

(2022) 08 PAT CK 0015

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 968 Of 2016

Tulmul Rai @ Bisheshwar Rai

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 05-08-2022

Acts Referred:

Indian Penal Code, 1860 — Section 376

Citation : (2022) 08 PAT CK 0015

Hon'ble Judges : A. M. Badar, J

Bench : Single Bench

Advocate : Binod Bihari Singh

Final Decision : Dismissed

Judgement

1. By this appeal, appellant/convicted accused, Tulmul Rai @ Bisheshwar Rai is challenging the Judgment and order dated 26.08.2016 and 29.08.2016 passed by the learned Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No. 286 of 2012 between the parties, thereby convicting him of the offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years apart from a direction to pay fine of Rs.5,000/- and in default to undergo simple imprisonment for three months. For the sake of convenience, the appellant shall be referred to in his original capacity as "an accused".

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. P.W. 5 Mr. S. (identity concealed) used to reside at village Narhan Durga Asthan falling under jurisdiction of Police Station Bibhutipur, District Samastipur. The victim of the crime in question is his 12 years old daughter P.W. 4 Ms. S. (identify concealed). The incident in question allegedly took place at about 11 P.M. of 12.05.2010. At that time, P.W. 5 Mr. S. (identity concealed) was not present at the house. He had gone for purchasing medicines. His wife P.W. 3 Mrs.

M. (identity concealed) had gone to visit Doctor Kanak for her treatment. Their daughter P.W. 4 Ms. S. was alone in the house.

B. According to the prosecution case, at about 8 P.M. of 12.05.2010, the accused enticed Ms. S. and took her to the orchard of Dina Choudhary. There he had committed forcible sexual intercourse with P.W. 4 Ms. J.

C. Upon knowing about the incident, P.W. 5 Mr. S. lodged report on 12.05.2010 with Police Station Bibhutipur which has resulted in registration of Crime No. 120 of 2010 for the offence punishable under Section 376 of the Indian Penal Code against the accused.

D. After following routine investigation, the accused came to be charge sheeted. The learned trial court had framed and explained the charge to the accused. He pleaded not guilty and claimed trial.

E. In order to bring home the guilt to the accused, the prosecution has examined in all five witnesses. The defence of the accused was that of total denial. He however did not enter in the defence.

3. Despite chances none appeared for the appellant. I heard the learned Additional Public Prosecutor appearing the State. He supported the impugned Judgment and order.

4. Upon hearing the submissions of the learned Additional Public Prosecutor and on perusal of the record and proceedings, I am of the considered opinion that the impugned Judgment and order of conviction and resultant sentence is not requiring any interference and the appeal deserves to be dismissed.

5. Evidence of the victim of the crime in question in the offence of rape is of prime importance. By now, it is well settled that rape is a ghastly act which leaves the victim shattered for the life as it causes not only physical but emotional and psychological trauma to the victim. Sexual activities with young girls of immature age have a traumatic effect on them, which persists throughout the life of such victims. It is also well settled that the victim of offence of rape is not an accomplice, but she is the victim of lust of another person. Her evidence, therefore, stands on higher pedestal than the evidence of an injured witness. Therefore, if totality of circumstances emerging on record discloses that the victim of such offence does not have any motive to falsely implicate the accused, then, it is absolutely not necessary to search for any corroboration to the evidence of the victim of such offence and the court is generally bound to accept version of such victim.

6. It is in evidence of P.W. 4 Ms. S. that on the day of the incident, at about 8 P.M., she was cooking food at her house. At that time, the accused came and forcibly took her in the orchard of Dina Choudhary. There the accused committed rape on her. The victim of the crime in question further deposed that when she was going back to the house, her mother met her and took her to the house. As per her version, at the time of incident, there was nobody at her house.

7. In cross-examination, it was suggested to the victim that she resides in populous locality. However she has stated that houses in her locality were situated at the distance from each other. She has further stated that there are no houses near her house and her house is in the middle of the agricultural land. It was suggested to her that in past her sister was subjected to rape by a person named Santosh Rai. Except this, there is nothing in the cross-examination of the victim.

8. Perusal of the evidence of the victim of the crime in question shows that she was not having any enmity with the accused, giving her motive to falsely implicate him in the crime in question. It is not even suggested to her that she or her parents are having hostile relations with the accused. There is nothing in cross-examination of this victim to disbelieve her version. Evidence of P.W. 4 Ms. S. shows that at the time of the incident, she was an unmarried girl. It is not probable that an unmarried girl would make a false accusation of rape against the accused thereby jeopardising her prospect of marriage by putting at the stake the honour of her family. There is no reason to disbelieve version of the victim of the crime in question.

9. P.W. 3 Mrs. M. - mother of the victim has stated that she had gone to Dr. Kanak of the village for her medical treatment. She had noticed her daughter lying beneath the tree. She noted that the accused was running away from the spot. As per version of P.W. 3 Mrs. M., her daughter had disclosed her that the accused had committed rape on her. P.W. 3 Mrs. M. has deposed that clothes of her daughter were stain with blood. She further stated that when in the night hours, they were attempting to go to the Police Station, the accused and his brother prevented them from approaching the Police Station. Ultimately they were successfully lodging the report when the police came to the Bibhutipur road. She has spoken about seizure of clothes of her daughter by the police. It was suggested to her that she is selling illicit liquor in the village and in passed her another daughter was subjected to rape by Santosh Rai. It is further brought on record that she used to visit the house of the accused and wife of the accused used to visit her house. This implies that P.W. 3 Mrs. M. was having cordial relation with the accused. There is nothing in her evidence to suggest that she had any motive to falsely implicate the accused in crime in question by using her daughter as a tool. Evidence of this witness as such corroborates the version of the victim of the crime in question.

10. P.W. 5 Mr. S. - father of the victim has stated that on return from the medical shop, he saw his daughter who was bleeding. Her clothes were stain with blood. He further deposed that his daughter told him that the accused ran away. P.W. 5 Mr. S. has stated that then he lodged the report of the incident and had given blood stain clothes of his daughter to the police. Cross-examination of this witness has not brought anything on record to disbelieve his version. On the contrary, it shows that when his wife had brought his daughter to the house, his daughter was bleeding. Thus evidence of this witness is also corroborating the

version of the victim of the crime in question.

11. P.W. 1 and P.W. 2 Arun Kumar Purve and Govind Prasad Sahi respectively, who are co-villagers have not supported the prosecution case. The prosecution has not examined the Investigating Officer. However there is clear, cogent and trustworthy evidence of the victim of the crime in question which is showing that the accused had committed rape on her. Her evidence is also corroborated by the evidence of her parents. The prosecution has not adduced the evidence of the Investigating Officer and Medical Officer. The victim of the crime in question cannot be allowed to suffer on account of these laches on the part of the prosecuting agency. No prejudice to the accused is demonstrated. The learned trial court has rightly concluded that the charge framed against the accused is proved beyond all reasonable doubt by considering the testimony of the victim truthful, trustworthy and reliable. Hence there is no scope for interference in the impugned Judgment and order. The appeal is devoid of the merit and the same is accordingly dismissed.