

Narayan Lahri Vs. the State of Bihar

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Court : Jharkhand

Decided On : Apr-24-2003

Reported in : 2003(2)BLJR1126

Judge : Hari Shankar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 376, 387 and 452

Appeal No. : Criminal Appeal No. 4 of 2000 (R)

Appellant : Narayan Lahri

Respondent : The State of Bihar

Advocate for Def. : N. Gupta, APP

Advocate for Pet/Ap. : Pradeep Kumar Nayak, Adv. for Information; R.C. Jha, Adv.

Disposition : Appeal allowed

Judgement :

Hari Shankar Prasad, J.

1. The sole appellant namely Narayan Lahri has filed this appeal against the judgment dated 3-12-99 and order of sentence dated 6-12-99 passed in Sessions Trial No. 119 of 1997 corresponding to G.R. No. 4357 of 1996 arising out of Burmu

P.S. Case No. 55 of 1996 whereby the appellant was found guilty under Sections 376, 452, 387 and 323 IPC and the appellant was convicted to undergo R. I. for seven (7) years under Section 376, five (5) years each under Section 452 and 387 and further for six (6) months under Section 323 IPC and sentences were directed to run concurrently.

2. Prosecution case in brief is that one Shanti Devi on the alleged date and time of occurrence was alone in her house and the appellant entered her house, demanded money as Rangadari tax and snatched gold earrings and Rs. 4,000/- and when she protested about the same, then he threw her on the ground and committed rape on her. After commission of rape, she raised alarm whereupon witnesses turned up and saw the appellant running away. The victim lady did not go to the P.S. although some persons had advised her to go to P.S. and inform the police but as her husband was not in the house as he had gone to her sasural to see his ailing father-law, she did not file any case without his consent. After two weeks when her husband came and thereafter they came to P.S. but P.S. did not entertain their application and, therefore, a complaint case was filed against the alleged action of the appellant and the court was pleased to send the case to the concerned P.S. for registration and investigation under Section 156(3) Cr. P.C. and the I.O. after investigation submitted charge sheet in the case. Cognizance was taken and the case was committed to the court of sessions and after recording of evidence both oral and documentary on behalf of the both the sides learned Court below found the appellant guilty aforesaid and passed the sentence.

3. The learned Counsel appearing for the appellant assailed the judgment on the ground of delay in filing of the complaint case, non-availability of any eye-witness save and except the victim lady (P.W. 4) and non finding of commission of rape by the doctor and the witness were the interested ones and non production of material exhibits such as blouse etc.

4. P.W. 3 is father-in-law of the victim lady, P.W. 4 is the informant Shanti Devi and P.W. 5 is the husband of the informant P.W. 1 is Govind 'Sao who came to the place of occurrence soon after the occurrence, Similarly, P.W. 2 Tahlu Sao who also came soon after occurrence. P.W. 6 is a lady doctor who examined the victim

lady (P.W. 4) and P.W: 7 is the I.O. of the case.

5. P.W. 4 is prosecutrix. She has stated in her deposition that at about 9.00 a.m. she was cooking in her house and there was none in her house because all other inmates had gone out for work. Her husband had gone to sasural to see his ailing father-in-law and she was in her house with her two children. She further stated that house of the appellant is adjacent to her house. She further says that the appellant entered her house with revolver and took out Rs. 4,000/- which her husband had given her on sale of a bull and snatched gold earrings, necklace and thereafter he thrust cloth in her mouth and threw her on the ground and committed rape on her. He committed rape for half an hour and thereafter he came out with his family members and fled away on motorcycle. She raised alarm whereupon P.W. 1, P.W.2 and P.W. 3 came to her house and she narrated the entire occurrence to them. She further says that she will not go to the P.S. for lodging the case at the present moment because her husband is not there. She further says that after 15 days of occurrence, her husband came and thereafter she lodged a case with the P.S. and she was brought to Ranchi where she was medically examined. She has further stated that when the appellant entered her house doors were open. She has further stated that he tore her blouse and bit her breast also. She further says that she handed over all the clothes to the police.

6. P.W. 1 is Govind Sao. He has come to say that during commission of offence, nobody was there but he saw P.W. 4 in disturbed condition and she was weeping and in that condition, she narrated the entire occurrence to him. But in cross-examination he says that he did not see P.W. 4 in naked condition. He further says that he did not see any mark of violence on her body.

7. P.W. 2 is Tahlu Sao. He has also supported the commission of rape and loot but in cross examination he says that he did not see Shanti Devi (P.W. 4) in naked condition and Shanti Devi was wearing gold earring, etc. and he did not find any mark of violence on her body. He also did not find her clothes torn.

