
(2006) 05 JH CK 0045

In the Jharkhand High Court

Case No : Criminal Appeal No. 257 of 1999 (P)

Tulsi Yadav

APPELLANT

Vs

The State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 16-05-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 376

Citation : (2007) 1 EastCric 212 : (2007) CriLJ 466 : (2006) 3 JLJR 508 :
(2006) 4 JCR 157 : (2006) 3 AIRJharR 610

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : Rajeeva Sharma, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—The appellant has filed the present appeal against the judgment dated 15-9-99 passed by the 6th Additional Sessions Judge, Dumka in Sessions Case No. 463 of 1992 whereby and where under the appellant was convicted for the offence u/s 376 IPC and was sentenced to undergo rigorous imprisonment for a period of seven years.

2. Initially the prosecutrix Usha Devi lodged a complaint in the court of Additional Chief Judicial Magistrate, Jamtara against the present appellant alleging therein that the appellant Tulsi Yadav was her next door neighbour. The complainant Usha Devi was a married minor girl aged about 13-14 years. Her Gouna was not performed at that time and she was living with her parents. Tulsi Yadav the appellant who had a criminal background and was an accused of serious offences like dacoity and murder was a widower. He in the month of Paush in the year 1990, when her father had gone out for milking cows of other persons, her mother had gone to Hatia and the complainant was alone in her house at, that time the accused Tulsi Yadav taking advantage of the situation entered in her

house and after giving threat on her life committed rape on her. After commission of rape the accused threatened her that if she would divulge this fact to her parents, they would also not be spared. The complainant out of fear did not divulge the facts to her parents and then being emboldened by the sentence of the informant, the accused continued to commit rape on her whenever she was alone in her house. It was further alleged in the complaint petition that in this way she became pregnant and when she disclosed this fact to the accused, he brought her to Jamtara Popular Nursing Home on 24-4-90 and got her aborted. She further alleged that on 23-4-90 she was again brought to Jamtara Popular Nursing Home and on that day her parents could detect her and then she was compelled to divulge the entire state of affairs to them. The said complaint lodged by the complainant was sent by the A.C.J.M to the police in exercise of power u/s 156(3) of the Cr. P.C for institution of F.I.R. and accordingly, the police formally instituted F.I.R. on the basis of the allegations made in the complaint petition. Thereafter the police on completion of investigation submitted chargesheet and accordingly the appellant was put on trial for the charges u/s 376 I.P.C.

3. The defence of the appellant was a false implication due to enmity and total denial of the occurrence.

4. In order to establish the charges altogether ten witness were examined on behalf of the prosecution. P.W. 1 is Bachu Yadav, the uncle of the prosecutrix Usha Devi. It appears that he is a hearsay witness and he came to know about the commission of the offence from Ramdas Yadav. P.W. 2 is Mahendra Yadav, he also heard about the commission of the offence from Ramdas Yadav that his daughter was raped by Tulsi Yadav. P.W. 3 is Sunita Devi @ Nahali, the mother of the victim girl Usha Devi. She has stated in her evidence that her daughter Usha Devi was raped by the appellant on the threat on her life. Thereafter, her daughter became pregnant and then in order to save the prestige of the family, her pregnancy was terminated. P.W. 4 is the victim girl Usha Devi. In her evidence, she has stated that when she was alone in her house, the appellant Tulsi Yadav came there and thereafter forcibly took her to his house and thereafter on the point of Chura committed rape on her. She further alleged that he continued to commit rape on her for about four months and when she became pregnant, she disclosed this fact to her father and her father brought her to Jamtara and got her pregnancy aborted. In cross examination, she has stated in paragraph 5 that when she was being taken by the accused from her house, she tried to raise hullah but the accused showed him Chura and threatened him to keep quiet and as such out of fear, she did not raise hullah. P.W. 5 is Dr. Sudarshan Kumar Gutgutia who treated the victim girl Usha Devi in his Nursing Home and aborted her pregnancy. In his evidence he has stated that the victim girl was brought to his Nursing Home by her father. Both the father and the daughter were illiterate, therefore, he took written consent of the father and the daughter which was written by his compounder, on which those two persons put their LTIs. In his cross examination the doctor has stated that he found that the

victim girl was carrying the pregnancy of 2 1/2 months. He specifically stated in paragraph 6 of the cross examination that abortion of Usha Devi was done in his clinic. He denied the suggestion of the defence that he did not carry out the abortion of the victim girl.

5. P.W. 6 is Ramdas Yadav, the father of the victim girl. In his evidence he has stated that when he had gone out for milking cows of others and his wife had also gone to Hatia at that time her daughter Usha Devi was alone in the house and at that time the appellant came to his house. His daughter informed that the appellant took her to his house and forcibly committed rape on her on the point of Chura. He further stated in his evidence that Usha Devi told him that Tulsi Yadav had committed rape on her on earlier occasion also on the point of Chura but she did not disclose this fact out of fear. This witness further stated that his daughter became pregnant and then he brought her to Dr. Gutgutia's Nursing Home at Jamtara and there he got her aborted by the said Dr. Gutgutia. He further stated that the Doctor took his LTIs and of his daughter on the consent letter. In his cross examination, this witness has given some inconsistent evidence by saying that he got his daughter admitted in the Nursing Home where she was admitted for three days and thereafter the Doctor carried out the abortion on the next day. He says that after the abortion, his daughter was discharged on the next day from the hospital. P.W. 7 is Dr. Arun Kumar Chakraborty, who has examined the appellant Tulsi Yadav and he proved his report Ext. 4. P.W. 8 and 9 are Vinay Kumar Singh and Om Prakash Mahto, who are the formal witnesses. P.W. 10 is Someshwar Mahto. He is also a formal witness and proved Ext. 7 and 8.

