

(2006) 07 JH CK 0007

Jharkhand High Court

Case No: Criminal Appeal No"s. 123, 119, 88 and 116 of 2001

Parsu Ram Hessa, Rajesh Hessa,
Kandey Hessa and Sonaram
Hessa

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: July 5, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 34, 366A, 376

Citation: (2007) 1 AIRJharR 130 : (2007) 49 AllIndCas 372 : (2007) CriLJ 1063

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Advocate: M.K. Dey, R.P. Gupta and D.K. Laik, for the Appellant; Tapas Roy, APP., for the Respondent

Final Decision: Allowed

Judgement

D.P. Singh, J.

All these appeals, arise common judgment and order, are directed against the judgment of conviction and order of sentence dated 16.2.2001 passed in Sessions Trial No. 72 of 2000, whereby and whereunder the learned 3rd Additional Sessions Judge, Chaibasa held the all the appellants guilty under Sections 366A and 376 IPC and convicted and sentenced them to undergo RI for ten years.

2. The brief facts leading to their conviction are that in the forenoon of 23.4.1999 Manju Sinku, daughter of the informant Bika Sinku, PW 5, left her house situated in Mauja Katepara, P.S. Jagannathpur, district West Singhbhum along with two minor relatives Tushu Mai and Lobga Mai for Karanjia Bazar and when they did not return in the evening, the informant thought that they might have stayed with their relations and waited for them. Next morning on 24.4,1999 one Ghanshyam Tape of village Amjora, Tola Chinisai came to his house and informed him that the girls were

confined and raped by the above named convicts persons along with one unknown person outside the village. He further stated that he was informed regarding this incident by one Subodh Hessa of the same village, The informant along with Ghanshyam went in search of Subbodh Hessa, who could not be found but his wife, Sukhmati narrated about the incident that her husband has said that when he was coming back Tushu Mai has asked him to help her but he was prevented by the accused persons. The informant started searching the girls and the accused persons and ultimately in the morning of 26.4.1999 the matter was reported to Jagannathpur P.S. The police registered Jagannathpur P.S. Case No. 14/99 under Sections 366A/376/34 IPC against all the accused persons and one unknown. In the meantime, the girls Tushu Mai and Lobga Mai were recovered by the police from the house of the convict Rajesh. The police further investigated the case and finally submitted chargesheet against all of them under Sections 366A/376/34 IPC. The learned CJM took cognizance and the case was committed for trial by the court of session. The trial court framed charges against the appellants and further against accused Shiv Sumbrui and Subodh Deogam u/s 366A/376/34 IPC. The trial court after examining witnesses, found and held that accused Shiv Sumbrui and Subodh were not involved in the alleged occurrence and acquitted both of them from the charges but appellants being found and held guilty under Sections 366A/376 IPC, they were convicted sentenced to serve RI for ten years.

3. In the present appeals, all the appellants asserted separate grounds for setting aside their conviction. The main contentions raised in these appeals are that the trial court has not considered the improbability of the allegations. According to them, the informant was a hearsay witness, who was informed about the incident by Ghanshyam, who in turn was informed by Subodh. It is further submitted that even the wife of Subodh has stated that Sanjay has informed them the manner, in which he saw Tushu Mai asking for help and rescue from the appellants. The learned Counsel for the appellants stressed that in absence of Sanjay, Subodh and Ghanshyam, the evidence of the informant Bika Sinku requires to be scrutinized strictly. It is further asserted that even the statement of PW 3 Sukhmati , PW 4 Sanjay Hessa does not support the prosecution case, as they have been declared hostile. The memo of appeal further mentions that the evidence of victim girl Tushu PW 6 and Lobga PW 7 materially contradicts each other. According to the counsel for the appellants the independent witness PW 8, Kaira Sinku has been declared hostile while PW 9 Satrugan Soy, father of victim PW 6, has not supported the prosecution story properly, who admitted in cross examination that he has stated whatever was stated to him by PW 5. Therefore, the conviction of the appellants made on the basis of uncorroborated evidence of PW 6 and 7 with evidence of PWs 1 and 2, the doctors, who examined them, deserves to be set aside. It Is further submitted that in absence of 1.0 and non-explanation of delay in lodging of FIR and sending the same to court, the prosecution version deserves to be discarded. Learned Counsel further submitted that the medical report doe not support the

prosecution version. It is further stated that the victim girls, examined by the trial court, have attained the age of consent and finally that on hearsay evidence, the conviction of the appellants is not maintainable.

