

Umbulan Marki, Pawal Guria, Bishram Jojo and Luther Aind Vs The State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Aug. 3, 2010

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 313
Penal Code, 1860 (IPC) â€” Section 34, 376, 376G

Citation: (2011) 6 RCR(Criminal) 1409

Hon'ble Judges: Prashant Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Prashant Kumar, J.

This appeal is directed against the judgment of conviction and order of sentence dated 17.4.2002 and 19.4.2002

passed by Sessions Judge, Simdega in S.T. No. 169 of 1997 whereby and whereunder appellants were convicted u/s 376 of the I.P.C. and

sentenced to undergo rigorous imprisonment for 10 years.

2. The case of prosecution in short as per the FIR dated 26.12.1996 is that one month ago, the prosecutrix (aged about 16 years) had gone to

Mahabuyang Hat for marketing. It is further alleged that while she was returning from the market in the evening at about 6-7 p.m. and reached near

a hillock, appellant No. 1 and 2 intercepted her. Thereafter appellant No. 1 forcibly took her inside the forest and committed rape upon her. It is

further alleged that after the occurrence, he threatened that if she will disclose this fact to any person she will be killed. It is stated that out of fear,

she did not disclose this fact to any person including her family members. It is then alleged that on 25.12.1996 at about 6 p.m., she went for

fetching water from a well, situated at some distance from her house. She then states that when she reached at the well, she saw that aforesaid four

appellants were standing near the well. She then alleged that appellant No. 1 called her, however looking the appellants, she tried to run away, but

appellant No. 1 caught hold and gagged her, then took her in a field and after laying her on the ground committed rape upon her. It is then alleged

that after appellant No. 1, other three appellants committed rape upon her one by one. It is further alleged that thereafter appellant No. 1 again, for

the second time, started committing rape upon her, however, while he was doing so, prosecutrix's father arrived at the place of occurrence, then

appellant No. 1 fled away leaving his apparels i.e. pant, Gamcha and necker. It is further stated that at that time other appellants also fled away. It

is stated that thereafter informant returned to her house and narrated about the occurrence to all her family members. On the next date the FIR was

lodged and police took up investigation.

3. After completing the investigation, police submitted charge sheet against the appellants u/s 376/34 of the IPC. After cognizance the case was

committed to the court of sessions as the offence u/s 376 of the IPC is exclusively triable by a court of Sessions.

4. The Sessions Court framed and explained the charge to the accused persons u/s 376 of the IPC to which the accused persons pleaded not

guilty and claimed to be tried. Thereafter, prosecution examined altogether seven witnesses and also brought on record FIR and Seizure List to

prove its case.

5. After close of the case of prosecution, statements of the appellants recorded u/s 313 of the Cr.P.C. in which their defence is of total denial.

6. It appears that after considering the evidence available on record, learned court below, convicted and sentenced the appellants as aforesaid

against that the present appeal filed.

7. While assailing the judgment of the court below, Mr. Arshad Hussain, learned Counsel for the appellants submits that in the instant case, there is

no independent witness to support the prosecution case. He further submits that the learned court below convicted and sentenced the appellants

merely on the evidences of prosecutrix and her father. The doctor who medically examined the prosecutrix has not been produced by the

prosecution, therefore, it can be presumed that the prosecutrix had not received any injury in course of occurrence. It is further submitted that the

prosecutrix appears to be consenting party because she did not disclose that one month ago, from the date of lodging of FIR, she was raped by

the appellants. Accordingly, it is submitted that the aforesaid conduct of the prosecutrix makes her untrustworthy. Thus, it is not safe to convict the

appellants merely on the evidence of prosecutrix and her father. Accordingly, it is submitted that the appellants be acquitted from the charge

levelled against them.

8. On the other hand, learned Additional P.P. submits that in the present case prosecutrix has given the vivid account of the occurrence and fully

supported the case of prosecution. Her evidence also found full corroboration from P.W. 2 (the father of prosecutrix), P.W. 4 (mother of

prosecutrix), P.W. 3 and P.W. 5, who are independent witness, had also supported the case of prosecution to the extent that they have been

informed by the father of prosecutrix about the occurrence. It is submitted that it is well settled that in a rape case ordinarily the evidence of

prosecutrix should not be suspected and should be believed and no corroboration is necessary unless the defence shows that there exist strong

reason to falsely implicate the appellants. It is submitted that in the instant case there is absolutely no reason to show that prosecutrix had falsely

implicated the appellants. It is further submitted that from no stretch of imagination it can be said that the prosecutrix was a consenting party to the

said sexual intercourse. It is submitted that on the first occasion when the prosecutrix was ravished by the appellants, she has been threatened by

him to be killed if she will disclose the said fact. Prosecutrix is a minor girl residing in village area, under the said circumstance, she might not have

disclosed the aforesaid fact to her family members due to the said threat. Thus, only because of the non disclosure of first occurrence, it cannot be

said that the prosecutrix is a consenting party. Accordingly, it is submitted that there is no illegalities and/or irregularities in the impugned judgment

which require interference by this Court.

