
(2011) 09 JH CK 0128

In the Jharkhand High Court

Case No : Criminal Appeal (SJ) No. 615 of 2002

Thakur Tiu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 13-09-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2012) 2 JCR 49 : (2012) 2 JCR 363

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia

1. By Court. This appeal is directed against the impugned judgment of conviction and sentence passed on 3rd September, 2002 and 5th September 2002 respectively, by Sri Ajit Kumar Thakur, 3rd Additional Sessions Judge, Chaibasa in Sessions Trial No. 49 of 1996, whereby the sole appellant has been found guilty for committing the offence u/s 376 of the Indian Penal Code and, thereby, he has been sentenced to undergo R.I. for seven years.

2. The prosecution case, in brief, is that Lakshmi Gagrai, the informant lodged the F.I.R., before the police on 13/12/1995 at 17.00 hours at her house that on 06/12/1995, at about 1.00 in the day when she was going to the house of her "Phuphu"-Suraj Mani Laguri (PW-6) and reached near Toongri Jangal, the appellant met, who caught her, thrown her on the earth and committed rape on her. She all along protested and threatened to tell about it to others but the appellant did not stop. After committing rape, he gave Rs. 10/- to her and told not to narrate the incident to anyone. The appellant, then, accompanied her half of the way and returned.

The informant went to the house of her Phuphu (PW-6) and narrated the incident to her. She remained there for two days and on Friday (08/12/1995) at 1.00 in

the day, she returned to her home and narrated the incident to Jobati Mai (PW-2), who used to work in the house of the informant, who, narrated the incident to the mother of the informant Mani Gagrai (PW-3). After returning home, the informant washed her cloth with soap. The incident was reported to the Village Munda Pratap Gagrai (PW-4), who noticed the accused in the Panchayati but he did not attend and, then, the informant reported the matter to the police.

3. Mr. Ananda Sen, learned counsel appearing for the appellant assailed the impugned judgment on various grounds and submitted that the prosecution has failed to prove its case beyond all reasonable doubts. He further submitted, that the appellant was an young boy of tender age may be between 18-19 years on the date and time of alleged occurrence; and that he has suffered this prosecution from the year 1995 and he also remained in jail custody for a total period of about eight months.

4. On the other hand. Miss Anita Sinha, learned APP supported the impugned judgment of conviction and sentence.

5. It appears that the PW-6 Suraj Mani Laguri, i.e. Phua of the informant has turned hostile as she clearly said that the informant did not tell her about the occurrence though she came to her house. The F.I.R., was lodged after about a week. The informant was examined by the Doctor on 15/12/1995, i.e. after about nine day of the alleged occurrence. The Doctor did not find any injury over the body and also did not find any positive sign of rape. The Doctor opined that the informant was between 14-16 years of age. The Doctor also opined that in absence of any injuries on the person of the victim is suggestive of the fact that she may be consenting party.

6. After hearing the parties and going through the records carefully, in my opinion, the appellant deserves benefit of doubt as the prosecution has not been able to prove its case beyond all reasonable doubts as noticed above.

7. In the result, this appeal is allowed. The impugned judgment of conviction and sentence, passed by the trial court against the appellant is hereby set aside. The appellant, who is on ball, is discharged from the liabilities of his bail bonds.