

Mangra Indwar Vs. State of Bihar

Mangra Indwar Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/517882

Court : Jharkhand

Decided On : Jan-13-2004

Reported in : 2004CriLJ2727

Judge : Hari Shankar Prasad, J.

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

Appeal No. : Criminal Appeal No. 147 of 1998 (R)

Appellant : Mangra Indwar

Respondent : State of Bihar

Advocate for Def. : A. Sinha, Adv.

Advocate for Pet/Ap. : B.M. Tripathy, Adv.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. This criminal appeal is directed against the judgment of conviction and order of sentence dated 22-5-1998 passed in Sessions Trial No. 188/96, whereby and whereunder the learned Additional Sessions Judge, Simdega held the appellant guilty under Section 376, I.P.C. and convicted and sentenced him to undergo R.I.

for 10 years.

2. The prosecution case in brief is that Lilli Grace Minz lodged an FIR with Kurdeg P. S. stating therein that on 6-3-1996 she was in the house of her maternal uncle (Silas Xaxa) in village Parkala. On the same day at about 8.30 p.m. she was standing on the road near the house of her maternal uncle when Mangra Indwar (Appellant) caught her and took her towards the field and when she wanted to raise alarm, appellant covered her mouth with his hand. She was taken to the field near a mango tree. Appellant threw her on the ground and committed rape on her. The prosecutrix wanted to raise alarm but she was threatened that she would be killed. Appellant committed rape on her and while leaving the place he again threatened her that in case she discloses the matter she will be killed. She went inside the house and out of fear she slept in the night but without informing about the incidence to anyone. But in the next morning she informed about the incidence to her cousin sister Fatima Xaxa, who in turn told about the occurrence to the maternal uncle and ant of the informant. Information was sent to her brother Rajesh. Minz. Informant along with her brother Rajesh Minz went to the police station where police recorded her F.I.R. and on the basis of F.I.R. police registered Kurdeg P. S. Case No. 7/96 under Section 376, I.P.C. and after investigation charge-sheet was submitted against the appellant and cognizance was taken and case was committed to the Court of Sessions and learned Additional Sessions Judge, Simdega recorded the evidence of witnesses both oral and documentary and came to a finding and held the appellant guilty and convicted and sentenced him as aforesaid.

3. Prosecution has examined 10 witnesses. P.W. 1 is Fatima Xaxa, who has been declared hostile by the prosecution as she has not supported the prosecution case.

4. P.W. 2 has been tendered. P.W. 3 is Prabhat Xaxa, who has also been declared hostile as he has not supported the prosecution case. P.W. 4 is a formal witness. P.W. 5 is Hemant Xaxa. He has also not supported the prosecution case and he has been declared hostile. P.W. 6 has been tendered for cross-examination. P.W. 7 has also been tendered for cross-examination. P.W. 8 is

Rajesh Minz and he is the brother of the prosecutrix Lilli Grace Minz (P.W. 9). He deposed that appellant had committed rape on his sister at about 7-8 p.m. but he admits that he did not see the commission of rape on her. He was informed by his maternal uncle and on this piece of information he came to the place where P.W. 9 was staying and enquired from her and on enquiry Lilli Grace Minz (P.W. 9) disclosed .to him that appellant had forcefully committed rape on her at about 8 p.m. Then he went to the police station along with P.W. 9 where P.W. 9 gave her statement and thereafter she handed over her Painti to the officer Incharge and she disclosed that Mangra Indwar has torn her Painti. She was thereafter sent for medical examination. Lilli Grace Minz and wife of P.W. 8 had entered into some quarrel with each other and she left the house of her brother and went to live in the house of her maternal uncle She narrated the occurrence that took place with her on 6-3-1996 at about 8 p.m.

5. P.W. 9 is the victim girl herself. On 6-3-1996 at about 8 p.m. she was standing on the road near the house of her maternal uncle and at that time she was alone and in the meantime appellant came there from the east and caught her hands and dragged her, whereupon she raised alarm then appellant shut her mouth with his hands and told her not to raise alarm otherwise she will be killed. He took her to other place and threw her on the ground. Although she tried to rescue herself but appellant again threatened her to commit her murder and thereafter he committed rape on her. Appellant again threatened her while leaving the place. She came to her maternal uncle's house and she was afraid and ashamed and fell asleep. She did not narrate the occurrence to anyone in the night but in the next morning she disclosed the occurrence to her cousin Fatima Xaxa (P.W. 1). She was limping as a result of pain and trouble and she was finding her difficult to move. P.W. 1 disclosed the fact to her father and others and P.W. 8 was informed and P.W. 8 came and took her to the police station, where a case was lodged. She handed over her Painti to Darogaji and a seizure list was prepared. Her Painti was torn by the appellant before commission of rape. She was thereafter referred to the doctor for medical examination and she was medically examined.

6. PW 10 is Rojalin Minz. She is the wife of the brother of PW 9. She has supported the prosecution case and has corroborated the fact that PW 9 had left

her house to some altercation with her and had gone to her maternal uncle' house where the occurrence took place.

7. While assailing the judgment, learned counsel for the appellant submitted that not a single independent witness has supported the alleged occurrence and there is no eyewitness to the alleged occurrence. It was also pointed out that out of ten witnesses merely 7 witnesses have either been declared hostile or have been tendered as they have not supported the prosecution case and more-so even PW1, who is cousin of PW 9, in whose house PW9 was residing at the time of occurrence, has not even supported the occurrence. It was also pointed out that PW 8 is brother of victim girl and PW 9 is the victim herself and PW 10 is the wife of the brother of PW 9 and, therefore, all are interested witnesses. It was also pointed out that even doctor has not been examined and, therefore, there is no corroboration of commission of rape by the medical evidence also. Except her nanad and herself, no body has supported the case and in such a situation simply on the evidence of interested witnesses a person cannot be held guilty.

8. On perusal of evidence on record it appears that out of ten witnesses seven have either been declared hostile or have been tendered for cross-examination and even they have not supported the case of the prosecution. It is established principle of law that it is not safe to rely on the solitary evidence of a person unless corroboration is made or if the evidence of a person is so reliable that no corroboration is required. In the instant case the evidence of PW 9 has been supported by the evidence of PWs 8 and 10, although there is no eye-witness except PW 9 but the evidence of PW 9 is so convincing that it is difficult to disbelieve her evidence. The defence has not been able to elicit anything which caused to show that out of any grudge or malice PW 9 lodged a case of rape against the appellant. She is unmarried girl and also she has got no history of being bad character and also whatever she has stated in her evidence, it appears that there is consistency in her evidence about the commission of rape and she has deposed in the most natural way about the commission of rape and in such a way even if her evidence is not corroborated by medical evidence or so, it cannot be said that rape has not been committed. Corroboration of rape by medical evidence is not necessary and it has been upheld by a number of decisions of the

Apex Court and further that statement if not corroborated, but without any malice and that does not require any corroboration, is enough for conviction of a person. Here in the instant case it is necessary that after commission of rape she was referred to the doctor for medical examination and she was medically examined, as per her evidence and evidence of PW 8 and 10 but whatever be the cause, the doctor has not been examined and there is no such suggestion on behalf of the defence that she was not purposely medically examined and have not challenged the examination of doctor.

9. From the discussion made above, I find and hold that there is no merit in this appeal and impugned judgment does not require any interference, so far as the merit is concerned but the period of sentence of ten years RI is reduced to seven years RI and with this modification in the period of sentence, this appeal is dismissed.