

Mohan Ojha Vs. State of Bihar

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Court : Patna

Decided On : Feb-12-2002

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

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363 and 377

Appeal No. : Crl. R. No. 381 of 2000

Appellant : Mohan Ojha

Respondent : State of Bihar

Advocate for Def. : APP

Advocate for Pet/Ap. : Vishwanath Prasad Sinha, Sr. Adv., Nand Kishore Singh, Siya Ram and Braj Bhushan Kama, Advs.

Judgement :

B.N.P. Singh, J.

1 The appellant along with Dinesh Thakur was prosecuted for the offence punishable under Sections 363 and 377 of the Indian Penal Code (IPC) on behest of Smt. Mridula Sinha (P.W. 2) with accusation that in the night of 5-8-1988, after Om Kumar Singh found his younger brother Ranjit Kumar Singh the victim, missing from the bed, he informed his mother who, it was alleged, along with her neighbour made hectic searches for Ranjit Kumar Singh when the latter came to

them weeping on having come out from a thatched roofs house and disclosed the complicity of the petitioner and one Dinesh Thakur about commission of carnal intercourse with him against the order of nature. After the Police was set in motion, investigation commenced and in course of investigation, the Police Officer recorded statement of witnesses, got the victim examined by the Doctor, secured injury report, prepared a production list of the wearing apparel of the victim on its production by his mother, visited the place of occurrence and eventually laid charge-sheet before the Court.

2. In the eventual trial that commenced' against the appellant and Dinesh Thakur, eight witnesses were examined by the State including victim Ranjit Kumar (P.W. 4), Mridula Sinha (P.W. 2) who happens to be the mother of the victim and also the person who set the Police in motion. The State has also examined Manmohan Singh (P.W. 3), who stated to have noticed Ranjit Kumar coming from the south direction and having disclosed complicity of the appellant alone about commission of unnatural offence on him. The State also examined Deo Narain Mishra (P.W. 6), who brought production list on the record, some formal witnesses, the Police Officer and also Dr. Mumtaz Ahmad (P.W. 5) who stated to have examined the victim along with Dr. Manoranjan Kumar and issued injury report.

3. Now, advertng to the evidences placed on record, Mridula Sinha (P.W. 2) had been reiterating her early version, which she had rendered before the Police about Ranjit Kumar having disclosed the complicity of the appellant and Dinesh Thakur in commission of unnatural offence on him, having removed him to a thatched roof house. Ranjit Kumar (P.W. 4) narrated in similar terms about he having been removed from his house by the appellant where carnal intercourse was committed against the order of nature on him both by the appellant and Dinesh Thakur. The Doctor who examined Ranjit Kumar, noticed that the anal margin was found bruised and inflamed and anal muscle was found dilated and tender to touch. The inside of rectum was found bruised and lacerated.

4. The defence too examined three witnesses including Dr. Shiv Shankar Prasad (D.W. 2) who stated about treatment of the appellant in the Kurhani Hospital when he was hospitalised and remained confined during the period from 3-8-1988 to 4-

8-1988, pursuant to which he was discharged from the Hospital. Other two defence witnesses were examined obviously to place some documents on record to suggest litigation between the parties.

5. The trial Court on meticulous appreciation of the evidences placed on the record while acquitted Dinesh Thakur giving him benefit of doubt for insufficiency of evidence about his identification, rendered verdict of guilt under Sections 363 and 377, IPC and sentenced appellant to suffer rigorous imprisonment for a term of six months and 2 and 1/2 years on both these counts, respectively with the direction that both the sentences shall run concurrently.

6. When the matter was carried in appeal, the lower appellate Court while negating the defence raised on behalf of the petitioner, upheld the findings recorded by the trial Court and it is how, that this revision is before this Court at the instance of the aggrieved appellant-petitioner.

7. There has been concurrent findings of the Courts below on the facts and when this revision was admitted, the petitioner was to be heard on the question of sentence only. Learned counsel for the petitioner, while arguing on the point of sentence, sought to highlight also the infirmity in the evidence of the prosecution witnesses in his anxiety to assail the findings recorded by the Courts below. Contentions were raised that on consideration of age of the petitioner and also the attending circumstances of the case, sentence imposed upon the petitioner appears to be excessive for which reliance has been sought on a decision of the Apex Court reported in the case of Chitranjaji Dass v. State of U.P. (AIR 1974 SC 2352). However, I find that the facts of the instant case were quite distinguishable from the facts stated at the Bar as in the latter case, on consideration of the status of the appellant, who was an educated person, and also there being apprehension of loss of service, the sentence imposed by the Court below was reduced. The appellant is aged about 22 years on the material time of incident while the victim was a minor boy who was, carried in the dead of night by the petitioner to a lonely place for commission of carnal intercourse against the order of nature. It is urged that the petitioner has been in custody for about one year and that was also a mitigating ground for consideration of reduction of sentence.

8. On consideration of totality of the circumstances of the case, while upholding the finding of guilt recorded by the Court below, the petitioner is sentenced to a term of 1 and 1/2 years under Section 377, IPC. The sentence imposed under Section 363, IPC does not need interference and with this modification in the order of sentence, this application is dismissed. The bail bonds of the petitioner are cancelled and he is directed to surrender before the Court below forthwith to serve the sentence. Trial Court is also directed to take the petitioner in custody forthwith.

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