

Darogi Yadav and Another Vs. the State of Bihar

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Court : Patna

Decided On : Mar-25-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) Nos. 454 & 663 of 2013

Appellant : Darogi Yadav and Another

Respondent : The State of Bihar

Judgement :

1. In Cr. Appeal no.454 of 2013, Darogi Yadav happens to be the appellant while in Cr. Appeal no.663 of 2011, Kapil Yadav happens to be the appellant. Before coming to adjudicate upon the matter, it looks worthwhile to mention that on account of filing of Complaint Case no.63 of 2003 against both the appellants named above by Guriya Devi, Laxmipur (Gidhour) P. S. Case no.08 of 2003 was registered under Section 376/ 34 of the I.P.C. as directed by the learned Chief Judicial Magistrate, Jamui in terms of Section 156(3) of the Cr.P.C.. The investigation commenced concluded and consequent thereupon, both the appellants were put on trial on account of submission of charge sheet.

2. During conduction of trial up-till the stage of statement of accused, both the appellants have their physical presence, but subsequently thereof, Darogi Yadav escaped resulting cancellation of bail bonds as well as bifurcation of trial. Appellant Kapil Yadav was proceeded with the main trial bearing Sessions Trial

no.94 of 2006/ 135 of 2009, wherein vide judgment dated 12.05.2011, he was found guilty for an offence punishable under Section 376 of the I.P.C. while vide order dated 17.05.2011, he was directed to undergo rigorous imprisonment for ten years as well as also slapped with fine appertaining to Rs. Five thousand in default thereof, to undergo rigorous imprisonment for six months by the Additional Sessions Judge, Fast Track Court-Vth, Jamui.

3. After appearance of Darogi Yadav, he has been proceeded with supplementary record bearing Sessions Trial No.94(A) of 2006 on the same set of evidence, wherein vide judgment dated 05.06.2013, he has also been found guilty for an offence punishable under Section 376 of the I.P.C. as well as vide order dated 05.06.2013, he has been directed to undergo simple imprisonment for eight years along with fine appertaining to Rs. Five thousand and in default thereof, to undergo simple imprisonment for three months additionally by the Ad hoc Additional Sessions Judge-IV, Jamui.

4. Because of the fact that same set of evidence was considered against both the appellants and the same set of evidence is to be considered against both the appellants at the present stage also on account thereof, both the appeals have been heard analogously and are being disposed of by a common judgment.

5. Guriya Devi (PW-8) had filed complaint petition on 30.01.2003, showing the date of occurrence as 09.01.2002 as well as 08.10.2002 alleging inter alia that during day time of 08.01.2002, the accused persons unsuccessfully attempted to ravish her after making house trespass. At evening hour, while she had gone to ease herself was overpowered by Kapil Yadav, who had committed rape. On hue and cry, villagers assembled, but on account of furious activities of Kapil Yadav, they could not dare to go against him side by side Kapil Yadav also prevented the complainant from reporting the matter to the police. Again on 08.10.2002 at about 10.00a.m. both the accused namely Kapil Yadav and Darogi Yadav made house trespass and committed rape. They also used to continue with the aforesaid activity whenever, they got an opportunity. It has further been disclosed that the petticoat soaked with blood is in her possession. It has also been averred that accused persons were threatening and on account thereof, she could not manage

to inform at an earlier occasion. However, on 19.10.2002, an information was sent to the Superintendent of Police, Jamui, but without any fruitful result on account thereof, instant complaint has been filed.

6. The defence case as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr. P.C. is of complete denial of occurrence. However, in both the trial, defence had not examined any DW nor exhibited any documents.

7. While assailing the judgment of conviction and sentence, it has been submitted on behalf of appellants that the judgment impugned has been pronounced in mechanical way without appreciating the evidence available on the record. It has also been submitted that the learned lower Court had not considered the inconsistency, improbability persisting in the prosecution case. Further elaborating submission on these two counts, it has been submitted that basically the prosecution had shown two date of occurrence. The first one dated 09.01.2002, while the second one dated 08.10.2002. However, from the plain reading of the complaint petition, the successive commission of the rape, apart from aforesaid two dates has also been alleged. For 09.01.2002, no case was launched. The complainant or her husband had not alleged that during said period they were prevented from lodging the case. In likewise manner, the occurrence dated 08.10.2002 also gone unreported. In spite of giving disclosure in the complaint petition PW-8, the victim had not alleged continuance of such kind of activity even thereafter, during course of her evidence. It has further been submitted that from paragraph-8 as well as paragraph-12 of PW-8, the occurrence so alleged became falsified.

