
(2013) 11 PAT CK 0008

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 249 of 1996

Yogendra Sah and Ganesh Ram

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 109, 376, 506

Citation : (2013) 11 PAT CK 0008

Hon'ble Judges : Anjana Prakash, J

Bench : Single Bench

Advocate : Sandeep Kumar, for the Appellant; Satya Nr. Prasad, Assistant Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

Anjana Prakash, J.—The Appellant No. 1 has been convicted u/s 376 I.P.C. whereas Appellant No. 2 has been convicted u/s 376/109 I.P.C. and sentenced to R.I. for seven years by a judgment dated 21.9.1996 and 25.9.1996 passed by the 3rd Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No. 207 of 1987/243 of 1987. The case of the Complainant P.W. 1 Maya Devi is that on 5.6.1987 at about 12.30 Noon while he was collecting leaves and dry branches, both the Appellants asked her to accompany them. When she refused, the Appellant No. 1 threw her on the ground and committed rape on her, whereas Appellant No. 2 gagged her mouth. On a noise having been raised by her, the Appellants ran away but her husband came and caught hold of the Appellant No. 1, who was beaten up. When he went to demand an explanation, the rest of the accused persons threatened him. Initially six persons were put on trial. Out of which four of them were acquitted of the charges u/s 506 I.P.C. since there was no evidence against them whereas the Appellants were convicted as mentioned above.

2. During trial the prosecution examined eleven witnesses in all. Out of whom,

P.W. 1 is the prosecutrix, whereas P.W. 2 America Ram is her husband and P.W. 3 Chandrika Ram, P.W. 4 Moharam Ram have been declared hostile. P.W. 5 Jamadar Ram, P.W. 6 Ranglal Ram, P.W. 7 Dharohara Devi and P.W. 8 Geeta Lata have been tendered. P.W. 9 Ram Ekbal Roy is a formal witness, who has proved the First Information Report. P.W. 10 Dr. C.K. Verma examined the prosecutrix. P.W. 11 Ramdhari is also a formal witness. It is evident that the Investigating Officer has not been examined by the prosecution.

3. P.W. 1, the prosecutrix, in her evidence before the Court repeated her version of the First Information Report and that her clothes with semen had been handed over to the Investigating Officer but there is no further investigation on the same in this case. It appears that initially a Complaint was instituted, which was sent for investigation u/s 156(3) Cr.P.C. and, therefore, there was a delay of eight days in initiation of the investigation. P.W. 2 America Ram, the husband of the prosecutrix, stated that on shouts of the wife when he reached the place of occurrence, his wife narrated to him about the occurrence. However he exonerated the presence of Appellant No. 2. He stated that his wife had not told him about the participation of Appellant No. 2 in the occurrence. P.W. 3 Chandrika Ram also stated that he reached the place of occurrence on the shouts of the prosecutrix, who narrated to him about the occurrence and that Appellant No. 1 was caught hold of by them and taken to the house of Babu Lal, where he was beaten up. The evidence of the doctor does not corroborate the prosecution case inasmuch as on the date of examination i.e. 12.6.1987 the doctor did not find any injuries on the person of the prosecutrix. Evidently this is well explained since the examination had taken place much after the occurrence and there was no likelihood of any objective evidence remaining on the body of the prosecutrix.

4. In view of the consistent statements of the prosecutrix supported by P.W. 2, her husband, with regard to Appellant No. 1, I would be inclined to hold that the prosecution has succeeded in proving its case beyond all reasonable doubts against him. Hence his appeal is dismissed.

5. As for the Appellant No. 2, since P.W. 2 stated that his wife had not narrated to him about his participation nor did he find him at the place of occurrence, I would be inclined to give him benefit of doubt. Hence, the order of conviction and sentence passed against the Appellant No. 2 on 21.9.1996 and 25.9.1996 by the 3rd Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No. 207 of 1987/243 of 1987 is set aside. The Appellant No. 2 is discharged from the liability of his bail bonds. The Appeal stands partly allowed.