(2002) 07 JH CK 0014

Jharkhand High Court

Case No: Criminal Appeal No. 42 of 1996 (R)

Manjar Imam		APPELLANT
	Vs	
State of Bihar		RESPONDENT

Date of Decision: July 4, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: Vishnudeo Narayan, J

Bench: Single Bench

Advocate: M.S. Chhabra and B.K. Sinha, for the Appellant; S.K. Laik, APP, for the Respondent

Final Decision: Allowed

Judgement

Vishnudeo Narayan, J.

This appeal has been directed by the sole appellant named above against the judgment and order dated 27.4.1996 passed in ST No. 403 of 1993 by Sri R.P. Pathak. Sessions Judge, Giridih whereby the appellant was found guilty for the offence punishable u/s 376, IPC and he was convicted and sentenced to undergo R.I. for 10 years and also to pay a fine of Rs. 5,000/-to be paid to the prosecutrix, ie., the informant, and in default thereof to further undergo R.I. for one year.

2. The prosecution case has arisen on the basis of the written report of PW 1, the informant, lodged before the S.P. Giridih on 31.3.1993 regarding the occurrence which is said to have taken place on 27.3.1993 at 7.00 O''clock in the morning in village Khurd Magha, P.S. Jamua, District Giridih and the FIR in respect thereof was instituted on 13.4.1993 when it was received in the Jamua P.S. The allegation is that the appellant has ravished PW 1 the informant.

3. The prosecution case, in brief, is that PW 1, the Informant had gone for nature''s call at 7.00 O''clock in the morning oh 27.3.1993 in a field west of her house and when she was to sit for easing, the appellant came there and he caught her and

pressed her breast and kissed her and attempted to fell her on the ground. It is alleged that the informant attempted to raise alarms but the appellant closed her mouth and pressed her neck and felled her on the ground and thereafter making her helpless broke the rope of her ''Salwar'' and ravished her. It is also alleged that in course of the ravishment she was protesting but the appellant had stuffed her mouth. It is also alleged that the ''Jompher'', ''Salwar'' and ''Orhni'' of the informant was smeared with mud in course of the occurrence. The prosecution case further is that after her ravishment the appellant intimidated her not to tell this fact to anybody failing which she will be done to death and the appellant thereafter fled away. It is also alleged that the informant was returning to her house weeping and in the way she met the father of the appellant and on query she told him about her ravishment by the appellant and she has also narrated the incident to several other persons who had assembled there and Anjuman was informed of the occurrence and on enquiry the Anjuman found the occurrence true but no action was taken by the Anjuman and she was riot allowed to go to the P.S. and she was also intimidated. It is also alleged that the husband of the informant works as a tailor and on getting information of the occurrence he had refused to keep the informant with him for leading conjugal life.

4. The appellant has pleaded not guilty to the charge levelled against him and he claims himself to be innocent and to have committed no offence and that he has been falsely implicated in this case due to enmity at the instance of PW 3, Afjal and PW 4, Md. Akhtar. It has also been contended that no occurrence at all, as alleged, has ever taken place.

5. The prosecution has examined seven witnesses in all to substantiate the charge levelled against the appellant PW 1, Shamima Khatoon is the informant in this case and said to be the alleged victim in this case. PW 2, Munni Khatoon is the mother of the informant. PW 3, Afjal and PW 4, Md. Akhtar are close maternal relatives of the informant. PW 5, Dr. Sujata Jha has examined the informant and her report is Ext. 1 in this case. PW 7 is the I.O. of this case who has proved the formal FIR and the requisition sent to the doctor for medical examination of the informant which are Ext. 2 and 3 respectively. The written report of the informant has been proved by PW 7, a formal witness. No oral and documentary evidence has been brought on record in defence before the Court below.

6. In view of the evidence, oral and documentary, on the record the learned Court below has found the appellant guilty for the offence punishable u/s 376, IPC and convicted and sentenced him as stated above.

7. Assailing the impugned judgment it has been submitted by the learned counsel for the appellant that the entire occurrence is a got up one and the appellant has been implicated in this case due to enmity between PWs 3 and 4 on the one hand and the appellant and his father on the other hand and there are several litigations between them and the said enmity is still existing and alive. It has also been

submitted that this got up case has been initiated at the instance of and in conspiracy with PWs 3 and 4. It has further been contended that the objective finding of PW 5, the doctor and PW 6, the I.O. does not at all corroborate the case of the prosecution regarding the alleged ravishment of the informant by the appellant as alleged. Elucidating further, it has been submitted that PWs 2, 3 and 4 are the hearsay witnesses of the alleged occurrence and they have come to know about the alleged occurrence from PW 1, the informant and the evidence of the informant is highly unreliable, improbable and cannot be said to be a legal evidence in this case substantiating the allegation against the appellant. It has been submitted that no person of the Anjuman has taken oath in support of the prosecution for the reasons best known to the prosecution and there has been abnormal unexplained delay in lodging the case against the appellant when the police station is very nearby approximately at a distance of 1 km from the place of occurrence. Lastly it has been submitted that the learned Court below did not at all scan and scrutinize the evidence on the record in proper perspective meticulously and has erred in finding the appellant guilty.

