

Kuldip Prasad Vs. State of Bihar

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Court : Patna

Decided On : Mar-31-2000

Judge : S.N. Pathak, J.

Appeal No. : Criminal Appeal No. 140 of 1999

Appellant : Kuldip Prasad

Respondent : State of Bihar

Disposition : Appeal Dismissed

Prior history : S.N. Pathak, J. 1. This appeal is directed against the judgment and order of conviction and sentence passed by Shri V.N. Jha, 3rd Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 345 of 1996. The sole appellant was convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. 2. The case of the prosecution, as stated in the fardbeyan (Ext. 2) of Shakuntala Devi, mother of the victim girl, is that on 22.2.1996 at about 6.30 p.m. t

Judgement :

S.N. Pathak, J.

1. This appeal is directed against the judgment and order of conviction and sentence passed by Shri V.N. Jha, 3rd Additional Sessions Judge, Muzaffarpur in

Sessions Trial No. 345 of 1996. The sole appellant was convicted under Section 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years.

2. The case of the prosecution, as stated in the fardbeyan (Ext. 2) of Shakuntala Devi, mother of the victim girl, is that on 22.2.1996 at about 6.30 p.m. the informant's daughter namely, Chandra Kumari, aged about 4 1/2 years, was playing at the verandah of her house along with other children where the accused-appellant Kuldip Prasad came and offered chocolate to her daughter. On allurements of chocolate, the accused lifted the victim in his lap and carried her away. When the informant's daughter did not return for an hour, the informant started search for her in the mohalla. Subsequently, she was found near the boundary wall of the house of one lawyer of the mohalla. The informant enquired from her weeping daughter and then the latter told her that accused Kuldip Prasad had made her sit between his thighs and committed criminal assault upon her. The informant found that the underpants of the victim were wet and sticky. The informant related the alleged occurrence to the mohalla people. The police was informed which case there and recorded her fardbeyan. On the basis of the aforesaid fardbeyan, the case was registered, investigated, and charge-sheet was submitted and after cognizance and commitment, the accused was put on trial and sentenced, as stated above.

3. The accused in his suggestion to the P.Ws. denied the occurrence and alleged false implication on account of enmity.

4. The prosecution examined in all ten witnesses. P.W. 10 was the Judicial Magistrate who recorded the statement of Chandra Kumari, the victim girl and her mother Shakuntala Devi under Section 164 of the Code of Criminal Procedure. Those statements were exhibited as Exts. 5 and 5/1. P.W. 9 was the I.O. of the case. The evidence of this witness is that he recorded the fardbeyan of the informant as also statements of other witnesses and thereafter, he submitted charge-sheet on receiving a report from the doctor. P. W. 8 is the doctor. I shall discuss his evidence later on P.W. 7 is Chandra Kumari, the victim. In her examination-in-chief, she has supported the alleged occurrence of criminal assault

upon her at the hands of the accused in the manner as stated in the fardbeyan of the informant. I need not elaborate it in detail, but, in substance, it is to the effect that the accused carried her away on offer of chocolate and placing her in between his thighs, he committed indecent act which she has described in her own language and which will constitute an offence under Sections 376 of the Indian Penal Code. In its spirit and tenor, she has almost told all the things which were recorded in the fardbeyan of the informant and which I have stated above at paragraph 2. She has stated in cross-examination by the accused that the house of Kuldeep Prasad was contiguous to her own house. Her mother used to purchase rice, etc. from the shop of the accused. There was quarrel over dues. There was also other a panchaiti over the aforesaid quarrel. There were also other cases. From the aforesaid statements, it was submitted that the accused and the informant were on inimical terms and, therefore, there was false implication. But, in my opinion, position of enmity may also be a cause to commit the offence, because enmity cuts both ways. P.W. 6 is the mother of the victim and she has in her chief examination made all the statements which she has made before the police in her fardbeyan (Ext. 2). The lengthy cross-examination to which she was subjected failed to elicit any statement from which it can be inferred that she was making a false statement and that she had falsely implicated the accused.

5. P.W. 5 is a hearsay witness who had learnt the same from Chanda Kumari and her mother. P.W. 4 is another hearsay witness who had gone out in search of Chanda Kumari and Chanda Kumari was found near the house of one lawyer of the mohalla weeping. It was suggested that this witness is related to the informant and, therefore, he has made false statement, but simply because this P.W. is a relation of the informant, his evidence cannot be discarded. P.W. 3 was tendered. P.W. 2 was declared hostile because he failed to make even a single sentence in favour of the prosecution case. P.W. 1 was also declared hostile.

6. The above resume of the evidence suggests that P.Ws. 6 and 7 are the two important witnesses to support the occurrence of rape upon the victim. Some other P.Ws. to whom I have referred to above will be corroborating the alleged occurrence because they had learnt about the same from the victim and her mother just immediately after the alleged occurrence.

7. Now, the evidence of the doctor has to be analysed in order to find out whether of course there was any occurrence of rape on Chanda Kumari. I find that the doctor examined the victim on 23.2.1996 at 12.05 noon. The alleged occurrence had taken place on 22.2.1996 at 6.30 p.m. The doctor found that the victim's vaginal tissues was bruised, congested, lacerated and tender. Blood was also oozing. There was blood clot and swelling and tenderness on the labia. On microscopic examination of the vaginal swab, semens were present and many complete dead spermatozoa were also found. The doctor opined that rape was committed within 24 hours. The doctor's medical report was exhibited as Ext. 1.

8. From the evidence of the doctor, it is apparent that the victim's person was violated amounting to ravishment and that was the reason why labias were injured containing swelling, blood, etc. Spermatozoa were also found in the swab taken from vagina. The aforesaid evidence on the record was sufficient to fix the accused guilty with the offence of having committed rape upon the victim. So, I do not think, the order of conviction suffered from any lacuna, legal or material.

9. So far as sentence is concerned, the appellant was sentenced to undergo rigorous imprisonment for ten years, and the circumstances of the case in which a very minor and tender child was subjected to rape did not attract any kind of leniency. Hence, the sentence is also confirmed.

10. In the result, this appeal is dismissed and the order of conviction and sentence is hereby confirmed.