

(2002) 02 PAT CK 0057
In the Patna High Court
Case No : Criminal A. No. 407 of 1989

Upendra Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 20-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2002) 50 BLJR 1391 : (2002) CriLJ 3401 : (2002) 2 PLJR 75

Hon'ble Judges : Prabhat Kumar Sinha, J

Bench : Single Bench

Advocate : Anjana Prakash, Shivendra Kumar Sinha, Mukesh Kant and Rakesh Kumar Sinha, for the Appellant; Prabhat Ranjan Addl. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Prabhat Kumar Sinha, J.—This is an appeal by Upendra Mahto who was convicted u/s 376 of the Indian Penal Code in Sessions Trial No. 94 of 1989 under judgment of the learned Sessions Judge, Nawadah, dated 18-9-1989 and was sentenced to undergo rigorous imprisonment for five years.

2. In this appeal this Court had delivered judgment on 18-12-2000 dismissing the appeal in absence of learned Counsel for the appellant, as when the appeal was first taken up for hearing on 13-12-2000, no one on behalf of the appellant had appeared and the case was adjourned to 18-12-2000 when also none appeared on behalf of the appellant, and then appeal was taken up for hearing and learned Additional Public Prosecutor was heard and this Court, after going through the entire case record, had recorded the judgment as aforesaid.

3. It appears that thereafter this matter was heard in Cr. Appeal No. 865 of 2001 by the Apex Court in which by order dated 17-8-2001, the appeal was allowed and the case was remitted back to this Court for disposal afresh after giving opportunity of hearing to the parties as it was pointed out before their lordships

that the Senior Advocate who was appearing for the appellant in the High Court had expired and the name of other advocate who was appearing with him was not shown properly in the cause list which was why no counsel appeared when the appeal was taken up for hearing. This is how this appeal has come up for hearing again.

4. Learned counsel for both the parties have been heard.

5. F.I.R. in this case by the informant Raj Kumar Jha, father of the victim girl, is Ext. 2 whereas the formal F.I.R. is Ext. 4, in which it was alleged that the informant's wife Gita Devi had come and told him that their daughter Rekha Kumari when in the morning at 8 A.M. was going to ease herself and had reached near the field of Raj Kumar Mahto, the appellant came from behind, caught hold of her, abused and also assaulted her. Thereafter as per allegation, he took her to the field of Brahmdeo Mahto which had maize crop, threw her down and then raped her. When the victim girl cried and the accused saw the wife of Rajo Mahto coming, he fled away. The victim thereafter went home and informed Gita Devi who in turn came to Nawadah where her husband was, and told him about the incident but they could not go back to home because of heavy rains and flood in the river. Subsequently he reached home and went to the police station and F.I.R. was lodged on 10-8-1988.

6. In course of trial the appellant took the defence of false implication because of groupism in the village which was what he told the learned lower Court in course of his examination u/s 313 of the Code of Criminal Procedure. A suggestion was thrown to the victim girl when she was in the witness box that this false case was instituted at the behest of one Mahabir Mahto for extorting Rs. 10,000/- from the father of the appellant.

7. Mrs. Anjana Prakash, learned Advocate for the appellant in course of arguments submitted that the girl was first examined by one Dr. Manorama Prasad on 11-8-1988 (report submitted on 13-8-1988 which is Ext. A) as per which" she did not find any injury on the person nor she found spermatozoa and opined, also noting that as per report of the radiologist (Ext. 3) the girl was 15 to 16 years old, that it was difficult to say as to whether or not rape was committed. It was also found that hymen of the victim was intact.

8. It was submitted that thereafter a Medical Board was constituted with Civil Surgeon, Nawadah at its head also consisting of a lady doctor, a Medical Officer, pathologist and radiologist as well a Dental Surgeon and the doctors as per report found that old tear of hymen was present. The Medical Board had examined the girl on 19-9-1988. Learned counsel submitted that there was difference of about a month and a week in between the two examinations and it could be just possible that in between the period for any reason, out of a variety of reasons, the hymen could have been torn, hence no reliance can be placed on Ext. 3/1, the report of the Medical Board as has been done by the learned lower Court.

9. Smt. Prakash also argued that there is no independent corroboration of the statement of the victim as also about her telling her mother about the occurrence, and about the mother informing her father about the incident. Her third argument was that the evidence of the victim did not inspire confidence as a perusal of the evidence would give impression that it was not the evidence of an immature girl, also because she had answered even embarrassing question boldly.

