

Birendra Sah Vs. State of Bihar

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Court : Patna

Decided On : Feb-09-2000

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 427

Appeal No. : Criminal Appeal No. 128 of 1996

Appellant : Birendra Sah

Respondent : State of Bihar

Advocate for Def. : Anant Prakash Sahay, A.P.P.

Advocate for Pet/Ap. : Mukesh Kumar-3, Adv. (A.C.)

Judgement :

D.P.S. Choudhary, J.

1. This criminal appeal has been preferred against the judgment and order dated 26-4-1996 passed by 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 78 of 1991/10 of 1992 convicting the sole appellant under Section 376 of the Indian Penal Code and sentenced to undergo R.I. for 7 years along with a fine of Rs. 5,000/- and in default of payment of fine to 1 year R.I.

2. The prosecution case in brief, is that, the informant Chandrakala Kumari (P.W. 8) a minor girl aged about 7 years alleged in her fardbeyan dated 6-12-1990 before S.I. of Sahiyara P.S. that on this day she had gone to scrap grass in the Chaur of village. Just before sunset she kept the cut grass in a gunny bag and left for her village with the grass and sickle. In the meantime, accused-appellant, Birendra Sah aged about 20 years who was grazing his She-Buffalo came near her and demanded sickle for preparing Paina. She gave him her sickle. It is further alleged that accused Birendra Sah pushed the grass bag from her head, and forcibly made her to lie on the ground and thereafter, committed rape. During the course of rape, he has pressed her neck. The grandmother of Chandrakala Kumari was cutting grass in the nearby field. On the cry of her granddaughter, she rushed there. Thereafter, accused fled away with his she-buffalo. Other witnesses also arrived at the place of occurrence and saw the accused fleeing away. They were told about the occurrence of rape committed by the accused on the victim girl. At the time of occurrence, the father of the victim girl was at Punjab and her mother was in her Naihar. Information was sent to her mother. When she returned home the first information report was lodged in the police station. On the basis of which a case was registered and after completion of investigation charge-sheet submitted. The Investigating Officer sent the victim girl for medical examination and obtained the injury report. After commitment the trial proceeded in the Court below.

3. The case of the defence is that he has been falsely implicated in this case at the instance of local Mukhiya. No occurrence as alleged took place.

4. In order to prove the charges, the prosecution has examined 8 witnesses including the informant (P.W. 8) and one Court witness who is doctor Renu Chatterjee who has proved the injury report marked (exhibit p) on behalf of the prosecution. The Investigating Officer has proved the First Information Report (exhibit-1) the injury report prepared by the police (exhibit-2) and a letter written to Director, Forensic Science Laboratory, Patna (Exhibit-3). On behalf of the defence, two witnesses have been examined they are Suraj Das (D.W. 1) and formal witness, Ram Swarath Rai (D.W 2) and brought on record order-sheet of Sahiyara P.S. Case No. 12/1996 (Exhibit-A) formal FIR of the said case (exhibit-B) and the

fardbeyan (Exhibit-B/1).

5. From the scrutiny of the evidences on record, it is clear that P.W. 1, Jai Mangal Mahto stated that at the time of alleged occurrence he was in nearby field to store the bundle of his paddy crops. He heard hulla raised by Panwati Devi and when reached the place of occurrence saw accused Birendra Sah fleeing away with his she-buffalo. He found Chandrakala Kumari naked who told him about the occurrence and rape committed on her by the accused. Other witnesses who arrived on hulla had seen the accused fleeing away from the place of occurrence. They include (P.W. 2) Bhagya Narain Mahto and Mahmmud Badri Sah (P.W. 5). These witnesses have corroborated the evidence of P.W. 1 and stated that they learnt that accused had committed rape on the prosecutrix Chandrakala Kumari, and had also seen the accused fleeing away from the place of occurrence. (P.W. 3) Kapoor Chand Mahto has tendered by the prosecution for cross-examination.

