

(2020) 02 PAT CK 0195

In the Patna High Court

Case No : Criminal Appeal (Db) No. 16 Of 2019

X

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 07-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 323, 341, 342, 354, 376, 379, 452, 506
Code Of Criminal Procedure, 1973 — Section 164

Citation : (2020) 02 PAT CK 0195

Hon'ble Judges : Ashwani Kumar Singh, J;Partha Sarthy, J

Bench : Division Bench

Advocate : Diwakar Prasad Singh, Ajay Mishra

Final Decision : Dismissed

Judgement

1. The instant appeal has been preferred against the judgment dated 26.10.2018 passed in Sessions Trial no. 195 of 2011 whereby the learned 1st Additional Sessions Judge, Saharsa was pleased to hold that the prosecution has not been able to bring home the charges under sections 376, 452, 354 and 379 of the Indian Penal Code against the respondent no. 2 and thus was pleased to acquit him from the charges.

2. The case of the prosecution as per the written statement of the informant (appellant herein) (PW-3) made on 9.2.2009 to the Officer-In-Charge, Nauhatta Police Station is that Indra Kant Jha (respondent no. 2) who is a hot headed person with a bad character carries with him a firearm and imposes himself on other persons. It is stated that three days prior to the occurrence, he had made a demand of Rs. 5,000/- by way of loan but because of his character, the appellant refused to give the said amount to him. It is further stated that the husband of the appellant Lakshman Jha (PW-5) works in Delhi as a labourer while she along with her minor daughter (PW-4) and aged mother-in-law (PW-2) reside at their house. On 7.2.2009, in the night the appellant was sleeping in her house with her 12 year old daughter. The door was not locked and a lantern was

burning. It is stated that at about 12 am in the night of 7.2.2009 the appellant entered the house, caught hold of the informant and attempted to commit rape on her. On her shouting, her daughter woke up from sleep and on hulla being raised by both of them, a gold chain worth about Rs. 30,000/- was snatched by the respondent no. 2. On hearing the hulla, it is stated that the appellant's mother-in-law Purnima Devi got up and in the torch light saw and identified the respondent no. 2 running away. It is further stated that on way near the house, co-villagers Ram Sundar Mishra and Chandeshwari Sharma identified the respondent no. 2 in the light of torch. Thereafter, it is stated that the appellant narrated the entire incidence to them on which they chased him, however, the respondent no. 2 after firing in the air from his firearm managed to escape. It is further stated by the appellant that she narrated the entire occurrence on mobile phone to her husband who was in Delhi and on her husband arriving back home, the application was written and they came to the police station. On the written statement dated 9.2.2009 of the appellant addressed to the Officer-In-charge, Nauhatta Police Station, the FIR being Nauhatta P.S. Case no. 11 of 2009 was registered on 9.2.2009 for offence under sections 452, 341, 342, 354, 379 and 506 of the Indian Penal Code.

3. In course of investigation the statement of the appellant was recorded under section 164 Cr.P.C and by order dated 15.4.2009 section 376 of the Indian Penal Code was added. After completion of investigation charge-sheet was submitted in the case and by order dated 10.3.2010 cognizance of the offence under sections 376, 452, 379, 323 and 506 of the Indian Penal Code was taken. Thereafter, the case was committed to the Court of Sessions and charges were framed under sections 376, 452, 354 and 379 of the Indian Penal Code.

4. The prosecution in support of their case examined six witnesses namely PW-1 Ram Sundar Mishra, PW-2 Purnima Devi, PW- 3 victim-informant (appellant herein), PW- 4 Resham Kumari, PW-5 Lakshman Jha and PW-6 Md. Najimuddin. On the other hand, two witnesses were examined on behalf of the defence who were DW-1 Muneshwar Jha and DW-2 Chanda Devi.

5. P.W 1 Ram Sundar Mishra happens to be the brother of mother-in-law of the appellant. He states that at about 11-12:00 in the night, while going home, when he reached near the house of the appellant, he heard hulla. On going inside the house he was told that the respondent no. 2 had entered and committed rape on the appellant.

6. In his cross-examination he states that mother-in-law of the appellant happens to be his sister and there are about 500-700 houses in between his house and that of the appellant. At around 10-10:30 pm, he was returning after purchasing vegetables from 'hatiya' which is at a distance of 2-2 ½ kms from his house. He had gone on foot. He claims to have seen the respondent no. 2. As per his statement, there was no other person present there and it was a moonlit night. He further states that there was sound of two shots being fired but he did not see as to who fired those shots. Further his house and the house of the

respondent no. 2 are in two different wards and there is around five bighas in between their houses. It is further stated by him that he is not aware that Subhash and Prabhash, the brothers of the appellant had taken and run away with the wife of Govind Mishra for which an FIR had been lodged. It is not true that he was giving a false statement for the reason that he happens to be the "mama" (maternal uncle) of the appellant's husband.

