

Sukhman Bodra Vs. State of Bihar

Sukhman Bodra Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/523908

Court : Jharkhand

Decided On : Aug-05-2002

Reported in : 2003(1)ALT(Cri)3; 2002CriLJ4634

Judge : Hari Shankar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 176 of 1999

Appellant : Sukhman Bodra

Respondent : State of Bihar

Advocate for Def. : S.K. Dutta, A.P.P.

Advocate for Pet/Ap. : Malti Chaurasia, Adv.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. This criminal appeal is directed against the judgment and order of sentence dated 3-4-99 passed in Sessions Trial No. 262/97, whereby and where under the learned Sessions Judge held the appellant guilty under Section 376, IPC and

sentenced him to undergo R.I. for 10 years.

2. The prosecution case In brief is that Rautu Samad gave a written report, to the effect that on 5-4-97 his daughter Manipal Samad had come after grazing the bullocks and at about 7 PM she was going to sleep in the house of her Aunt and it is stated that appellant Sukhman Bodra took Manipal Samad to his house and kept her in his house and committed rape on her. On the next day i.e. on 6-4-97 Sukhman Bodra left Manipal Samad in the house of his sister Radha Bodra in the village Anjitbera and thereafter sister of Sukhman Bodra left Manipal Samad in the house of her parents where Manipal Samad narrated the entire occurrence to her parents and this fact was brought to the knowledge of one Birsingh Sindhi but he did not report the alleged occurrence to the police station and thereafter Rautu Samad gave his written report to Chaibasa Muffasil Police Station and on the basis of written report of Rautu Samad this case was registered as Chaibasa Muffasil P.S. and investigation was started. After completion of investigation the I.O. submitted charge-sheet against the appellant as well as one Birsingh.

3. From the trend of statement of the appellant under Section 313, Cr.P.C. and the trend of cross-examination of witnesses, it appears that defence has taken a stand that he has been falsely implicated in this case.

4. The prosecution, in order to prove its case, has examined nine witnesses. PW 9 the I.O. of the case.

5. Assailing the judgment, the learned counsel for the appellant submitted that no independent witness has supported the prosecution case and FIR has been lodged after a lot of delay. The learned counsel further pointed out that evidence of witnesses has not been properly appreciated, otherwise case would have ended in acquittal.

6. PW 1 is lady doctor, who has examined the victim girl. In course of examination she has found the followings :-

On general Examination :

Complexion :- Dark.

Body built :- Average

Height :- 4 '1/2'

Teeth :- 6+6/ 7+7

Secondary Sexual character

Breast:- Developing. (Slightly developed)

Auxiliary hair :- Not developed.

Pubic hair :- Not developed.

No scratch mark on private part and body.

P.V. Examination

Hymen :- Ruptured.

Bleeding :- Absent.

Tenderness :- Absent.

Introitus :- Admit one finger.

Swab report

No spermatozoa either alive or dead found. No. R.B.C. or pus cells found. Only few epithelial cells found.

M/I :- Two mole below clavical.

R.T.I. were taken of the victim.

X-ray :-A.P. elbow, epiphysis of medial and lateral epicondyle not completely fused. A. P. Wrist, epiphysis of lower end of radius and ulna not fused. A.P. pelvis, epiphysis of iliac crest not fused. According to guardian. Rautu Samad. father, incident occurred one month back, Exact date not remembered.

Opinion :- The girl is 10 to 12 years old No scratch on private part, since the time of incident of rape is pretty long about one month back, I cannot give any opinion regarding rape.

7. The doctor has not been able to give her opinion for the commission of rape because of incident being one month back.

8. PW 2 is victim girl. She has stated that on the alleged date of occurrence after taking meal she was going to her elder mother but appellant called her on way and caught her and took her to his residence and committed rape on her. She further stated that appellant kept her whole night in his house and thereafter he left her to his sister's house and his sister took her to her parents' house where she narrated the occurrence. She has further stated that when appellant caught her she raised alarm but appellant threatened her with dire consequences.

9. PW 3 is Jobna Samad. She is mother of victim girl. She is hear-say witness and she has stated the same thing which PW 2 has stated.

10. PW 4 is Rautu Samad. He is father of the victim girl and he is also a hear-say witness and has stated the same thing which he heard from his daughter.

11. PW 5 is also a hear-say witness. He has stated that PW 4, father of the victim girl, stated to him about the alleged occurrence, which PW 4 heard from his daughter. PW 6 has also stated the same thing and he is also a hear-say witness. PW 7 has been tendered. Similarly PW 8 has also been tendered.

12. PW 9 is I.O. of the case. He has stated that on 12-5-97 a written report was received at the police station and on that basis a case was registered and investigation was started. He recorded the statement of victim girl as well as statements of witnesses and inspected the P.O. and P.O., according to him, is the mud built house of the appellant in village Roro.

13. From perusal of evidence on record, it appears that PW. 2, who is the victim girl, has stated that rape has been committed on her. She is aged about 10-12 years and her evidence has been supported by PWs. 3, 4, 5 and 6. PWs. 3, 4, 5 and 6 are though hearsay witnesses but they were immediately informed by PW. 2

about commission of rape on her and these witnesses have also deposed the same in the Court.

14. On the other hand, PW. 1 is the lady doctor, who examined PW. 2 and she has not been able to give her opinion about commission of rape as rape is said to have been committed one month back but she has found hymen ruptured of the victim girl. There may be different causes for rupturing of the hymen but in the instant case PW. 2 has specifically stated that appellant committed rape on her and that may be a cause of rupturing of hymen. So far as delay in lodging of the FIR is concerned, time of reporting is not material but in the instant case delay in lodging of the FIR has been explained in the FIR itself. There is no previous animosity between appellant and the prosecutrix or her family members and, therefore, false implication due to animosity does not arise. The victim girl has given her evidence in a natural way and has also stated as to which place she was taken after commission of rape. Occurrence has taken place in the night in village and it is not necessary that there must be some eyewitnesses to the occurrence.

15. On considering of the entire facts and materials on record, I came to the conclusion that the judgment of the learned trial Court does not require interference. Learned counsel for the appellant submitted that the punishment awarded is severe one and it should be reduced, but, on the other hand, learned APP submitted that this is a case relating to commission of rape on a minor girl aged about 10-12 years and in such a heinous nature of offence, punishment should be severe one and sentence of 10 years R.I. is appropriate in the facts and circumstances of the case.

16. Considering the submissions and nature of offence, in my opinion, the sentence of 10 years R.I. is appropriate and it does not require any interference.

17. In the result, I find no merit in this appeal, which is accordingly dismissed.