

Joseph Oraon Vs. the State

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Court : Jharkhand

Decided On : Jun-23-2004

Reported in : 2004CriLJ4405

Judge : S.J. Mukhopadhaya and; Lakshman Uraon, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 300 and 376

Appeal No. : Criminal Appeal No. 105 of 1998(R)

Appellant : Joseph Oraon

Respondent : The State

Advocate for Def. : J.P. Gupta, A.P.P.

Advocate for Pet/Ap. : P.P.N. Roy,; Ram Prakash Sinha,; Shahid Khan and;

Disposition : Appeal allowed

Judgement :

S.J. Mukhopadhaya, J.

1. The appellant Joseph Oraon was initially charged in the F.I.R. for offence under Section 302, I.P.C. In course of investigation, Section 376, I.P.C. was also added. The learned Sessions Judge, Gumla found him guilty, convicted the appellant both under Sections 302 and 376, I.P.C. by the impugned judgment dated 6th March,

1998 passed in Sessions Trial No. 69/97 and sentenced him to undergo imprisonment for life under Section 302, I.P.C. and ten years for offence under Section 376, I.P.C. and directed the sentences to run concurrently. In this appeal, the aforesaid judgment is under challenge.

2. The case of the prosecution, as per Fardbeyan of Informant Him Sahu (P.W. 3) is that on 15th December, 1996 at about 9 a.m. his daughter Rekha Kumari (deceased) left his house with Bamboo Basket to collect fire wood and cow dung for cooking purpose. She went into the field of accused Joseph Oraon and picked up few groundnuts, on which accused Joseph Oraon abused her and threatened her with Tangi (axe), due to which Rekha Kumari (deceased) fled away. Till evening she having not turned up, he (P.W. 6) along with his wife began to search her but could not trace her. On the next morning, i.e. 16th December, 1996, when they were searching her (deceased) and reached near a nala of the village, they found the dead body of their daughter, Rekha Kumari inside Nala having injury on her head and back having broken Bangles lying nearby the dead body. Bamboo basket was also lying near the dead body, having some fire wood, some cow dung and ground-nuts lying scattered. It was also stated that his nephew. Gopal Sahu (P.W. 5) told him that yesterday (15th December, 1996) at about 11 a.m., the accused Joseph Oraon had gone towards the place of occurrence with Tangi in his hand and returned at about 3-4 p.m. the accused also threatened Gopal Sahu that he will kill the entire family. It was reported that the accused Joseph Oraon is an accused In the murder case of his nephew Ram Khelawan and had committed rape on his another Niece Sampati Kumari about one year back. At that time, as the villagers asked the accused to marry the girl, since then the accused used to threaten them. It was alleged that the accused Joseph Oraon had committed murder of his daughter Rekha Kumari causing injury on her head and back with Tangi.

3. In the present case, the prosecution produced only six witnesses i.e. Dr. A.D.N. Prasad (P.W. 1), who conducted autopsy on the dead body of Rekha Kumari; Lakheshwari Devi (P.W. 2), a distant relation and neighbour of the Informant; Him Saw (P.W. 3), Informant, father of the deceased; Hira Lal Gupta (P.W. 4), a formal witness of inquest report and seizure list; Gopal Sahu (P.W. 5), nephew of the

Informant i.e. cousin of the deceased and Lakhan Murmu (P.W. 6), the Investigating Officer.

4. The learned Sessions Judge, Palamau held the accused guilty of both the charges under Sections 376 and 302 of I.P.C. and convicted him on the basis of circumstantial evidence and on the ground that the deceased was last seen with the accused. There being no eye-witness and Lakheshwari Devi (P.W. 2) being a chance witness of part of the occurrence; the Informant Hiru Saw (P.W. 3), father of the deceased and Gopal Sahu (P.W. 5), cousin of the deceased, both being related, the counsel for the appellant raised doubt with regard to their statement.

5. The following injuries were found on the body of the deceased and opinion given by P.W. 1, the doctor who conducted the autopsy :

(i) Lacerated wound at the back of head on the occipital region with depressed fracture of the skull and brain tissues. Soiled with dirt, dry leaves etc. 2' x ' x 1'.

(ii) Blood oozing out of the female genitalia with tear of the hymen and semen present inside the vagina. Slide confined dead spermatozoa.

(iii) Multiple bruises on the dorsum of left hand, right forearm both legs of variable shapes @ size.

(iv) Ecchymosis on the right cheek with marks of teeth bite on the face on right cheek.

Cause of death : Head injury as mentioned at injury (i) with rape on a minor child. Injury No. (1) could be caused by blade portion of axe. Time elapsed since death between 24 hrs to 48 hrs.

He further opined that if a person falls in a 15 feet deep khud and if the head hits the stone, the injury No. (i) may be caused but in that case brain matter will not be protruding out. In the opinion of the doctor, spermatozoa remained alive for 24 hours.'

6. As pointed out, Lakheshwari Devi (P.W. 2), a distant relation of the Informant cannot be stated to be an eye-witness of the total occurrence. She has not seen

the accused committing rape nor had seen the murder being committed by the accused. According to her, when she went to call her daughter Puspa, she saw Rekha Kumari (deceased) and for which the accused abused her and chased her with a Tangi in his hand towards the hillock. She only raised doubt that the accused might have committed rape with Rekha Kumari.

