
(2002) 03 PAT CK 0118

In the Patna High Court

Case No : Criminal Appeal No. 151 of 1991 (S.J.)

Upendra Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 14-03-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 376

Citation : (2002) 4 PLJR 490

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Shrawan, Shola Sandhwar and Brij Bhushan Mishra, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

B.N.P. Singh, J.—It is alleged that though Dhouli Kumari, P.W. 8, too had gone to attend Kirtan in the company of Batiya Mosomat, P.W. 1 and Maya Devi, P.W. 2, while they came back to their houses she remained there and after the Kirtan was over, and she was to come to her house, one lad asked her to take her to her house. It was alleged that the said lad instead of taking her to her house, took her to a field where he undressed her and committed sexual assault on her, and with these accusations, prosecution was launched against unknown by Ramdeo Mistri, father of the victim girl. After the police was set in motion, investigation commenced, during which the police recorded statement of a number of witnesses, got the victim girl clinically examined by the doctor, inspected the place of occurrence and on conclusion of investigation, laid charge sheet before the court. In the eventual trial that commenced, the State examined altogether twelve witnesses which include the victim girl, her family members, host of other witnesses, the doctor who attended her and also two police officers, who conducted the investigation, and the trial court on appraisal of the testimony of witnesses, while negating contentions raised on behalf of the Appellant about his false implication at the instance of the Sarpanch,

rendered verdict of guilt, finding the Appellant guilty u/s 376 of the Indian Penal Code and sentenced him to suffer rigorous imprisonment for a term of ten years.

2. Various submissions were canvassed at the bar to assail the finding recorded by the court below and it is sought to be urged that even though the Victim girl was alleging identification of the person, who had committed sexual assault on her, with curly hair, the Appellant alone was chosen by the State to be put on trial, notwithstanding there being two more persons in the village with curly hair. In quick succession it is urged that even though P.Ws. 3 and 8 were stating to have rendered their statements before the police much before recording of Fardbeyan of the father of the victim girl, the State had deliberately suppressed the early version of the prosecution and hence, credibility of the entire prosecution case was to be thrown over board on this score alone. It is further urged that though Appellant was shown to have been identified by the victim girl during T.I parade which was held by the police, that was mistaken identity of the Appellant and the prosecution had not led positive and good evidence to saddle the Appellant with the accusations for which he was charged at trial. Non-production of blood-stained clothes of the victim girl at trial was also taken to be a ground to discard the prosecution version and the last argument was that the prosecution was launched against the Appellant not before lapse of 3 or 4 days of the alleged incident for which the State had not furnished on the record, plausible explanation.

3. Now advertng to the witnesses who accompanied the victim girl, were Batiya Mosomat, P.W. 1 and Maya Devi, P.W. 2 and they were making similar narrations as that of the victim girl, about the latter having accompanied them to attend a Kirtan in the village in the night of incident. Dhouli Kumari, P.W. 8, happens to be the victim girl and she had been narrating how she was picked up by the Appellant, who eventually ravished her, when Kirtan was over and she was alone, as other two female members had already left for their houses. She had narrated that Appellant came to her and proposed to take her to her house and thinking little that it was a false pretext of the Appellant, when she gave her consent, he took her to the field where he undressed and ravished her P.Ws. 1 and 2 were the female members of the house in the company of whom Dhouli Kumari had gone to attend Kirtan and these two witnesses would make similar narrations as that of Dhouli Kumari, that after the Kirtan was over, while they came to their house, Dhouli Kumari remained there. Ranjit Singh, P.W. 3, stated to have noticed father of Dhouli Kumari taking the latter while she was in critical condition. Both Ranjit Singh and Arjun Singh, P.W. 8 stated to have been informed by father of Dhouli Kumari about the girl having been raped by a lad. Dhouli Kumari narrated her owes (sic-woes?) to P.W. 5, who was Sarpanch of the locality. P.W. 7, who happens to be her father was informed by Budhan about Dhouli Kumari having been ravished. He rushed to the place and found her smeared with mud and unable to walk. She claimed to indentify the rapist. The doctor who examined the prosecutrix assessed her age between 12 to 13 years and also recorded a positive finding about there being evidence of commission of

rape on her. The police officer, who visited the place of occurrence, found plants in the field, trampled, and that shows the evidence of violence on the place of occurrence.

4. Though identity of the Appellant at T.I. parade which was conducted under the supervision of a judicial magistrate is suggested to be mistaken identity, in view of identification of the Appellant with the aid of his physical features, significance of argument about the Appellant being not with curly hair is lost. The other contentions also raised at the bar on behalf of the Appellant, in view of clinching evidence of the prosecutrix and that of other witnesses, are bereft of legal value, and contrary to that positive finding recorded by the doctor and the objective finding of the investigating officer manifestly suggests that the Appellant violated person of Dhouli Kumari, who was a minor girl. The prosecutrix was not an accomplice and her status was at par with the injured witness to deserve credence, particularly, when no evidence of animus with the Appellant, was placed on the record. The false pretext made by the Appellant was an additional evidence to lend corroboration to the story propounded by the State. Feeble argument was also made with the aid of narration made by informant before the police that since Dhouli Kumari was a girl of innocence (Bodhi) mind, identification made by her during T.I. proceeding was hot of much significance. Though the argument looks alluring, that too, was bereft of merit the reason that the doctor who examined Dhouli Kumari recorded a positive finding that he did not find Dhouli Kumari to be mentally derailed. I find accordingly, that the finding recorded by the trial court was based on meticulous appreciation of the evidences placed on the record. It is brought to my notice by learned Counsel for the Appellant that the prosecution was launched in the year 1988 and the Appellant has suffered ordeal of protracted prosecution for not less than fourteen years. It is urged that the Appellant has suffered custody for more than two years and this mitigating circumstance deserves to be taken into consideration by the court. Though the victim is shown to be aged about twelve and thirteen years at the time of alleged incident; regard being had to the fact that the Appellant had suffered ordeal of protracted prosecution for about fourteen years, his sentence is reduced to five years and with this modification in sentence the appeal is dismissed.