8. It has also been submitted during course of investigation, the victim was not medically examined and in likewise manner, the so alleged petticoat, which was produced by the victim during course of investigation was not at all sent to the Forensic Science Laboratory for examination with regard to presence of corroborative evidence relating to rape. Not only this, the delay in institution of case is also not found properly explained.

9. Now, coming to the evidence of other PWs, it is evident that none happens to be an eye witness to occurrence. Furthermore, the objective finding of the Investigating Officer (PW-9) also did not support the same. As such, judgment of conviction and sentence recorded by the learned trial Court happens to be wrong and erroneous and is accordingly, fit to be set aside.

10. At the other hand, learned Additional Public Prosecutor while sticking with the finding recorded by the learned trial court has submitted that the finding is recorded on the basis of proper scrutiny of the evidence available on the record hence is fit to be confirmed.

11. From the lower court record, it is evident that altogether nine PWs have been examined. Out of them, PW-1 Bhutu Thakur, PW-2 Sadanand Thakur, PW-3 Dinesh Thakur, the husband, PW-4 Saraswati Devi, mother in-law of victim, PW-5 Dhobi Yadav, PW-6 Upendra Yadav, PW-7 Tuntun Thakur, PW-8 is the victim herself Guriya Devi and PW-9 is Kameshwar Singh, the Investigating Officer. Also exhibited series of documents out of which Exhibit-1 happens to be signature of witness over production-cum-seizure list, Exhibit-2 is formal F.I.R., Exhibit-3 is seizure list. Now, coming to the nature of witnesses, it is evident that PW-1, PW-5 and PW-7 were declared hostile while PW-6 is formal in nature.

12. Then, coming to the evidence of remaining PWs, it is evident that none of the PWs have claimed to be an eye witness to the occurrence rather they all happens to be under hearsay category. PW-2 is the Bhainsur of victim who had stated that in the year 2003 on his arrival to his house, he came to know regarding the occurrence. However, from his evidence, it is apparent that he confined himself to an occurrence dated 09.01.2002 that means to say, this witness had ruled out any sort of commission of occurrence on 08.10.2002.

13. PW-3 is the husband, he also happens to be hearsay witness of both the events. He had fairly stated that for an occurrence dated 09.01.2010, no case was instituted while for the occurrence dated 08.10.2002, instant case has been filed. He had further stated that he had gone to Khedna Bahiyar on 08.10.2002 at about 8.00a.m. and returned back at 12.00 noon and then he was informed by his wife Guriya Devi that Kapil Yadav and Darogi Yadav have committed rape after making

house trespass. He had further stated that Kapil Yadav had committed rape on 09.01.2002, but became apprehensive on account of threatening given by him. He had further stated that during course of investigation petticoat having blood stained was handed over to police for which production-cum-seizure list was prepared. During cross-examination at paragraph-9, he had stated that he had not seen the occurrence rather he was told. In paragraphs-16, 17 there happens to be contradictions. However, during course of cross-examination of PW-9, the aforesaid relevant passage was not at all placed. Hence, it could not be said that there happens to be contradictions on that very score in his evidence.

14. PW-4 is Saraswati Devi. She had stated that on the alleged date and time of occurrence Kapil Yadav and Darogi Yadav have had raped her daughter in-law. She had further stated that Kapil Yadav had raped at evening hour while Darogi Yadav raped in day time at the cow-shed. When she came to her house, she was informed by her daughter in-law. During cross-examination, it is evident that she was not at all cross-examined on that very score, save and except, being cross-examined in the background of some sort of differences amongst Dinesh Thakur, the husband with his first wife, who had deserted.

