

Anil Kumar and ors. Vs. State of Bihar Now Jharkhand

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Court : Jharkhand

Decided On : Oct-30-2006

Reported in : [2007(1)JCR518(Jhr)]

Judge : Amareshwar Sahay and; D.P. Singh, JJ.

Acts : Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- Sections 3(2)(V); Indian Penal Code (IPC) - Sections 34, 341, 376 and 376(2);
Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Criminal Appeal (DB) Nos. 391, 403, 406, 440/2000 and 104/2006

Appellant : Anil Kumar and ors.

Respondent : State of Bihar Now Jharkhand

Advocate for Def. : V.S. Sahay, Adv.

Advocate for Pet/Ap. : A.A. Kumar,; A.K. Kashyap,; A.S. Dayal and;

Disposition : Appeal allowed

Judgement :

ORDER

1. All these appeals, arise out of same judgment of conviction and sentence were heard together and are being disposed of by this common judgment.

2. All the appeals are directed against the judgment of conviction and order of sentence dated 13.9.2000 passed by the First Additional Sessions Judge, Chaibasa in Sessions Trial No. 329/98, whereby and whereunder the learned Sessions Judge held the appellants guilty under Sections 341, 376(2)(g) IPC and 3(2)(V) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced them separately to serve RI for life on both counts. No separate sentence has been passed under Section 341 IPC. The appellants are further sentenced to make payment of Rs. 2000/- each and in default of payment to undergo RI for one year. However, sentences were directed to run concurrently.

3. Factual matrix leading to these appeals is as follows:

In the evening of 11th July, 1998 the informant Anita Hessa along with another victim Maki Haiburu had gone to purchase pulse from the shop of one Singh Jee situated in Banta Nagar near RIT campus at about 5.30 PM. It is further stated that when they reached near the Maidan situated beyond DAV High School, they went to ease themselves. At that time, appellant Krishna Mahto, Anil Kumhar @ Dablu Kumhar, Uday Tiwary, Lal Kalindi along with one Fulo Lohar, on the pretext of some urgent talk, took them towards the far end of the Maidan. As further alleged, thereafter both the girls were forced to lie down on the ground and raped one by one by the appellants. According to PW 3, they were raped repeatedly by the appellants confining themselves and threatening that they would be killed, if any alarm was raised. Later on all the appellants fled away leaving them in semi unconscious condition. The informant and victim, PWs 1 and 3 reached their house at about 8.30 PM and informed their family members. The appellants were being searched for being taken to task but when they could not be caught, the police was informed.

4. Fard beyan of PW 3 was recorded by SI D. Manjhi at RIT on 12th July, 98 at about 10.30 PM, on the basis of which Adityapur (RIT) P.S. Case No. 116/98 dated 12.7.98 was registered under Sections 376/341/34 IPC. The investigation was immediately taken up by S.I., D. Manjhi, P.O. was visited, incriminating articles were recovered from the PO and appellant Krishna Mahto was arrested in the morning of 12/13th July, 98. The police finally submitted chargesheet against

six persons including one Fulo Lohar, whose case was later on separated for separate trial, as he was found to be juvenile. All the appellants were charged by the trial court under Sections 376(2)(g), 341 IPC and 3(2)(V) of SC ST Act. The appellants pleaded not guilty and claimed false prosecution. However, the learned trial court, after examining witnesses, found and held all the appellants guilty under Sections 376(2)(g.) IPC and 3(2)(V) of SC ST Act and sentenced them as aforesaid.

5. The present appeals have been preferred on common ground that the learned trial court has convicted and sentenced the appellants on uncorroborated statement of informant. The memo of appeal further high lighted that the medical report did not support any offence of rape committed on the victims. It has also been submitted that during the trial none of the witnesses have supported the involvement of these appellants in the actual crime, rather one of the victims, PW 1 did not name the appellants to have participated in the alleged offence. The learned Counsel for the appellants further pointed out that the entire prosecution story stand concocted and exaggerated by PW 3, who claimed to have suffered external injuries on her person but the same could not be supported by PW 6, the doctor, who examined the victims on 14th July, 98. Our attention has been drawn towards the contradictory statements of PWs 3 and 7 on material points regarding the time of occurrence, identity of appellants and non-examination of probable witnesses. The learned Counsel for the appellants further pointed out that the correct version of incident has been concealed from the court and concocted version has been brought in the FIR, as it has been recorded after 24 hours and sent to the court of CJM Chaibasa after two days of the registration of FIR. It has also been asserted that even if the prosecution case is relied upon in absence of any corroborating evidence on record, conviction of the appellants deserves to be set aside. It has also been asserted that no offence under Section 3(2)(V) of SC ST Act could be made out in the present fact. Therefore, the conviction of the appellants requires to be set aside.

