(2012) 01 JH CK 0039

Jharkhand High Court

Case No: Criminal Appeal (SJ) No. 172 of 2003

Musa Mian		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: Jan. 27, 2012

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: Dhrub Narayan Upadhyay, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.N. Upadhyay

1. The appeal has been preferred against the judgment of conviction and order of sentence dated 10.12.2002 and 16.12.2002 respectively passed by learned Sessions Judge, Dumka in connection with Sessions Case No. 226 of 2001 arising out of Dumka (M) P.S. Case No. 63 of 1999 corresponding to G.R. Case No. 755 of 1999 whereby the appellant has been convicted u/s 376 of the Indian Penal Code and sentenced to undergo R.I. 10 years The prosecution case, as it appears from the written report lodged by Fatima Bibi, is that on 01.09.1999 while she had been to her maize field she was overpowered by appellant Musa Mian who forcibly committed rape on her and fled away. The wife of one Israil Milan had also seen Musa Mian while he was fleeing from the place. The written report was lodged on 03.09.1999 after which Dumka (M) P.S. Case No. 63 of 1999 u/s 376 I.P.C. against appellant Musa Mian was registered and accordingly investigation proceeded. After conclusion of investigation chargehseet u/s 376 IPC was filed and the accused was put on trial after framing of the charge u/s 376 I.P.C.

2. Prosecution has examined altogether 10 witnesses out of whom the victim has been examined as PW-4. Dr. Arun Chatterjee who had examined the victim has been

examined as PW-1. Sujata Kumari, Investigating Officer, is PW-10, Yakub Mian is PW-2, Quyumuddin Ansari (husband of the victim) is PW-3, Manira Bibi is PW-5 who had seen the appellant fleeing from the place of occurrence, Jamula Bibi (mother-in-law of the deceased) is PW-6. Ashrafi Mian PW-7 and Shamshul Bibi PW-9 have been tendered.

3. The informant, PW-4 has fully supported the prosecution case and she has stated that while she had been to her maize field, situated at about half kilometer from her house, (he appellant suddenly appeared, overpowered her and committed rape on her. She had made protest but could not succeed. After she returned home, she narrated the incident to her mother-in-law and after arrival of her father-in-law the matter was reported to police on 3rd September, 1999. The version of victim finds support from the evidence of her husband Quyumuddin Ansari PW-3. Yunus Mian (father-in-law of deceased) PW-2, Jamula Bibi (mother-in-law of deceased) PW-6 and Manira Bibi PW-6 have supported this fact that they had seen the victim going towards home from the field and the appellant fleeing from the field.

4. PW-4 Dr. Arun Chatterjee has proved the medical report but according to doctor he was not firm in opinion about commission of rape on the victim. Sujata Kumari PW-10 happens to be the Investigating Officer and she has supported the investigation done by her and proved the documents like formal F.I.R. etc. The I.O. has described the place of occurrence in para-2 of her deposition.

5. Learned counsel appearing for the appellant has challenged the impugned judgment and findings on the ground that the evidence of prosecutix is not corroborated by medical evidence. There was delay of two days in lodging the First Information Report and the explanation extended for the delay is not cogent and reliable. The story narrated by the victim is not believable that during day hours at a place situated at a distance of half kilometer from the village anybody would dare to commit an offence liker ape and that too on a lady of the same village. It is argued that the appellant has been falsely implicated because the relation between two family was strained from before. The husband of the victim had taken loan to the tune of Rs. 1200/- and it was not paid and to grab the amount this false case has been instituted. No independent witness of the village has supported the incident.

6. Learned counsel appearing for the State has vehemently opposed the argument and supported the impugned judgment and findings of the learned trial Court. He has submitted that the ocular evidence, disclosed by the victim, if found reliable, there is no need that it must be corroborated by medical evidence. All the prosecution, witnesses have fully supported the prosecution case.

7. I have carefully examined the case record and perused the evidence and the impugned judgment. I do not find that the appellant has succeeded to substantiate the strained relation prevailing between them which led to the informant to lodge this false. case. The statement of victim is consistent on the point of time of

occurrence, manner of occurrence and place of occurrence. The I.O. PW-10 in her deposition in paragraph 2, while describing the place of occurrence has stated that the maize plant at the place of occurrence were found crushed and pressed. The appellant was fleeing torn the place of occurrence just after the incident and the victim was returning home was noticed by PW-5 and she has supported this fact in Court. The other family members of the victim who are PW-2, PW-3 and PW-6 have also corroborated the incident narrated to them by the victim. I do not find that any material contradiction from the material witnesses have been taken out to disbelieve their version. Considering all aspects of the prosecution case, I do not find any merit in this appeal and the same stands dismissed and the impugned judgment of conviction and sentence dated 10.12.2002 and 16.12.2002 respectively passed by learned Sessions Judge, Dumka in connection with Sessions Case No. 226 of 2001 arising out of Dumka (M) P.S. Case No. 63 of 1999 corresponding to G.R. Case No. 755 of 1999 stands upheld. The bail bond of the appellant is cancelled and he is directed to surrender before the Court below within one month from the date of Bus judgment failing which the convicting/successor Court is directed to take all coercive steps to secure the attendance of the appellant and also to forfeit the bail amount in accordance with law.