

Aditya Sahu Vs. the State of Bihar

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Court : Patna

Decided On : Sep-12-2000

Judge : Ashok Kumar Verma, J.

Appeal No. : Criminal Appeal No. 40 of 1995 (R)

Appellant : Aditya Sahu

Respondent : The State of Bihar

Disposition : Appeal Dismissed

Prior history : Ashok Kumar Verma, J. 1. The sole appellants Aditya Sahu has preferred this appeal against the judgment and order of conviction and sentence dated 24.3.1995 and 25.3.1995 respectively passed in Sessions Trial No. 508/90, whereby the 3rd Additional Judicial Commissioner, Ranchi had convicted him under Sections 354 and 323, I.P.C. and sentenced him to undergo R.I. for two years under Section 354 I.P.C. and to undergo R.I. for one year under Section 323, I.P.C. The sentences are to run concurrent

Judgement :

Ashok Kumar Verma, J.

1. The sole appellants Aditya Sahu has preferred this appeal against the judgment and order of conviction and sentence dated 24.3.1995 and 25.3.1995 respectively

passed in Sessions Trial No. 508/90, whereby the 3rd Additional Judicial Commissioner, Ranchi had convicted him under Sections 354 and 323, I.P.C. and sentenced him to undergo R.I. for two years under Section 354 I.P.C. and to undergo R.I. for one year under Section 323, I.P.C. The sentences are to run concurrently.

2. In short, the case of the prosecution is that on 8.11.88 at about 8 a.m. the informant, Roza Kumari, daughter of Ganpat Uraon, was going towards the field of Ram Kishun Sao of village Sakra. When she reached near Patra Tanr accused Aditya Sahu caught her hand and when the informant tried to release herself he thrashed her on the ground and shut her mouth by his left hand and raised her Sari by his right hand and committed rape on her. After some time the informant raised hulls on which the accused wanted to throw her into a well. In the meantime, the mother of the informant came there and when her mother protested the accused threw brickbats on her, but that did not hit her mother. On hulla, the father of the informant also came and accused Aditya Sahu assaulted him with stone, as a result of which his father was injured and he fell down. The Mahal Choukidar brought them to the bus stand and they came to the police station on rickshaw. The informant gave her statement at the police station and put her thumb impression on it. Ext. 1 is the F.I.R. of this case. The police had instituted a case under Sections 376 and 337, I.P.C. After investigation police submitted charge-sheet against the accused Aditya Sahu. The learned Chief Judicial Magistrate after taking cognizance of the case committed it to the Court of Sessions for trial.

3. The learned Additional Judicial Commissioner Ranchi, has convicted the accused-appellant under Sections 354 and 373, I.P.C. and sentenced him to undergo R.I. for two years under Section 354, I.P.C. and undergo R.I. for one year under Section 323, I.P.C.

4. The defence of the accused according to the trend of the cross-examination of the prosecution witnesses and the statement of the accused under Section 313, Cr.P.C. is that he has been falsely implicated in this case.

5. It was argued by the learned lawyer appearing on behalf of the appellant that the evidence of the prosecution witnesses is not reliable and no medical officer has been examined in this case by the prosecution to show that any injury was caused to the informant or to her father.

6. In this case, ten witnesses have been examined on behalf of the prosecution P.W. 4, Kailash Oraon, P.W. 5. Narendra Kumar Rai and P.W. 6, Farzan Ansari have been tendered by the prosecution. P.W. 7 Sakhawat Ansari and P.W. 8, Prem Oraon are witnesses of seizure list. According to P.W. 7, Sakhawat Ansari, he had gone to the police station where Roza Kumari, her father and others were there, and the Jamadar had shown him the blouse, petticoat and lungi and the Jamadar had prepared a paper on which he (P.W. 7) had signed. According to P.W. 8 Prem Oraon, Choukidar had taken him to the police station where Saya of the girl, Jacket, Lungi and Janghiya were there and police had prepared a paper on which he had put his thumb impression. P.W. 9, Roza Kumari has said in her evidence that Daroga had not seized her clothes.

7. P.W. 1 is Ganpat Oraon, father of the informant Roza Kumari. He has stated that he was at his house at 8'0 clock in the morning and his daughter Roza was going to the field of Ram Kishun Sao for plantation of potato and he heard the cry of Roza and he went there and when he reached near the well of Aditya Sahu(accused) he saw that Aditya Sahu had caught his daughter and pulling her and Roza was weeping. When he (P.W. 1) asked Aditya Sahu as to what he was doing, Aditya Sahu assaulted him with stone causing him injury and he fell down and became unconscious. He (P.W. 1) has said that his wife and daughter brought him to the house and after gaining consciousness he went to the police station where Daroga recorded the statement of his daughter and read it over to her and she had put her thumb impression on it and he (P.W. 1) had also put his thumb impression on it. He has further said that he was sent to the Block Hospital for medical treatment where he was treated and his daughter was sent for medical examination to Ranchi Hospital. No medical officer has been examined in this case on behalf of the prosecution to show that this witness (P.W. 1) and his daughter had any injury on their person.

