

Angad Ram Vs. State of Bihar

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Court : Patna

Decided On : Mar-16-2007

Judge : Abhijit Sinha, J.

Appellant : Angad Ram

Respondent : State of Bihar

Disposition : Appeal dismissed

Judgement :

Abhijit Sinha, J.

1. Angad Ram, the sole appellant, has preferred this appeal from jail where he is suffering incarceration consequent to the judgment and order dated 31-5-2003 passed by Sri Shiva Bachan Singh, learned Presiding Officer, Fast Track Court No. I, Kaimur at Bhabhua, in Sessions Trial No. 26/200 of 2000/2001 (arising out of Mohania P.S. Case No. 33/2000). By the impugned judgment and order the appellant on being found guilty of the offences under Sections 376 and 450, I.P.C. has been sentenced to undergo rigorous imprisonment for 7 years and also pay a fine of Rs. 500/-, in default whereof to suffer further rigorous imprisonment for three months for the offence under Section 376, I.P.C. However, no separate sentence was imposed for the offence under Section 450, I.P.C.

2. The prosecution case is based on the statement given by one Indrawati Devi, the wife of Ram Sagar Sharma at the Mohania P.S. at about 11.30 a.m. on 6-2-2000 in respect of an occurrence which took place earlier in the night between 5/6 February, 2000. According to the prosecutrix, her husband was often given to sleeping at the darwaza of Ramraj Ram and on the fateful night too he had gone to sleep there after taking his meals at about 9 p.m. and the prosecutrix with her youngest daughter went to sleep in a room in the house. However, at about midnight she suddenly woke up on feeling cold and found that the quilt had been removed from her body and accused-Angad Ram was standing by the side of her cot. She questioned Angad regarding his presence there whereupon Angad threatened her to keep quiet or face dire consequences. The prosecutrix attempted to raise alarm even as she lay flat on her back but Angad allegedly gagged her mouth with one hand and removed her sari and undergarments with the other hand and then climbing on top of the prosecutrix forcibly inserted his penis inside her vagina. The prosecutrix claims to have attempted to ward off Angad but without any success and it was only after he had discharged his semen that Angad got up and attempted to flee but the informant caught hold of his clothes and raised alarm. However, Angad managed to flee leaving behind his chhapal and gamcha in the room. Curiously, none of the neighbours arrived notwithstanding the informant raising hulla and after about an hour she claims to have gone to her husband at the darwaza of Ramraj Ram and narrated the incident to him. It is said that in the morning as the prosecutrix with her husband were getting ready to go to the police station, Nihore Ram and Sheo Tahal Ram, the brothers of Angad came over and started abusing them and also threatened to kill her if she went to the police. But on the advise of the villagers who had gathered at the house of the informant and to whom the incident was narrated, they eventually went to the police station. On the basis of the statement of the informant Mohania P.S. Case No. 33/2000 was registered under Sections 376, 447 and 504/34, I.P.C. against Angad and his two brothers.

3. After due investigation a charge-sheet under Sections 376, 450 and 452, I.P.C. was submitted against Angad only and after commitment charges under Sections 376, 450 and 452, I.P.C. were framed against him to which he pleaded not guilty and claimed to be tried.

4. The defence plea was one of innocence and false implication due to previous enmity. From the trend of cross-examination it appeared that the false implication was attributed to previous enmity with the father-in-law of the informant and that Dina Nath Sharma, the father-in-law, had lodged a criminal case against him some years prior to the instant occurrence.

5. At the trial the prosecution in support of its case sought to examine as many as 9 witnesses of whom P.Ws. 8 and 9 Ram Ekbal Singh and Ram Niwas Bahelia have been declared to be hostile. The informant Indrawati Devi, her husband Ram Sagar Sharma and their nephew Pappu Sharma have been examined as P.Ws. 6, 3 and 4 respectively. However, the lady Doctor who examined the victim prosecutrix has not been examined nor her report has been brought on record. The I.O. has been examined as P.W. 7.

6. The learned trial Court after considering the material on record and hearing the submissions advanced by the parties found the appellant guilty of the charges under Sections 376 and 450 of I.P.C. and sentenced him accordingly.

7. As before the trial Court so before this Court the defence plea was one of innocence and false implication due to previous enmity. The learned Counsel for the appellant sought to impute the false implication to the criminal case earlier lodged by Dina Nath Sharma, father-in-law of the prosecutrix against him. It was also contended that the medical evidence had not proved the factum of rape as the injury report of the prosecutrix was not exhibited and the Doctor who had examined the prosecutrix had not been examined and in these circumstances the allegation of rape was bound to fail. Another contention of the appellant was that only interested witnesses had been examined so much so that Kusum Devi, the Gotani of the prosecutrix, who had not been cited as a witness in the charge-sheet was examined as P.W. 5 and as such the learned trial Court had erred in placing reliance on the evidence of the said Kusum Devi.

8. Before proceeding with the merit of the impugned judgment it is worthwhile mentioning that victim Indrawati Devi appeared in Court as P.W. 6 and in course of her testimony she supported the fard beyan story in material particulars including a vivid description of the method in which rape was committed on her. It is by now

well settled by a, catena of decisions of the Apex Court that the statement of the prosecutrix in Court that she had been raped was sufficient to invite conviction notwithstanding there being discrepancies in the evidence of other witnesses. I am supported in my view by the decisions in State of H.P. v. Asha Ram reported in : 2005 CriLJ139 , Vishnu v. State of Maharashtra reported in : 2005 CriLJ303 and Om Prakash v. State of U.P. reported in : 2006 CriLJ2913 .

9. As observed by the Apex Court in the traditional non-permissive bounds of society of India, no girl or woman of self-respect and dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardising her future prospect and also would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family circle. The Courts have further held that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. The Supreme Court in the case of Om Prakash (supra) has observed that in a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix and suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence. Under the given circumstances, minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

10. In the instant case the defence sought to raise the plea that their defence has been prejudiced by the non-examination of the lady Doctor who had examined the prosecutrix and by the prosecution not bringing on record the medical report. They have also raised the plea of only interested witnesses being examined in support of the prosecution case.

11. Admittedly, the occurrence took place in the depth of night when it is difficult to find independent witness. However, the inhabitants of the house have testified in support of the prosecution case. In these circumstances specially when the

prosecutrix in her testimony in Court has voluntarily admitted of rape having been committed on her, the non-examination of the lady doctor and non-production of the medical report pales into insignificance, regard being Had to the decisions of the Apex Court enumerated above.

12. In the circumstances mentioned above I am unable to accept the submissions of the learned Counsel for the appellant and dismissed the appeal.

13. It appears from perusal of the record that the appellant herein surrendered before the trial Magistrate on 23-5-2000 and has been in custody ever since. This would mean that he has been in custody for a period which is a little short of seven years and the sentence imposed on him is of rigorous imprisonment for seven years. It would, thus, appear that the appellant has virtually carried out the term of his sentence. In that view of the matter I convert his sentence to the period undergone. Due regard being had to the fact that he has virtually served out the terms of sentence, the fine amount imposed upon him is set aside.

14. In the result the appeal is dismissed with modification in the sentence.

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