

Kuldeep Soreng, Vs. the State of Jharkhand

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Court : Jharkhand

Decided On : Nov-07-2007

Reported in : 2008CriLJ1972

Judge : D.G.R. Patnaik, J.

Appellant : Kuldeep Soreng, ;motias Dungdung, ;william Bilung and Raju Cheek

Respondent : The State of Jharkhand

Disposition : Appeal dismissed

Judgement :

D.G.R. Patnaik, J.

1. The appellants have preferred the instant appeal against the judgment of conviction dated 24.04.2004, passed by the Additional Sessions Judge, Simdega in Sessions Trial No. 23 of 2002, whereby the appellants were convicted for the offences under Sections 366A and 376(2)(g) of the Indian Penal Code and also against the order of sentence to undergo imprisonment for a period of ten years for the offence under Section 376(2)(g) and fine of Rs. 1,000/- each though no separate sentence was awarded to them for the offence under Section 366A of the I.P.C.

2. The case against the appellants was registered at the Kurdeg Police Station on 07.11.2001 on the basis of a written report submitted by the prosecutrix (P.W. 1) alleging, therein that on the night of 04.11.2001 (Sunday) at about 10 P.M., she was alone in her house. It was the occasion of 'Sohrai' festival. Her father had gone to a relative's house and other members of the family were also away from house and had gone to the house of their relatives on the festival occasion. At that time all the present four appellants came to the house of the prosecutrix, and asked for water. When the prosecutrix came out of her house to offer water, the appellants finding her alone forcibly dragged her towards the nearby bushes. When she raised alarms, the appellant Kuldeep Soreng pressed her mouth and gagged her. They dragged her to a nearby tree, where they fell her on the ground and committed rape on her one after the other. After having ravished her, the appellant, Matias Dungdung took her with him to village- Baglata, where he confined her in the house of Silbanus Soreng and in the next morning, he brought her to Tetanga Munda. On the way her co-villagers Victor Kullu and Ashok Tete met her and escorted her to her house. She adds that a Panchayat meeting was convened on the next day i.e. on 05.11.2001, but since no decision could be taken in the Panchayati, she reported the matter to the Police.

3. After investigating the case, the Police submitted chargesheet recommending trial of the appellants for the offences under Sections 366A and 376(2)(g). Cognizance for the aforesaid offences was taken by the Chief Judicial Magistrate, whereafter the case was committed to the court of Sessions and the trial commenced in the court of the Additional Sessions Judge, Simdega. The appellants pleaded not guilty to the charge. Their case in defence was of total denial of the occurrence and of their false implication.

4. At the trial as many as 11 witnesses were examined by the prosecution including the prosecutrix (P.W.1), the Doctor (P.W. 8) and the Investigating Officer (P.W. 9). No witness was examined by the defence.

5. The trial court considered and discussed the evidence of the prosecutrix and finding support from the evidence of the other witnesses recorded its finding of guilt against all the four appellants for the offences under Sections 366A and

376(2)(g) of the I.P.C. and sentenced them accordingly.

6. The appellants have assailed the impugned judgment of conviction and sentence primarily on the ground that the learned trial court has committed a grave error in failing to appreciate the evidence on record in proper perspective and in placing implicit reliance upon the testimony of the prosecutrix ignoring the several contradictions and inconsistencies in her evidence, which render her story as totally improbable and unbelievable.

Mr. Ram Kishore Prasad, learned Counsel arguing on behalf of the appellants submits that the impugned judgment of conviction cannot be sustained even on the basis of the testimony of the prosecutrix since her claim of being subjected to gang rape by as many as four persons, has not been supported by the medical evidence at all. Learned Counsel argues that if the story of the prosecutrix is to be believed that all the four appellants had committed forcible sexual assault on her that too on a rough surface on the ground, then there was every likelihood that she should 'sustain injuries on her body, besides injuries on her private parts but strangely enough no such external or internal injury was found by the Doctor, who had examined her. This, according to the learned Counsel, totally falsifies the testimony of the prosecutrix about gang rape. Learned Counsel argues further that the story that one of the appellants, namely, Matias Dungdung had himself ventured to escort the prosecutrix to her village is highly improbable as because it cannot be believed that a person having committed the offence of rape would continue to remain in the company of the victim exposing himself thereby to the risk of being apprehended and prosecuted. It is further argued that the learned court below has committed grave error in failing to extend the benefits of the provisions of the Section 360 Cr.P.C. and in failing to record special reasons for not extending the benefit. Learned Counsel lastly submits that the prosecution has failed to offer any convincing explanation for the delay of over four days in lodging the F.I.R.

