

Sudesh Jha Vs. State of Bihar

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Court : Patna

Decided On : Dec-12-2000

Judge : P.K. Sinha, J.

Appeal No. : Criminal Appeal No. 327 of 1989

Appellant : Sudesh Jha

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

P.K. Sinha, J.

1. This appeal was time barred but by order dated 11.9.1989, this Court ordered that this matter would be considered at the time of hearing of the appeal.
2. Heard earned Counsel on limitation. Delay is condoned and this appeal is admitted.
3. This appeal has been preferred by convict Sudesh Jha who had faced trial in Sessions Trial No. 34 of 1984 on the charges under Sections 376 and 323 of the Indian Penal Code ('the Code', in short for having committed rape upon Kanti Devi, on 16.5.1983 and also having caused her hurt, but he was acquitted of the charge under Section 376 of the Code and instead of Section 323 of the Code, was

convicted under Section 354 of the Code and was sentenced to undergo rigorous imprisonment for one year.

4. The fardbeyan of the victim lady Kanti Devi is Ext. 2 as per which she claimed that when at about 4 p.m. on the date of occurrence, she was working in her field, this accused came with curd in an earthen pot and asked her to carry the pot across the field. Further, allegation was that when she reached near a well, appellant took back the curd, ate some and asked the informant to take away the rest which she declined. Thereafter, the appellant felled her down, opened her 'Sari' at which she started crying but the appellant gagged her and assaulted her with slaps and fists and therefore, he raped her. A woman with a child was a passerby who also raised hulla and thereafter the witnesses came.

5. After completion of the investigation, charge-sheet was submitted and ultimately the case reached at trial stage after which the judgment aforesaid was delivered by the then learned Sessions Judge at Saharsa.

6. The point for consideration is whether the judgment of the lower Court can be sustained.

7. It may be mentioned that the learned Sessions Judge had disbelieved the story of rape mainly in view of the evidence that came in course of cross-examination of the prosecutrix, who otherwise had supported allegation in the examination-in-chief, wherein she said that when she was doing 'Nikauni', accused Sudesh Jha came with earthen pot of curd but at that time, there was no one around. She further said that in such circumstance, the accused had threatened her and she tried to flee away and was fleeing away towards village. Thereafter, she said that she reached village and told the incident to her husband. This assertion, in view of the learned lower Court, went against the allegation of rape obviously under the interpretation that if on seeing the accused, she fled away towards her village and went to her husband, the story that before her escape she had carried the curd upto some distance where she was forcibly raped, was doubtful.

8. Learned lower Court has also given reasons to disbelieve the witnesses of the prosecution, P.W. 1 Bijai Kamat and P.W. 2, Kameshwar Kamat who had

supported the occurrence and said that they saw from a distance that the rape was being committed in a maize field which was found doubtful also because P.W. 2 in para 2 had said that the maize crop was chest high.

9. The learned lower Court also has discussed the medical evidence from which support for allegation of rape was not found. In any case, the accused stands acquitted of the charge of rape and the point for consideration before this Court is whether the conviction of the accused under Section 354 of the Code could be sustained.

10. Judgment in para 18 is illuminating in this regard wherein the learned trial Court, while holding the charge under Section 376 of the Code not having been proved, held that the prosecution had proved that the accused had caught the informant lady and had assaulted her at a lonely place causing her simple injury on face, which made out offence under Section 354 of the Code instead of Section 323 of the Code. Learned lower Court observed that such assault on informant who was a lady, had effected her modesty. This reasoning itself does not appear to be reasonable. The allegation of assault as per Ext. 2 is related to the stage when the prosecutrix, as claimed by her, had started crying when the accused was attempting to commit rape at which he assaulted with slaps. The allegation of rape itself not having been found proved, it should be held that the actions of the accused relating to that main offence should also have been viewed with suspicion. In her examination-in-chief, the prosecutrix, P.W. 6, also had supported that she was slapped when the accused had thrown her down. P.Ws. 1 and 2 who had claimed to have come on hulla have not said that they had also seen the accused slapping the prosecutrix.

11. The doctor has found a swelling with bruise near the eyes and the nose but this medical report does not support the commission of rape.

12. The learned lower Court had convicted the accused under Section 354 of the Code not because of any act of the appellant relating to the alleged commission of rape but on the alleged assault on the informant. In the aforesaid circumstance, even the allegation of assault, in view of the findings of the learned lower Court in relation to offence under Section 376 of the Code, will appear to be doubtful,

These points also have been propounded by Miss. Bella Singh, Advocate who was appointed to defend this appellant by the High Court Legal Aid Committee as per order of this Court dated 11.9.2000. Learned Addl. Public Prosecutor and the learned Counsel for the appellant also have pointed that though the appellant was sentenced to rigorous imprisonment for one year, he already has remained in custody for more than that period (from 29.5.1985 to, 3.5.1986).

13. In view of the aforesaid, particularly in view of the findings of the learned lower Court, I find that the appellant is entitled to the benefit of doubt for allegation relating to Section 323 or Section 354 of the Code.

14. This being so this appeal is allowed and the conviction and sentence are hereby set aside. Appellant stands acquitted and discharged of the liability of his bail-bond.

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