

Subhash Mandal Vs. State of Jharkhand

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Court : Jharkhand

Decided On : May-04-2016

Appellant : Subhash Mandal

Respondent : State of Jharkhand

Judgement :

1 Cr. Appeal (S.J) No. 95 of 2003 [Against the judgment of conviction and order of sentence dated 24.12.2002 passed by Sri M.P. Mandal, Additional Sessions Judge, 1st Rajmahal in Session Case No. 241 of 2001] Subhash Mandal, S/o Sri Gono Mandal, R/o Village Radhanagar, P.S. Radhanagar, Dist. Sahibganj Appellant Versus The State of Jharkhand ... Respondent PRESENT HON'BLE MR. JUSTICE ANANT BIJAY SINGH For the Appellant : Mr. Din Dayal Saha, Advocate For the State : Mr. Amresh Kumar, A.P.P CAV on 18.04.2016 Pronounced on 04/05/2016 The instant appeal has been preferred by the appellant, namely, Subhash Mandal, being aggrieved and dissatisfied of the judgment and order dated 24.12.2002 passed in Sessions Case No. 241 of 2001 by Sri M.P. Mandal, Additional Sessions Judge 1, Rajmahal whereby and whereunder the appellant, namely, Subhash Mandal was convicted under Section 376 of the Indian Penal Code and was ordered to go rigorous imprisonment for five years and to pay a fine of Rs. 2,000/ further he was also ordered to undergo imprisonment for two months for the offence under Section 342 of the I.P.C and both the sentences were ordered to run concurrently and in default of fine, the appellant was ordered to go imprisonment for six months 2. The case of the prosecution, as unfolded the

fardbeyan of the prosecutrix recorded by Pankaj Kumar Jha OfficerInCharge, Radhanagar Police station on 07.09.2000 at 11.00 hrs. alleging that 2 on 05.09.2000 (Tuesday) the prosecutrix along with her sister, Anjana Kumari had gone to the house of one Rajendra Mistri where some cultural programme were organised. In the midnight when the prosecutrix was returning after conclusion of cultural programme and reached near the Panchyat Bhavan and went to attend the call of nature, in the meanwhile Subhash Mandal, appellant came and caught hold her and threatened her of dire consequences and took her to Panchayat Bhavan thereafter committed rape upon her and threatened to dire consequences. It is alleged that the informant went to her house and disclosed this fact thereafter a panchyati was organized by the villagers and the appellant accepted his guilt and also accepted to marry with her, but on 06.09.2000 the appellant fled away from the house.

3. On the basis of these allegations, Rajmahal (Radhanagar) P.S. Case No. 154 of 2000 dated 08.09.2000 was instituted under Section 376 of the Indian Penal Code and after investigation police submitted chargesheet on 09.12.2000 under Sections 341, 342, 376/34 of the I.P.C and further learned Additional Sessions Judge, Rajmahal on 17.01.2002 framed charges under Sections 376/34 and 342 of the I.P.C. Trial proceeded and during course of trial the prosecution examined altogether 14 witness, out of which P.Ws. 1, 2, 7, 8, 9, 10, 12 and 13 were declared hostile. P.W.6 is Doctor, P.W.4 is the prosecutrix herself, P.W.3 is sister of the prosecutrix. After conclusion of the trial the Trial Court held the appellant guilty under Section 376 of the I.P.C and directed to undergo R.I for five years and fine of Rs. 2,000/ and further 3 held guilty under Section 342 and directed to go imprisonment for two months and both the sentences were ordered to run concurrently and in default of fine further go imprisonment for six months.

4. Learned counsel for the appellant has submitted that save and except family members, other witnesses have been declared hostile. Further P.W.6 Doctor did not find any injury and sign of rape on the person of the prosecutrix. P.W.14(I.O) in para 9 in his crossexamination stated that during investigation it transpired that there was love affairs between the prosecutrix and appellant and they have made sexual relationship and when their relationship failed, this case has been lodged.