7. Learned Counsel for the State on the other hand, relies entirely on the findings recorded by the trial court against the appellants and supports the judgment of conviction and sentence. Learned Counsel explains that the girl was a minor on

the alleged date of occurrence as confirmed by the Medical Report and her testimony, wherein, she has narrated the incident in graphic detail, naming all the four offenders, is fully reliable and the defence has not brought any such material on record to suggest that she has falsely implicated the appellants accusing them of committing rape on her. Learned Counsel adds further that absence of corroboration From the medical evidence us of no help to the appellants, since the victim was examined more than four days after the alleged date of occurrence and, as such, the presence of any injuries or sign of rape cannot be expected.

8. From the perusal of the evidences on record, it appears that besides the prosecutrix, the prosecution had examined P.W. 2, P.W. 7, P.W. 10 and P.W. 11 as material witnesses. These witnesses have made identical statements affirming that in the early hours in the morning of 05.11.2001, Libnus Tete, who is the father of the prosecutrix, came and informed that the prosecutrix has not been found at home and he asked him (P.W. 2) to go and search for the prosecutrix. He went in search of the prosecutrix, accompanied by Victor Kullu (P.W. 7). About two kilometers away from the village, he saw the prosecutrix coming towards them and Matias Dungdung was also accompanying her. On being asked, the prosecutrix stated that Matias Dungdung, Kuldeep Soreng, William Bilung and Raju Cheek had visited her house on the previous night and asked for water and thereafter they forcibly dragged her towards a nearby tree by the side of a rivulet and after felling her on the ground, they committed rape on her one after the other and thereafter Matias Dungdung took her to village-Baglata, while the others had fled away. The statements of P.W. 7, P.W. 10 and P.W. 11 are identical to the statement of P.W. 2. and P.W. 3, who is the father of the prosecutrix, while P.W. 4 and P.W. 5 are her uncles and aunt. These witnesses have also affirmed that the prosecutrix was not found at home, since the night of 04.11.2001 and on the next morning, the co-villagers went in search of her and after finding her brought her home alongwith them and thereafter the girl narrated the incident before them stating that on the Previous night all the four appellants had visited her house and asked for water and when she came out to offer water, all the four of them forcibly dragged her away towards the rivulet, where near a tree, they fell her on the ground and committed rape on her one after the other and thereafter Matias Dungdung took her to village Baglata on the next morning, he accompanied her

towards her house and on the way, the witnesses Francis Tete, Victor Kullu and others had met her.

9. The prosecutrix (P.W.1) has reiterated the same statements as contained in her written report. She informs that all the four appellants, who were known to her from before, had visited her house in the night of 04.11.2001 and asked for water and when she offered water to them, the appellant Kuldeep Soreng forcibly dragged her while the other three appellants also with him. When she wanted to raise alarms, Kuldeep gagged her mouth. Thereafter they dragged her towards the Behara tree nearby and after felling her on the ground they committed rape on her one after the other. She adds further that after having committed rape on her, the appellant-accused Matias Dungdung took her to Village-Baglata and confined her in the house of Silbanus Soreng. The next morning, while she was returning home, her co-villagers Victor Kullu and Ashok Tete had met her on the way and escorted her to her house. She reported the incident to them as well as to the members of the family. On Monday, she went to the Police Station, alongwith Victor and Ashok, where she submitted a written report about the occurrence to the Police Officer. Thereafter, the Police took her to the Kurdega Hospital, where she was examined by a lady Doctor. In her cross examination, she explains that the house of Williams and Raju is located about 200 yards from her house and explains further that though she did not know the appellants Kuldip and Matias, prior to the occurrence and it was the accused Matias himself, who had revealed his name and the name of Kuldip to her while proposing that he would marry her. She further informs that Anita, the wife of the accused Kuldeep is her sister by relation and that Kuldeep alongwith Raju and William had visited her house in the afternoon of 04.11.2001, with a proposal for marriage. She further explains that her house is located in the Northern corner of their village beyond the Basti area. She adds further that a Panchayat meeting was convened in the village in which all the four appellants were also present and the Panchayat had decided that the appellants should pay compensation of Rs. 10,000/- each but they had refused to abide by the decision of the Panchayat and she admits that had the appellants paid the compensation amount, she would not have lodged the case against them. She describes the place of occurrence being located at a distance of about 20 Cubits from her house towards the Eastern side and that the ground on which she was