8. The learned APP has submitted that the learned Court below has rightly relied upon the evidence of PW 1, the informant, regarding her ravishment by the appellant and has rightly convicted the appellant.

9. PW 1, Shamima Khatoon, the informant, has deposed in Para 1 of her evidence that when she had gone to ease herself, the appellant came there and intimidated her to be done to death if she will raise alarms and thereafter he has ravished her. The manner of ravishment as alleged in the written report of the informant is not at all corroborated in material particulars as per the evidence of PW 1. In Para 8 of her cross examination she has deposed that the place where she was ravished was dry land with stone chips. She has also deposed that abrasions scratches and bruises were caused on her back and waist due to the said stone chips. PWs 2, 3 and 4 in their evidence on oath do not at all whisper regarding the existence of any scratch, abrasion and bruises on the back and waist of PW 1, the informant during the course of the occurrence. PWs 2, 3 and 4 are not the ocular witnesses of the occurrence and they have deposed to have learnt about the occurrence from PW 1, the informant. Therefore, the evidence of PWs 2, 3 and 4 lacks evidentiary value when the evidence of PW 1, the informant is already on the record. It is pertinent to mention here that as per the averment made in the written report the clothes of the informant was smeared with mud meaning thereby that the place of occurrence was not a dry land having stone chips. The aforesaid clothes smeared with mud have neither been produced before the I.O. nor brought before the Court below in course of the trial in this case. Moreover, the averment in the written report of the informant regarding the place of occurrence stands contradicted as per the testimony of PW 1 appearing in Para 8. PW 6, the I.O., has deposed in Para 1 of his evidence that the place of occurrence is the fallow 5'' deep land of the appellant, 500 yard east of Jamua Chatro macadamized road. He has further deposed that he has

not found any mark of violence at the place of occurrence nor any incriminating article there. In this background the evidence of PW 5, Dr. Sujata Jha become very-very relevant, in which she has specifically deposed in the most clear and unequivocal terms that she has found no mark of external injury over the body of PW 1, the Informant, who Is aged about 20 years. She has also deposed that there was no injury or any foreign hair on the genital of the informant though her hymen was raptured having old tears and her vagina admits two fingers. She has also deposed that no spermatozoa was found in the vaginal swab of the informant. The medical evidence totally negates the factum of ravishment as alleged by the prosecution. It is true that the informant was examined by PW 5 after a fortnight but had there been any injury on the back and waist of the informant, the medical witness must have at least found the marks and signs of the injuries on the person of the informant. Moreover, the informant is 20 years old and a healthy adult woman and under ordinary circumstances it is not possible for a single man to hold sexual intercourse with a healthy adult woman In full possession of her senses against her will unless she has taken unawares, thrown accidentally on the ground and placed in such a situation and position as to render her completely helpless or unless she swoops aware from fright or exhaustion after long resistance. The averment made in the written report of the informant paints a picture of tough resistance by the informant to the appellant in course of the ravishment but the evidence of PW 1, the informant appearing in Para 1, presents quite a different picture which prima facie cast a cloud of suspicion to the very creditability of the prosecution case of ravishment of the informant by the appellant. According to the evidence on the record it appears that a complaint was lodged before the Anjuman and there had been a panchayati by the Anjuman and PW 1 in Para 9 of her evidence has deposed that the appellant was reprimanded and he was punished to sit and stand beholding his ears PW 2 has deposed that besides that the appellant was also fined Rs. 3,000/-. PW 2 has also deposed that there is paper of Anjuman regarding the said decision. The said paper has not been brought on the record by the prosecution for the reasons best known to him and no member of Anjuman is also forth coming to support the allegation against the appellant of the alleged ravishment of the informant by the appellant. However, Annexure-2 of the memo of appeal is an award of Anjuman in which there is a reference that the appellant has only beaten the informant. Annexure-2, however, does not corroborate the case of the prosecution regarding the ravishment of the informant by the appellant. Admittedly PWs 3 and 4, very close maternal relatives of the informant, are sworn enemies of the appellant being on litigating terms with the appellant and the false implication of the appellant at their instance or with their conspiracy cannot be totally ruled out in the facts and circumstances of the case. And to crown all. police station is at a distance of only one km. from the place of the occurrence and it does not stand to reason as to why the informant did not lodge a case before the police station immediately soon after the occurrence and no explanation is also forthcoming on the record regarding the delay in respect of lodging of the case by

the informant. This inordinate delay in setting the law in motion against the appellant by the informant cast a cloud of suspicion to the very creditability of the wrap and woof of the prosecution case.

10. In view of the discussions above it is crystal clear that the written report of the informant is not only suspicious but is a result of the after thought at the instance of PWs 3 and 4. I, therefore, see substance in the contention put forward on behalf of the appellant. The learned Court below did not meticulously consider the evidence on the record in right perspective and has gravely erred in coining to the finding of the guilt of the appellant in the facts and circumstances of this case. The evidence on the record does not at all establish the charge against the appellant beyond all reasonable doubts. Therefore, the im pugned judgment suffers with inherent ille gality which requires an interference therein. 11. There is merit in the appeal and it succeeds. The appeal is hereby allowed. The impugned judgment and order of the learned Court below is hereby set aside. The appellant is not found guilty of the charge levelled against him and he is ac quitted and discharged from the liability of the bail bond.