PW 4 is Leela Devi with whom the prosecutrix had gone out for collecting fire wood and who was present when the appellant picked up the prosecutrix and carried her to the Rahar field. PW 6 is a formal witness who was examined to prove the formal F.I.R. and some endorsement and signature made thereon. It may be noted here that the I.O. and the doctor who examined the prosecutrix were not examined on behalf of the prosecution.

4. The prosecutrix in her deposition before the court fully supported her case. The prosecutrix also said that the appellant was in the habit of misbehaving with the women folk of the village and in the past also he had torn the Saree of the wife of Jethu Paswan, PW 2.

5. PW 2 also told the court that at the time of the occurrence he had climbed up a toddy palm tree close to the place of occurrence when he heard a loud shriek. Thus attracted, he saw the appellant forcibly carrying the prosecutrix to the Rahar field and committing rape on her there. Later, he saw the prosecutrix going away crying. PW 2 in his cross-examination accepted that in the past an incident had taken place in which the appellant had torn the Saree of his wife but he denied the suggestion that he was deposing against the appellant on account of his enmity towards the appellant for the past incident.

6. PWs 3 and 5 also stated that on the dates of occurrence at about 5 in the evening the prosecutrix had returned crying and had told them that the appellant had committed rape on her after forcibly carrying her into the Rahar field.

7. PW 4 Leela Devi also stated that on the date and time of occurrence she was going with the prosecutrix for collecting fire wood when the appellant suddenly appeared and picked up the prosecutrix in her lap and carried her to the Rahar

field and dishonoured her. She further stated that she got scared and ran away from the place raising alarm.

8. It may be observed here that the evidence of PW 1. the prosecutrix is quite firm on all material points. Her evidence is also corroborated by PWs 2,3,4 and 5 and I further find that it is one of those rare cases of rape in which per chance apart from the prosecutrix herself, another eye-witness of the occurrence is available.

9. In the face of such prosecution evidence, the trial court deemed it fit and proper not to hold the appellant guilty of the offence u/s 376 but to find him guilty only u/s 364 of the Penal Code. The reason assigned for not holding the appellant guilty of the offence of rape (See para 11 of the judgment coming under appeal) is the non-examination of the doctor and the I.O. According to the trial court in the absence of the doctor being examined the evidence of the prosecutrix was not corroborated by Medical evidence. It also used the statement of the prosecutrix in para 22 of her deposition that she did not hand over her stained clothes to the I.O. because the I.O. did not ask her for the same.

10. In my view, the reasons assigned by the trial court for not holding the appellant guilty u/s 376 of the Penal Code are not at all convincing and on the basis of the evidence on record this court should have perhaps held the appellant guilty of that offence and liable to a more severe punishment. I, however, find that the occurrence took place in September, 1980 and this appeal was admitted for hearing on 2.2.1988. After such a long lapse of time I think it would not be quite proper to issue any rule of enhancement against the appellant and I accordingly leave the matter at that.

11. In view of the discussions made above, it is evident that so far as the appellant's conviction and sentence (for two years rigorous imprisonment u/s 354) is concerned, it warrants absolutely no interference by this Court.

12. In the result, I find no merit in this appeal and it is accordingly dismissed. The bail bond of the appellant is cancelled and he is directed to immediately surrender to undergo the remaining period of his sentence. In case of his failure to do so within one month of the trial court, is directed to take him in custody to make him undergo the remainder of his sentence.