felled, was a sandy ground, She admits that in the house of Silbanus, she saw some 3 to 4 persons but she did not reveal the occurrence to them. She further admits that at the time, when the accused persons had visited her house in the night, her younger sister Alas and a small boy, who had come for dancing, were also in the house. She has also given a vivid description about the manner in which, the act of rape was committed on her stating that the accused Kuldip was the first to ravish her followed by one after the other. She explains further that she was forcibly taken by the Matias to Village Baglata although she had tried to release herself from his clutches. The evidence of P.W. 8, Dr. Jesica Din is that on 07.11.2001, she examined Margret Tete (prosecutrix) clinically. She did not find any injury on the private parts of the girl and the pathological examination of the vaginal swab also did not confirm the presence of any spermatozoa. She has also found that the vagina of the girl admits two finger easily and hymen had an old rupture. She further ' admits that on radiological examination, she assessed the age of the girl about 14 and half years to 16 and half years. It may be mentioned here that by her physical appearance, the trial court had assessed the age of the prosecutrix as 15 years. The Investigating officer (P.W. 9), in his description of the place of occurrence has confirmed that the place where the victim was felled on the ground was a sandy place surrounded by bushes and the place was within a lonely area.

10. From the scrutiny of the evidences, it appears that while the occurrence is alleged to have taken place on the night of 04.11.2001, the information thereof was given to the Police on 07.11.2001 at about nine A.M. The Police Station is located at a distance of 16 kilometers from the house of the prosecutrix. There is an apparent delay of three days in lodging the F.I.R. The explanation offered by the prosecutrix for the delay is that after the occurrence, she was confined by the accused Marias at village Baglata and she returned home on the next day i.e. on 05.11.2001 and thereafter, the mailer was reported in the village and the Panchayat meeting was convened on the next date. She awaited in expectation that the appellants would abide by the decision of the Panchayat but when they refused to abide by the division of the Panchayat, she went to the Police accompanied by her co-villagers and submitted her written report. The above explanation as offered by her is quite reasonable and satisfactory since, it explains

the reasons as to why she had withheld from lodging prompt information to the Police. It may be noted that she had promptly narrated the entire occurrence, to the persons, whom she had met first in a point of time while she was returning home and she had also informed her parents, her uncle and aunt about the occurrence almost immediately on her return home naming all the four appellants as being her offenders. Her parents chose to inform the village elders for convening a Panchayati instead of advising her to straightway go to the Police. The delay is adequately explained.

11. Much emphasis has been led by the learned Counsel for the appellants on the fact that the medical evidence does not support the claim of the prosecutrix that she was subjected to gang rape. It may be noted that though the alleged occurrence is of the night of 04.11.2001, the Medical examination of the prosecutrix was conducted three days later. The presence of any sign of rape after a delay of three days it unlikely, Furthermore, from the evidence of the prosecutrix, corroborated by the evidence of the Investigating Officer, the place of occurrence is a sandy place and, therefore, the presence of any mark of injury on the body of the victim is unlikely. Even other wise, mere lack of corroboration from the Medical evidence, in itself is not sufficient to discard the testimony of the prosecutrix. On reading the testimony of the prosecutrix, there appears a ring of truth and it inspires confidence. No circumstances, has been brought by the appellants in their defence to support the plea that the prosecutrix has falsely implicated the appellants on the charge of rape. Learned Counsel for the appellants argues that the absence of any injury whatsoever on the body of the girl amply demonstrates that the girl was a consenting party to the act of sexual intercourse. This plea of the appellants is totally unacceptable. It cannot be believed that a girl would consent to sexual intercourse simultaneously with as many as four persons. It is also to be noted that the age of the victim girl as per medical report, was below sixteen years on the alleged date of occurrence and therefore the plea of consent is totally irrelevant.

12. From the perusal of the impugned judgment, I find that the learned trial court has elaborately discussed the evidences of the prosecutrix and of the other witnesses and has assigned adequate reasons for recording its finding of guilt

against all four appellants for the offences under Sections 366A and 376(2)(g) of the I.P.C. The sentence of ten years' imprisonment as awarded by the trial court, is commensurate with the gravity of the offence.

13. For reasons discussed above, I do not find any merit in this appeal. Accordingly, this appeal is dismissed.

The judgment of conviction and sentence as imposed by the trial court against the appellants is hereby confirmed.

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