6. (P.W. 6) Panwati Devi, the grandmother of the victim girl, stated that at the relevant time she was working in the paddy field and her grand-daughter was cutting grass in the nearby field. She heard the cry of her grand-daughter she went near there and saw accused Birendra Sah lie on her grand daughter and was committing rape after removing her Salwar. She raised hulla upon which, several witnesses, who were working in their field, rushed and they all saw accused Birendra Sah fleeing away from the place of occurrence. Her grand daughter, Chandrakala Kumari also narrated her about the occurrence and named the accused who committed forceful rape on her. She further stated that on that day her son had gone to Punjab to work as labourer and her daughter-in-law was in her Naihar. She sent information to her daughter-in-law and when she returned back thereafter, she went to the police station along with her grand-daughter where her statement was recorded. She denied in her cross-examination that this case has been field falsely at the instance of Mukhiya (P.W. 7 Nandan Mahto) has stated that at the time of occurrence he along with accused Birendra Sah were grazing their she-buffaloes in the east of the plan. At that time, accused Birendra Sah tied his she-buffalo with a tree and went near Chandrakala Kumari who was cutting grass in nearby field and committed rape forcibly on her after removing her clothes. He stated that on the cry of the victim girl, he rushed there where other

witnesses also arrived. In cross-examination, he denied the suggestion of the defence that his father is employed with the Mukhiya of the village.

7. (P.W. 8), Chandrakala Kumari is the victim girl, she corroborated her statement made before the police. She stated that the accused forcibly made her lie and after removing her Salwar committed rape upon her. She cried there upon her grandmother came there. She narrated to her about the occurrence. She further stated that other witnesses including Kapoor Chand, Bhagya Narain, Jai Mangal and other also came thereto whom she and her grandmother told about the occurrence. When her mother returned back from her Naihar, thereafter, she went to the police station and narrated about the occurrence. She was examined by a lady doctor at Sitamarhi. This witness has identified the accused though accused was mix with other persons at the request of the defence. She denied the suggestion of defence that her father has taken any land of the Mukhiya on Batai and the accused has inimical term with her father or the Mukhiya of the village. She further denied the suggestion that her grand-mother has taken money from Mukhiya for instituting this case against the accused.

8. (P.W. 4) Basisth Narain Singh is the Investigating Officer. On 7-2-1990 he recorded the statement of the victim girl (exhibit-1) and during the course of investigation, he examined the informant and another witnesses. He sent the victim girl for medical examination. He visited the place of occurrence and found the sign of cutting grass on the ridge of the land of the informant. He also found sign of tying rope on the Sisam tree belonging to Ram Kripal Sah. He found cattle dung near that tree. He also found suppressed grass near the southern side of the Paina. He has sent the seized Salwar of the victim girl for chemical examination but the report of the chemical examination was not received till the date of submission of charge-sheet.

9. The lady doctor, who has been examined as Court witness, examined the prosecutrix (Chandrakala Kumari) on 8-12-1990 at 11 a.m. In her opinion, there was no external or internal injury on the private part of the victim girl. Her hymen was intact. The spermatozoa was not found in the vaginal swab. She did not find any sign of rape on the victim girl. She stated that the clothes of the victim girl had

mark of semen discharge which he handed over to the police. In her opinion, the victim girl was aged about 12 years. She had proved the injury report which has been marked (Exhibit-P).

10. The defence has examined two witnesses and produced some documents as referred to above, to show that one Ram Chandra Das has filed a case against Lax-man Singh and his Manager Harihar Mahto in the year 1986 and in that case cognizance was taken under Section 427 of the Indian Penal Code. On the basis of these evidences and the document it was suggested that the informant family had grudge against the accused and his family members, besides, accused had enemical relation with Mukhiya and at the instance of Mukhiya this case has been instituted. All the P.Ws. referred to above have denied this suggestion of the defence as discussed above.

11. On the basis of evidences discussed above, the trial Court has come to the finding that accused-appellant has committed rape on the minor girl, Chandrakala Kumari and further came to the finding that there was no reason either to disbelieve the evidence of the victim girl or to believe the suggestion of the defence that she has falsely implicated the accused at the instance of local Mukhiya.

