

Bhola Pandey Vs. State of Bihar

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Court : Patna

Decided On : Jul-04-2005

Judge : Rekha Kumari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Criminal Appeal No. 203 of 2003 (SJ)

Appellant : Bhola Pandey

Respondent : State of Bihar

Advocate for Def. : Satya Narayan Prasad, A.P.P.

Advocate for Pet/Ap. : Arun Kumar Singh No. 3, Suresh Prasad Singh No. 1 and Ashok Kumar Singh, Advs.

Disposition : Appeal allowed

Judgement :

Rekha Kumari, J.

1. The appellant faced trial for the alleged commission of the offence punishable under Section 376 of the Indian Penal Code. The learned lower Court found him guilty under Section 376, IPC and convicted him thereunder and sentenced him to undergo R.I. for seven years.

2. The prosecution version as unfolded in trial is as follows :

The informant Chameli Devi on 28.11.1987 at 3.00 p.m. had gone to cut out grass near river Durgawati accompanied by Shiv Chand Mushar and Santra Kumari, brother-in-law and the sister-in-law respectively. It is further said that suddenly the appellant Bhola Pandey reached there and caught hold of her and then pushed her down on the ground and committed rape on her. In Course of this incident her blouse were torn and her petticoat was stained with semen of the appellant. She went to her house and narrated about the incident to her mother-in-law and the husband.

3. The fard beyan of the informant was recorded at Chenari Police Station on the same day at 17.30 (5.30 p.m.) hours by the S.I. Jamindar Singh of Chenari Police Station. As usual, investigation followed and the charge sheet was submitted against the appellant under Section 376, IPC. Cognizance was taken and the case was committed to the Court of Sessions and the appellant was put on trial before the Court of Sessions.

4. In order to prove its version the prosecution examined altogether seven witnesses. Among them PW 7 Chameli Devi is the informant cum victim of the case. PW 4 Shantra Kumari and PW 5 Shiv Chand Mushar are said to be the eye witnesses of the incident. PW 3 Mithu Mushar is the father-in-law of the victim and PW 6 Mallik Mushar is her husband.

5. On consideration of evidence on record the trial Court held that the prosecution has been able to bring home the accusation against the accused. He found him guilty of the offence under Section 376, IPC for committing rape on the informant and convicted and sentenced him as mentioned above.

6. The question that falls for determination is whether on facts and circumstances of this case, as revealed from the evidence on record, the order of conviction and sentence passed by the learned Court below is justified and fit to be maintained.

7. Learned counsel for the appellant submitted that the appellant is innocent and he was falsely implicated in this case on account of previous enmity and that the

learned lower Court failed to appreciate the evidence adduced during trial and convicted the appellant.

8. Learned A.P.P., on the other hand, submitted that no woman would go to the extent of staking her reputation and future in order to falsely set up a rape on her. He further contended that the law is well settled that if the Court is satisfied from the evidence of the victim, an order of conviction can be safely passed without looking for further corroboration.

9. In order to appreciate the argument by the learned counsel for the parties, it would be proper to take note of the evidence which has been adduced by the prosecution.

10. PW 7 has stated that about five years ago, at 3.00 p.m. she was cutting grass near Durgawati river and her brother-in-law and sister-in-law, namely, Sheo Chand Mushar and Santra Kumari, were also with her. They were engaged in picking up the pieces of wood. In the meantime the appellant came and pushed her down and raped her. Her blouse was torn, petticoat was stained with semen and after rape the appellant fled away. She went to her house and narrated about the incident to her mother-in-law and the husband. Thereafter she alongwith others went to Chenari Police Station and gave her statement.

11. PW 4 has stated that 8 to 9 years ago she had gone with her sister-in-law (PW 7) and brother (PW 5) near river; for collecting pieces of woods. Her sister-in-law had gone for cutting grass. The accused came there and pushed her sister-in-law down and misbehaved with her.

12. PW 5 similarly has stated that he also had gone near river where the accused came, pushed her sister-in-law down and raped her. His sister-in-law raised alarm. He also raised alarm. Thereafter they fled away to their house and the accused also fled away from there. He has further stated that they stated about the incident to his aunt Guiari Devi and uncle Mithu Mushar (PW 3). His evidence also is that the accused had torn the blouse of his sister-in-law (PW 7).