8. P.W. 3 is Laxman Sao. He is the father-in-law of the victim lady (P.W. 4). He is also hear-say witness. He reached home after occurrence had already taken place. He was also told by the P.W. 4 about the occurrence but he says that he did

not lodge the case only because his son who is husband of the prosecutorix was not present.

9. P.W. 5 is the husband of the P.W. 4. He says that he had gone to his sasural to see his ailing further-in-law and returned after 15 days when entire occurrence was narrated to him and, therefore, he decided to lodge the case and went to P.S. and when nothing was done by P.S, then he filed this complaint case.

10. P.W. 6 is the lady doctor who examined the prosecutorix. According to her, she examined P.W. 4 on 20-10-1996 but she did not find any mark of injury on her, private part or anywhere on her body. She did not find any stain on her cloths or on her private part she did not find any positive evidence of rape. This is natural because occurrence took place on 26-9-1996 and she was examined on 20-10-1996 and after lapse of so many days, it is but natural that no sign of rape will be found.

11. P.W. 7 is the 10 of the case. He says that on 19-10-1996 he was Assistant Sub-Inspector in the Burmu Thana P.S, and on receipt of complaint Case No. 2749 dated 16-10-96, Burmu P.S. Case No.55/96 was registered under Section 323, 376, 452, 387 I.P.C. After assuming charge of investigation of the case, he recorded statement prosecutorix and inpected the P.O. which is located in Gijo Thakur Village, According to him, house of the prosecutorix is in northern end of the village which is facing western wide. A, Kachcha rasta emerges from west of the house and goes up to surid and adjacent to east of the rasta, house of the informant is situated and adjacent to the north of her house is the house of Tahlu Sao (P.W. 2} and on the southern side also, there is house of Tahlu Sao and on the western side. There is kachcha rasta and house of Laxman sao and the house of appellat. In cross-examination, he has stated that he did not seize article and did not prepare any seizure list and no article was produced before him, He further says that P.W. 3 had disclosed him that his son had another marriage and he had given up his first wife and married this lady. The first Wife of the husband of the complainant has filed a case in the Court.

12. On behalf of the defence only one witness has been examined and he has come to say that on 26-9-1996 he was in village, which is the same village where

occurrence is said to have taken place. But he did not hear anything about this occurrence. He has further come to say that he had even seen appellant and husband of the prosecutorix in the village the very same day.

13. Although, from the medical evidence no positive evidence of rape has been found nor presence of spermatozoa was found because prosecutorix was medically examined after a lapse of about three weeks it is but natural that no sign of rape or presence of spermatozoa will be found and, therefore, this piece of evidence does not held the prosecution case. Evidence of I.O. is also more or less negative about the prosecution case because he has conducted investigation but has stated that he did not prepare seizure list of any article and prosecutorix did not produce any torn clothes nor semen stained clothes. He further says that she had shown her body where she is said to have received tooth bite but he did not find any sign of injury or mark of violence. Similarly, doctor had also not found any mark of violence on the body of the prosecutorix. Now there remains only oral evidence on the point of alleged rape.

14. P.W. 4 is the prosecutorix. She has supported her version of alleged snatching of gold earrings, necklace, etc. and commission of rape on her body. P.W. 1 has supported his version who immediately after occurrence, arrived at the place of occurrence. He had, in his examination in chief, stated about P.W. 4. In a peculiar condition but in cross-examination he says that he did not see her naked, although he had stated that he saw the occurrence from her naked eye but in cross examination he says that he did not see occurrence. He further says that he did not see any mark of violence on her body. Similarly, P.W. 2 who also claims to have arrived immediately after the occurrence has stated that prosecutorix Shanti Devi was weeping and she narrated the entire occurrence to him Like P.W. 1, P.W. 2 also claims to reach the place of occurrence immediately and Shanti Devi (P.W. 4) narrated the entire occurrence to him. He also admits that he did not see her naked and she was wearing necklace, etc. He further says that he did not see mark of violence on her face nor found her clothes torn from anywhere.

