

Binod Ram and anr. Vs. State of Bihar

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Court : Jharkhand

Decided On : Apr-28-2004

Reported in : 2004CriLJ3436

Judge : Hari Shankar Prasad, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 374; [Indian Penal Code \(IPC\), 1860](#) - Sections 376

Appeal No. : Cr. Appeal Nos. 318 and 335 of 2000(R)

Appellant : Binod Ram and anr.

Respondent : State of Bihar

Advocate for Def. : A.B. Mahato, APP

Advocate for Pet/Ap. : A.K. Kashuap and; Ravi Prakash, Advs.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. Both these appeals are directed against the judgment of conviction dated 25-7-2000 and order of sentence dated 27-7-2000 passed in S.T. No. 510 of 1998 whereby and where under the learned VIIIth Additional Judicial Commissioner,

Ranchi held the appellants of both the appeals guilty under Section 376(2)(g) of the Indian Penal Code and convicted and sentenced them to undergo R.I. for ten years each.

2. Prosecution case in brief is that the informant as well as the victim girl Sunila Kachhap, who is daughter of Madho Kachhap, had gone to attend marriage ceremony on the invitation of Manjula Lakra, daughter of Sadhu Lakra on 10-3-1998. On this occasion, village girls, namely, Munni Kumari, Hira Kachhap, Langri Mundain, Kokali Mundain and others were enjoying dance and singing. At about 11.30 pm she went to make water and she came out of the house for going make water in sahan where appellants and one more accused person were there who were concealing themselves and they caught hold of the informant and appellants and one more accused person took her dragging and pressing her mouth to the quarter of Forest Department situated west of the village where appellant Binod Ram first unlaced her salwar and made her lie on the ground committed rape on her. Thereafter, Vijay Ram committed rape on her. Thereafter, appellants and other accused person threatened to kill her if she disclosed the occurrence. Finding her absent at the place where she was sitting, boys and girls began search of Sunila Kachhap, then the appellants and accused person started fleeing away from that place. The informant came weeping towards the village. Ram Kachhap, brother of the informant and other villagers arrived there and informant narrated the occurrence. Thereafter, a search for culprits was made and appellant Vijay Ram, who had hidden himself inside the house of Manki Ram, was caught and in process of catching him, someone hit Vijay Raj with brick bat due to which he received injury of brick on his head. Sunila Kachhap gave a fardbeyan to the effect as aforesaid and on the basis of this fardbeyan, Doranda PS case No. 59 of 1998 dated 11-3-1998 under Sections 376, 34 of the Indian Penal Code was registered and after completion of investigation charge-sheet in the case was submitted under Section 376(f) of the Indian Penal Code. Cognizance was taken and the case was committed to the Court of Sessions where learned VIIIth Additional Judicial Commissioner, Ranchi record the evidence of witnesses both oral and documentary --and came to a finding and held the appellants guilty and convicted and sentenced them as aforesaid but acquitted the other accused person namely Gopal Ram.

3. Prosecution has altogether examined nine witnesses. PW-1 is Hira Kachhap, PW-2 is Dr. (Mrs.) Rital Lal who examined the victim, PW-3 is Langri Kachhap, PW-4 is Munni Kumari, PW-5 is Kokli Mundain, PW-6 is Sunila Kachhap, who is informant as well as victim girl, PW-7 is Ram Kachhap, PW-8 is Jagdish Prasad and PW-9 is Dilip Kumar Singh.