15. PW-8 is the victim herself, she had stated that at an evening hour Kapil Yadav had committed rape upon her in the field of Kashi. She raised alarm over which Kapil Yadav pointed pistol and further threatened to kill. Then had said in the month of Aaswin, Kapil Yadav and Darogi Yadav took her to cow-shed where both committed rape for which she has lodged a case. She has further stated that she had made her statement before the Gidhour Police as well as had also handed over petticoat to the police. From paragraph-8 of her cross-examination, an effort has been made on behalf of defence to discredit her version with regard to the occurrence alleged at evening hour. She had stated that it was 7.00p.m., darkness had fallen, at that very time she was easing, she had seen Kapil Yadav at a distance of fifteen feet. No sooner than he caught, she raised alarm over which people ran and surrounded. It was thousand or two thousand seeing the people Kapil Yadav escaped there from and then she came to her house. In paragraph-12, she had stated that house of others also lies, surrounding her house. All the persons were inside their house. Pradeep, Anil are her neighbours, they are on

visiting terms. She had seen both the accused at a distance of five feet. She raised alarm. Seeing them the neighbours assembled on her alarm, but she is unable to disclose the names of those persons. Accused persons fled away on getting the persons assembled.

16. PW-9 is the Investigating Officer, who had stated that after registration of the case, he took up investigation, gone to the place of occurrence, recorded further statement of informant, visited both the place of occurrence, so detailed, under paragraphs-3 and 4. From his objective finding with regard to second place of occurrence, he had found the cow-shed inside the house of informant where the alleged occurrence was committed. He had taken statement of other witnesses including Dinesh Thakur, who had produced blood stained petticoat and for that production-cum-seizure list was prepared. He took statement of Ganesh Thakur and Bhutu Thakur, seizure list witnesses. He had arrested accused Darogi Yadav, he had submitted charge sheet against accused Darogi Yadav while investigation was kept open against accused Kapil Yadav. As he was transferred, he handed over charge to Rewati Raman Prasad Sinha. During cross-examination at paragraph-16, he had stated that he had not sent petticoat for pathological examination till he was commanding the investigation. He had further stated that he had not cared to examine the victim.

17. In a rape case, the evidence of the victim is of paramount consideration and in case the Court finds that it is out of blemish or suspicion then in that event, the sole testimony of victim is found sufficient for recording conviction. Moreover, Section 134 of the Evidence Act did not require the counting of witnesses rather it requires the authenticity in the version of witness and that happens to be reason behind that evidence of single witness if it does inspire confidence, should be accepted and would form the basis of conviction. In case, the evidence of victim is found suffering from some sort of inconsistency, then in that event corroboration is needed.

18. Now, coming to the case in hand, it is apparent that prosecution had not played fair game. Prosecution failed to disclose that after first occurrence, the victim or her family members were prevented to lodge case. In likewise manner

happens to be the immiscibility over 2nd occurrence. From the evidence of husband of victim Dinesh Thakur, PW-3, and Saraswati Devi, mother in-law, PW-4, they were out of house at the time of 2nd occurrence, that means to say, they have free movement without having any sort of threat or coercion and on account thereof such long delay of more than a year is a matter of concern. Apart from the fact that during evidence, none of the witnesses have disclosed regarding persisting threat. At the other hand from the evidence available on the record, it is apparent that Dinesh Thakur, the husband of victim Guriya Devi was earlier married and the first wife though alive was not residing with Dinesh Thakur and on account thereof, the villagers were annoyed. Enmity is double edged sword. So, it may be a cause of false implication side by side it happens to be a cause for commission of an occurrence. Moreover, as referred above, paragraphs-8 and 12 of the cross-examination of the victim appears to be another circumstance which had given severe jolt to the prosecution version and consequent thereupon, it looks unsafe to concur with the finding given by the learned trial Court.

19. Consequent thereupon, both these judgments of conviction and sentence recorded by the learned trial Court are set aside. Consequent thereupon, both the appeals are allowed. Appellant Kapil Yadav is on bail, hence he is discharged from its liability while appellant Darogi Yadav is in custody, hence he is directed to be released forthwith if not wanted in any other case.

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