15. On the other hand, learned Counsel for the appellant submits that the occurrence took place on 26-9-1996 but FIR was lodged on 15-10-1996 after

lapse of about three weeks of occurrence which has come in the evidence. He further pointed out that in order to reach Neither of the complainant, it takes about three to four hours from her residence. Learned Counsel further pointed out that such an ugly incident occurred with P.W, 4 but neither her father-in-law nor any body else went to the P.S. to inform nor any of them informed the husband of the P.W 4 to come immediately there because, besides snatching of money, gold earrings, etc., she was also raped and such an ugly occurrence took place with the prosecutorix but no information was sent and the best evidence which could have been available immediately after the occurrence, but these persons allowed to wither away because except P.W. 4 none else is eye-witness and, therefore, in such a situation, documentary evidence was also essential. On the other hand evidence has come to the effect that prosecutorix was the second wife of P.W. 5 and the first wife of P.W. 5 had earlier lodged a case against P.W. 5 and P.W. 4 at Ranchi and P.W. 4 sometimes used to attend the court at Ranchi and for that, she used to come with the appellant and this fact has been stated by P.W. 7 in his deposition that P.W. 4 had said to him that first wife of P.W. 5 had filed a case at Ranchi against P.W. 5 and she used to go to Ranchi along with this appellant to attend the Court. But in her cross-examination she has completely denied any acquaintance with this appellant The I.O. has further stated that P.W. 3 had told him that prosecutorix is the second wife of this son and first wife of his son had lodged a case against P.W. 5 and P.W. 4. Even P.W. 5 has stated in Para 22 of his deposition that Sumita Devi is the name of his first wife and Shanti Devi is the name of his second wife. In Para 37 he has stated that the appellant had not bitten his wife by teeth nor caused any injury, that is why she did not state about this. But P.W. 4 in her evidence has stated like this P.W. 5 has stated in Para 34 that he had inquired why he was not informed for so many days, he was told that his father was ill, that is why no information was sent to him. But on the other hand, on the alleged date of occurrence. P.W. 3 who is father of P.W. 5 had gone to filed for work and, therefore, this is very peculiar plea that no information was sent to him rather an occurrence of such a magnitude had taken place and information should have immediately be sent. Learned Counsel further says that if father was ill then the informant should have sent information to her husband to come back or some one should have been immediately sent to him. But on the other hand, an

explanation is being given that due to illness of his father, information was not sent to him.

16. The learned Counsel further pointed that torn clothes and semen stained clothes should have been given to the I.O. but from the evidence of I.O. (P.W. 7), it appears that no such clothes were handed over to the I.O. and, therefore, from every corner it will appear that case of rape and snatching of gold ornaments and money is a concocted one to implicate the appellant and, therefore, appellant deserves acquittal.

17. In a case of rape when a victim lady or girl comes out with the statement that she has been raped, it generally touches the conscience of everybody as to why she will say that she has been raped and with not motive of profit etc. or enmity etc., and in such situation whether there is a report of doctor or not, the statement of victim lady or girl is believed to be true. In the instant case also P.W. 4 has come out with a statement that she has been raped by the appellant but the case of rape is not immediately lodged and after three weeks of the return of her husband from her Sasural, she lodged the case and for this occurrence of rape plus loot of articles and money no information was sent to her husband, who could have contacted the same day as from the resident of P.W.4 to the house of her Neither, there was a journey of 3-4 hours but till her husband did not come to his home of his own no information was sent to him. Further witnesses, who came to the place of occurrence immediately after the occurrence, did not fully corroborate the statement of P.W. 4 and P.W. 2 even found P.W. 4 bearing gold earrings etc. and P.Ws. 1 and 2 did not find any sign or mark of violence or anything like that. P.W. 4 claims that she has been raped for half an hour and that too at about 9 a.m. in the morning hours when there was possibility of anybody's coming to the house for any work and further than she did not keep her torn clothes and semen stained clothes to be handed over to the I.O. and simply on the statement of P.W. 4 that she has been raped, it will be difficult to believe her statement. Others circumstance is against her statement because she has not come out with clean hands and she has suppressed several material facts in her evidence. P.W. 4 had denied any prior acquaintance with the appellant but it has come in the evidence of P.W. 7 that first wife of P.W. 5 had filed a case against P.W. 4 and P.W. 5 at

Ranchi and P.W. 4 used to go to attend the Court alongwith this appellant and, therefore she was acquainted with the appellant from before. Further appellant was her next door neighbour and she must be knowing form before. It further appears that occurrence occurred like twinkling an eye. It is true that time of reporting is not material but it becomes material in same nature of case like this because best evidence available after occurrence gets lost in due course of time. P.W. 4 claims to have been raped and information to that effect is lodged after three weeks and, therefore, the doctor (P.W. 6) did not find any sign of rape nor any spermatozoa was found and it is natural that sign of rap will not be found there weeks after commission of rape. Then the best evidence was semen-stained clothes and torn blouse, which she could have shown to P.Ws. 1 and 2 but they did not find any such material.

18. On the basis of discussions made above. I am of the view that this is an appeal, which is fit to be allowed.

19. In the result, this appeal is allowed, judgment and order of sentence is set aside and the appellant is acquitted from the charges. The appellant is on bail, he is discharged from the liability of bail bond.

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