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Court : Patna

Decided On : Dec-10-1999

Judge : D.P.S. Choudhary, J.

Appeal No. : Cr. Appl. No. 174 of 1993(S.J.)

Appellant : Bhelna Mallah

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

D.P.S. Choudhary, J.

1. The sole appellant has preferred this appeal against the judgment and order dated 29th of April, 1993 passed by the 1st Additional District and Sessions Judge, Saharsa in Sessions Trial No. 95 of 1990 convicting the appellant Bhelwa Mallah under Section 376 of the Indian Penal Code and sentenced him to undergo R.I. for 8 years.

2. The prosecution case in brief is that informant Geeta Devi (Victim woman-P.W. 2) in her statement recorded on 31-12-1988 at 10.00 a.m. by S.I. of Kishanpur P.S., district Saharsa, alleged that on the same day in the morning at about 6.00 a.m. she had gone to cut Lar along with her mother-in-law at Matnaza Badh. When

she was cutting Lar a man suddenly came there and caught her hand and threw on the ground, thereafter committed rape on her. She started weeping and raised hulla. Her mother-in-law namely, Sudama Devi (P.W. 3) rushed there. The accused pointed out a pistol on her and threatened. Thereafter, her mother-in-law fled away raising alarm. On hulla the nearby villagers including Mahendra Yadav, Moti Lal Ram arrived there. Accused tried to fled away. He was chased by the villagers and apprehended. The accused disclosed his name. The local villagers also assaulted him, and forwarded to the police. On the basis of the statement of the victim levy (P.W. 2), the case was registered and after investigation charge-sheet submitted and the trial proceeded in the Court below.

3. The case of the defence is that the accused has been falsely implicated in this case because of village politics and enmity.

4. The prosecution examined six witnesses in support of its case, P.W. 1 (Mahendra Yadav) stated that on hulla he rushed to the place of occurrence along with other villagers and saw accused committing rape on the victim lady. When the witness protested the accused pointed the pistol on him. He raised hulla. Thereafter, other villagers assembled. They apprehended him and handed over to the police.

5. P.W. 2 is the victim lady Geeta Devi. She supported her case as made out in her fardbeyan and stated that accused committed rape on her. She is a married lady. She further stated that when her mother-in-law tried to intervene, the accused threatened her to kill by pistol. She has named several witnesses who arrived on hulla and apprehended the accused. She was referred to Saharsa Hospital by the police where she was examined by the Doctor.

6. P.W. 3 (Sudama Devi) is mother-in-law of the informant but she has tendered by the prosecution for cross-examination. P.W. 4 (Chhutaharu Rajak) has deposed as an eye-witness, who arrived at the place of occurrence on hulla and with the help of the villagers apprehended the accused. He saw the accused running away and the villagers including Mahendra Yadav, Ram Khelawan Rajak were chasing him. His wife told him that the accused has committed rape on Geeta Devi (P.W. 2). He has identified the accused in the dock who was apprehended near the

place of occurrence and was handed over to the place by the villagers. P.W. 5 (Ram Khelawan Rajak) is son of P.W. 3 (Sudama Devi) and Dewar of Victim Geeta Devi. He stated that, at the time of occurrence, he had gone to the nearby field, and on the cry of his Bhabhi, he reached at the place of occurrence and saw accused committing rape on her. He was apprehended after chase and handed over to the the police.

7. P.W. 6 (Ram Charan Prasad) is the Investigating Officer of this case. He stated that on 31-12-1988 while he was Officer Incharge of Kisanpur P.S., at about 10.00 a.m. he heard rumour that in village-Naua Pokhan, a criminal has been caught. He made Sanha Entry No. 484 dated 31-12-1988 (Ext. 1) and reached at the place of occurrence. He recorded the statement of victim Geeta Devi on the spot (Ext. 2) and the formal F.I.R. (Ext. 3) was drawn. He saw the villagers apprehending the accused from whom he took the charge of him. He inspected the place of occurrence which is the field of one Jogendra. He recorded the statement of the witnesses. He further stated that from the police entry and record he found that antecedent of the accused was bad as he was accused and charge-sheeted in other cases including under Sections 395, 467, 380 of I.P.C., etc. He further stated that at the place of occurrence he found Lar Pressed (Dhanga Hua). In cross-examination, he stated that he received the medical report which he copied in the case diary. According to him, the Doctor has not found sign of rape on the victim.