5. It was submitted that this aspect has not been considered by the learned Trial Court so, in view of the above facts, it was submitted that the impugned judgment and order cannot be sustained in the eye of law and deserves to be set aside.

6. It was further submitted that the Trial Court has assessed the age of the prosecutrix 18 years on 07.05.2002. Admittedly on 05.09.2000 on the date of occurrence she was aged about 16 years on the verge of attain majority.

7. In view of the fact that the I.O.P.W14 in his cross examination in para9 has stated that there was love affairs going on between the parties, no offence under Section 376 of the I.P.C is made out. 8. Learned A.P.P on the other hand while referring to the evidence of P.W.4 prosecutrix submitted that in ExaminationIn 4 Chief in para1 the prosecutrix has supported her case and stated that this appellant had committed rape upon her inspite of her resistance and further in her crossexamination in para6 has denied the talk regarding marriage with the appellant and prosecutrix was going on and hence it did not materialise, this case has been lodged. Learned A.P.P. also referred the evidence of P.W.6 Dr. Punam Sinha who has stated that on 07.09.2000 she examined the prosecutrix although did not find any injury in the private part but in her opinion found sexual intercourse. It was submitted that in view of evidence of P.W.4prosecutrix and P.W.6Dr. Punam Sinha, prosecution has been able to prove the case beyond all reasonable doubt. 9. It is further submitted that there is no requirement of corroboration of evidence of P.W.4prosecutrix and her evidence is sufficient to have the appellant guilty. In support of his submission learned A.P.P has relied on a judgment in the case of State of Himachal Pradesh Vs. Asha Ram reported in AIR 2006 SC 381 in which the Hon'ble Supreme Court held as under; Penal Code (45 of 1860), S. 376RapeConviction for, can be founded on testimony of prosecutrix alone Evidence of prosecutrix is more reliable than that of an injured witnessminor contradictions or insignificant discrepancies in her statement, immaterial. Conviction for rape can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts

should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. The evidence of prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of prosecutrix should not be a ground of throwing out an otherwise reliable prosecution case.

10. Learned counsel for the appellant on the other hand submitted that admittedly evidence of P.W.14, Dayanand Sharmal.O, who in his cross-examination has submitted that prior to the occurrence some love affair was going on between the appellant and the prosecutrix and when the marriage did not materialise, the case has been instituted. 11. It is further submitted that age of the prosecutrix was assessed as 16 years on the date of occurrence, who was on the verge of attaining majority. The relationship with the appellant and prosecutrix was consensual due to love affairs so no case under Section 376 of the I.P.C is made out. This aspect of the matter has not been considered by the learned Trial Court, hence the impugned judgment is not sustainable in the eye of law and deserves to be set aside. 12. Having heard learned counsel for the appellant and learned A.P.P appearing for the State admittedly the case is that the prosecutrix has sexual love affairs with the appellant although this aspect has not been discussed in the fardbeyan but in her cross examination she has admitted this fact. This fact has been corroborated by the I.O. P.W.14 who deposed in the Court. This factum regarding the rape has not been proved. Dr.P.W.6 did not find any sign of rape.

13. Under the circumstances although the judgment in the case of State of Himachal Pradesh Vs. Asha Ram (Supra) relied on by the learned A.P.P, conviction for rape can be founded on the testimony of the prosecutrix can be maintained but in fact of the case the evidence of the prosecutrix is not reliable. In fact the prosecution has not brought corroborative evidence. Taking all these facts, I am of the considered opinion that prosecution has failed to prove this case beyond all reasonable doubt under Section 376 of the I.P.C. 14. Accordingly, judgment and order dated 24.12.2002 is hereby set aside and the instant appeal

stands allowed. The appellant is discharged of his bail bond. Let a copy of the judgment be sent to the trial Court. (Anant Bijay Singh, J) High Court of Jharkhand, Ranchi Dated 04.05.2016 Satayarthi/Satayendra/NAFR

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