

Sk. Faisal Vs. the State of Bihar

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Court : Patna

Decided On : Feb-18-2003

Judge : I.P. Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 511

Appeal No. : Criminal Appeal No. 1886 of 1991

Appellant : Sk. Faisal

Respondent : The State of Bihar

Advocate for Def. : R.K. Sinha, Addl. P.P.

Advocate for Pet/Ap. : Rajeev Roy and A.K. Sinha-I, Advs.

Disposition : Appeal dismissed

Judgement :

I.P. Singh, J.

1. The sole appellant has been convicted under Sections 376/511 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for seven years.

2. The prosecution case, in short, is that on 2-6-1989 at about 2 p.m. while the prosecutrix Sitara Khatoon, aged about 14 years, had gone to graze her she goat

at Larayamui Bandh, the appellant caught her from behind and gagged her mouth and dragged her to Kharor, near bushes. Thereafter, he tried to commit rape upon her, but in the process of scuffle on her resistance, the rape could not be committed. It has been submitted that when she raised alarm, several persons including her father and brother, who were working in the vicinity came and caught hold of the appellant. Thereafter, the prosecutrix narrated the entire incident to her brother and father and also to the villagers, who had assembled there. The matter was also tried to be settled by the Panchayat level, but the same was not decided. Thereafter, the Assistant Sub-Inspector of Police of Barsoi Police Station came to the village and recorded the statement of the victim girl on 27-6-1989, the fardbayan of the victim girl has been exhibited as Exhibit-1. On the basis of the fardbayan, formal First Information Report (Exhibit-2) was drawn up and the case was registered against the appellant under Sections 376/511 of the Indian Penal Code. After completion of investigation, charge-sheet was submitted and cognizance was taken against the appellant. The submitted and cognizance was taken against the appellant. The case was committed to the Court of Sessions, where the trial concluded with the result as indicated above. The appellant pleaded not guilty.

3. The prosecution, in support of its case, examined altogether nine witnesses. PW 1 is Safique, PW 2 is Md. Alam, PW 3 is Nasiruddin, PW 4 is Ataur Rahman, tender witness, PW 5 is Hakimuddin PW 6 is Dukha, he is also tender witness, PW 7 is Abdul Gaffar, PW 8 is Sitara Khatoon, the victim girl and PW 9 is Muzaffar Hussain Khan, ASI of police, who is the Investigating Officer of the case.

4. PW 8 the prosecutrix, has supported the case of the prosecution, as stated in her fardbayan. According to her, on the date of occurrence at about 2 p.m., she had gone to graze her she goat at Kharor and her father was working in a paddy field by the side of Kharor. She had further stated that while she was going to graze her she goat, the appellant caught her from behind and attempted to commit rape upon her, but on her resistance, he was thrown on the ground. According to her, when she raised alarm, her father and brother along others came to the place of occurrence and the appellant was caught hold by them. Thereafter, she narrated the entire incident of attempt to commit rape upon her by the appellant to

the persons, who had assembled there. According to her, Panchayati was called for, but the appellant did not co-operate in the said Panchayati, then the police came to her house and her statement was recorded by the Asstt. Sub-Inspector of Police.

5. The other witnesses, PWs. 1,2, 3, 5 and 7 have also supported the version of the prosecutrix, PW 9, I.O. of the case, has also supported the case of the prosecution. According to him, on 27-6-1969, he was posted as Sub-Inspector of Police, when he was returning from the village Ekchanna, he heard about the occurrence and went to the house of the prosecutrix, where the persons had assembled for Panchayati. According to him, he recorded the fardbayan of the prosecutrix, Sitara Khatoon and arrested the appellant, who was also present at the place. Thereafter, he sent the appellant to the police station. He again recorded the fardbayan of the prosecutrix, Sitara Khatoon and also recorded the statement of other witnesses. Thereafter, he inspected the place of occurrence and he has given full description of the same. He also found trampling marks over the grass at Kharor field.

6. Learned Counsel for the appellant has submitted that in the cross-examination of the victim girl, Sitara Khatoon, she has stated that there was scuffle and no rape was committed on her as such the whole episode creates doubt. It has further been submitted that no rape was committed as such it was only modesty of the victim girl was outraged.

7. From the deposition of the prosecutrix it appears that only attempt to rape was made by the appellant but due to her resistance rape was not committed. She had specifically stated in her deposition that no rape was committed by the appellant. As per definition of rape under Section 375 of the Indian Penal Code, in the Explanation 'penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape' other witnesses have also stated that the appellant came and attempted to rape on her, but on her resistance rape was not committed.

8. The learned Court below after appreciation of the evidence, so adduced, rightly came to the conclusion and convicted the appellant for the offence punishable under Sections 376/511 of the Indian Penal Code. I find no reason to interfere with

the conviction of the appellant. However, coming to the question of sentence, learned Counsel for the appellant has submitted that the occurrence took place in the 1989, about twelve years ago and this appellant has no criminal antecedent and previous conviction, moreover he has remained in jail custody for about four years as such this requires consideration on the point of sentence.

9. Having regards to the submissions, so raised and in the above facts and circumstances of the case, I am of the view that the ends of justice will be most if the sentence of the appellant is reduced to the period he has already undergone in jail custody with a fine of Rs. 3000/- (three thousand) to be deposited by the appellant within three months from the date of production/receipt of a copy of this order. In default, the appellant will have to undergo R.I. for one year. It is made clear that the amount of fine, if and when deposited by the appellant, shall be paid to the victim girl, Sitara Khatoon (PW 8).

With the aforesaid modification in the sentence, the criminal appeal is dismissed.

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