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Court : Patna

Decided On : Sep-17-2002

Judge : Someshwar Nath Pathak, J.

Appeal No. : Criminal Appeal (SJ) No. 310 of 2001

Appellant : Sheoji Sah

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

Someshwar Nath Pathak, J.

1. The appellant Sheoji Sari has assailed the order of conviction and sentence passed by the 4th Additional Sessions Judge, Ara, dated 13.7.2001, in Sessions Trial No. 230 of 1999, whereby he was convicted under Section 376 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for seven years.

2. The prosecution case originated on the fardbayan of the victim Twinkle Kumari (P.W. 5) to the effect that on 1.7.1999, she was called by the accused appellant to his house where she was asked to bring oil. When she went to the house of Sheoji Sah, the latter pulled her inside his house and bolted the exit door planks from

inside. Subsequently he whipped out a Chura and pointed it towards her and made her lie on the ground. The accused after undressing her subjected her to criminal assault. When he failed to have complete coitus, he oiled his private parts as also the private parts of the informant. Subsequently she raised alarm which made the accused fly away. She further stated in her fardbayan (Ext. 2) that her private parts was still aching. After the occurrence, she went to her house and narrated the occurrence to her parents and other family members.

3. The prosecution has examined all together six witnesses to prove its case, out of which P.W. 1 and 2 were hearsay witnesses who learnt about the occurrence either from the victim or her parents. P.W. 3 and 4 were the parents of the victim. P.W. 5 was the victim herself. P.W. 6 was a doctor and P.W. 7 is the I.O.

4. The trial Court on the basis of the evidence of the aforesaid witnesses hold the accused-appellant guilty and convicted and sentenced him as stated above. The evidence of the witnesses was criticized on the ground that there was no eye-witness to the occurrence and there were contradictions in the evidence of P.Ws. inter-se leading to disbelief of the occurrence. The accused appellant had filed a complaint case alleging dacoity in his house on the part of the informant's father and others and hence this false case was filed.

5. However, it transpires on perusal of the evidence of P.W. 5, the victim that she had supported the alleged occurrence on its material particulars to the effect that in the evening on 1.7.1999, she was confined inside the house of the accused on the pretext of asking her to bring oil. Subsequently after undressing her, the accused penetrated his private parts into her vagina and when he failed to have complete coitus, the accused oiled his own private parts and the private parts of the victim and again made an attempt to thrust his private parts. So far the discrepancy in the evidence is concerned, it was submitted by the appellants lawyer that in the fardbayan there was no mention of injuries on her mouth or any other part of the body as was alleged in her evidence (P.W. 5), The next discrepancy was with respect to the blood oozing out from her privates parts as was stated in her evidence whereas there was no such statement in the fardbayan. It was next submitted that the evidence of P.W. 3 and 4 have no

reference to the oiling of the private parts of the accused and the victim as it was claimed in the evidence of P.W. 5 but I find that this argument advanced by the appellants' lawyer is not sustainable. It was next submitted that the doctor's evidence was not sufficient to constitute an offence of rape. In this connection, I am to refer to the evidence of P.W. 6 she stated that although she did not find any external injury on the person of the victim, she had found that the private parts of the victim was red, inflamed, and there was tenderness of the perineum and labiamajora-labiaminora. Hymen was found intact, but it was red tender, inflamed as also congested. The aforesaid objective findings of the doctor would suggest that the accused appellant had of course, attempted to thrust his private parts to the victim's private parts causing redness and inflammation of labiamajora-labiaminora as also the hymen. Penetration upto vaiva is sufficient to constitute an offence of rape and this fact is well confirmed by the findings of the doctor with respect to the labiamajora-labiaminora and the hymen. There is absence of spermatozoa on private parts. It is to be noted that the occurrence took place on 1.7.1999 and the victim was examined by the Board of the doctors on 3.7.1999. Moreover, if at all any semen was discharged by the offender that should be deposited only on the vulvas, which may be washed off in course of the time and hence there was no chance of the same being present. In that circumstance, the argument that in absence of spermatozoa the case of rape was belied, is not sustainable. So far as the question whether the alleged occurrence can be disbelieved on account of the absence of any eye-witness, I am of the opinion that in such cases, there is no question of there being any eye-witness. Moreover, in such cases interested witnesses only are expected to come forward to support the alleged occurrence and other witnesses are only bound to be hearsay witness. In the instant case, the victim had gone to her house immediately after the occurrence and she narrated the alleged offence committed upon her to her parents, so this was a natural conduct on her part which in itself would amount to corroboration of the alleged occurrence, which was also further well supported by the medical evidence afforded by the objective findings of P.W. 6.