4. Considering the above facts, I propose to go through the evidence available on record. It is admitted case of the prosecution that FIR was lodged after three days and the victims were sent for medical examination on 29.4.99 and 16.5.99. Therefore, the victims could not be examined immediately after the occurrence and the question of finding any spermatozoa is not possible. Their age has been ascertained as between 15-17 years. It is also admitted fact on record that the informant was given the details of the occurrence by PW 6 and 7. According to this witness, vide para 3, in the evening of 26.4.99 the mother of convict Kandey and Rajesh brought the victims, PW 6 and 7, to police. He further admitted that his girl Manju went away with accused Shiv Sumbrui and she was traceless. Thereafter he narrates that all the appellants Kandey, Rajesh Sonaram and Parsuram committed rape on the girls. He admitted In para 8 that he knew the appellants before the alleged occurrence.

5. In this context the statement of PW 6 Tushu and PW-7 Lobga is important. They have stated that when they were returning from Karanjia Bazar, appellants Kandey, Parsuram, Rajesh and Sonaram asked them to sit with them on their cycle so that they may reach their houses early. However, they were forcibly taken to a pond near Amjora village and raped against their wishes. PW 6 asserted that Parsuram committed rape on her while Rajesh and Sonaram with Lobga. Kandey was alleged to have committed rape with Manju. They have explained the delay in reaching the houses. PW 6 further admitted that they were brought to village by the women of Amjora, where from they were taken to Jagannathpur P.S. She has further identified Kandey, Rajesh and Sonaram in dock. She denied to have seen the acquitted accused Subodh at the time of occurrence. She narrated that how she was confined by Parsuram and raped.

6. PW 7 similarly supported the prosecution case. She has named Rajesh and Sonaram to have committed rape with her. She further identified Rajesh, Kandey, Parsuram and Sonaram and preferred not to identify Shiv Sumbrui. According to her, when she met the mother of Rajesh, she came to know that a police case has been registered. PW 9, father of Tushu Mai PW 6, and PW 11 are formal witnesses. The learned trial court has discussed all these evidences in details in the impugned judgment.

7. From perusal of materials available on record, it appears that the prosecution has based upon the statement of victims, out of which only two were examined, PW 6 and 7. According to PW 6 and 7, they were subjected to forceful intercourse in the night of 24.4.99 near a pond outside of village Amjora. However they did not return to their house nor to the house of the informant and started moving to different places. According to victims, they were afraid to go to their houses and narrate the

incident. It has also come on record that after two days, they were caught hold by mothers of appellants Rajesh and Kandey, who brought them to police station. The fact remains that the victims preferred not to report the matter even to their parents or near relatives and were moving in different directions. It is also on record that In the morning of 26.4.99 the third girl Manju, the daughter of the informant Bika Sinku, went with Shiv Sumbrui and has remained traceless, so she could not be examined as a witness.

8. The statement of these two witnesses PW 6 and 7 also mentions that they were going with appellants from the Bazar out of their own free will. PWs 3 and 4 have been declared hostile because they did not support the prosecution case. The other named witness Ghanshyam has not been examined by the prosecution. The story of rape, therefore, stands only on the testimony of PWs 6 and 7. PW 6 has admitted that she knew the appellants since before this occurrence. However, PW 7 denied any knowledge about them. Therefore, naming of the appellants by PW 7 Lobga creates a reasonable doubt in the prosecution case.

9. PW 5 Bika Sinku is uncle of PW 7 while PW 9 is father of PW 6. PW 5 has admitted, vide para 4, that Bazar was situated at a distance of 4 kms from the village and P.O. was only 2 1/2 Kms. However, he could not find out whereabouts of the victims for next two days. Therefore, the doubt arises why in spite of knowing the appellants, he preferred not to go to police. It is also important that when Ghanshyam has given this information to him, why he has not been examined as a witness, The absence of Manju, daughter of PW 5, one of the victims, also makes the prosecution case weak. The appellants have remained in custody for different periods or appellant Rajesh has remained in custody for nearly three year nine months, Parsuram for nearly three years and Sonaram for nearly 19 months during their trial and pendency of appeal.

10. In the facts and circumstances discussed above, I find that the prosecution has failed to bring home the charges against aforementioned appellants beyond all reasonable doubts.

11. In the result, all these appeals are allowed and the convictions of the appellants are set aside. The appellants being on bail, are discharged from the liability of their bail bonds.