6. Mr. Sharma learned Counsel appearing for the appellant assailed the conviction and sentence passed by the trial court mainly on the following grounds. Firstly, that the evidence led the prosecution was inconsistent and unreliable and the prosecution failed to prove his case beyond all reasonable doubts. Secondly, that the place of occurrence itself was not proved by the prosecution and thirdly that the fact as to whether the victim girl in fact became pregnant and any abortion was carried out on the victim girl has not been proved satisfactorily by the prosecution because there is vital contradiction in the evidence of prosecutrix and her father P.W.6 in this regard.

7. Elaborating his argument Mr. Sharma submitted that according to the allegations made in the complaint petition, the rape was committed by the appellant in the house of the complainant/prosecutrix, whereas during trial the prosecutrix has stated in court that when she was alone in her house, the appellant entered in her house thereafter took her forcibly to his own house and there he on the point of Chura committed rape on her. Therefore, according to Mr. Sharma there is a vital difference in between the allegations made in the complaint petition and in the evidence of the prosecutrix given during trial. Elaborating his second argument Mr. Sharma submitted that according to the allegations made in the complaint petition when the victim girl became pregnant,

she disclosed this fact to the accused Tulsi Yadav and then he got her pregnancy aborted in Nursing Home at Jamtara, whereas according to the evidence of the prosecutrix P.W.4 and the evidence of her father P.W. 6, the victim girl was taken to the Popular Nursing Home at Jamtara for terminating her pregnancy by P.W. 6, i.e. father of the victim girl. In this situation Mr. Sharma submitted that the evidence of the prosecution in this regard is wholly inconsistent and, therefore, the prosecutrix failed to prove the fact that any victim was aborted in the Nursing Home at Jamtara.

8. So far as the first submission of Mr. Sharma is concerned, no doubt there is some contradiction in between the allegations made in the complaint petition and the oral evidence laid down by the prosecution during trial with regard to the place where the victim was raped by the appellant.

9. As noticed above in the complaint petition it was alleged by the complainant that the accused entered in the house of the complainant/prosecutrix when she was alone in her house and then she was forcibly raped by the appellant whereas during trial she has stated that when she was alone in her house the accused entered in her house, took her out to his house, thereafter committed rape on her. The evidence of the prosecutrix has to be scrutinized keeping in mind that she was an illiterate girl aged about 13-14 years only at the time of the alleged commission of rape and the allegations made in the complaint petition was not actually her fardbeyan but the same was drafted by a lawyer on the basis of the information given by her. It has to be kept in my mind also that the said minor girl was deposing in court after about four years of the alleged date of occurrence, therefore, it is not expected from the minor girl that she would narrate the incident just like a parrot.

10. Therefore, in my view the inconsistency or contradiction whatever has occurred in the evidence of the prosecutrix is not of much consequence and is not fatal for the prosecution. The fact remains that the evidence of the prosecutrix as well as of her father are consistent on the point that when the victim was alone in her house, the appellant entered in her house and thereafter committed rape on her. Whether she was raped in her house or in the house of appellant is in my view immaterial.

So far as the second submission of Mr. Sharma learned Counsel for the appellant regarding the termination of pregnancy of the victim girl is concerned, again from the evidence discussed above, I find that there is not inconsistency in the evidence of the prosecution that the victim girl was taken to Popular Nursing Home, Jamtara for the purpose of abortion and the abortion was carried out by the doctor of that very nursing home and the doctor who carried out the abortion there has been examined by the prosecution as P.W. 5 who in categorical term has stated that he carried out the abortion of the victim girl Usha Devi. The doctor has further stated in his evidence as noticed above that since the father and the girl were both illiterate and, therefore, he took their LTIs in the consent form for getting the abortion done by him.

11. Therefore, in my view the question as to whether the girl was brought to nursing home by her father or by the accused does not advertently affect the veracity of the prosecution case, so far the allegation of termination of pregnancy of the victim girl is concerned.

12. In view of the discussion and finding above I hold that the prosecution has fully proved the commission of the rape by the appellant on the victim minor girl and also the fact that when she became pregnant because of the rape committed by the appellant, her pregnancy was aborted at Popular Nursing Home at Jamtara by P.W. 6. In view of the discussion and finding above I hold that the learned trial court was perfectly justified in convicting the appellant for the offence u/s 376 Indian Penal Code.

13. So far the sentence of imprisonment of seven years is concerned Mr. Sharma learned Counsel for the appellant submitted that though for the offence u/s 376 IPC the minimum sentenced provided is imprisonment for seven years but the same can be reduced under the proviso of Section 376 in special circumstances and for adequate and special reasons. He submitted that the appellant has remained in custody for about 3 1/2 months and, therefore, the sentence be modified to the period already undergone by him. The submission of Mr. Sharma learned Counsel for the appellant cannot be accepted in view of the case of the prosecution that the victim was a minor girl and she was raped by the appellant when she was alone in her house on the point of Chura and he also continued to rape her for about for months.

14. In this view of the matter I see no reason to reduce the sentence also. Accordingly by affirming the conviction and sentence passed by the trial court, this appeal is dismissed.

15. The appellant who is on bail, his bail bonds are hereby cancelled and is directed to surrender forthwith to serve out the sentence.