

Jogl Sada Vs. State of Bihar

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Court : Patna

Decided On : Mar-24-1993

Judge : N.S. Rao, J.

Appeal No. : Criminal Appeal No. 139 of 1992

Appellant : Jogl Sada

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

Narinder S. Rao, J.

1. Jogi sada, the appellant, stands convicted under Section 307 of the Indian Penal Code (to be hereinafter referred to as the Code), and sentenced to undergo rigorous imprisonment for seven years. He has also been sentenced to undergo rigorous imprisonment for one year each under Section 354 as also under Section 342 of the Code. Although he was also charged under Section 376 read with Section 511 of the Code, but has been acquitted of that charge. His awarded sentences have been ordered to run concurrently. Feeling aggrieved, he has preferred this appeal through jail. Alongwith appellant, his co-uccused Birju Sada and Maikhu Sada were also convicted and sentenced under Section 342 Of the Code in the same manner, but this appeal has been prefered only by Jogi Sada

appellant.

2. The appellant hails from Chhatunibadh, district-Madhubani, to which village his co-convicts Birju Sada and Maikhu Sada also hail.

3. The prosecution version, in brief, is that on 16-4-1988 at about noon time when Jalas Kumari PW 2 then aged about 12 years, was collecting grass by the side of a pond situate at some distance from the Abadi of the village, and her sister Punia Devi PW 3 was giving both to her buffalo, the appellant accompanied by aforesaid Birju Sada and Maikhu Sada had arrived. The latter two had tied the hands of PW 2 and the appellant had then tried to commit rape upon her. However, she thwarted the attempts of the appellant in indulging in sex with her. Her alarm had attracted to the spot Yugeshwar Yadav PW 1. At that stage at the asking of Birju Sada and Maikhu Sada, the appellant had given a blow with his Khurpi on the neck of PW 2 for committing her murder. After committing the crime, the appellant and his co-culprits had fled away.

4. The prosecution version further proceeds that as condition of PW 2 was found somewhat serious, she was removed to Sadar Hospital Jainagar, and then to Medical College Hospital Darbhanga. She was got admitted as an indoor patient in the said Medical College Hospital, It was in that hospital that police had arrived on 18-4-1988 and recorded her Fardbeyan at 12.30 p.m. on its basis, the case was registered. After completion of the investigation,' the appellant and his co-accused charge-sheeted.

5. Out of six witnesses examined by the prosecution PW 2 is the victim, and PWs 1 and 3 other eye witnesses, A. S. I. Hit Lal Das PW 4 and A. S. I. Muktinath Singh PW 6 are the investigating officers. Dr. Chowdbary Siirya Narain Prasad PW 5 of Medical College Darbhanga had conducted medical examination of PW 2 on 16-4-1988 at 8.00 p.m. and had found a cut injury 5' x 1-1/2' with haemorrhage. Trachee was found injured. The injury was caused by a sharp cutting instrument and was grievous. It was caused within six hours. Ext. 3 is the Injury Report,

6. The appellant in his examination, had denied the prosecution allegation and stated that he was innocent. He had, however, not examined any witness in

defence.

7. After hearing Mrs. Kusum Lata Das who was required to appear on behalf of the appellant as an amicus-curiae, and learned Counsel for the State, as also after going through the records, it is found that as the prosecution has remained unsuccessful in proving its case, this appeal deserves to succeed.

8. The occurrence had taken place on 16-4-1988, and the F. I. R. lodged after a couple of days. The explanation of this delay is not forthcoming. True that delay in the registration of the case, by itself, is not fatal, but it surely puts a court of law on guard while scrutinising the material brought on records. Law is well settled that graver the offence, the greater is scrutiny of the evidence.

9. The success of the prosecution in the case rests on the evidence of PWs 1, 3 and 2, especially the latter. All of them are the alleged eye witnesses of the occurrence. Out of them PWs 1 and 3 had not supported the prosecution case at all. That was in spite of the fact that PW 3 is none else, but the sister of PW 2. PWs 1 and 3 had sworn that they had not seen anybody, much less the appellant, committing the crime in question. At the request of Addl. P. P. these PWs were declared hostile, and the Addl. P. P. permitted to put questions to them in the nature of cross-examination of these witnesses by the State for showing that what they had stated at trial was not based on truth. The evidence of PWs 1 and 3 is thus not available to the prosecution in bringing home the guilt against the appellant.

10. Then as regard PW 2, true that she had supported the prosecution version in examination-in-chief, but had taken a somersault in cross-examination. She had stated in cross-examination, conducted by the defence, that the appellant had never entertained any evil designs towards her and that he had not caused any injury. She had explained that her neck injury was because of her falling on her own Khurpi. In spite of those damaging admissions made against the interest of State, not even a suggestion was put from the side of the prosecution to the effect that as PW 2 had been won over, she had, for that reason, given a clean chit to the appellant. The impugned judgment shows that the State counsel had not even re-examined PW 3 for enquiring as to if what she had stated in examination-in-

chief was true, or what she had admitted in cross-examination. Therefore, the all important witness (PW 2) had also disowned the prosecution version. Her evidence also thus does not connect the appellant with the offences charged.

11. Learned Counsel for the State appearing herein has submitted that a compromise has already been arrived at between the parties, and a joint petition filed in the trial court therefore, PWs 1, 2, and 3 had not supported the prosecution case. Be that as it may, the fact remains that no evidence was brought on record by the prosecution for bringing home the guilt against the appellant. Undoubtedly, the conviction of the appellant had been recorded in the case, having no evidence against him.

12. For reasons stated above, this appeal succeeds and is hereby allowed. The conviction and sentences of the appellant are set aside, and he is acquitted of the charges. He is in jail. He is ordered to be set at liberty forthwith, if not required to be detained in connection with any other case.

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