8. P.W. 2 Hiliya Devi, wife of Ganpat Oraon and mother of the victim girl Roza Kumari. She has stated that she was at her house at 8 a.m. and Aditya had quarrel with Roza in his land, and Aditya had abused Roza and thereafter caught her and on hearing the sound of weeping of Roza, she (P.W. 2) had gone there with her husband. She has also said that when she reached there she saw that Aditya Sahu was putting Roza in the well and he threw brickbats on her (P.W. 2) but she escaped and her husband was hit by it, as a result of which he was injured. According to her, Daroga had seized the cloth of her daughter and prepared the seizure list and Daroga had sent her daughter to Ranchi for medical examination. P.W. 9 Roza Kumari, has said that Daroga had not seized her clothes and he had not sent her to the doctor for medical examination. No medical officer has been examined in this case on behalf of the prosecution.

9. P.W. 3 is Raghiv Oraon. According to him, he was ploughing his field at about 8 a.m. and he saw Aditya and Roza and Aditya threw brickbats on Ganpat, father of Roza, and he went there later on and Ganpat told him that Aditya was catching Roza and due to this there had been assault.

10. P.W. 9 is Roza Kumari, informant of these case. She has stated that it was 8' clock in the morning and she was going to the land of Ram Kishun Sao to plant potato and when she reached Patra Tanr she raised alarm and her father and mother came there. She has stated that Aditya Sahu was catching her (Dhar Pakar Kar Raha Tha) and therefore she had raised alarm. She has also said that he (Aditya) had wanted to commit rape on her and she cried. On which her mother and father came and Aditya could not do anything. She has further said that she went to the police station with her father where Daroga recorded her statement and read it over to her and after finding it correct she had put her thumb impression on it. She has said that Daroga had not seized has clothes. She has also said that Daroga had not sent her for radical examination to the doctor. According to her, when her father reached there Aditya assaulted him with stone as a result of which he has injured and he had become unconscious. She had said in her cross-examination that Aditya Sahu is, of Sadan community and she it Oraon and when Sadan does catching etc. with Oraon, Panchyati is called. She has further said in her cross-examination that she had not called any Panchyati

and when Aditya had caught her, no one had seen the occurrence at that time. P.W. 10 is Jagat Narain Singh, I.O. of this case. He has stated that on 8.11.1988 he was posted as Sub-Inspector of police in Mandar and on that day informant Roza Kumari along with her father and mother had come to the police station and he had recorded the statement of Roza Kumari and gave it over to her and the informant had put her thumb impression on it. Ext. 1 is the F.I.R. of this case. He has stated that he had sent the informant to Sadar Hospital for medical examination. But P.W. 9 Roza Kumari, Informant, has said in her evidence that Daroga had not sent to the doctor for medical examination. No medical officer has been examined in this case on behalf of the prosecution. He (P.W. 10) has also said that he had sent the father of the informant to the State Dispensary, Mandar for medical examination. He has also said that he had seized the clothes of the victim girl and he had prepared production-cum-seizure list of the clothes given by the informant. P.W. 9 Roza Kumari has said that Daroga had not seized her clothes. Ext. 2 is the production list of the clothes.

11. The above evidence adduced on behalf of the prosecution proves beyond all reasonable doubts that the accused Aditya Sahu has committed the offences punishable under Sections 354 and 323, I.P.C. There is nothing in the cross-examination of the prosecution witnesses to disbelieve their evidence on this point. The prosecution has proved beyond all reasonable doubts that the accused appellant Aditya Sahu has committed the offences punishable under Sections 354 and 323, I.P.C. The judgment and order of conviction passed by the learned Additional Judicial Commissioner under Sections 354 and 323, I.P.C. against the accused appellant is confirmed. The date of occurrence of this case is 8.11.1988. So it is more than 11 1/2 years since then. Thereafter in view of the facts and circumstances of the case sentence of one year R.I. under Section 354, I.P.C. and sentence of six months R.I. under Section 323, I.P.C. will meet the ends of justice. Accordingly, the sentence of Aditya Sahu under Section 354, I.P.C. is reduced to R.I. for one year and sentence under Section 323, I.P.C. is reduced to R.I. for six months.

12. With the above modification in the judgment and order of conviction and sentence, this criminal appeal is dismissed. Accused appellant Aditya Sahu is on

bail. His bail-bond is cancelled, and he is directed to surrender in the Court of 3rd Additional Judicial Commissioner. Ranchi forthwith to serve out his sentence. The learned 3rd Additional Judicial Commissioner, Ranchi will also take all necessary steps in this regard.

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