4. PW-6 is Sunila Kachhap. She is informant as well as victim girl. According to this witness, she had gone on 10th March 1998 in the night to the residence of Lolu Lakra on the occasion of marriage ceremony of his sister Manju Lakra and along with her, Munni Kumari, Langri Mundain, Hira Kachhap, Pup Munda, Vijay, Munda, Kisto Kachhap and Ramu Kachhap had also gone to attend the marriage ceremony. In the night at about 10.30-11.00 pm girls and boys were enjoying dance and singing and she was watching dance and signing programme while sitting there. Further according to this witness, in the midst she went out to urinate and went 30-40 yards away and after sitting there she was unminating and when she got up from there, Vijay Ram came there and along with him, two other boys also came and all three persons committed rape on her one by one. She further says that she raised alarm before rape and after rape. Further according to this witness, after rape Vijay Munda, Kisto Kachhap and Ramu Kachhap came there and she immediately narrated the occurrence to them. One boy who had committed rape was caught and she had seen the boy and had identified that this boy had also committed rape on her. Two boys had fled away, but the boy who was caught disclosed his name as Vijay Ram. He further disclosed the names of other rapists as Gopal and Vinod. She further says that she narrated the occurrence to the persons standing there and to her friends' she also narrated the occurrence to the Daroga Sahab who recorded her statement and read it over to her and finding it to be correct, put her signature. She was medically examined at the instance of police and she had also given her statement before the Magistrate under Section 164, Cr.P.C. She identified Vijay Ram and Vinod Ram as the persons who committed rape on her but she did not identify Gopal Ram. She says that P.O. is about 50 yards away from the place where function of dance and signing was going on and that place was a bit dark. She says that she raised hulla but nobody could hear this and nobody reached at the P.O.

5. PW-2 is Dr. (Mrs.) Rita Lal, who examined the victim girl and found the following :

'Mark of identification (SIC) 1) Small scar on left side of forehead

(2) Scar mark of right arm.

= I found teeth upper fourteen, lower fourteen, height 61 inches, weight 96 pounds.

= Auxiliary and pubic hair scanty.

(2) = P. V. examination shows old rupture of hymen admits one finger.

= No mark of injury on her private parts nor anywhere on her body.

= She was menstruating. Vaginal smear taken and send to pathologist for report.

= X'ray of wrist and popish advised.

= pathologist report received on 16-3-1998 shows no dead or alive spermatozoa

= large number of robe present.

= X-ray report shows her age between 16 to 17 years.

According to her opinion, PW-6 cannot be said to have been raped or not.

6. PW-1 is Hira Kachhap. According to this witness, she had gone to residence of Sadhu Lakra on the occasion of marriage ceremony of his daughter and along with her, Munni Kumar, Langri Mundain and Pugali Mundain and Sunila Kachhap had also gone to attend the marriage ceremony. She further says that two boys had also accompanied them. They were Vijay Munda and Kisto Kachhap. After marriage ceremony dance and singing function was on and she was dancing with other girls and PW-6 was sitting there and enjoying the function. Further according to this witness, PW-6 felt urge of making water and went out for urination and when she did not find her (PW-6) there, then she along with others started searching for her and when she and others met PW-6, she was seen coming out from behind a quarter but was weeping and she disclosed to others about the

occurrence. She further says that one person was caught at the place who disclosed his name as Vijay Ram and this culprit disclosed before them about the names of two other persons' as Gopal Ram and Vinod Ram.

7. PW-3 is Langi Munda. She has also made similar statements like PW-1. She has also supported the version of PW-6.

8. PW-4 is Munni Kumari. According to this witness, she along with Vijay Munda, Ramu Kachhap, Kisto Kachhap, Hira Kachhap, Langri Mundain, Kokli Mundain and Sunila Kachhap had gone to attend marriage ceremony of Manju who is daughter of Sadhu Lakra, where after marriage dance and singing function was going on and PW-6 was sitting there and enjoying the function. When she was found absent from the gathering, then search for her was made and on meeting her, she disclosed that three boys caught her, took her behind a quarter and committed rape on her. There was some hulla-gulla and a search for culprit was made and the appellant-Vijay Ram was caught and he disclosed the name of two other accused as Vinod Ram and Gopal Ram. She further disclosed that Vinod Ram made extra-judicial confession before her that Vinod and Gopal has also committed rape on Sunila Kachhap.

9. PW-5 is Kokli Mundain. She has also supported the occurrence of rape on PW-6 and stated that one Vinod Ram was caught who disclosed the name of other two rapists.

