

Rintu Yadav Vs. State of Bihar

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Court : Patna

Decided On : Feb-13-2008

Judge : Subash Chandra Jha, J.

Acts : Indian Penal Code (IPC) - Sections 376 and 511; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 565 of 2004 (SJ)

Appellant : Rintu Yadav

Respondent : State of Bihar

Advocate for Def. : Satya Narayan Prasad, APP

Advocate for Pet/Ap. : Sanjeev Ranjan, Adv.

Disposition : Appeal dismissed

Judgement :

Subash Chandra Jha, J.

1. The sole appellant Rintu Yadav has been convicted and sentenced to undergo rigorous imprisonment for ten years and imposed a fine of rupees two thousand, in default of which to serve one month's simple imprisonment, for offence under Section 376 of the Indian Penal Code, in Sessions Trial No. 360/93/ Trial No.

41/04, arising out of Barbiga P.S. case No. 196/92, on 6th July, 2004 by Sri Arvind Kumar Srivastav, learned Assistant Sessions Judge, Sheikhpura.

2. The prosecution case, in short, is that on 24.10.1992 at about 12 noon, the informant Rina Kumari along with her sister Bina Kumari had gone to the field of Chormiya Parkhanda within the Barbiga P.S., in the district of Munger (now Sheikhpura), for mowing grass. Meanwhile, they were approached by the appellant Rintu Yadav, who asked for a Hasuwa (a kind of sharp edged weapon for the purpose of mowing grass) and, accordingly, after getting said Hasuwa, by putting them in fear, he caught hold of informant Rina Kumari, gagged her mouth and hands by means of gamchi (a kind of thin towel) and committed 'bura kam' (rape) on the informant Rina Kumari. Her sister Bina Kumari wanted to raise alarm but she was also put in fear. Blood out of such rape, oozed out from her private part and there after the accused/appellant fled away from the place of occurrence. Both the sisters informed their parents and they approached police station where her fardbeyan was recorded and FIR was drawn. Police investigation ultimately culminated in submission of chargesheet, on the basis of which charges were framed and the case was committed to the court of sessions. The accused/appellant pleaded not guilty and he also denied all circumstances appearing against him, in course of his examination under Section 313 Cr.P.C.

3. In course of trial, all together seven witnesses on behalf of the prosecution have been examined. P.W.1 is Upendra Mahto, P.W.2 is Lathu Mahto, P.W.3 is Bachchi Devi, P.W.4 is Bina Kumari, P.W.5 is Shanti Devi, P.W.6 is Dr. Manju Bhandari and P.W.7 is Rina Kumari, the victim informant. No witness on behalf of the accused/appellant in his defence has been examined.

4. Out of them P.W. 1 and 2, who happens to be father and uncle of the informant Rina Kumari, have supported the case on the basis of information received from Rina Kumari and Bina Kumari. They also claimed to have seen the blood stained pant. According to them, Rina Kumari at the relevant time of occurrence was 10 years old. They have also stated that Pant and frock were seized by the police Sub Inspector but in the trial court there was no production of pant and frock nor there is any report available with the record so as to infer that blood stained pant

and frock were ever sent for any chemical examination. From the medical report, as available with the case diary, her age has been ascertained by the Medical Board, duly constituted, in which age of the victim Rina Kumari has been assessed to be in between 11-12 years at the time of occurrence.

5. In the facts and circumstances, it has been submitted on behalf of the appellant that victim Rina Kumari cannot be said to be below 12 years of age on the date of occurrence, which fact, in all fairness, has not been controverted by the learned APP for the State.

6. P.W.6 Dr. Manju Bhandari, who was at the relevant time posted in Referral Hospital, Barbiga, has stated in her deposition that she did not find any development of sexual character except a few auxiliary hair. She did not find pubic hair. She found the victim as a minor girl and she noticed longitudinal tear of 1/2' size in perineum, which shows attempt of rape. She did not find any seminal spot. Bleeding was present but hymen was intact. Vaginal orifice was very small and even little finger went with difficulty. The medical examination report has been marked as Ext.1. She has stated that no rape was committed on the victim. Bleeding was due to longitudinal tear due to attempt of rape.

7. P.W.7, the victim Rina Kumari corroborated her earlier version made before the police to this effect that in the field Rintu Yadav came and demanded a Hasuwa and thereafter untied her pant and committed 'bura kam' (rape), as a result of which blood oozed out from her private part and thereafter accused/appellant fled away from the place of occurrence. Her sister also raised alarm. The occurrence, as alleged, was committed in a rahar field. She has stated everything to the police Sub Inspector.

8. Her sister Bina Kumari, P.W.4 has also supported the version of her sister Rina Kumari in her deposition in the court.

