

Mohammad Akhtar Vs. State of Bihar

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Court : Jharkhand

Decided On : Jun-27-2005

Reported in : 2005(3)BLJR2006; [2005(4)JCR109(Jhr)]

Judge : S.J. Mukhopadhaya and ; Hari Shankar Prasad, JJ.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Sections 3; [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Cri. Appeal No. 7 of 1997 (P)

Appellant : Mohammad Akhtar

Respondent : State of Bihar

Advocate for Def. : Malti Chourasia, APP

Advocate for Pet/Ap. : Rajeeva Sharma, Sr. Adv.,; Rita Kumar and; Manoj Kumar

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. The sole appellant has been convicted under Section 376 of the Indian Penal Code and under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo RI for life under

Section 376 of the Indian Penal Code and further sentenced to undergo RI for five years under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, but both the sentences were directed to run concurrently.

2. Facts briefly stated are that the victim lady namely Smt. Siya Janki Devi was coming from paddy field with a bundle of paddy straw on her head on 3.11.1994 at about 2.30-3.00 p.m. in the day. As soon as she came to Sohara Bahiar, the appellant caught hold of her by sari due to which, bundle on her head fell down. Having guessed the motive of the appellant, the victim lady tried to raise alarm but the appellant threatened her not to raise alarm and he even went to the extent of saying that if you allow me to have sexual intercourse with you, you would not loose anything. Thereafter the appellant caught hold of the victim lady and committed rape on her and fled away. The victim lady stated that it was lonely place; no one came on her alarm. Later she got up and arranged her cloths in order and took bundle on her head and proceeded for barn. After covering distance she dropped bundle at her door but because of dishonour, she did not narrate the occurrence to anyone. In the night she narrated the occurrence to her husband who immediately went to the residence of Mukhia and asked for panchayati and Mukhiyqjee assured him that panchayati will be held on the following day. On the following day panchayati did took place and the appellant nominated his under as panch on his behalf and on the pretext of calling him, the fled away. The victim lady was left with no alternative than to report the matter to the police and on the above facts, a case being Pathargama PS Case No. 148 of 1994 was registered under Section 376 of the Indian Penal Code and 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and after investigation charge-sheet was submitted in the case. Charges were framed accordingly and trial continued.

3. The learned trial Court recorded the evidence of 7 witnesses and ultimately came to a finding that rape has been committed on the victim lady, namely, Siya Janki Devi and consequently convicted and sentenced the appellant under various sections.

4. Prosecution has examined 7 witnesses in this case. PW 1 is Damodar Ravidas. He is father-in-law of the victim lady Siya Janki Devi and he is a labourer. He is hearsay witness. Accordingly to this witness, he came to know of this occurrence from his daughter-in-law that rape was committed on her by the appellant,

5. PW 2 is the husband of the victim lady. He is also hearsay witness. He was not in his house at the time when his wife Siya Janki Devi (victim lady) returned home but when he came from outside, then in the night her wife narrated the occurrence to him. Having got this information, he immediately went with his wife to the residence of Mukhiyqji who assured him to hold panchayatt and did not allow him to go to the P.S. Thereafter panchayati took place after two or three days of the occurrence and the appellant was present in the panchayati but he fled away and thereafter case was lodged at the P.S.

6. PW 3 is the prosecutrix herself and she has supported the prosecution case and has narrated the sequence of events that led to her rape by the appellant.

7. PW 4 is Balendu Ravidas. He is also hearsay witness. He came to know from PW 3 (prosecutrix) about rape committed on her by the appellant.

8. PW5 is Mohammad Mustakim. He is farmer. He has come to say that at the relevant point of time, he was Mukhiya and he had been Mukhiya for the last five year. He further says that on Tuesday at about 8.00 p.m. Aklu Ravidas (PW 2) had come to my residence and informed him that rape has been committed on his wife and asked him to call panchayati and the same night panchayati took place. Akhtar (appellant) was called at the panchayati but information was received that Akhtar is not in his house, then in the morning father of Akhtar was called and he was asked to inform as to where his son has gone and call him immediately. After 2, 4, 5 days he was called and panchayati took place and in the panchayati about 20-25 persons were present. Akhtar also came and he told the persons that he is going to call his uncle who will be panch from his side, but he fled away from the place and did not attend the panchayatt.

9. Learned senior counsel appearing for the appellant submitted that in this case, neither the doctor nor the IO has been examined and other witnesses are all

hearsay witnesses. It was further pointed out that since occurrence took place three or four days before but FIR was lodged after a long delay and the informant had enough time to maneuver the case as the occurrence is said to have taken place on 8th November, whereas FIR has been lodged on 14th November after six days of the occurrence, still she should have been examined by a doctor, but the IO did not think it fit and, therefore, she was not sent for medical test.

10. Learned counsel further pointed out that no case under Section 3(i)(xi) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out because the alleged rape was not committed considering the fact the victim lady belongs to the Harijan community. It was further pointed out that not only there was delay in lodging of the FIR but even after lodging of the FIR on 14.11.1994 at 4.30 p.m. the FIR was sent to the Court concerned on 15.11.1994 but it was received in the Court on 17.11.1994 and there was ample opportunity for the prosecution to maneuver things against this appellant and, therefore, on this score only, the appellant is entitled to acquittal.