10. PW-7 is Ramu Kachhap. He has participated in the dance and singing function that took place on the occasion of marriage ceremony of Manju Lakra where Vijay, Kisto Kachhap, Munni Kumari, Pugali, Langri, Hira Kachhap and Sunila Kachhap had also gone to attend the function. According to this witness, when PW-6 was found absent from the place where she was sitting, then search for her was made and on meeting her, she disclosed the fact that she was caught by three boys who took her behind a quarter and committed rape on her one by one and there was hulla-gulla. A search for culprit was made and Vijay Ram was caught who disclosed the names of two other rapists as Gopal Ram and Vinod Ram and disclosed that Gopal Ram and Vinod Ram had committed rape on PW-6.

11. PW-8 is a part LO. of the case. He has simply submitted charge-sheet in the case.

12. PW-9 is a formal witness, who has proved some documents.

13. Learned counsel appearing for the appellants pointed out that in the first instance, allegation was made that as many as three persons committed rape on PW-6 out of whom, two persons convicted who are appellants here and one Gopal Ram have been acquitted. It was further pointed out that as many as three persons committed rape on PW-6, who was aged, as per medical report, between 16 to 17 years, but doctor (PW-2) in course of examination of victim girl (PW-6) did not find any sign of rape and she has given her opinion that she cannot say as to whether rape has been committed or not. It was further pointed out that no mark of violence was found either inside her private part or externally, this is enough to suggest that no rape has been committed on her (PW-6). Learned counsel further pointed out that spermatozoa was also not found, whereas according to the medical jurisprudence if rape is committed and lady or girl is examined within 24 hours of commission of rape, spermatozoa will definitely be found. Learned counsel further pointed out that in the instant case, rape was committed in the night at about 11.30 p.m. and next morning, doctor (PW-2) examined her and, therefore, evidence of commission of rape should have been found, but no such evidence has been found. It was further pointed out that no independent witness has been examined in this case and further. I.O. has also not been examined in this case. It was further submitted that it is stated that Vijay Ram was caught at the place, but due to non-examination of the I.O., this fact, that he was caught and handed over to the police, could not come on record and, therefore, prosecution has not been able to prove the occurrence in a manner as alleged. It was further pointed out that not a single person from the house of Sadhu Lakra has come to say that on the alleged date of occurrence, marriage ceremony of the daughter of Sadhu Lakra was being celebrated.

14. On the other hand, learned A.P.P. for the State pointed out that there is consistent evidence against the appellants and no cause of false implication at the hands of PW-6 can be alleged.

15. As per fardbeyan, occurrence is said to have taken place after 11.00 p.m. on 10th March, 1998 and Vijay Ram was caught at the place of occurrence and he disclosed the names of two other persons and in course of evidence, PW-6 has narrated the occurrence of commission of rape on her by the appellants and by another co-accused namely, Gopal Ram, who was later acquitted by the trial Court, as the trial Court in course of trial found that he did nothing to her. Further, there is consistent evidence of other witnesses namely, PWs-1, 2, 3, 4, 5, 7, 8 and 9 that PW-6 was found absent from the place and when they made search for her, then she was seen coming from behind a quarter and was weeping and she immediately narrated the occurrence and thereafter search for culprits was made and subsequently one culprit, namely, Vijay Ram, was caught at the place of occurrence and the victim girl (PW-6) identified him as one of the rapist and this Vijay Ram had disclosed the names of two other associates. It is true that one of the co-accused who was facing trial along with these appellants, have been acquitted, but not on the same piece of evidence because only appellants have been identified to have committed rape on PW-6 and further that all those persons who attended the marriage ceremony and who were there, supported the case and, therefore, independent witnesses have also supported the occurrence and commission of rape on PW-6. It is true that medical report does not support or corroborate commission of rape but it is established principle of law that when the evidence of prosecutrix appears to be reliable one, then no corroborative piece of evidence is required. But in the instant case, although medical report does not support the prosecution case but other witnesses have fully supported the prosecution case and thereby have corroborated the evidence of PW-6 regarding commission of rape on PW-6.

16. In the facts and circumstances of the case, I do not find any reason to interfere with the findings of the learned Court below. In the result, these appeals are dismissed.