10. Lastly, learned counsel submitted that in his examination u/s 313 of the Criminal Procedure Code the accused had given his age to be 15 years and in view of that he was a juvenile at the time when he was remanded to custody in this case and, therefore, he should have been given the benefit of juvenile Justice Act, as it then was. However, this last argument has been mentioned only to be rejected because while examining the accused u/s 313 of the Code, the trial Court had assessed his age to be 22 years and learned counsel for the appellant admitted that this plea was being raised for the first time in this appeal.

11. Before turning to the contentions of the learned counsel for the appellant it may first be examined as to what evidence has come on the record and whether the evidence on record, particularly of the victim girl, is worthy of reliance, and whether or not the judgment of the learned lower Court can be upheld.

12. The learned lower Court has not relied upon evidence of P.W. 3, Gaya Devi, her evidence having been not found to be credible. The learned lower Court did that since it found that in-laws of this witness had enmity with the accused side and that in course of her evidence she appeared over enthusiastic in supporting the prosecution case as a result of which she answered in affirmative all the questions that were put to her by the defence. The learned lower Court has dealt with this matter at length and has given sufficient reasons for not giving benefit of the evidence of P/W. 3 either to the defence or to the prosecution. The reasonings appeared to be proper. In any case, if the evidence of the victim girl is found to be trustworthy, any benefit to the defence from evidence of such a witness would hardly accrue.

13. P.W. 1 is mother of the victim girl, Gita Devi who has said that at 8 A.M. in the morning Rekha Kumari had come back with blood spots on her "Salwar" and "Kamij" and told her as to how the appellant had raped her in the field of Brahmdeo Mahto. She also told the Court as to how she had gone to her husband who was at Nawadah to inform about incident and thereafter, on returning back to the village, they had proceeded to the police station where her husband lodged the first information report. In cross-examination she has said that there were no houses at the place of occurrence. She also said that she had found maize plants broken. This was supported by P.W. 6, the Investigating Police Officer, who on his inspection of the place of occurrence found some maize plants in the field of Brahmdeo Mahto broken and trampled. This witness (P. W. 1) also had seen abrasion on the thigh of the victim, the girl also claiming some minor injuries on her person. The medical Board, which had examined the victim a

month and 9 days later, may not have found any minor injury that the victim might have suffered.

14. P.W. 2 is victim girl who has fully supported the allegation made against the appellant, also claiming that she had shown the place of occurrence to the Investigating Police Officer. She also claimed that she had given her clothes to the Police Officer, vice Ext. 1, the production list, but she also said that since her clothes had become dirty, she had washed them to remove mud and spots. In course of cross-examination she said that she was not lying comfortably during the rape and also claimed that the lady doctor, who had given the first report at Ext. A, had seen the injury.

15. A minor contradiction was taken when she said that occurrence had taken place when she was coming after easing herself. This contradiction is not of such magnitude so as to demolish the effect of evidence of the victim girl about the actual occurrence. It may be noted that in para 1 of her deposition she had claimed that occurrence had taken place while she was coming to case. This witness has claimed that the appellant had lifted her and had taken her to maize field where he put her down and pressed her "Orhani" in her mouth, whereafter he opened her lower garment and raped her. She said that he also had given her two or three blows by his fist asking her to keep quiet. This witness said that wife of Rajo Mahto had come there at which the appellant had fled away. She also said as to how she had narrated about the incident to her mother who went to her father and on coming back went to the police station." In course of cross-examination she said that on the day of occurrence it was raining but she had not gone with umbrella. This explains the evidence of the Investigating Officer when he said that he did not find any blood at the place of occurrence, because he had visited the place of occurrence after much delay, the day being a rainy day.

16. This witness has given details about her rape. She also claimed that she had told the police about assault with fist but that evidence has not been challenged in the cross-examination of the Investigating Police Officer. On careful perusal of the evidence of P.W. 2 I find that the evidence of this witness is trustworthy and that there is nothing in her evidence which could cast doubt upon her narration about commission of the offence, by the appellant.

17. P.W. 4 is the informant, father of the victim, who has said as to how his wife had come to him and had informed about the incident after which he went to the police station and lodged the case. There is nothing significant in his evidence.

