

Devendra Das and ors. Vs. the State of Bihar

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Court : Patna

Decided On : Sep-01-1999

Judge : Manohar Lal Visa, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 342, 366, 366A, 376 and 376(2)

Appeal No. : Criminal Appeal (SJ) No. 108 of 1996

Appellant : Devendra Das and ors.

Respondent : The State of Bihar

Advocate for Def. : Lal Kailash Behari Pd., Adv.

Advocate for Pet/Ap. : Sudama Singh, Rajani Kant Singh and Anwita Jha, Adv.

Disposition : Appeal dismissed

Judgement :

Manohar Lal Visa, J.

1. This appeal is directed against the judgment and order dated 30th March, 1996 passed by 1st Additional Sessions Judge, Saran at Chapra, in Sessions Trial No. 13/93 convicting and sentencing all the appellants to undergo R.I. for 10 years each and to pay a fine of Rs. 1,000/- in default to undergo R.I. for 6 months under

Section 376(2)(g) IPC and R.I. for 1 year each under Section 342, IPC. Appellant Devendra Das has further been convicted and sentenced to undergo R.I. for 6 months under Section 366A, IPC. The respective sentences passed against the appellants have however been ordered to run concurrently.

2. The case of the prosecution, in short, is that about one week prior to 20-7-92 on a Saturday the informant Mamta (PW. 6), a minor girl aged about 13 years had gone to Tapan Bazar for seeing a 'Mela' (fair). At about 4-30 p.m. appellant Devendra Das met her and asked her to see the fair further with him. She declined. In the meantime, a bus came there and appellant Devendra Das with the help of his companion Ismail Mian forcibly boarded the informant on the bus. When the informant raised alarm the attention of passengers of the bus was drawn and the appellant Devendra Das and his companion told them that the informant was their niece. The informant could not know from which places the bus passed because she is illiterate. The appellant Devendra Das and his companion thereafter boarded the informant on a train. In the meantime they were molesting her. The appellant Devendra Das gave allurement to the informant that she would be married with a good boy. Thereafter on 19-7-92 at about 2 a.m. the appellant Devendra Das and his companion Ismail Mian got down at a small station and brought the informant through a kachcha road to a tiled house situated at a distance of about 2 miles. The informant later on knew that the house belonged to appellant Lalji Mahto. At that house three more persons came and the informant knew their names from their conversations that they were appellants Munna Sah and Subedar Mahto and Bachan Singh. One of them offered a sum of Rs. 500/- to the informant for going with him which was not accepted by her. When there was darkness all the six persons took the informant to a lonely place where they gave her threatening and thereafter four persons committed rape on her. When one was committing rape on her, others were holding her hands in their grip. Thereafter those six persons brought the informant back to that tiled house but by that time police arrived there and arrested all the six persons. On being asked by the police, four persons who had joined appellant Devendra Das and his companion Ismail Mian disclosed their names as Lalji Mahto, Munna Sah, Subedar Mahto (all appellants) and Bachan Singh. The police recorded the fardbeyan of informant (Ext. 6) on the basis of which a formal FIR (Ext. 7) was

drawn up. The informant on the next day was sent for medical examination and police after investigation submitted chargesheet against the appellants as well as against Ismail Mian and Bachan Singh under Sections 366A/376/342/34, IPC. After commitment of the case to the Court of Sessions charges under Sections 376 and 342 were framed against the appellants and Ismail Mian and Bachan Singh. The appellant Devendra Das and Ismail Mian were further charged under Section 366, IPC. During the trial Ismail Mian and Bachan Singh jumped the bail and therefore their case was split up. After trial the Court found all the appellants guilty under Sections 376(2)(g) and 342, IPC and further found appellant Devendra Das guilty under Section 366A, IPC and accordingly convicted and sentenced them as indicated above.

3. The case of the appellants before the Court below was complete denial of charges against them and their false implication in this case, one witness has been examined on behalf of defence.

4. In order to prove its case the prosecution has examined 11 witnesses. Ram Niwas Singh (PW. 11) is a formal witness who has proved Fardbeyan (Ext. 6). Mamta (PW. 6) is the victim girl. Sunil Kumar Mukherjee (PW. 1) was the Reader in Police Inspector's Office. Ram Narayan Ojha, Hawildar, (PW. 2), Pashupati Nath Jha, Hawildar, (PW. 3), Md. Rafique, a Police Constable (PW. 8) and Shiv Dayal Ram, Dafadar (PW. 10) were the members of raiding party which had raided the house of Lalji Mahto from where all the appellants with their companions Bachan Singh and Ismail Mian were caught with the informant. Dr. Shila Gupta (PW. 7) is the doctor to whom the victim girl was first referred for examination at Referral Hospital, Sonapur but since there was lack of sufficient technical hands at that hospital this doctor referred the victim to Sadar Hospital, Sonapur. Vinita Kumar (PW. 4) is the doctor who had examined the victim on 20-7-1992. Pravin Kumar (PW. 5) is the doctor to whom victim girl was referred for assessment of her age. Thakur Birendra Pd. Singh (PW, 9) is the doctor who had taken X-ray of the victim girl.