6. Now the moot question in the instant case is whether the conviction can be had on the sole testimony of the victim as corroborated by the evidence, which I have set forth above. This question would gain relevance and significance in view of the

defence taken by the appellant, which was to the effect that he had filed a case for dacoity against the informants' father and others and so on account of this enmity the prosecution case was filed after concocting a strong Of the alleged offence. The trial Court has examined this aspect of the defence in the light of Ext. A, B and C. From the aforesaid exhibits, it transpires that the appellant had filed a complaint on 3.7.1999 in Court. However, this complaint was referred to the police and the police after investigation submitted final report. It further transpires that the victim had gone to the police station on earlier occasion when her statement was not recorded. Then she was carried to the Superintendent of Police Office, where her fardbayan was recorded. In this connection it has been pointed out by the appellant's lawyer that P.W. 5 in her evidence at paragraph 29 stated that she had gone to the police station in the night of the alleged occurrence itself, where her statement was not recorded because the police officer was ill. Then in the morning she again went to the police station along with her father at TO a.m. from where she went away as the police officer was not present there. From there she went to Ara to the house of Judge where she met the Vakil Saheb. Then she gave beyan as directed by the Vakil Saheb. The appellant's lawyer submitted that those statements trained the prosecution case. Perhaps he manta suggest that there is no reference to this fact in the fardbayan and he further suggests that perhaps this case was lodged at the instance of a legal brain. However, the aforesaid facts disclosed by P.W. 5 must not necessarily indicate that a false case was lodged at the instance of a particular lawyer or as coached by him even if it is assumed for a moment that the informant and her father had consulted a lawyer before giving their fardbayan, I am of the opinion that the lawyer concerned must have told her father to go to the S.P. Office in case the Police Inspector was not available on the concerned police station or in case the police was evading to register a case at the instance of the informant. There is nothing uncommon for the informant or her father to take legal advice in such matters. This in itself will not belie the prosecution case nor this will indicate that a manufactured story of the alleged offence was lodged before a Court.

7. So far the question of false implication, I have already stated above that the accused appellant had filed a complaint case on 3.7.1999 which ended in final report, so the question of the informant or her father coming to know of the

complaint case and then manufacturing a false story for implicating the appellant does not arise. In this connection the appellant's lawyer referred me to paragraph 7 of P.W. 4 where he was suggested that before the alleged occurrence of dacoity, father was demanding money from the appellant and when this was refused, there was an offence of dacoity in his house for which the concerned complaint case was filed, so there was previous enmity, but the aforesaid suggestion has been flatly denied by P.W. 4. From the aforesaid circumstances, it transpires that the appellant himself filed a false complaint case manufacturing an offence of dacoity and after concocting a motive for the alleged occurrence of dacoity. It is not understandable how the informant will go to demand money from the mother of the appellant.

8. From the aforesaid discussion of the entire gamut of evidence, it transpires that the prosecution had proved its case to the hilt, whereas the appellant attempted to make out a ghost of probable defence case, but he had miserably failed to substantiate his defence. The appellant also failed to create genuine and reasonable doubt in the prosecution case. I am, therefore, of the opinion that the trial Court had recorded a correct and just finding regarding the guilt of the appellant and accordingly he was rightly convicted.

9. So far the sentence is concerned the alleged occurrence was committed on a girl of tender age (10-11 years) and in a most inhuman manner. So I do not think the sentence awarded against the appellant was also so stringent as to warrant any interference by this Court. Accordingly this appeal is dismissed.

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