12. The learned lawyer appearing on behalf of the appellant submitted that on the basis of the medical evidence of lady doctor the commission of rape on the victim girl is ruled out. The lady doctor has categorically stated that if there is slight penetration into vagina rupture of hymen will be caused and she has opined that there was neither external nor internal injury found on the private part of the victim girl. The learned lawyer submitted that in view of the evidence of the doctor, the prosecution case is not corroborated by the expert evidence. The other evidence examined on behalf of the prosecution are hearsay witnesses who claimed to have arrived at the place of occurrence. After hearing the cry of the victim girl. They are not witness on the point of occurrence of rape. Therefore only on the evidence of the prosecutrix, the conviction of the appellant is not maintainable and he should be acquitted.

13. These points were raised before the trial Court on behalf of the defence, who has discussed them in paras 27 to 31 of the judgment and has come to the finding that corroboration of the evidence of the victim girl is not required in such cases. The trial Court has relied on the decision reported in 1996 (1) JT (SC) 298 : 1996 Cri LJ 1728. State of Punjab v. Gurmit Singh in which the Apex Court has held that 'the testimony of, the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict and accused where her testimony inspires confidence and is found to be reliable.' The Apex Court has further held that to seek corroboration in such cases amounts to adding insult to injury. The evidence of a victim girl of sexual assaults stands almost at par with the evidence of an injured witness and to a rule the evidence of injured witness is beyond suspicion. Who is a good witness and it suppose that he is least likely to shield the real culprit, and to falsely implicate as innocent person. In several decisions the Apex Court has further held that victim of a sexual offence is entitled to great weight and absence of corroboration is not required in all cases. Corroboration of the evidence of the victim girl is not an imperative component of judicial credence in each and every cases of rape. However, corroboration of the testimony of the prosecutrix is required only as a guidance of prudence under given circumstances and is not requirement of law. In this case the evidence of the prosecutrix has been substantially corroborated by other evidences who have arrived just after the occurrence which includes her grand-mother and other witnesses working in nearby field as discussed above. Just after the occurrence, the girl has narrated the occurrence of sexual assault on her to all these witnesses including her grand-mother. These witnesses have seen the accused fleeing away from the place of occurrence. The grand-mother stated that on the cry of her grand-daughter she rushed to the place of occurrence and had seen the accused lying on her grand-daughter. Considering these evidences, the evidence of prosecutrix has been corroborated materially on the occurrence of rape committed on her by the accused-appellant and in totality these evidences fully corroborates her evidence. It is also settled law that the victim of sexual assault is not treated as accomplice, as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. Even if

the doctor who examined the victim does not find sign of rape, is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before a public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case, the suggestion given on behalf of the defence that the victim girl has falsely implicated the accused does not appeal to the reasoning. There was no apparent reason for a minor girl to falsely implicate the accused after seating her own prestige and honour.

14. The doctor has found semen marks on the clothes of the victim girl. This is a circumstances against the accused and it supports the prosecution case.

15. From the discussions made above, I find that prosecution has been able to substantiate the charge of rape against the accused-appellant beyond all reasonable doubt and there is reason to interfere with the finding of the trial Court.

16. In the result, I find no merit in this appeal, which is accordingly dismissed.

17. The learned lawyer for the appellant submitted that the accused is in jail custody since 26-4-1996 and at the time of occurrence he was young person as mentioned in the impugned judgment, as such the prayer has been made to take lenient view in the award of the sentence. In the facts and circumstances of the case and for the ends of justice, the period of sentence against the accused-appellant from 7 years R.I. is reduced to 5 years R.I. and the amount of fine of Rs. 5,000/- is reduced to Rs. 1,000/- and in default of payment of fine 6 months R.I.

18. With this modification in judgment and order of the trial Court, this criminal appeal is dismissed. The appellant is in jail.

Let a copy of this judgment be handed over to Mr. Mukesh Kumar-3, Advocate for the appellant.