5. Mamta (PW. 6), the victim girl, in her evidence, has stated that when she after finishing her work was going to her mother appellant Devendra Das and Ismail

Mian forcibly boarded her on a taxi and they brought her to Malda and from Malda they took her to Sonapur. Thereafter she was taken to a lonely place where rape was committed on her. She identified all the appellants along with Ismail Mian who, according to her, committed rape on her. Vinita Kumar (PW. 4), the doctor, has said that on 20-7-1992 she was posted at Sadar Hospital, Hajipur as Civil Assistant Surgeon and on that day she examined the victim girl and on internal examination found that vaginal orifice was swollen, hymen ruptured with posteriorly and posterolateral tear and there were signs of rape indicating that several intercourses were committed with her. She has further stated that after perusal of the report of the radiologist regarding age of victim she found the age of victim between 13 and 14 years. Dr. Pravin Kumar (PW. 5) in his evidence has stated that the victim girl was referred to him for assessment of her age and because at that time X-ray plant of his hospital was not functioning, he got the X-ray of victim girl performed in a private clinic and after getting X-ray plate and report he submitted his report (Ext. 3), Dr. Thakur Birendra Pd. Singh (PW. 9) has stated that he had taken X-ray of victim Mamta Kumari and has submitted a report (Ext. 5). From the report (Ext. 3) by PW. 5 the age of victim girl was assessed at 13 years at the time of her examination.

6. Sunil Kumar Mukherjee (PW. 1), a Reader in the Police Inspector's Office, has stated that on the night between 19-20 July, 1992 he along with other Police Officers raided the house of appellant Lalji Mahto from where the victim girl was recovered along with appellants and two others. He has stated that victim girl was a Bengali speaking girl and because he is also a Bengali, the statements of victim girl were recorded after translation of her statements in Hindi by him. He has further stated that victim girl at that time had disclosed that appellants and other two persons, namely, Ismail and Babban Singh who were found in that house had committed rape on her. Ram Narayan Ojha (PW. 2) and Pashupati Nath Jha (PW. 3), both Hawildars, Md. Rafique, a police constable (PW. 8) and Shiv Dayal Ram, Dafadar (PW 10) all supporting the evidence of PW. 1 have stated that they were the members of raiding party and victim girl was recovered from the house of appellant Laljit Mahto along with other appellants and their two companions and at the time of recovery victim girl had stated that all the six persons had committed rape on her. From the evidence of victim girl coupled with the evidence of PW. 1,

PW. 2, PW. 3, PW. 8 and PW. 10, I find that so far the case of the prosecution that the appellants had committed rape on the victim girl is concerned, it is fully established. This further finds support from the medical evidence.,

7. Bindeshwar Rai (DW. 1) examined on behalf of defence has simply stated that he had come to know that appellant Lalji Mahto had been arrested by police. His evidence does not bring any new fact on the record because it is the case of prosecution also that appellant Lal ji Mahto had been arrested by police.

8. It has been argued on behalf of the appellants that in the Fardbeyan the victim girl has stated that only four persons committed rape on her but she has not named those persons and for the first time in Court she has stated that all the appellants and their two companions committed rape on her. According to him, this contradiction in the Fardbeyan and in the evidence of victim girl makes the case of the prosecution highly doubtful and it is not clear that who four amongst six persons committed rape on her. It is true that in the Fardbeyan informant has stated that first one person committed rape on her and thereafter three more committed rape on her. If the Fardbeyan is taken in consideration in its entirety I find that it is stated that Devendra Das and Ismail Mian kidnapped the victim girl and brought her to the house of Lalji Mahto where three more person joined. Thereafter it is stated that she was taken to a lonely place where four persons committed rape on her. The reference of these four persons appears to be in respect of those persons who had later on joined the appellant Devendra Das and Ismail Mian. It is true that in the Fardbeyan the informant has not in so many words stated that Devendra Das and Ismail Mian also committed rape on her but in Court while identifying appellant Devendra Das and Ismail Mian in dock along with others she Jias stated they had also committed rape on her. The defence put a specific question to her in cross-examination whether appellant Devendra Das and Ismail Mian had committed rape on her to which she replied in affirmative. In the Fardbeyan it is clearly stated by the informant that whenever rape was being committed on her by anyone of the six persons the remaining five persons at that time used to catch hold of her hands. The victim girl was kept confined in a house, in the night she was taken to a lonely place by the appellants and their companions where she was subjected to rape and when one person was

committing rape the others were facilitating the act by catching hold of the hands of victim girl. These facts clearly prove that the appellants and their companions had common intention for committing rape on the victim girl. In this view of matter if for the sake of argument it is assumed that the victim girl was raped by only four of the six persons even then it will not be of any help for those two amongst the six persons who did not actually commit rape on her because as provided in explanation 1 appended to Section 376, IPC all will be deemed to have committed gang rape within the-meaning of Section 376(2)(g) IPC. Here the victim girl in her evidence has in unequivocal terms stated that all the appellants committed rape on her and her evidence as stated above is supported by medical evidence also.

9. The evidence of witnesses examined on behalf of the prosecution fully proves that appellants were caught in a house along with the victim girl where she was kept confined and therefore I find that charge under Section 342, IPC also stands proved. So far the charge under Section 366A, IPC against appellant Devendra Das is concerned, it is the specific evidence of informant that she was brought by appellant Devendra Das and his companion Ismail Mian from her native village in West Bengal. During the course of investigation appellant Devendra Das was found to be a resident of the same village to which informant belongs. Admittedly, the informant was recovered along with appellant Devendra Das and others at a place known as Paharichak within Hajipur District in Bihar. This fact proves the charge under Section 366A, IPC against appellant Devendra Das.

10. Considering the entire evidence on record I find that the prosecution has proved its case against the appellants beyond all reasonable doubts.

11. In this case, lower Court has convicted the appellants and sentenced them to undergo R.I. for 10 years and to pay a fine of Rs. 1000/- each, in default to undergo R.I. for six months under Section 376(2)(g) IPC and to undergo R.I. for 1 year under Section 342, IPC. Appellant Devendra Das has further been convicted and sentenced to undergo R.I. for six months under Section 366A. I find that the conviction is not on high side. In this view of the matter, considering all the facts I find that the order of the Court below even on the point of sentence also does not require any interference by this Court.

12. In the result, this appeal is dismissed. The judgment and order of the Court below is hereby confirmed.

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