Hiru Saw (P.W. 3), Informant is the father of the deceased. He stated that when his daughter did not return, he began to search her out in the night then Gopal Sahu (P.W. 5), his nephew told him that he had seen the accused Joseph Oraon chasing Rekha Kumari towards Barka pahar Nala with Tangi in his hand, but he could not go towards the hillock in the night and found his daughter dead by the side of Nala in the morning. In the Fardbeyan, P.W. 3, the Informant reported that on 15th December, 1996 at about 9 a.m., his daughter Rekha Kumari had gone to collect fire wood. When she was collecting cow dung cake, she also picked up some ground-nut from the field of accused Joseph Oraon, on which accused started abusing her and chased her daughter Rekha Kumari with Tangi when her daughter fled away. Such statement in the Fardbeyan has not been supported by Hiru Saw (P.W. 3) who, in his evidence, stated that he got such information from his nephew Gopal Saw (P.W. 5). No only different statement made by the Informant (P.W. 3) than the statement made in the Fardbeyan, rather, it appears that he improved the story as made in the Fardbeyan during his evidence. In the Fardbeyan, though Gopal Saw (P.W. 5) signed as a Fardbeyan witness, reason for threatening Gopal Saw was not mentioned therein. It was not mentioned that the accused Joseph Oraon had committed rape with Rekha Kumari.

Hira Lal Gupta (P.W. 4) is a witness of Inquest of the dead body of the deceased Rekha Kumari and- seizure list of bloodstained soil, bamboo basket, fire-wood, cow dung and ground-nuts and broken pieces of bangles. He merely proved his signatures.

Gopal Saw (P.W. 5), nephew of the Informant also can be stated to be an eye-witness of either committing rape with Rekha Kumari or her murder. He is also a chance witness like Lakheshwari Devi (P.W. 2). He stated that about eight months back in the month POSH at about 11-11.30 a.m., when he was going to search

him in the north side of the Pahar, he saw Rekha Kumari picking ground-nuts from the field of accused Joseph Oraon, at that point of time, Joseph rushed towards Rekha Kumari with a Tangi who run towards the Nala. He said that he had some apprehension in his mind out changed his version and immediately said that as Rekha Kumari was a minor child, there was no apprehension or doubt in his mind that the accused will commit rape.

Lakhan Murmu (P.W. 6), the Investigating Officer stated that he received the information about the murder of one minor girl. He entered the same in the Station Diary No. 312 dated 16th December, 1996 and proceeded for Saroda Village. On the way, he could come to know that the dead body was found near Barka Pahar. He found the dead body of the deceased Rekha Kumari, prepared the inquest report, seizure list and sent the body for autopsy. He also proved the P.O.

7. From the facts, it will be clear that there is no eye-witness. Lakheshwari Devi (P.W. 2) and Gopal Saw (P.W. 5) are chance witnesses who are related to the deceased and stated to have lastly seen the accused with the deceased.

8. From the Fardbeyan, there appears to be past enmity between the parties. The accused Joseph Oraon stated to have committed murder of one Ram Khelawan, nephew of the Informant and alleged to have committed rape with one Sampati Kumari, about a year back, who is niece of the Informant Hiru Sahu (P.W. 3).

9. In the aforesaid background, the credibility of witnesses, particularly, the witnesses related to the deceased and claimed to be the chance witnesses, is to be viewed with suspicion.

In the case of Bahal Singh v. State of Haryana., AIR 1976 SC 2032, the Supreme Court held that if by coincidence or chance, a person happens to be at the place of occurrence at the time when it is taking place, he is called a chance witness. AND if such a person happens to be a relative or friend of the victim or inimical disposed towards the accused, then his being a chance witness is viewed with suspicion. It requires cautious and close scrutiny.

10. The learned trial Court held the accused guilty of charges under Sections 376 and 302, I.P.C. on one of the grounds that the accused was lastly seen with Rekha Kumari (deceased). The other ground taken is the circumstantial evidence.

11. It is a settled law that suspicion, however, strong it may be, cannot take the place of proof. 'In a case based upon circumstantial evidence, the prosecution is under a legal obligation to prove, firstly on facts the existence of such circumstances and secondly that the circumstances form a complete chain which lead to the irresistible conclusion that the accused are guilty and such circumstances are inconsistent with their innocence. On proof of the aforesaid conditions, the Court can convict the accused of the charges framed against them. It is rightly said that witnesses may lie but the circumstances cannot', are the observations of the Supreme Court in the case of Dhananjay Reddy v. State of Karnataka, reported in AIR 2001 SC 1512.

12. In the present case, the Informant (P.W. 3) who is the father of the deceased and two other relatives of the deceased i.e. Lakheshwari Devi (P.W. 2) and Gopal Saw (P.W. 5), have merely stated that the deceased was being last seen with the accused. This apart, there is no evidence to hold that Rekha Kumari was raped and murdered by the accused Joseph Oraon. There is no evidence to hold that the accused has been proved to be guilty beyond all reasonable doubt. Doubt and suspicion of the Informant on the accused may be there, but such suspicion cannot take the place of proof. There is no evidence brought on record to complete the chain to suggest that the accused Joseph Oraon was lastly seen with the deceased Rekha Kumari, who committed rape and thereafter murdered her.

13. I, therefore, agree with the contention of the learned counsel for the appellant that on the facts and circumstances and materials available on record, there is no legal evidence at all on the record to substantiate the prosecution case and bring home the guilt of the appellant beyond all shadow of doubt.

14. In the aforesaid circumstances, there being merit in this appeal, it succeeds. The appeal is hereby allowed. The appellant Joseph Oraon having found not guilty to the charges levelled against him is, accordingly, acquitted.

15. The appellant Joseph Oraon who is in jail, is directed to be released forthwith from the jail custody, if not wanted in any other case.

Lakshman Oraon, J.

16. I agree.

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