6. Learned Counsel for the State opposed this contention and tried to justify the conviction of the appellants.

7. We have anxiously considered the points raised by the learned Counsel for the appellants. The prosecution version that PWs 1 and 3 were subjected to rape by the appellants was brought before the court, vide Ext.4, mentions that the fard beyan was recorded by 10 at 10.30 PM (Night) at Banta Nagar before RIT PS and it has been entered in the SD register as entry No. 363 dated 12.7.98 at 23.30 hours and thereafter investigation was started. However, it is further mentioned that the incident took place between 7-8 PM on 11.7.98. PW 7, the 10 has categorically stated in his examination in chief that on 12.7.98 at about 10 PM in the night he got information that an incident of rape has taken place at Banta Nagar and accordingly he left for PO after making entry in the station diary. According to him, he got the statement of PW 3 recorded at 22.15 hours at the house of PW 3 in presence of two witnesses, out of which only one PW 2 has been examined. The said fard beyan has been marked as Ext.2 for the prosecution. He immediately started investigation and went to the PO describing the same as the lonely place in the maidan, where he found trampled grasses. He further collected one red panty, torn clothes and some broken pieces of bangles. He prepared the seizure list as Ext.3 in presence of witnesses. However, the girls could not be examined medically till- 14th July, 98. He has got the victims examined under Section 164 Cr.P.C. on 16.7.98. The medical reports proved by PW 6 are on record as Exts. 1 and 1/1. The doctor has opined that sexual intercourse has taken place and the girls were about 16-17 years of age.

8. The prosecution, having examined the victims as PWs 1 and 3, brought on record the supporting evidence of relations of victim Maki Haiburu as PWs 2,4 and 5. The prosecution story revolves around the incident dated 11.7.98 in which PWs 1 and 3 were ravished. PWs 1 and 3 were examined and on 16.7.98 by a Judicial Magistrate, Chaibasa under Section 164 Cr.P.C. in which they have supported the prosecution version, naming five accused including four appellants as the assailants, committing rape on them. However, during her examination in the court PW 1 preferred not to identify any of the appellants in the court. She asserted that some persons committed rape on her and Anita Hesssa at the alleged time but she refused to identify any of the rapists in spite of pointed questions by the prosecution to identify five appellants standing in the dock. During cross examination by the prosecution, she has admitted that she named appellants Anil

Kumar, Krishna Mahto and Anil Kumhar as her rapist. During cross examination this witness admitted that she has not seen these appellants prior to her examination in the court. PW 2, her father Ramai Haiburu, a hearsay witness, admitted in examination in-chief that she has not disclosed the name of any of the appellants to him. He further asserted that police has not enquired from him and he did not identify the appellants present in the dock. PW 4 Desi Haiburu, mother of PW 1, has supported the allegations that her daughter was raped but she specifically mentioned in para 1 that the girls did not disclose the names of the boys, who committed rape. She has also asserted that police has not enquired from her regarding the incident. PW 5 Buran Singh Haiburu similarly asserted that the victims did not disclose the names of the assailants particularly the appellants. All these witnesses, PWs 1,2,4 and 5 have been declared hostile by the prosecution.

9. In the facts stated above, the veracity of the prosecution version becomes doubtful. It is said that the appellants belonged to the same locality Banta Nagar where the victims and their parents used to reside for sufficient period but they preferred not to identify the appellants, particularly Anil Kumhar, Anil Kumar and Krishna Mahto as alleged rapist of Maki Haiburu. The learned Counsel for the appellant Anil Kumar further asserted that he was not named in the fard beyan and he was not identified by the victim herself. Therefore, his involvement in the alleged offence becomes doubtful. The learned Counsel further submitted that appellant Anil Kumar in the Cr. Appeal No. 403/2000 deserves to be acquitted.