11. It was also pointed out that there are some discrepancy in the evidence of witnesses and those discrepancies are fatal for the prosecution because whereas Mukhiya (PW 5) says in his evidence that panchayati took place the same night but to absence of appellant, the panchayati was held after two or three days. But PW 3 who is husband of the prosecutrix says that panchayatt took place two or three days after but he does not say that when he had gone to lodge complaint with the Mukhiya, panchayatt took place in the night. Another difference which has been pointed out by the learned counsel that from the FIR, it will appear that PW 3 (Prosecutrix) has stated in her FIR that her husband had gone out for work and when he returned back, then he narrated the occurrence to him who immediately went to the residence of Mukhiya to lodge complaint with the Mukhiya. But in her evidence she has stated that she was raped and after rape she came weeping to her house where she narrated the occurrence to her devar (PW 4). Thereafter he went to barn and brought bundle of paddy from that place. It was pointed out that before narrating the occurrence to her husband, she had already narrated the same to her devar but in the FIR she has not stated like this. It was also pointed out that accept PW 3, all are hearsay witnesses and, therefore, no reliance should

be placed upon the evidence of such hearsay witnesses because neither the doctor has been examined nor the IO sent her for medical examination knowing fully well that case is concocted one and report will come otherwise and since IO has not been examined, great prejudice has been caused to the appellant.

12. On the other hand, learned APP for the State submitted that rape stands proved from the evidence of PWs, 1, 2, 3, 4 and 5 as they have all stated that appellant fled away from the place of panchayati on the ground that he is going to call his uncle to whom he has chosen as his panch and this fact has even been corroborated by PW 5 who also belongs to the same community to which this appellant belongs and he has also stated that Aklu Ravidas (PW 2) has come to his residence and has lodged complaint with him that rapes has been committed on his wife and he has corroborated the evidence of PW 2. It was further pointed out that evidence of PW 3 (prosecutrix) is quite natural because she says that she was thrown on the ground, she was made naked and rape was committed on her and she also sustained some injuries and she was weeping and when she raised alarm, then this appellant fled away. It was also pointed out that when evidence of prosecutrix appears to be natural, then no other corroboration is required. It is true that neither the doctor nor the IO has been examined but PW 5 Mukhiya who corroborates the fact that PW 2 had come to him and had lodged complaint against Akhtar (appellant) that he has committed rape on his wife and in pursuant to that allegation, panchayati was called and this appellant was called, but he fled away from there, this goes to prove guilty mind of appellant and he was not in a position to face panchayati on the ground that he had actually committed rape and, therefore, whether FIR reached the Court late or whether the doctor or the IO has been examined or not, but the fact remains proved that such an occurrence took place and for the fault of the prosecution, prosecutrix should not suffer.

13. Having considered the evidence brought on record, submissions of the parties, we are also of the view that PW 3 (prosecutrix) levelled allegation of rape against the appellant and panchayati was called but the appellant, namely, Akhtar did not face the panchayati and fled away. PW 5 who was Mukhiya at the relevant point of time had supported the fact and defence has not been able to bring any material on record to show that out of enmity, this allegation have been levelled against

him. Further, defence has only tried to bring this material on record that neither the doctor nor the IO has been examined in this case and the FIR reached late in the Court and, therefore, all these facts do not hit prosecution case in view of the fact that there is sufficient corroboration of the evidence of PW 3 by PWs 2, 3 and 5 and in the facts and circumstances of the case, occurrence stands proved.

14. Lastly, it was argued on behalf of the appellant that occurrence is dated 8th November, 1995 and at that time this appellant was aged 25 years and he has been lying in custody from the very beginning and has already remained in custody for more than nine years. It was Further submitted that minimum punishment prescribed for an offence under Section 376 of the Indian Penal Code is seven (7) years, whereas appellant has remained in custody for more than nine (9) years and, therefore, sentence of life imprisonment will spoil the very life of the appellant for a simple occurrence of rape.

15. On the other hand, learned APP for the State pointed out that occurrence of rape is increasing day by day and whenever a girl or lady is found in a lonely place, then person of this nature commit rape and, therefore, no leniency should be shown to such persons and deterrent punishment should be awarded to the guilty persons.

16. Considering submissions of the parties and materials on record, we are of the view that judgment of conviction and sentence passed by the learned Court below does not require any interference. However, since appellant has already remained in custody for more than nine (9) years, we think it proper to reduce punishment from life imprisonment to twelve (12) years rigorous imprisonment. So far as punishment provided under various sections of the Scheduled Castes and Scheduled. Tribes (Prevention of Atrocities) Act, 1989 is concerned, that will remain the same, but both the sentences will run concurrently.

17. In the result, with the aforesaid modification in the period of sentence, this appeal is dismissed.

S.J. Mukhopadhyaya, J.

18. I agree.

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