7. PW-2 Purnima Devi happens to be the mother-in-law of the appellant, who in her deposition states that it is on the hulla of her daughter-in-law (appellant) (PW-3) that she woke up. The respondent no. 2 snatched the gold chain of the appellant and escaped with the same. She states that she is not aware that the appellant's brother had run away with the wife of Govind Mishra and that her brother Prabhash had married her for which Supaul P.S. Case no. 237 of 1997 had been registered on 12.8.1997. She states that she does not recall whether it was a moonlit night or not but as per her memory it was a dark night and she has problem in her eye sight. She states that there is enmity between her family and that of the respondent no. 2. She did not see the respondent no. 2 snatching the chain. This was disclosed to her by the appellant later on. She saw the respondent no. 2 running away. No one turned up on their hulla. There was no electric light.

8. PW- 3 happens to be the informant of the case and the appellant herein. She has stated that at about 12:00 am at midnight while she was sleeping in her house with her 11 year old daughter and her old mother-in-law was sleeping in the 'verendah', the respondent no. 2 entered her house, closed her mouth and started to commit rape on her as a result of which she started to cry. On this her daughter woke up and on hulla being raised it is stated that the respondent no. 2 pointed a gun on the daughter of the informant threatening to kill her in case hulla was raised. It is further stated that on the informant's mother-in-law raising hulla the respondent no. 2 escaped. She states that the respondent no. 2 always used to take money from her and would not return the same. He had not returned Rs. 5-10,000 and on the informant asking for her money back, the respondent no. 2 had given effect to this occurrence. It is further stated that the informant gave information about the occurrence to her husband on telephone and on her husband coming back from Delhi, the case was filed. The statement was written by her husband on which she put her signature and her husband also signed as a witness.

9. In her cross-examination she states that it is not true that her brother and mother had run away with the wife of her uncle Govind Mishra. She further states that there was dispute with Indra Kant Jha from before the occurrence for the reason that he was not returning the amount given to him and on asking for the same used to become angry. It is further stated that the respondent no. 2 has not given effect to the occurrence for money. The respondent no. 2 does not bear a good character. She states that she had narrated about the occurrence of rape to Bambam Jha, Muni Jha, Runi Jha, Baban Jha and other persons.

10. PW- 4 Resham Kumari who happens to be the daughter of the informant states that on the date of occurrence at about 11-12:00 in the night, while she was sleeping with her mother, she woke up as a result of movement of the bed. The respondent no. 2 was misbehaving with her mother as a result of which she was raising hulla. While going the respondent no. 2 snatched a chain from her mother's neck. She states that her father who is in private job in Delhi was informed on telephone and on his coming home, he with her mother had gone to the police station.

11. PW- 5 Lakshman Jha happens to be the husband of the appellant who states that at the time of occurrence he was in Delhi when he received a telephone call from his wife to come home at the earliest. The reason was not disclosed to him. He states that his wife narrated to him that the respondent no. 2 had committed rape on her on which he along with his wife went to the police station and gave a written statement. In his cross-examination he states that he received information at 6:00 am, and it took him 2 - 2 ½ hours, to reach the station. He started for the station in the evening and stayed whole night. The next day at 6.40 am on 9th he got into a train and on morning of 10th at 4.00 am, he reached Khagaria by North East Express. He caught hold of another train and at about 11: 00 am, reached Saharsa.

12. PW- 6 happens to be the Investigating Officer of the case who stated that he had got the statement of the informant recorded under section 164 Cr.P.C. On the basis of the supervision report, charge-sheet was submitted by him under sections 452, 376, 379, 323 and 506 of the Indian Penal Code on 24.4.2009. He proved the formal FIR.

13. Heard learned counsel for the appellant, learned counsel for the State and learned counsel for the respondent no. 2. Perused the materials available on record including the certified copy of the FIR of Nauhatta P.S. Case no. 11 of 2009 which has been provided by the counsel for the appellant as also the deposition of the six prosecution witnesses which has been brought on record by the appellant in the supplementary affidavit.

14. It is submitted by learned counsel for the appellant that there was a direct and substantial material against the respondent no. 2 of having committed rape on the informant but the learned Court below did not consider the evidence/depositions of the witnesses in the right perspective. It was submitted that not only the informant (PW-3) made direct and categorical allegation against the respondent no. 2 but also supported the same and the said evidence is corroborated by the evidence of her daughter (PW-4) who was sleeping by her side as also by her mother-in-law (PW-2) who was sleeping in the 'verendah' just outside the room. It was submitted that in view of the overwhelming material, the Court below should have convicted and sentenced the respondent no. 2.

