

(2008) 10 PAT CK 0003

In the Patna High Court

Case No : Criminal Miscellaneous No. 33275 of 2007

Vijay Prasad and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)

Penal Code, 1860 (IPC) — Section 120B, 34, 366, 366A, 375

Citation : (2009) 2 PLJR 412

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : Awanish Kumar Pandey and Ajay Dubey, for the Appellant; R.K Prasad Yadav for the State and None for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

Abhijit Sinha, J.—Five of the six F.I.R, named accused of Manjagarh P.S. Case No. 131 of 2004 have prayed for the quashing of the order dated 7.9.2006 passed therein by Sri Sheo Kumar, Judicial Magistrate, First Class, Gopalganj, whereby he has taken cognizance of offences under Sections 366, 376 I.P.C, against all the six F.I.R, named accused including the petitioners. One Sangita Kumari, impleaded herein as O.P. No. 2, filed Complaint Petition No. 729 of 2004 before the learned Chief Judicial Magistrate, Gopalganj, which was transmitted to the concerned police station u/s 156(3) Cr.P.C. and on the basis thereof Manjagarh P.S. Case No. 131 of 2004 was registered under Sections 366A, 376, 120B/34 I.P.C, against the six persons named therein. According to the informant at about 9 P.M. on 2.5.2004 Subhawati and Guriya came over bringing the summons for her from their mother. On going over to the house of the petitioners, Kamla Devi offered her sweets and the other accused also requested her to eat the same and she complied with the request. It is alleged that when she started for home she felt a reeling and unsteady sensation whereupon the accused persons took her to a room and in the meantime when her brother came

looking for her he was misinformed of her having already left for home. It is further alleged that later on accused Subodh Kumar Prasad entered into the room and committed rape on her and in the morning she was ousted by the accused persons. She returned home and narrated the whole episode to her family members. It is said that the family members alongwith the villagers pressurized the accused persons whereupon the confessed their guilt and agreed to the marriage of the complainant with Subodh. However, on 9.5.2004 when the family members of the complainant went to the accused persons to fix the date of marriage, they resiled from the agreement of marriage.

2. Denying the occurrence as narrated in the complaint petition it has been submitted on behalf of the petitioners that the entire family has been dragged in a false case only to pressurize the petitioners for Subhash to marry the complainant. It has further been submitted that the police in course of investigation found the case to be one of a love story between Subhash and Sangita and the report of the Medical Board falsifies the alleged story of rape and to the contrary the girl was found to be 18-19 years of age and habituated to sexual intercourse. It was further submitted that the District Prosecutor Officer in his opinion to the Superintendent of Police had opined that the allegations had not been proved in course of investigation and that offence u/s 366 I.P.C, had not been made out. Reference has been made to paragraphs of the case diary to show that an illicit sexual relation was going on for over a year between Subhash and Sangita.

3. Sections 375 and 376 I.P.C, have substantially been changed by the Criminal Law (Amendment) Act, 1983 and several new Section were introduced by the new Act. The sweeping changes introduced goes to reflect the legislative intent of curbing the offence of rape with iron hands.

4. The Apex Court in the case of Dinesh @ Buddha Vs. State of Rajasthan, sounded an alarming note of caution in respect of the serious offence of rape and observed that sexual violence apart from being a dehumanising act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity-it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished fundamental right, namely, the right of life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

5. It also held that corroboration is not a sine qua non for conviction in a rape

case. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery.

6. In the instant case, the victim girl apart from being the complainant is forthright in asserting her claim of being raped whereas the alleged perpetrators have taken the defence of being falsely implicated. Even the statements in the case diary as has been referred to by the learned counsel for the petitioners speaks of co-villagers deposing before the police about the love affair going on for over an year between accused Subhash and the complainant, Sangita. Therefore, one cannot say that the fact of rape of Sangita is an absolutely false pleading and Sangita had been subjected to rape.

7. That apart while taking cognizance on a police report, the Magistrate is required to see whether an offence has been committed. Taking cognizance of an offence is not the same thing as issuance of process. Cognizance is taken at the initial stage when the Magistrate applies his judicial mind to the facts mentioned in a complaint or to a police report or upon information received from any other person that an offence has been committed. The issuance of process is at the subsequent stage when after considering the material placed before it the court decides to proceed against the offenders against whom a prima facie case is made out.

8. The Magistrate having applied his judicial mind to the materials available on record has come to a finding that a prima facie case has been made out against the petitioners for commission of offence under Sections 366A and 376 I.P.C. and the same cannot be faulted with. In the result, I find no merit in this application and the same is dismissed.