13. The evidence of PW 3 is that his niece Shantra Kumari (PW 4) and nephew Shiv Chand Mushar (PW 5) told him that Bhola had committed rape on their sister-in-law and Chameli Devi (PW 7) also narrated to him about the incident.

14. PW 6 has stated that about five years ago at 3.00 p.m. Shantra Kumari and Shiv Chand Mushar came running to him followed by his wife Chameli Devi and his sister informed him that the accused committed rape on his wife. He went to the P.S. His father and his wife also went to the PS. and the case was instituted.

15. PW 1 and PW 2 have stated that neither any seizure list was prepared before them nor any petticoat or blouse was produced in the police station in their presence. The signature of these two witnesses have been marked as Ext. 1 and 1/1 on a seizure list. These witnesses have been declared hostile. The evidence of these two witnesses are of no avail to the prosecution.

16. Thus, from the evidence of above PWs 3 to 7, it appears that they have tried to support the prosecution case that the informant was raped by the accused. But among the above witnesses PWs 3 and 6 are not the eye witnesses to the occurrence. PW 6 though has stated in his cross-examination that he had also seen the rape being committed, the fard beyan itself shows that at the time of alleged occurrence he was present in his house. Therefore, his evidence in this regard cannot be believed.

17. As regards other PWs, PW 6 of course is victim and it is settled that sole testimony of the victim can be a basis for conviction if the same is reliable and worthy of acceptance as it is reasonable to assume that no woman would falsely implicate a person in sexual offences as honour and prestige of that woman would also be at stake. The Hon'ble Supreme Court in the case of *Sudhansu Sekbar Sahoo v. State of Orissa*, reported in (2002) 10 SCC 743, has further held that...however, evidence of the prosecution should be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material. But in this case it appears that the evidence of PW 6 is that she was medically examined and she had given petticoat to the I.O. and the same was stained with semen but neither the doctor has been examined to prove that

actually the victim had sign of rape nor any sign of resistance by her. The prosecution has not examined the I.O. nor has produced the alleged semen stained Saya (petticoat).

18. Then though PW 4 claims to be an eye witness, she has not stated the nature of misbehaviour committed by the accused to the victim. It appears from her evidence that though the learned A.P.P. in course of her examination-in-chief had categorically asked the witness what actually the accused did, but she did not state more than this that he misbehaved (Beijjat) with her. In cross-examination she stated that if a man assaults a woman that amounts to misbehaviour. Therefore, on the evidence of this witness it cannot be said that actually the accused had committed rape on the victim. To crown all, the evidence of PW 5 shows that he has in his cross-examination stated in clear words that when his Bhabhi was cutting grass, the accused protested.

Therefore, there was a scuffle between them and in the process the blouse of the Bhabhi was torn and thereafter the accused fled away. The evidence of the witness, therefore, demolishes the entire prosecution case. The prosecution has not declared him hostile. It also appears from the impugned judgment that the learned lower Court has not at all considered the evidence of the witness, who claims to be an eye witness of the occurrence. This witness though was child at the time of occurrence but when he was deposing in Court he was aged about 14 years. Therefore, it cannot be said that he was not able to understand the questions and give proper answer.

19. Besides this, the evidence of PW 6 in his cross-examination also is that prior to the occurrence the accused Bhola Pandey had encroached upon the land which was allotted in their favour by the Government and was using the same as his Khalian and for the said land they fought the case upto the High Court and that the accused was still retaining the possession of the said land. Therefore, there was admittedly previous enmity between the parties. The evidence of PW 5 also is that when he informed his uncle (PW 3) about the occurrence, his uncle reacted that the accused would not listen and a case has to be made out.

20. Therefore, though the prosecutrix and other PWs have tried to support the prosecution case, as the evidence of PW 7 is not corroborated by the medical evidence and there is previous enmity between the family of the informant and the appellant and the clothes of the victim have not been produced and the evidence of PW 5 shows that there was only scuffle between the appellant and the victim. I think a reasonable doubt arises as to whether actually any rape was committed. The appellant at least deserves the benefit of doubt. The learned Court, hence, was not justified in finding the accused guilty under Section 376, IPC and convicting him thereunder.

21. In the result, this appeal is allowed. The order of conviction and the sentence passed by the learned lower Court is set aside. The appellant is acquitted. The lower Court is directed to release the appellant forthwith, if not wanted in any other case.