

Rajdeo Ram Vs. State of Bihar

Rajdeo Ram Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/137621

Court : Patna

Decided On : Jul-13-2001

Judge : B.N.P. Singh, J.

Appeal No. : Criminal Appeal No. 94 of 1990

Appellant : Rajdeo Ram

Respondent : State of Bihar

Disposition : Appeal Dismissed

Judgement :

B.N.P. Singh, J.

1. The sole appellant on being tried by the 4th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 53 of 1989 suffered conviction under Section 366 of the Indian Penal Code (IPC) and was sentenced to undergo rigorous imprisonment for five years on that count.

2. The factual matrix are that in the night of 22nd January, 1988, when Ram Baran Roy found his sister Bachi Devi missing from the house, made hectic search for her in the company of Jagdish Roy (PW-3) and Ram Chandra Roy (PW-2) and in their bid to make search for Bachi Devi, they happened to meet Baiju Roy (PW-5) who narrated to them to have witnessed Rajdeo Ram (appellant) gossiping in the

evening with Bachi Devi. The worried brother suspecting complicity of Rajdeo Ram, visited house of the latter when he was informed by the mother of the appellant that Rajdeo Ram may be available in the cattle shed of Lal Babu Mian where he usually goes for a sleep. It was alleged that Ram Baran Roy along with the villagers visited palani of Lal Babu Mian and apprehended both Bachi Devi and Rajdeo Ram. However, before they were apprehended, the brother of Bachi Devi had set the Police in motion on rendering his fardbeyan before the Police at 7.15 hours on 23rd January, 1988 which forms the basis of the First Information Report drawn up by the Police.

3. It seems that after the Police was set in motion and investigation had commenced, both Bachi Devi and Rajdeo Ram were apprehended by the villagers. After the investigation commenced, the Police on its conclusion, laid charge-sheet before the Court and the appellant was eventually put on trial on being committed to the Court of Session. In the eventual trial, the prosecution examined altogether nine witnesses and the trial Court placing implicit reliance on evidence of these witnesses, rendered verdict of guilt against the appellant and sentenced him in the manner stated above.

4. The finding recorded by trial Court is sought to be impeached by the learned Counsel for the appellant on premises that the objective finding of the Investigating Officer about situation of the place of occurrence and evidence and Bachi Devi thereon were not coherent and hence the prosecution was guilty of introducing distorted version before the Court about the place of occurrence which had not been established by cogent evidence. The credibility of Jagdish Roy (PW-3) and Rajendra Rai (PW-4) also was sought to be impeached on premises that as their evidences suffer major contradictions from the basic facts of the prosecution case, they were not worthy of credence. It is urged that if Jagdish Rai (PW-3) was to be given credence that Bachi Devi and Rajdeo Ram were available in the Palani of Lal Babu Mian and they were not apprehended by the villagers, that runs counter to the prosecution case. Next in quick succession, it urged that if evidence of Rajendra Rai (PW-4) was to be accepted true on its face value, only Rajdeo Ram was found at the Palani of Lal Babu Mian. The learned Counsel would urge that though the witnesses had been narrating before the Court that preceding the

incident, Baiju Rai claimed to have witnessed Bachi Devi and Rajdeo Ram gossiping in the field, but such assertion was conspicuously wanting in the statement of the victim girl and lastly it is urged that Bachi Devi had excluded presence of even her brother when she along with Rajdeo Ram was shown to have been apprehended. The learned Counsel laying stress on the long prosecution of the appellant for about 12 years, would urge that since the appellant has suffered torture of the prosecution for such a long period, he deserves leniency on that count in the matter of sentence also.

5. The factum of Bachi Devi missing from the house in the intervening nights of 22/23rd January, 1988, the villagers along with Ram Baran making hectic search for her in the night, meeting Baiju Rai, who disclosed proximity of Rajdeo Rai with Bachi Devi and the apprehension of the victim girl and the appellant at the Palani of Lai Babu Mian are broad features of the prosecution case, which have not been shattered as there had been coherent and consistent evidence of the witnesses on these counts. As has been noticed, though there are some variations in the assertions made by Jagdish and Rajendra about presence of Bachi Devi at the place of occurrence and also her apprehension with the appellant that does not affect broad feature of the prosecution case. The redeeming feature of the prosecution case had been the clinching evidence of Bachi Devi, the victim girl, who without any variation in the prosecution version, stated before the Court in explicit and positive terms about Rajdeo Ram having lifted her when she came out of her house for urinating. The question as to whether the victim girl raised any alarm was not such a factor which would discredit her on that count alone.

6. The doctor who examined Bachi Devi found her minor and thus the doctor was not in a position to state in positive terms whether sexual intercourse had been committed with her but noticed multiple abrasions on both breasts. However, there was no evidence conclusively suggesting even of the victim girl, about commission of rape on her by the appellant. About grievance of the appellant that the prosecution had introduced distorted version about place of occurrence, it can be notice from the evidence of the Investigating Officer that cattle-shed of Lai Babu Mian situate within the village Patiassa from where Bachi Devi hails and the said cattle shed of Lal Babu Mian was at a distance of 200 Laggis only from house of

Ram Baran Rai and if the evidence of the Investigating Officer about distance of the place of occurrence from where Bachi Devi was recovered from the house of Ram Baran Rai was accepted, the prosecution cannot be saddled for introducing distorted version about the place of occurrence. This fact too cannot be lost sight of that Bachi Devi was found missing in the intervening night of 22/23rd January, 1988 and fardbeyan of informant was recorded by the Police at about 7.15 hours on 23-1-1988 and hence, it can well be found that the worried brother took recourse to the Police authority with all promptitude and within the shortest time. Though Ram Baran Rai, brother of Bachi Devi who set the Police in motion, was not examined at trial, I find from the findings recorded by the Court below that sufficient explanation for his non-examination was furnished by the prosecution and the Court below was satisfied about his non-examination.

7. Having taken into consideration evidences placed on record, I come to the conclusion that the findings recorded by the trial Court rendering verdict of guilt against the appellant was well founded based on meticulous appreciation of the evidence placed on record and hence the conviction of the appellant by the trial Court under Section 366 IPC is maintained. However, having considered submission of the learned Counsel for the appellant about long prosecution of the appellant for about 12 years and also regard being had to the fact that the appellant remained in custody for about 2 and 1/2 years, the sentence awarded to the appellant is reduced to the period already undergone and with this modification in the order of sentence, this appeal is dismissed.

Mrs. Nirmala Kumari, learned Advocate, on the direction of the Court appeared in this case as amicus curiae to assist the Court. She is directed to be paid her fee by the Legal Services Authority, Patna High Court.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com