18. P.W. 5 is Dr. Ramanand Prasad Singh, the then Civil Assistant Surgeon at Sadar Hospital, Nawadah. This witness has proved Ext. 3 relating to radiological examination of the victim on basis of which he came to the conclusion that her age was 15-16 years. He was posted in the hospital as radiologist. This witness thereafter on 19-9-1988 was also a member of the Board of doctors chaired by the Civil Surgeon and said that on examination the victim girl again, the doctor

of the Board had come to the finding that there was an old tear of hymen. That report, signed by the doctors of the Board, is Ext. 3/1. In cross-examination this witness said that Rekha Kumari was examined practically by two lady doctors, but in their presence. P.W. 6 is the Investigating Police Officer. As per his evidence he had visited the place of occurrence, the field of Brahmdeo Mahto and, near the southern ridge, inside the field he had found broken plants of maize, trampled so much so that those plants were lying flat on the soil. He also found turmeric plants trampled in the field of Raj Kumar Mahto. It may be noted here that the victim in her evidence had said that when she had reached near the field of Raj Kumar Mahto, Upendra Mahto had caught her and there had been some scuffle there, after which he had lifted her and took her to the maize field.

19. This witness has said that he had sent the victim for medical examination to the Nawadah hospital and his forwarding letter was proved as Ext. 5. He said that he received the medical report on 14-8-1988. This witness said that he again requested the Civil Surgeon, Nawadah to constitute a Medical Board and thereafter the victim was examined by the Medical Board on 19-9-1988. Only other significant point in his statement is that he said in cross-examination that he did not find any external injury on the person of Rekha Kumari. But the injury that was seen by the mother of the victim was on the thigh. This witness also said that he had requested for re-examination by doctors on the instructions of the Superintendent of Police since the earlier report had not given a definite opinion. From perusal of Ext. A which has been proved by defence witness No. 1, Dr. Manorama Prasad, it will appear that the doctor had opined that it was difficult to say as to whether or not rape was committed but, as already stated, she did not find the hymen to have been torn.

20. From examination of the evidence of the victim girl in particular and supporting evidence of her mother, father and the Investigating Police Officer as also the medical report submitted by the board of doctors, I find that the prosecution has proved its charge against the appellant beyond reasonable doubts.

21. The evidence of victim girl is quite reliable and if that be so, an order of conviction can be based on such statement but in this case, as already stated, there are supporting evidence also.

22. Now coming to the contentions of the learned counsel for the appellant to see as to whether or not any point so raised could disturb this finding I will first proceed with the medical report. Learned counsel has submitted that the first report was trustworthy in which a positive finding was given about the hymen being intact. It was argued that because of gap of time in between the first examination by the lady doctor and the next examination by the Board of doctors, it could be possible that the hymen had been torn for any of a variety of reasons.

23. The girl was minor one. In her evidence she has stated that prior to this rape

she had no sexual experience. In any case the report of the medical Board shows that the tear was old one and lends support to the claim of the prosecution. This report coupled with the reliable evidence of the victim goes to prove the allegations.

24. Smt. Anjana Prakash has also argued that there was no independent corroboration of the statement of the victim. If the evidence of the victim girl is found worthy of reliance, then the prosecution case does not beg for corroboration by the independent witnesses. It has already been discussed as to under what circumstances evidence of P.W. 3 was not found to be reliable. But the other evidence on the record, as already discussed, support the allegations of the prosecution.

25. It was particularly argued that there was no corroboration as to what the girl had said to her mother and what her mother had said to her husband. It is obvious that narration of such incident by a minor girl can be made to her mother in private, and that what the mother had said to the father of the girl, that can only be corroborated by the evidence of the father. Mother in her evidence has corroborated what the girl had told her and husband has corroborated his wife telling him about the occurrence.

26. Other argument of the learned counsel was that the evidence of the victim girl did not inspire confidence as a perusal of the evidence would give impression that it was not the evidence of an immature girl, as also because she had answered even embarrassing question boldly.

27. From the evidence of the victim girl I find that she had answered the questions, even the embarrassing ones, put to her by both sides, in a straightforward manner. A witness cannot be castigated for answering the questions properly and honestly, as also for not answering the questions in that manner. A girl of 15-16 years, at the time of occurrence is though a minor but is mature enough to understand the nature of offence that was committed against her. Therefore, I do not find any merit in the arguments made on behalf of the appellant.

28. In so far as the sentence is concerned, the appellant has been sentenced to undergo rigorous imprisonment for five years. Keeping in view the nature of offence I do not find that the sentence is excessive.

29. In the result this appeal fails and is dismissed. The judgment of the learned trial Court as well the sentence awarded are hereby upheld. The appellant, if not in custody, will be taken into custody by the learned lower Court for undergoing remaining period of sentence.