15. So far as the six prosecution witnesses are concerned, PW- 3 happens to be the victim who is also the appellant herein. PW-2 is the mother-in-law of the

appellant and PW-4 is the minor daughter of the informant. It is these three witnesses i.e. PW-3, PW-2 and PW-4 who were present inside the house when the occurrence is said to have taken place. PW- 1 happens to be the brother of PW- 2 who states that he was crossing the house of the informant immediately after the occurrence and claims to have seen the respondent no. 2. PW-5 happens to be the husband of the informant who on receiving information on telephone in Delhi, reached Saharsa at about 11.00 am on 10.2.2009 and thereafter, lodged the FIR. PW-6 happens to be the Investigating Officer of the case.

16. So far as PW-1 Ram Sundar Mishra is concerned, he happens to be the brother of the mother-in-law of the appellant. Besides being a related and interested witness, in his deposition he states that on the date of occurrence he had gone to purchase vegetables to hatiya at 4:00 pm, the hatiya being at a distance of 2-2 ½ kms from his house and he was returning at 10-10:30 pm in the night. The time narrated by PW-1 does not inspire confidence for the reason that any person going to purchase vegetables at 4:00 pm, would not return after six hours at 10-10:30 pm, and that to from a distance just 2- 2 ½ kms. Further the date of occurrence said to be around first week of February and the weather still being cold at the relevant time, the time given by the PW-1 of his returning does not appear to be normal. Even if the statement of PW-1 is taken at its face value, still as per the case of the prosecution right from the narration in the FIR to the depositions of PW- 2, PW- 3 and PW- 4 the occurrence is said to have taken place around 12:00 am in the night whereas the PW-1 reached near the house of the appellant at about 10-10:30 pm. Further even as per the narration of PW-1, he is admittedly not an eye-witness to the occurrence of rape and was told about the occurrence by PW- 3. There is further no explanation to the fact that when he came to know about the occurrence in the night itself, why was no information given to the police.

17. The date and time of occurrence as per the FIR is 12 am midnight in the night of 7.2.2009. The FIR was lodged on the written statement of the appellant dated 9.2.2009 to which her husband PW-5 was also a witness. In her deposition the informant (PW-3) states that she gave information of the occurrence on telephone to her husband (PW-5) and after her husband came, the FIR was lodged. PW-5, the husband of the informant also states that on receiving information on telephone from his wife, he started from Delhi on 9.2.2009 at 6.40 am, and reached Khagaria in the morning of 10th by North East Express. Thereafter, he took another train and reached Saharsa in the same morning (i.e. 10.2.2009) at around 11.00 am. It would be important to note here that the FIR was registered on 9.2.2009 on the written statement of the informant which was also dated 9.2.2009. Thus, if the statement of PW-5, husband of the informant is to be believed wherein he states that he reached home on 10.2.2009 at about 11:00 am, the FIR could not have been registered a day earlier on 9.2.2009. Thus, there appears to be a serious lacuna in the depositions of both the informant (P.W 3) as also her husband (P.W 5).

18. Even with respect to the commission of the offence, while in the FIR the informant states that the respondent no. 2 made an attempt to commit rape on her, in course of trial she states that he started to commit rape on her. P.W 1 states that on his reaching near the house of the informant he was informed that the respondent no. 2 had committed rape on P.W 3. P.W 2, the mother-in-law of the appellant in her deposition does not mention anything about the attempt to or commission of rape on P.W 3. She only states that the respondent no. 2 ran away with the golden chain of her daughter-in-law. Thus, there is no consistency amongst the prosecution witnesses even on the point as to whether the offence of rape was committed by the respondent no. 2 or not.

19. Further there is also no justification as to why the PW-3 did not visit nor was examined by any doctor.

20. As stated above, the witnesses PW-1, PW-2, PW-3, PW-4 and PW-5 all happen to be interested and closely related witnesses to the appellant P.W 3. From the depositions of the prosecution witnesses it would transpire that they consistently agree to the fact that there is serious differences and enmity between the respondent no. 2 and the informant's family.

21. Having heard learned counsel for the appellant and having gone through the records of the case including the deposition of the prosecution witnesses, as narrated above, the witnesses do not inspire confidence. There are serious discrepancies and contradictions in their deposition which goes to the root of the prosecution case and thus, having considered the materials on record there does not appear to be any material to interfere with the judgment of the court below.

22. The learned 1st Additional Sessions Judge, Saharsa by his impugned judgment dated 26.10.2018 has rightly held that on the basis of the evidence adduced the prosecution was not able to prove the charges beyond all shadows of reasonable doubt and as such he rightly acquitted the respondent no. 2 of the charges.

23. Not finding any merit in the instant appeal, the same is dismissed.