10. The another victim Anita Hessa, PW 3, has supported the prosecution version in details. According to her version all the appellants committed rape on her and PW 1. She has asserted that Lal Kalindi, Uday Tiwary and Fulo Lohar, juvenile and whose trial has been separated, caught hold of her and sexually exploited her repeatedly. She identified them in court. In her detailed examination by the prosecution, she asserted that appellants Uday Tiwary and Lal Kalindi threatened her not to disclose the incident otherwise she may be killed. However, she reached her house at about 9 PM and informed her elder brother Siridhar Samat regarding the incident. According to her version she went to the police station in the morning and her statement was recorded by the police in presence of

interpreter, as she stated it in Ho language. She has also asserted that she gave her undergarment to the police and undergarment of Maki Haiburu along with broken bangles, which were seized by the police from the PO. She admitted that PO lies west of the shop of Singh Jee. She has further admitted that PO was situated outside the DAY School campus and she saw 7-8 constables standing at some distance. This witness confused the court by admitting that when rapists caught hold of the girls, the constables were looking at but they did not intervene. She asserted that she could identify the rapists. She further asserted that during commission of rape she received some injuries on her leg, hand, which were visible for next three days. She further contradicted her own statement by admitting in para 12 and 13 that the rapists belong to Banta Nagar and she could see them although her eyes were closed. She admitted in para 13 that she along with her family members had arrived at the police station in the night of 11th July, 98 and her statement was recorded in their presence.

11. Learned Counsel for the appellants Krishna Mahto, Uday Tiwary, Lal Kalindi and other remaining appellants assailed the version of the single prosecution witness supporting her earlier statement on the ground that she has exaggerated and improved the prosecution version during her examination in court. Learned Counsel pointed out that the whole story appears to be concocted one. According to the learned Counsel, if the victim, PW 3 has received some external injuries, scratches and bleeding injury on her person, the doctor examining her on 14.7.98 at about 11 AM must have noticed these injuries on her person. However PW 6 has mentioned no external injury found on PWs 1 and 3 particularly on PW 3. According to the learned Counsel, if PW 3 has stated correctly that she got scratches and bleeding injuries on her hand and leg then the injuries must have been present when she was examined on 14.7.98. It is further submitted that the whole story becomes improbable in the event when she admitted that near the maidan 7-8 constables were present and further who saw the appellants forcing them towards the PO. It is submitted that it is beyond imagination that such incident took place in presence of 7-8 constables. Learned Counsel further pointed out that if PW 1 was neighbour of appellant Krishna Mahto, she could not have missed to identify him as the rapist. It is also pointed out that her statement rerecorded by police in the night of 11.7.98 itself contradicts Ext.4, the FIR and

proved by PW 7, becomes doubtful, as it mentions that the fard bean was recorded in the night of 12.7.98 at about 23.30 hours. Learned Counsel for the appellants strenuously argued that in such event the first version and the materials admittedly given by PW 3 is not available on record. In such circumstances the false implication of the appellants by the police afterwards is possible. It is also submitted that the doctor, PW 6 has found that sexual intercourse has taken place, though he stated that the victim girl was having her last menstrual period on 11th July, 98 and in such cases the bleeding found, it is natural.

12. Learned Counsel for the appellants submitted that in absence of any corroborative evidence and admitted position that earlier version regarding the incident recorded by police on 11.7.98 is missing, reliance cannot be placed on belated statement of PW 3. Our attention has been drawn towards the admitted fact on record that PW 7 received the information after 10 PM on 12.7.98 and he proceeded to record the statement of Anita Hessa after making SD Entry No. 233 dated, 12.7.98. The learned Counsels submitted that the said SD entry has not been brought on record by the prosecution for the reasons best known to it. Learned Counsel further pointed out that the IO having started the investigation immediately, went to the PO in the night and recorded the statements of witnesses in the night of 12/13.7.98, vide para 4. According to the learned Counsel these assertions of PW 7 becomes doubtful in the admitted position that PWs 2,4 and 5 denied that they have given any statement to the police. Learned Counsel further pointed out that though the IO promptly started the investigation but failed to send the FIR to CJM Chaibasa for next 24 hours and the same was received in the court of CJM on 14.7.98. Therefore, contradictions have been brought on record by the prosecution witnesses and admission of PW 7 regarding changed version of PWs 1,2,4 and 5 does not support the prosecution case. It is also pointed out that appellant Krishna Mahto was arrested in the night itself on 12/13 7.98 but he was not examined medically. The defence counsel has brought to our attention the conduct of IO, who admitted that he did not examine PWs 4 and 5 individually rather the statements were recorded jointly. It is also pointed out that according to PW 7, witnesses as well as victims gave their statements in Ho language, which is also confirmed by the trial court, who got their statements recorded through interpreter but the statement under Section 164 Cr.P.C. does not mention that they

were recorded with the help of any interpreter. Therefore, the entire prosecution version lacks corroboration.

