

Nathuni Pandit Vs. State of Bihar

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Court : Patna

Decided On : Oct-25-2005

Judge : Manohar Lal Visa, J.

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

Appeal No. : Criminal Appeal No. 163 of 2003

Appellant : Nathuni Pandit

Respondent : State of Bihar

Advocate for Def. : Ali Mozaffar, Adv.

Advocate for Pet/Ap. : K.N. Diwakar, Adv.

Disposition : Appeal dismissed

Judgement :

Manohar Lal Visa, J.

1. This appeal is directed against the judgment dated 15-2-2003 and order dated 17-2-2003 passed by Additional Sessions Judge-I, Muzaifarpur in Sessions Trial No. 488 of 2001 convicting and sentencing the appellant to undergo rigorous imprisonment for eight years under Sections 376/511 of Indian Penal Code (in short 'IPC') and to pay a fine of Rs. 1.000/- and in default to undergo rigorous

imprisonment for a further period of one month.

2. The case of prosecution in short is that on 3-4-2001, victim Baby Kumari (P.W. 4) aged about ten years then was sleeping with her father Jang Bahadur Thakur (not examined) in the Dalan of her house. At about 4 O'clock in the morning, appellant went there and lifted Baby Kumari and took her in a wheat field situate at a distance of about two hundred yards from her house and committed rape on her. On hulla raised by Baby Kumari, a number of villagers ran towards the place of occurrence and they caught hold of appellant and locked him in a house. Blood was found oozing from the private part of Baby Kumari who was badly injured and she was taken to Sadar Hospital, Muzaffarpur but the doctor on duty did not admit her and she then was taken to Police Station where her uncle Satrugan Thakur (P.W. 5) got his Fard-e-bayan recorded. A case under Section 376 of IPC was registered and police after investigation submitted charge-sheet under Section 376 of IPC against the appellant. Cognizance of the case was taken, case was committed to the Court of Session and charge under Section 376 of IPC was framed against the appellant and after trial, appellant was found guilty under Sections 376/511 of IPC and was convicted and sentenced, as indicated above.

3. The case of appellant was denial of charge against him and his false implication in this case on account of enmity. One witness was examined on behalf of appellant.

4. In support of its case, prosecution, examined seven witnesses. Baby Kumari (P.W. 4) is the victim girl. Satrugan Thakur (P.W. 5) is the uncle of victim girl and he is informant. Dr. Neelam Singh (P.W. 6) is the doctor who had examined the victim. Dhruv Shanker Singh (P.W. 7) is the Investigating Officer. Kamal Kishore Sharma (P.W. 1), Phekan Sah (P.W. 2) and Ashok Kumar Singh (P.W. 3) are witnesses who on hearing hulla had reached the place of occurrence.

5. Baby Kumari (P.W. 4), in her evidence, has stated that on the day of occurrence she along with her father was sleeping at the Darwaza of her house when appellant picked her in his lap and took her to a wheat field where he committed rape on her causing bleeding and her clothes were blood-stained and she raised hulla and then her father came there and caught hold of appellant. She has further

stated that she was taken to hospital. Dr. Neelam Singh (P.W. 6) has said that on 3-4-2001, she examined the victim and found fresh hymen ruptured and blood was present on vagina. She has further said that though no spermatozoa was found but sign of attempt of rape was present. She has proved her report which is marked Exhibit-1. Satrughan Thakur (P.W. 5), the informant has said that victim Baby Kumari is his niece and at the time of occurrence, he was at a temple and on hulla raised by her niece, he went to the place of occurrence where he found that appellant was trying to run away but he was caught by him and other villagers and he also found that blood was oozing from the private part of Baby Kumari and her underpant was also stained with blood and she was taken to hospital and appellant was handed over to police. He has said that his Fard-e-bayan was recorded by police on which he put his signature (Exhibit-1). He has denied the suggestion of defence that appellant has been falsely implicated at the instance of Kamal Kishore.

6. Kamal Kishore Sharma (P.W. 1), Phekan Sah (P.W. 2) and Ashok Kumar Singh (P.W. 3) are witnesses who are said to have reached the place of occurrence on hearing hulla. They all have said that they saw the victim with blood-stained clothes and appellant was also there who was caught by villagers and they were told by villagers that appellant had committed rape on victim Baby Kumari. Dhruv Shanker Singh (P.W. 7), the Investigating Officer has said that after completing the investigation, he submitted charge-sheet.

7. Ranjeet Kumar (P.W. 1) is a witness examined on behalf of appellant and he has said that appellant had money dispute with Kamal Kishore and Kamal Kishore happens to be brother of informant. He has further said that appellant has been falsely implicated at the instance of Kamal Kishore but no suggestion to informant was given that he happens to be brother of Kamal Kishore. Kamal Kishore Sharma has been examined as P.W. 1 and he has denied the suggestion of defence that he had dispute with appellant on account of business of generator and, therefore, he has deposed falsely. There is nothing on the record to show any relationship between this Kamal Kishore Sharma {P.W. 1) and informant Satrughan. It also does not seem convincing that on account of enmity between Kamal Kishore Sharma and appellant, the informant will plan to implicate the appellant in a false

case of rape on his minor niece to jeopardise her future.

8. From the evidence on record, I find that the victim girl was minor aged about ten years at the time of occurrence. Her evidence fully supports the case of prosecution that appellant took her to a wheat field where he made an attempt to commit rape on her. Although the commission of actual rape on her has been described by her by phrase used in local language but then her evidence, coupled with medical evidence proves that an attempt of committing rape on her by appellant was made.

9. Learned Counsel appearing on behalf of appellant has argued that in case the Court finds the appellant guilty at least his sentence requires to be reduced. It is a case of an attempt to rape a minor girl that too by entering her house and lifting her and taking her to a field. The appellant has been sentenced to undergo rigorous imprisonment for eight years. I do not find the sentence excessive.

10. In the result, this appeal stands dismissed and the order of conviction and sentence of appellant passed by Court below is confirmed.

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