

Aliyas Mian Vs. the 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 341 and 376

Appeal No. : Crl. A. No. 58 of 1992

Appellant : Aliyas Mian

Respondent : The State of Bihar

Advocate for Def. : Ali Mozaffar, Adv.

Advocate for Pet/Ap. : Arbind Kumar Sharma, Adv.

Disposition : Appeal dismissed

Judgement :

Manohar Lal Visa, J.

1. This appeal is directed against the judgment dated 27-2-1992 and order dated 28-2-1992 passed by Additional Sessions Judge II, West Champaran at Bettiah in Sessions Trial No. 196 of 1989 convicting and sentencing the appellant to undergo rigorous imprisonment for a period of five years under Section 376 of Indian Penal Code (in short 'I. P. C.').

2. The case of prosecution in short is that on 21-1-1988, informant Meena Devi (PW-4), after working in a sugarcane field of her master Rama Shanker Singh (PW-5), collected sugarcane leaves for fuel and put them in a bundle and when she was returning to her house along with bundle, the appellant stopped her in the way and pulling the bundle from her head threw it and, thereafter, caught hold of her and threw her in the field. When she raised hulla. appellant put a knife on her neck giving threatening that in case she raised hulla. she would be killed. Thereafter, appellant committed rape on her. On hearing hulla raised by victim Meena Devi, Jawahar Sao (PW-2) reached there and appellant then fled away and in that process, one old HMT watch with broken glass of appellant fell. The victim thereafter along with villagers went to Manjhaulia Police Station where she produced the watch of appellant and first information report (Exhibit-1) was recorded under Sections 341/376 of I. P. C. against the appellant. After investigation, charge-sheet was submitted and cognizance of the case was taken and case was committed to the Court of Session where after trial, appellant was found guilty and was convicted and sentenced to undergo rigorous imprisonment for five years under Section 376 of I. P. C. The case of appellant before the Court below was that he had been falsely implicated in this case on account of enmity because he had earlier filed a case against the family members of prosecutrix because goats of prosecutrix had entered the field of appellant and had damaged his crop by grazing.

3. In order to prove its case, prosecution has examined eight witnesses. Meena Devi (PW-4) is informant and victim lady. Laljee Ram (PW-1), Jawahar Sao (PW-2) are witnesses who, according to prosecution, had reached the place of occurrence on hearing hulla of prosecutrix. Dukhni (PW-3) is a tendered witness. Rama Shanker Singh (PW-5) is the master of prosecutrix to whose house prosecutrix along with some villagers after occurrence had gone and requested him to take action and he then took the prosecutrix and villagers to Police Station. Dr. Saroj Jaiswal (PW-6) is the doctor who had examined the prosecutrix. Krishna Kumar Singh (PW-7) is the Investigating Officer and similarly G. P. Mishra (PW-8) is also Investigating Officer who had taken the charge of investigation from PW-7 on latter's transfer to some other Police Station. Meena Devi (PW-4), the prosecutrix, in her evidence, has said that on the day of occurrence, in the evening

after working in the field of her master Rama Shanker Singh she after collecting sugar-cane leaves in a bundle for fuel was returning to her house when in the way, appellant came and pulled the bundle from her head and while talking laid her on the ground and at the point of dagger committed rape on her. She raised hulla on which the witnesses Jawahar and Dukhni came there. She has further submitted that during the course of commission of rape on her the wrist watch of appellant fell and, thereafter she went to Police Station and lodged the first information report. About her medical examination, she has said that she was examined at Bettiah Hospital on the next day of occurrence. In cross-examination, she has said that the place of occurrence is a ridge between sugarcane fields. In para 7, she has said that after occurrence, appellant fled away and then witnesses came there and, therefore, nobody saw appellant committing rape on her. Dr. Saroj Jaiswal (PW-6) is the doctor who had examined the prosecutrix on 22-1-1988 and she in her cross-examination has said that on medical examination of prosecutrix, no definite opinion could be gathered about any recent sexual intercourse but to a Court question, she has answered that ladies bearing child have their vaginal walls dilated hence if rape is committed upon such ladies, the signs and injuries may not appear. About prosecutrix, she has said that prosecutrix disclosed that she had 2 1/2 years old son and she was giving breast feeding to her child. Meena Devi, the prosecutrix, in para-6 of her evidence, has said that at the time of occurrence, she had a son aged about seven months. Laljee Ram (PW-1) in his evidence has said that on the day of occurrence, he along with Jawahar Sao was at Government boring when he heard hulla of Dukhni Devi (PW-3) and, thereafter, he and Jawahar Sao both went to the sugarcane field of Hari Narain Singh where they found appellant committing rape on prosecutrix and when they reached there, the appellant fled away. Meena Devi started weeping and told them that appellant had forcibly raped her. Jawahar Sao (PW-2), in para -20 of his evidence, has admitted that appellant had filed a case against him but according to him that case was filed four to five days after the occurrence in order to create defence of this case. Rama Shanker Singh (PW-5) has said that on 21-1-1988 at about 7 p. m., prosecutrix along with a number of villagers came to his house and told him about the occurrence and villagers were very agitated and were asking him to take some steps otherwise they would themselves settle the matter and he then took the

