

(2006) 11 JH CK 0002

Jharkhand High Court

Case No: None

Rajesh Patel

APPELLANT

Vs

State of Bihar (now
Jharkhand)

RESPONDENT

Date of Decision: Nov. 14, 2006

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 376

Citation: (2007) 1 JCR 66

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.K. Sinha, J.

The instant appeal has been directed against the judgment and order passed by Shri Krishna Murari, 1st Additional Sessions Judge, Jamshedpur in S.T. No. L68 of 1994/172 of 1995 whereby and whereunder the sole appellant was convicted u/s 376 of the Indian Penal Code and was sentenced to rigorous imprisonment for a period of seven years.

2. The prosecution story is in a narrow compass .The prosecutrix, Sheela Roy in her statement before the police on 25.2.1993 delivered at the Ghatsila police, station narrated that she was working as a Nurse in the Nursing Home of Doctor Prabir Bhagat at Moubhandar, P.S. Ghaisila. East. East Singhbhum. The house of the appellant, Rajesh Patel was located near the dispensary/nursing Home of Doctor Prabir Bhagat. It was alleged that on 14.2.1993 at about 11 a.m. the prosecutrix on the request of the appellant went to his house in order to get back her book from him. As soon as the prosecutrix entered into the house of the appellant, he closed the door from inside and at that time the members of his family had gone out. The prosecutrix tried to make alarm but she was terrorized by the appellant to be killed by a knife, as a result of which, she could not raise

alarm. After terrorizing, the appellant committed rape on her. When she felt pain in her private part on such commission of rape she again wanted to cry but she was silenced by the appellant who displayed a knife to her. After commission of the offence she was confined in his house and the appellant escaped after locking the door of his house from outside. After about half an hour one Purnendu Babu of Chundih came there, unlocked the house and asked the prosecutrix to return to her house silently. She went to her house and narrated the occurrence to her mother but on the request of Purnendu Babu the mother of the prosecutrix remained silent for two to four days on the assurance that Purnendu Babu would take action in the matter. It was further alleged that the appellant at the time of commission of offence had threatened the prosecutrix that in case of lodging any complaint against him she would be killed. It was explained in the statement that the appellant had borrowed her book of sociology from the prosecutrix about a week ago as both the appellant as well as prosecutrix were studying in the same college. On the statement of the prosecutrix Ghatsila P.S. Case No. 34 of 1993 was registered on 25.2.1993 u/s 376 of the Indian Penal Code against the appellant. Rajesh Patel. The police after investigation submitted charge-sheet under the said section against the appellant who was put on trial.

3. Mr. T.R. Bajaj learned Sr. Counsel appearing on behalf of the appellant submitted that the appellant is innocent and the present case was instituted against him by the prosecutrix in order to put pressure upon him to marry her. As a matter of fact, no occurrence took place in the manner presented by the prosecutrix in the case. Advancing his argument Mr. T.R. Bajaj submitted that the occurrence as alleged took place on 14.2.1993 but the FIR was lodged on 25.2.1993 without any explanation of such inordinate delay and the trial Court failed to take into consideration that aspect of delay in launching the prosecution against the appellant. Admittedly the appellant as well as the prosecutrix were known to each other from before the date of the alleged occurrence. In the instant case neither the Investigating Officer nor the doctor who examined the prosecutrix, has been produced in the witness box before the trial Court below and in this manner the appellant has been rightly prejudiced for being denied the opportunity to cross-examine them on certain issues.

4. Mr. Bajaj further submitted that in the instant case as many as six witnesses were produced and examined on behalf of the prosecution before the trial Court but none of them, except PW 1, Prosecutrix and PW 2 her mother, have supported the prosecution case. PW 3 Purnendu Singh though he was an important witness of the alleged circumstances but was tendered by the prosecution. Similarly PW 4 Doctor Pravir Bhagat in whose dispensary the prosecutrix was working at the relevant time of the alleged occurrence was declared hostile by the prosecution, except supporting that she was working in his dispensary as a Nurse. PW 5 Nazir Mohammad was tendered for his cross-examination and similarly PW 6 Dharamdeo Sao was also tendered for his cross-examination and therefore, nothing material could be obtained leading to the complicity of the appellant in the alleged offence u/s 376 of the Indian Penal Code for which he has

been convicted.

5. Mr. Bajaj further submitted that according to the version of the prosecutrix PW 1, who has supported her statement recorded by the police at Ghatsila police station, other substantial evidence before the trial Court below that on two occasions she tried to raise alarm i.e., first when appellant tried to close the door of his house from inside and second when she felt pain in her private part while she was being ravished, with the intention to attract the attention of neighbouring people but the important point for consideration before the appellate Court is that when the appellant left house after commission of the alleged offence after locking her in the house, no attempt was made by the prosecutrix to raise alarm though there was none to restrain her to attract the attention of by passers, at least the neighbours until arrival of PW 3 Purnendu Babu. In such circumstances, what prevented her to raise alarm was best known to the prosecutrix and adverse inference can well be drawn that an imaginary story was cooked up by the prosecutrix by giving an imaginary retrospective date of the alleged occurrence implicating the appellant who is innocent and the only intention of the prosecutrix was to mount pressure on false allegation against the appellant to marry her.