9. Having heard the submission on behalf of the parties, I have carefully scrutinized the evidence available on record. P.W. 1 Narayan Manjhi is a

formal witness, who proved the FIR (Ext.-1), P.W. 2 Manohar Guria is the father of prosecutrix and an eye witness of part of occurrence, P.W. 3

Budhuwa Singh is a co-villager, who has been examined to prove that he has been informed by P.W. 2 about the occurrence. He is also a witness

of FIR and Seizure list. P.W. 4 Nirantar Santoshi is the mother of prosecutrix, P.W. 5 Simson Baraiki is also co-villager who has been examined

to prove that he has also been informed about the occurrence by P.W. 2. P.W. 6 is the prosecutrix, P.W. 7 is the Investigating Officer.

10. Thus, from the perusal of record, it appears that the entire case of prosecution rest on the testimony of P.W. 6 (prosecutrix) and P.W. 2 (

father of prosecutrix). P.W. 6 had categorically stated in her deposition that on 25.12.1996 at about 6 p.m. , when she went to the well for

fetching water, all the appellants were standing near the well. She further deposed that appellant No. 1 called her, whereupon she tried to run away

but appellant No. 1 caught and gagged her and took her in the field of Jaimangal Guria and fell her on the ground and then committed rape upon

her. Thereafter other three appellants committed rape upon her one by one. She further deposed that when for the second time appellant No. 1

started committing rape upon her. P.W.-2 (father) arrived at the place of occurrence, thereafter all the appellants fled away. She further deposed

that one month ago, from the date of present occurrence, appellant No. 1 committed rape upon her while she was returning from Mahabuyung

market. Thus, from perusal of evidence of prosecutrix, I find that she remained consistent to her earlier statement made in the FIR. She has been

cross examined at length by the defence but nothing has been elicited from her on which her testimony can be doubted. The statement of

prosecutrix further found full support from the evidence of P.W. 2 (father of prosecutrix). This witness deposed that on the date of occurrence in

the evening his daughter went to the well for fetching water and when she did not return after much delay, he went towards the well to search her.

He further deposed that when he reached in the field of Jaimangal Guria, he found that appellant No. 1 was committing rape upon her. He also saw

other appellants at the place of occurrence. He then states that after seeing him, appellants fled away. He further states that appellant No. 1 had

ran away leaving behind his apparels i.e. pant, necker and Gamcha. This witness was also cross examined but the defence had not elicited anything

to show that he had any personal grudge or enmity for falsely implicating the appellants.

11. In the instant case, the I.O. has also been examined as P.W. 7 and he also corroborates the statements of the prosecutrix by saying that when

he inspected the place of occurrence i.e. the field of Jaimangal Guria, he found trampling mark at the place of occurrence. Thus, I find that in the

instant case, the statement of prosecutrix found full corroboration from other evidence available on record.

12. It is well settled that while evaluating the evidence of prosecutrix ,the Court must keep in mind that no self respecting woman would come

forward in court to make a humiliating statement against her honour only with a view to falsely implicate some persons without any rhyme and

reason. It is further well settled that in cases involving sexual molestation, the materials which have no effect on the veracity of prosecution or even

minor discrepancy in the statement of prosecutrix have no effect on her reliability unless it is shown that the discrepancies are such which are fatal in

nature. It is equally well settled that if the evidence of prosecutrix inspire confidence then it is not necessary for the court to insist on corroboration

of her evidence from any independent source such as medical evidence etc.

13. In the instant case, I have already noticed that prosecutrix has absolutely no reason and/or personal grudge to falsely implicate the appellants.

There is no discrepancy in the evidence of prosecutrix. It is true that in the instant case, the prosecution had not produced and examined the doctor

who medically examined the prosecutrix. It is worth mentioning that in the instant case ,prosecution was conducted by the State Government and it

is for the prosecutor to examine all the witnesses. The prosecutrix cannot be blamed for non-examination of any witness. Moreover, since there is

no discrepancy in the evidence of prosecutrix and the defence had also not brought anything on record to show that the appellants have been

falsely implicated, I find no reason to disbelieve her evidence, which find corroboration from the evidence of P.W. 2 (father of the prosecutrix)

and P.W. 7 (Investigation Officer).

14. The contention of Mr. Hussain, learned Counsel for the appellants that the prosecutrix is a consenting party is liable to be rejected out right for

the following reason. One can notice inherent bashfulness in women and their tendency to conceal sexual aggression on them. Said tendency is

more common in woman residing in village. Thus, it appears that the prosecutrix due to aforesaid reason might not have disclosed the first

occurrence of rape committed by appellant No. 1. Moreover the prosecutrix had categorically stated that appellant No. 1 had threatened to kill

her if she will disclose the said fact to anybody. It appears that at the time of occurrence, prosecutrix was a minor, therefore due to bashfulness and

also due to fear, she might not have disclosed the aforesaid fact to anybody including her family members. Under the aforesaid circumstance, only

due to non disclosure of first occurrence of rape by prosecutrix, it cannot be presumed that she consented for sexual intercourse. Moreover, it is

stated in the FIR that at the time of occurrence, prosecutrix was aged about 15 years. Under the said circumstance, even if she had consented for

the sexual intercourse, the same have no consequence on the case of prosecution. Sexual intercourse with a minor girl, even with her consent will

come within the mischief of rape.

15. In view of the discussion made above, I find no illegality and/or irregularities in the impugned judgment of learned court below which requires

any interference by this Court.

16. In the result, there is no merit in this appeal, the same is accordingly, dismissed. The impugned judgment of conviction and order of sentence is

hereby affirmed. Appellants are on bail, their bail bonds are cancelled. They are directed to surrender in the court below to serve out the sentence.

The court below shall also take all coercive steps for procuring their appearance.