8. The learned appellant's lawyer submitted that the prosecution has failed to substantiate the charge under Section 376, I.P.C. against the appellant beyond all reasonable doubts. The Doctor has not been examined which has caused serious prejudice to the appellant. From the evidence of the Investigating Officer (P.W. 6), it appears that the lady Doctor has not found sign of rape on the victim lady. This belies the entire prosecution case. It was further submitted on behalf of the appellant that the most important witness in this case is P.W. 3 the mother-in-law of the victim lady but prosecution has tendered her. In the fardbeyan, the victim lady stated that her mother-in-law has been the occurrence; Therefore, the material witness of this case has not supported the evidence of the victim lady (P.W. 2). The other witnesses including P.Ws. 1, 3, 4 and 5 have falsely deposed that they had seen the occurrence of committing rape by the accused on the victim

lady. From the evidence of P.W. 2, it appears that these witnesses were not present at the place of occurrence, but they arrived on hulla. The victim lady raised hulla after the alleged occurrence of rape. Therefore, these witnesses are not the eyewitness of the occurrence. It appears that they falsely implicated the accused. There is no reliable evidence to corroborate the evidence of victim lady. In the last, it was submitted on behalf of the appellant that the date of occurrence is 31-12-1988 and the accused was apprehended and handed over to the police on the same date. Since then he is in custody, except for a period of one month in between 15-7-1991 to 16-8-1991 when he was allowed provisional bail on the ground of death of his father. It is possible that by now he must have been released from the jail custody, if not, an order may be sent to the jail authority to release him forthwith.

9. The learned A.P.P. in reply to the above submissions, submitted that it is true that the lady Doctor has not been examined and she was an important witness. From the impugned judgment, it appears that the prosecution tried its best to procure her attendance but she did not appeal. The evidence of the Investigating Officer is that in her injury report the Doctor has not mentioned any sign of rape, but this part of evidence is not admissible in absence of evidence of Doctor and non-production of the injury report of the victim girl in the Court. The learned A.P.P. further submitted that in the cross-examination, there is nothing to discredit the evidence of the victim lady (P.W. 2). There is no reason why she will falsely implicate the accused and take blame of rape on herself. In normal course a lady tris to conceal such occurrence of rape even if committed actually and in rare case, a lady will speak lie and falsely implicate a person after taking blame on herself of rape. It is true that P.W. 3 was an important witness but reason best known to the prosecution, she has been tendered. However, P.Ws. 1, 4 and 5 have corroborated the evidence of P.W. 2 on material points, i. e. when they arrived at the place of occurrence. On hulla they saw the accused fleeing away, and after chase he was apprehended. P.W. 1 stated that he had seen the accused committing rape on her. Even if this part of the evidence is disbelieved the other part of the evidence that he found the accused present there, is not to be disbelieved. The Investigating Officer has found the 'Lar', at the place of occurrence being pressed which corroborates the evidence of the prosecutrix that

at that place she was thrown on the ground and rape was committed on her. The Investigating Officer found the accused in custody of the villagers, from whom he took him in custody. Therefore, the presence of the appellant at the time and place occurrence is proved beyond doubt. In his statement under Section 313 of the Code of Criminal Procedure, he has not given any satisfactory explanation as to how he was caught at the place of occurrence when admittedly he is not the resident of that village.

10. After considering the facts, circumstances and the submissions made on behalf of both the parties, I come to the finding that there is reason to interfere with the judgment and order of the trial Court. The prosecution has proved its case beyond all reasonable doubts.

11. In the result, this appeal fails and the judgment and order of the trial Court is hereby confirmed. However, there is substance in this contention of the appellant's lawyer that appellant has already been in jail custody for longer period than the sentence awarded to him. Therefore, Jail Superintendent, Saharsa is directed to release the accused-appellant forthwith, if not released till now and not wanted in any other case.

12. A copy of the order dated 6-12-1999, is made over to the lawyer who has successfully conducted the case and the Legal Aid Committee, Patna High Court is directed to pay his fee, in accordance with law.

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