9. Mother of the victim Shanti Devi (P.W.5) has also corroborated the version of her daughters Rina and Bina regarding commission of rape on Rina Kumari by appellant Rintu Yadav, on the basis of information received from both the daughters.

10. I.O. has not been examined.

11. It has been submitted on behalf of the appellant that the plea of juvenile at the time of alleged occurrence was taken on behalf of the appellant, on the basis of which the appellant was granted bail by the learned Sessions Judge but subsequently this plea of his being juvenile was turned down by the trial court without holding any proper enquiry, as provided under the law. The appellant being a poor fellow could not afford to move any appropriate court against the said order of refusal of his prayer in respect of his status as juvenile. This fact can also be ascertained from the judicial record when no body appeared to cross examine the principal witness of this case, i.e., victim Rina Kumari for her cross examination. The appellant could not afford, because of his poverty, to engage a competent person to represent his case in proper perspective in the trial court for which the defence of the appellant could not be brought and placed in the trial court for due consideration in right perspective.

12. Here in the appellate stage, emphasis has been given by the learned Counsel for the appellant that in the given situation, circumstance and the offence, as alleged, would attract ingredients of Sections 376/511 IPC but not under Section 376 IPC, in view of the fact that the doctor has given clear-cut opinion regarding plea of existence of blood found in private part of the victim Rina Kumari. The doctor has described this place as perineum, which lies in between vagina and anus, i.e., unconnected with either of the opening of vagina or anus, i.e., purely separate part of the body, where there is least chance of any penetration by any man's genital organ.

13. In support of his contention learned Counsel for the appellant has relied upon and placed the case laws reported in : 2004 CriLJ1399 (Aman Kumar v. State of Haryana), : 2004 CriLJ2881 (Sakshi v. Union of India) and : (2006)8SCC560 (Tarkeshwar Sahu v. State of Bihar). In reply, learned APP for the State has also placed reliance on the case law reported in 2001(4) Cr.L.J. 4460 (Ghewar Ram v. State of Rajasthan), so as to show that actually it was a clear-cut case of rape, not as attempt to commit rape, in view of the fact that attempt to penetrate penis inside the vagina was made, which would attract relevant provisions of law constituting

necessary ingredients of Section 376 IPC. Moreover, learned APP has submitted that the evidence of the victim Rina Kumari, her sister Bina Kumari as also other witnesses are very much clear and consistent that such process of commission of rape has been made by accused/appellant by putting the victim as well as her sister in fear, who untied her pant, penetrated his penis inside the vagina, which fact has been stated by victim Rina Kumari in her deposition that accused/appellant Rintu Yadav committed rape on her and after seeing blood oozing out, the appellant fled away.

14. In the facts and circumstances, emphasis has been given, not to give much weightage to the medical report against evidence of the victim and her sister, as also her parents and other witnesses, which would go to suggest that it was an offence of rape, which seems to have been committed and trial court has rightly held appellant guilty for such offence.

15. Now, so far quantum of sentence of the appellant is concerned, it has been submitted on behalf of the appellant that the appellant at the relevant time of occurrence was also a teen aged boy, although his plea of being a juvenile was turned down but the fact that he was considered to be 15-16 years old boy, was taken note of by the learned Sessions Judge while granting him bail. Learned Sessions Judge, has seen the appellant himself on 4.12.1992 by securing his physical production in court and, as such, appellant was granted bail. Of course, the appellant lost his legal battle to ascertain the status of juvenile, as submitted on his behalf, due to poverty but the fact remains that he was a teen aged boy at that time. Now more than 15 years has elapsed after such commission of occurrence and both the victim as well as the appellant belonging to the same village, are now leading their respective married life with their children at their disposal. They have also filed a compromise petition, although it has no legal value, but definitely to suggest good gesture of the parties that they believe not to reagitate and remember their ugly past. The appellant has no criminal antecedent. He is not a habitual offender of such crime. It is just possible that due to such age factor he could not have resisted his temptation at the relevant time and place but for that he has sufficiently been penalized, as further submitted on his behalf.

16. Reliance has also been placed in the case of Ram Kumar v. State of Haryana, reported in 2006 (4) SCC 347, so as to reduce the quantum of sentence awarded to the appellant in view of the fact that there is no hurdle in reducing his sentence in view of the fact that the victim was not below 12 years of age.

17. After considering the facts, evidence, circumstance of the case and arguments advanced on behalf of both sides, the order of holding him and conviction does not require any interference. So, the same stands confirmed.

So far quantum of sentence is concerned, after considering aforesaid facts and circumstances, the same is reduced to five years R.I. and fine imposed on the appellant is also reduced to rupees five hundred and in default of which to serve another period of one month's imprisonment.

18. In the result, this appeal is dismissed with the aforesaid modification in the order of sentence.

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