6. Advancing his argument Mr. Bajaj further submitted that the prosecutrix was silent as to what kind of settlement she was seeking with the intervention of PW 3 Purnendu Babu as well as PW 4 Doctor Pravir Bhagat under whom she was working in the dispensary and none of the said witnesses in any manner supported the prosecution case. Obviously the only alternative available with her was that since the appellant and the prosecutrix had some affairs from before, she was intending to settle the matter either by marriage or by taking some money from him but silence of the prosecutrix for long after commission of rape was for certain purpose and nature of settlement for which she was seeking was not disclosed at any occasion pursuant to her pre conceived design. The denial of the opportunity to the appellant to cross examine the doctor has left important queries unanswered about injury on her private parts or on any other part of her body the position of hymen layer etc. so as to corroborate the story that she suffered unbearable pains while the appellant was committing rape on her and for such reason the finding of the trial Court below that the appellant has not been prejudiced for non-examination of the Doctor is unsustainable under the law. Mr. Bajaj further submitted that the prosecutrix was already working as Nurse in the private hospital and the information regarding commission of the rape was of such grave nature that she would not have hesitated in giving information to the police had the occurrence been true. To conclude, Mr. Bajaj submitted that if at all it was established that the appellant had established physical relation with the prosecutrix, it was a consent sex and both were majors to enter into such alliance and the parties were familiar to each other as well as on visiting terms from before prior to the alleged occurrence.

7. From the arguments of the learned Counsel appearing on behalf of the appellant it is evident that judgment passed by the Court below has been assailed on three counts:

- (i) The appellant has been prejudiced for non- examination of the Investigating Officer as well as the doctor who had examined the prosecutrix after about 10 days of the alleged occurrence.
- (ii) The inordinate delay of 11 days in the institution of the police case being not properly explained.
- (iii) It was a sex with the consent of the parties.

8. I have perused the judgment delivered by the 1st Additional Sessions Judge convicting the appellant for the offence u/s 376 of the Indian Penal Code. The trial Court has observed that the prosecutrix PW 1 Sheela Roy as well as her mother PW 2 have consistently supported the prosecution case. Admittedly, PW 2 was not an eye witness of the occurrence but she narrated the occurrence before the Court below as what she derived from her daughter PW 1 soon after the alleged occurrence and corroborated the statement of the prosecutrix at first point in time before the police station on 25.2.1993. The defence had not attracted the attention of the aforesaid witnesses as there was development in their statements before the trial Court below beyond what they had narrated before the police in their statements recorded u/s 161 Cr PC. The other four witnesses were unfavourable to the prosecution who were either tendered or were declared hostile and have not supported the prosecution case, so it cannot be held that the non-examination of the I.O. has in any manner prejudiced the defence.

9. The learned trial Court has rightly observed that in the instant case non-examination of the doctor, who had examined the victim, did not materially affect the case of the prosecution. She was examined by the doctor after about 12 days of the occurrence and by that time the sign of rape must have disappeared. Even if it was presumed that the hymen of the victim was found ruptured and no injury was found on her private part or any other part of her body, finding of such rupture of hymen may be for several reasons in the present age when the prosecutrix was a working girl and that she was not leading on idle life under the four walls of her home.

10. I further find from the judgment that delay of ten days in institution of the case has been explained and discussed by the trial Judge. The trial Court below observed that in case of rape, victim girl hardly dare to go to the police station and make the matter open to all, out of fear of stigma which is attached with the girls who were ravished. In the instant case the victim girl as well as her mother tried to get justice by interference of PW 3 and PW 4 and for such reason the victim had visited them with her mother but when no initiative was taken in the manner for justice to the victim by way her rehabilitation she went to the police station and lodged the FIR on 25.2.1993 in respect of the offence which took place 11 days ago. I find that she had given the date of occurrence as on 14.2. 1993 though she had every opportunity to give the different date of occurrence of recent past but she did not. The trial Judge further observed that victim girl had explained in her evidence that she was terrorized by the appellant at the time of commission of rape that

in case of reporting the matter to the police she would be killed. I find that such explanation of delay in lodging the FIR is admissible under the facts and circumstances of the case of rape which puts stigma on a girl for whole of her life and only on failure to get justice from the other two witnesses PW 3 and PW 4 she had no option other than to institute case against the appellant for justice.

11. Mr. Bajaj has vehemently argued that it was a sex with consent, if at all the prosecution case was admitted to be true, for the argument sake, but failed to explain as to under what circumstances the prosecutrix was confined in the house of the appellant had it been the sex with consent. Admittedly the prosecutrix as well as the appellant were familiar to each other from before when they were studying in the same college at Ghatsila and there was transaction of books which usually happens amongst the students. The prosecutrix had given book of sociology to the appellant a week ago of the alleged occurrence and when she insisted to return her, the appellant got an opportunity to trap and accordingly he ravished her in the manner narrated by the prosecutrix in her statement before the police after demolishing her faith what she had reposed upon the appellant while visiting his home.

12. I have gone through the statements of the victim girl as well as her mother PW 2 which are consistent and natural and inspire confidence leading to the complicity of the appellant for his conviction u/s 376 Indian Penal Code and I do not find any irregularity or illegality in the judgment as well as the order of sentence impugned, passed in S.T. No 168 of 1994/172 of 1995 which do not call for interference of this Court in appeal. The judgment is well discussed and punishment awarded to the appellant is adequate. This appeal is therefore, dismissed. Bail granted to the appellant by this Court on 12.3.1999 stands vacated and the appellant is directed to serve out the remaining period of rigorous imprisonment. The Court below is directed to take effective steps in this regard.