
(2004) 04 JH CK 0010

Jharkhand High Court

Case No: Criminal Appeal No. 168 of 1999 (R)

Ram Sharan Sai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: April 9, 2004

Acts Referred:

- Penal Code, 1860 (IPC) - Section 314, 34, 376

Citation: (2006) CriLJ 297 : (2005) AIR Jhar HCR 2176

Hon'ble Judges: Hari Shankar Prasad, J

Bench: Single Bench

Advocate: P.P. Roy, P. Kumar and R.P. Singh, for the Appellant; I.N. Gupta, APP, for the Respondent

Final Decision: Allowed

Judgement

Hari Shankar Prasad, J.

This appeal is directed against the judgment of conviction dated 25-5-1999 and order of sentence dated 26-5-1999 passed in Sessions Trial No. 363/97/ 33/97, whereby and whereunder the learned Additional Judicial Commissioner Loharadaga held the appellant guilty under Sections 314/34 IPC and convicted and sentenced him to undergo RI for seven years.

2. Prosecution case in brief is that Badu Oraon lodged an FIR on 29-4-97 at about 9.30 AM at Bhandra P. S. to the effect that his daughter Sukri Kumari, aged about 20 years, is blind of both the eyes and in the absence of family members appellant Ram Sharan Sai forcibly committed sexual intercourse with the blind girl and she became pregnant and when pregnancy became visible then she narrated the occurrence of rape by the appellant. Informant wanted to lodge FIR at the police station but appellant Ram Sharan Sai and Bhuneshwar Sai (acquitted) gave a threat to kill him and out of fear the informant kept mum. Thereafter, one day appellant and Bhuneshwar Sai secretly took-Away Sukri Kumari with them and against the will of

the deceased, pregnancy of the deceased was aborted and after some day both of them brought her and left her under a Karange tree near her house on 24-4-1997, but she was moaning with pain. The informant took his daughter inside the house and on enquiry she disclosed that appellant Ram Sharan Sai and Bhuneshwar Sai (acquitted) forcibly took her to Akasi, where the lady accused caused miscarriage thereafter she became unconscious and on coming Monday she died. After lodging of the FIR I. O. started investigation and submitted charge sheet against all the three accused persons including appellant u/s 314/34 IPC. Cognizance in the case was taken and case was committed to the court of session. Where learned Additional Judicial Commissioner recorded the evidence of witnesses both oral and documentary and came to a finding and held the appellant guilty and convicted and sentenced him as aforesaid, but he acquitted two other accused, who faced trial along with this appellant.

3. Prosecution has examined 11 witnesses PW 1 is Mahesh Prasad Sahu PW 2 is Sarbe Oraon PW 3 is Paro Devi PW 4 is Ganga Devi PW 5 is Ranthi Devi PW 7 is Thibua Sao PW 8 is Jayanti Devi, and all these witnesses have been declared hostile, as they did not support the prosecution case. PW 6 is Chhotelal Oraon, who is father of the deceased PW 10 is Dr. B. K. Pandey, who conducted the post mortem examination on the dead body of Sukri Kumari and PW 11 is Raghunath Singh, who is I. O. of the case.

4. PW 6 Chhotelal Oraon is the full brother of the deceased Sukri Kumari According to this witness he came to the field and saw his father (PW 9) taking his blind sister Sukri Kumari (deceased) towards his house and when he went inside the house, he enquired from Sukri, who immediately disclosed that appellant Ram Sharan Sai had taken her to Akasi and got her pregnancy aborted. Further according to this witness, on Monday at about 9 PM, Sukri Kumari died. According to this witness appellant was on visiting terms with him.

5. PW 9 is the informant and father of the deceased Sukri Kumari. He was working in the field at that time when he saw his daughter who was blind, under the Karange tree and she was moaning. He enquired from her after she was taken inside the house and she disclosed that Bhuneshwar Sai and Ram Sharan Sai had taken her to Akasi, where her abdomen was pressed causing miscarriage and next day she died.

6. PW 10 is Dr. B. K. Pandey, who conducted the post mortem examination on the dead body of deceased Sukri Kumari and found the following injuries:

(i) Rigor mortis absent in all the four limbs.