prosecutrix to Police Station where prosecutrix lodged the first information report. He had denied the suggestion of defence that there was dispute between his family and father of appellant who had filed a petition before sub-Divisional Magistrate. He has also denied the suggestion that appellant has been falsely implicated in this case. Krishna Kumar Singh (PW-7) has proved the first information report (Exhibit-1) and has said that he took up the investigation and also seized the petticoat of prosecutrix and prepared a seizure list (Exhibit-3/1). He has further said that the prosecutrix produced an HMT watch which he seized and prepared a seizure list (Exhibit-3). About the place of occurrence, he has said that he inspected the place of occurrence which is the sugarcane field of Hari Narayan Singh and he found that half of the crop had already been cut and half of the sugarcane crop was standing and he also found recent pressing marks of soil at a place in the field and sugarcane leaves were scattered. He has said that he handed over the charge of investigation to Officer-in-charge on 25-3-1988. He has also proved the requisition (Exhibit -4) which was prepared by Harish Chandra Mishra at his dictation for medical examination of prosecutrix. He has proved the case diary which is marked Exhibit-5. G. P. Mishra (PW-8) has said that he took up the charge of investigation of the case on 26-3-1988 and on 9-4-1988, he received medical examination report and, thereafter, he submitted charge-sheet.

4. Learned counsel appearing on behalf of appellant has argued that medical evidence does not support the case of prosecution on the point of commission of rape because PW-6, the doctor who had examined the prosecutrix has clearly stated that no definite opinion could be gathered about any recent sexual intercourse. It is true that the aforesaid evidence of doctor is there but at the same time, as stated above, the doctor to a Court's question replied that in the case of ladies bearing child if rape is committed on such ladies, the signs and injuries may not appear because vaginal walls of such ladies are dilated. The evidence of doctor does not rule out the possibility of commission of rape on prosecutrix. In such type of medical evidence, it is the only evidence of prosecutrix that has to be considered to find out the truth. The prosecutrix has fully supported the case of prosecution against the appellant and I find no reason to disbelieve her. The next argument advanced on behalf of appellant is about the identity of place of occurrence. The learned Counsel of appellant has submitted that in first

information report, the prosecutrix has stated that place of occurrence was the sugarcane field of Rama Shanker Singh, the master of prosecutrix but PW-1 has said that it was the sugarcane field of Hari Narayan Babu and PW-2 has said that it was the field of Basudeo Babu. Krishna Kumar Singh (PW-7), the Investigating Officer who visited the place of occurrence has said that the place of occurrence was pointed out by husband of prosecutrix and it is a sugarcane field of Hari Narain Singh. He has further said that towards south of the sugarcane field of Hari Narain Singh, which is the place of occurrence, there is sugarcane field of Rama Shankar Singh. The prosecutrix in her evidence has stated that after completing the work in the field of her master, Rama Shanker Singh when she was returning to her house after carrying one bundle of sugarcane leaves, the appellant met her in the way and pulled the bundle of sugarcane leaves and fell her down in the field. This evidence clearly shows that the place of occurrence was not the field of her master Rama Shanker Singh which she left after completing work and she was proceeding towards her house when in the way, occurrence took place. Her evidence also shows that the place of occurrence is near the field of her master where before occurrence she had worked. So, I do not find that merely some variance in the evidence of PW-2 about the ownership of place of occurrence the entire case of prosecution has to be disbelieved. In a case of rape, the evidence of prosecutrix carries much weight and if her evidence supports the case, it does not require any further corroboration particularly in absence of any material making the evidence of prosecutrix doubtful. So far Exhibit-A produced on behalf of appellant is concerned, that is a copy of deposition of Dr. B. N. Sinha recorded in a criminal case. This deposition shows that appellant was examined on 21-1-1988 and some injuries such as abrasion, bruises and swelling were found on his person. This document has been produced in support of case of defence that earlier appellant had filed a case against the family members of prosecutrix in respect of entry of goats of prosecutrix in the field of appellant. The time and date of present occurrence of this case is at about 5 p. m. on 21-1-1988. Exhibit-A shows that appellant was examined by a doctor on the same day at 5.15 p. m. No other document on behalf of appellant has been filed to show that what type of case was instituted by him and against whom the case was filed by him. In the absence of any such material, no inference by Exhibit-A adverse to the case of prosecution

can be drawn in this case.

5. Considering the entire material on record, I find that prosecution has been able to prove its case beyond all reasonable doubts. I, therefore, find no merit in this appeal which is dismissed. The judgment and order of Court below are hereby confirmed.

6. As the appellant is on bail, his bail bonds are cancelled and he is directed to surrender before the Court below to serve out the sentence.

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