

Vishwambhar Malakar and Others Vs. the State of Bihar

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Court : Patna

Decided On : May-17-2011

Judge : Anjana Prakash, J.

Acts : Indian Penal Code (IPC) - Sections 376(2)(g), 323, 509

Appeal No. : Criminal Appeal No.295 OF 1996 (S.J.)

Appellant : Vishwambhar Malakar and Others

Respondent : The State of Bihar

Advocate for Def. : Mr. Choubey Jawahar, Adv.

Advocate for Pet/Ap. : Mr. Jitendra Kr. Singh, Adv.

Judgement :

1. The appellants have been convicted u/s.376 (2) (g) I.P.C. and sentenced to R.I. for ten years as also u/s.323 I.P.C. and sentenced to six months R.I. and in addition the appellant no.2 has been convicted u/s.509 I.P.C. and sentenced to three months S.I. by the 1st Additional Sessions Judge, Gaya in Sessions Trial No.310 of 1994/ 22 of 1996/ 153 of 1996 by a judgment dated 11.10.1996.

2. The case of the prosecution is that on 3.3.1994 at about 7-8 P.M. while the informant and her niece had gone to ease themselves, the accused persons

surrounded them and committed rape upon them. When they resisted, they were also assaulted and in addition the accused persons also cut the hair of the informant. When the two ladies returned to their house they informed P.W.8, the mother of one of the victims. They were so afraid of making any report that they waited for the male members to return, after which the present case was instituted.

3. During trial the prosecution examined ten witnesses in all. Out of whom, P.W.1 is the informant, whereas P.W.3 is her niece, the other victim. P.W.2 is the brother-in-law of the informant, whereas P.W.4 and P.W.5 have been declared hostile. However, P.W.5 has supported the factum of rape upon the two victims but did not support the fact of the commission of the same by the present appellants. P.W.6 is the doctor, who examined one of the victims, whereas P.W.7 is the husband of the informant, a hearsay witness. P.W.8 is the mother of one of the victims and sister-in-law of the informant, also a hearsay witness. P.W.9 is the Investigating Officer, whereas P.W.10 is the doctor, who examined the informant and found injuries on the person.

4. On going through the evidence of P.W.1 and P.W.3 which I do not wish to elaborate, I find that they have fully corroborated the fact of rape having been committed by the accused persons. No doubt, there was a suggestion that the two victims were persons of loose character but it appears that this report against them was made much after the occurrence and evidently with a view to falsify the prosecution case and create a defence. P.W.2, P.W.7 and P.W.8 have also given a very convincing narration of the manner of occurrence as hearsay witnesses as also explained the delay in institution of the case. They being family members of the two victims cannot be disbelieved only on the point that they were interested witnesses since their evidence having been tested in the cross examination is trustworthy. The two doctors i.e. P.W.6 and P.W.10, who had examined the victims belatedly, had found injuries on the person of the informant as well as the other victim which also fully corroborates objectively the prosecution case.

5. In view of such direct evidence against the appellants, I am not inclined to interfere with the conviction of the appellants. However, since 17 years have passed since the date of occurrence and the appellants have remained in custody for about 4 years and they being young persons, at the time of occurrence, the sentence is reduced to 7 years.

6. In the result, the appeal is dismissed. The Trial Court will take immediate steps for apprehension of the appellants for serving out the sentence.

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