(ii) Whitish froth was coming from the nostrils

(iii) Both nipples of the breast were hyper pigmented. There was whitish discharge and foul smelling coming from the vagina.

(iv) There were multiple half-healed abrasions on the medial side of thighs.

Internal Injuries.

- i) Uterus size was six to seven months size - 9" in length
- ii) On dissection, there was haemorrhage fluid in the uterine cavity with remnant part of the faltered and placenta
- iii) Heart-Both chambers empty

Lung, spleen, liver, kidney - all were pale in colour.

According to doctor, time since death was about 48 hours and cause of death was due to septicemia leading to death.

7. PW 11 is the I.O. of the case. He recorded the statement of witnesses, inspected the place of occurrence and prepared the inquest report and sent the dead body of Sukri Kumari for post mortem examination.

8. While assailing the Judgment, learned Counsel for the appellant, submitted that three persons including this appellant were tried under Sections 314/34 IPC but two of them were acquitted and only this appellant was convicted, although the lady doctor, or whoever she may be, was equally responsible for terminating the pregnancy of Sukri Kumari learned Counsel further pointed out that if that lady may not be responsible, for a sake of argument, even though from the evidence of PW-9, who is the father of deceased Sukri Kumari, it is clear that he was told by Sukri Kumari that this appellant and Bhuneshwar Sai (acquitted) had taken her, kept her for six days, got her pregnancy terminated and left her under a Karange tree near the house of PW-9, from where she was taken inside the house by PW 9. Curiously enough, Bhuneshwar Sai has been acquitted on the same piece of evidence, on which piece of evidence this appellant has been convicted. In this connection, learned Counsel for the appellant referred to [L.L. Kale Vs. State of Maharashtra and Others](#), wherein it has been held that if on the same piece of evidence one accused is left out, on the same piece of evidence another person cannot be convicted. The learned Counsel further pointed out that PW 6 is Chhotelal Oraon, who is the full brother of deceased Sukri Kumari and Sukri Kumari disclosed the name of this appellant only, whereas PW 9, who is father of deceased Sukri Kumari, stated in his evidence that Sukri Kumari had taken the name of both this appellant and Bhuneshwar Sai that both of them had taken her to Akasi, where her pregnancy was terminated. He further pointed out that when this PW 6 enquired from Sukri Kumari, at that time his father was present but PW 9, who is said to be present at the time of enquiry by PW 6, stated that Sukri Kumari disclosed the names of two persons. He further stated that he was alone when Sukri Kumari disclosed the names of this appellant and Bhuneshwar Sai. The learned Counsel further pointed out that from the evidence, it is clear that Sukri Kumari remained outside for six days and it is also admitted fact that she was blind but neither father nor brother lodged any complaint anywhere about her disappearance and, therefore, it appears that this

case is a concocted one, because from the evidence on record, it nowhere comes as to who made her pregnant and, therefore, in the facts and circumstances of the case and on the basis of fact that on the same set of evidence Bhuneshwar Sai has been acquitted, the appellant deserves acquittal.

9. On the basis of evidence and material brought on record it appears that Sukri Kumari was blind and taking advantage of her blindness someone committed rape on her and made her pregnant but she had taken the name of this appellant as the person, who committed rape on her, but in course of investigation charge-sheet has not been submitted u/s 376 IPC but has been submitted u/s 314/34 IPC against this appellant and Bhuneshwar Sai and a lady, who helped in termination of pregnancy of Sukri Kumari but two of them have been acquitted and this appellant has been convicted. In my opinion, since on the same piece of evidence both this appellant and Bhuneshwar Sai have taken Sukri Kumari to Akasi, where her pregnancy was terminated. Bhuneshwar Sai has been acquitted and further there are contradictions in the statements of PWs 6 and 9, as pointed out above, and further nobody has seen her being taken by this appellant and Bhuneshwar Sai, no case is made out against this appellant and in that view of the matter, this appellant deserves acquittal.

10. In the result, this appeal is allowed and appellant is acquitted of the charges levelled against him. The appellant is on bail, he is discharged from the liability of bail bond.