13. We have anxiously considered these points along with materials on record. The prosecution version regarding commission of rape on the victims is not disputed. The question remains whether these appellants were involved in the commission of rape. PW 1, one of the victims, totally disowned her earlier version and gave a clean chit by not identifying them in the court. PWs 2,4 and 5 have also admitted that the appellants were not named as rapists before them immediately after the occurrence. The conduct of the investigation by PW 7 further weakens the prosecution case. According to him, the victims and the witnesses stated before him in Ho language but he has not mentioned how he recorded the statement in Hindi without having been interpreted by any person knowing Ho language. The trial court has examined these witnesses through interpreter. Further more if admittedly the victims along with witnesses approached the police on 11.7.98, why the FIR was lodged after 24 hours on 12.7.98. The conduct of the IO D. Manjhi admittedly is misleading in recording the statement and lodging the FIR at such belated stage. According to him, he immediately started to verify the incident vide SD Entry No. 233 dated 12.7.98 but that SD Entry has not been brought on record. He asserted that he started immediately the investigation and later on recorded the statement of witnesses in the night between 12-13 July, 98. This promptness is found missing in sending the FIR to OM Chaibasa and getting the victims examined by doctor. He admitted himself that he sent the girls to local doctor at Adityapur and then MGM Jamshedpur, though it fell inside the territorial jurisdiction of Chaibasa. His conduct in not sending the clothes as well as materials exhibits seized from the PO for forensic examination provides the defence another loopholes. He has contradicted PW 3 on material points vide para 14 when he admitted that he has not mentioned in the case diary that articles seized from the PO were identified by Anita Hessa. He admittedly did not try to ascertain from police constables posted there in. RIT Guest House or any employee of the guest house. He has not even mentioned that seized articles were kept in malkhana. He admitted that he did not mention the name of the person from whom he got the information regarding the incident in the night of 12.7.98. This witness exaggerated himself when he stated vide para 17 that he

inspected the PO same night after 12 PM in the light of three cell torch. He apparently did not conducted the investigation in proper manner.

14. Having considered the above mentioned facts and circumstances, we find that the earlier version of incident is concealed and belated version has been made the basis of accusation against the appellants. Further when the appellants have not been identified by one of the victims PW 1 before the trial court, the whole prosecution story becomes doubtful. The sole prosecution witness PW 3, who supported her version, stands contradicted by PW 7. She has tried to give definite picture of the incident and during this narration she exaggerated on material points. The doctor has not found any external injury on her person though she claimed that it has occurred during rape. In such circumstances, where appellants, Uday Tiwary and Lal Kalindi have not been identified by the victim, their conviction cannot be sustained. So far as conviction of appellants, Anil Kumar, Krishna Mahto @ Chhotu Mahto and Anil Kumhar @ Dablu Kumhar is concerned, in absence of supporting evidence that they participated in the alleged offence, it is unsafe to confirm their conviction.

15. From appraisal of the materials on record, we also find that the IO of the case Sri D. Manjhi, SI has committed serious lapses on his part in conducting the investigation. He has knowingly delayed the registration of the case, medical examination of the victims and recorded the statement of the informant without mentioning that her statement was recorded through interpreter. He further did not produce the seized articles before the trial court nor mentioned it in the diary that the seized articles were preserved during the investigation and afterwards. He has also did not record the statements of the witnesses in proper manner. The lapses on his part have apparently helped the accused persons. It should have been proper on the part of the trial court to notice such lapses on part of the IO and report the matter for proper action to the appropriate authority. The lower court shall accordingly take steps.

16. Having considered the above mentioned facts and circumstances, we are of the view that the prosecution has failed to bring home charges against the appellants beyond all reasonable doubts. Accordingly, the conviction of the

appellants cannot be sustained.

17. In the result, these appeals are found having merit in them and allowed. The conviction of the appellants is hereby set aside and they are acquitted of the charges levelled against them. Since all the appellants, except appellant Anil Kumar of Cr. Appeal No. 403/2000, are on bail, they are discharged from the liability of their bail bonds. Appellant Anil Kumar of Cr. Appeal No. 403/2000 is directed to be released forthwith, if not wanted in any other case.

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