

(2010) 09 JH CK 0040

Jharkhand High Court

Case No: Criminal Appeal No. 571 of 2002

Hira Lal Murmu

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 9, 2010

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Advocate: M.B. Lal, for the Appellant; A.K. Prasad, A.P.P, for the Respondent

Final Decision: Allowed

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment of conviction dated 5.9.2002 and order of sentence dated 6.9.2002 passed by Shri Binay Kumar Sahay, Additional Sessions Judge-XIII, Dhanbad in Sessions Trial No. 241 of 2001 arising out of Baliapur P. S. Case No. 80 of 2000 (G.R. No. 3231 of 2000), by which judgment he found the Appellant guilty u/s 376 of the Indian Penal Code and sentenced him to undergo R.I. for seven years and to pay a fine of Rs. 1000/- and in default of payment of fine further sentence to undergo R.I. for one year more.

2. It is submitted by the learned Counsel for the Appellant that the Appellant has falsely been implicated in this case due to village enmity. Although the victim lady in her F.I.R. stated that she was caught and took her to Jungle and she was raped by this Appellant, but in her examination-in-chief she admitted that she does not recognize the Appellant. In her examination-in-chief, she further admitted that just of the occurrence on hearing "Hullah" her husband came along with her mother-in-law, but the husband has also not supported the prosecution case as he stated that on the date of occurrence he was at Dhanbad and not present at here and as such the prosecution is doubtful and the Appellant is entitled to be given

benefit of doubt and acquitted from the charges leveled against him.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that the victim lady has named the Appellant in the F.I.R. itself and subsequently in her cross-examination and at para 2 she stated that the accused-Appellant. Hira Lal Murmu came from the bush and caught hold of her and took her to Jungle by force and committed rape upon her and as such it is a case where it cannot be said that the Appellant has falsely been implicated and not named by the victim girl.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by the victim girl, Sajda Khatoon-P.W. 5 stating therein that on 31.10.2000 when she was returning to her home after easing her neighbour Hiralal Murmu, the accused came out from the bush and shut the mouth of the informant with one hand and dragged her towards the jungle and committed rape upon her. On hullah being raised, her mother-in-law and her husband came there. On seeing them the accused ran away.

5. On the basis of the said Fardbeyan police registered a case u/s 376 of the Indian Penal Code and after investigation submitted charge-sheet against the Appellant in the case.

6. Since, the case was exclusively triable by a Court of Sessions, the same was committed to the Court of Sessions where charges were framed against the Appellant u/s 376 of the Indian Penal Code by the 3rd Additional Sessions Judge, who tried the case and disposed of by the Additional Sessions Judge-XIII, who found the Appellant guilty as aforesaid.

7. It appears that in course of trial the prosecution has examined 6 witnesses.

8. P.W.1, Dr. Laxmi Pandey, who examined the victim girl on 1.11.2000 at 11.50 a.m. and found no injury on her external body or her internal parts. She further found that the hymen is old ruptured and no spermatozoa was found on high vaginal swab. The victim lady was aged about 18 years and according to her there was no sign of rape. She also admitted in her cross-examination that she found no sign of dragging her.

9. P.W.2, Jainab Bibi is the mother in law of the victim and stated that on hearing hullah of her daughter in law she went to the place of occurrence where she saw the accused running away and her daughter in law stated that she was criminally assaulted by the accused.

In her cross-examination, at para 4 she stated that her another daughter, Farida Bibi in law was present on that day and she had also accompanied the victim lady to the jungle to attend the nature call, but the said Farida Bibi, who was examined in Court as P.W.4 was declared hostile and she has not supported the prosecution case.

10. P.W.3, Mobin Ansari is the husband of the victim girl, has stated in the examination-in-chief that on the date of occurrence he was not at home rather he was told about the occurrence by his mother.

11. P.W.5, Sajda Khatoon she is the victim lady, has stated in her examination-in-chief that the occurrence took place about one year back at 5 am in the morning some body committed rape upon her, but she did not identify the person who raped her.

12. Thus, after going through the entire evidences, it appears that as admitted by the victim lady herself that she could not identify as to who committed rape upon her and more so when her statement as given in the F.I.R. that just after the occurrence of rape she made Hullah whereupon her husband along with her mother-in-law came to the place of occurrence, has also been falsified by the evidence of husband-P.W.3, who stated in examination in chief that he was not present on the date of occurrence, and he had gone to Dhanbad. Her mother-in-law, who examined as P.W.2 stated in para 4 that her another daughter in law-P.W.4 had also accompanied the victim lady, but she has not supported the statement as given by the informant. P.W.4 was declared hostile. The doctor has also not supported the prosecution case and she stated that there was no sign of rape nor any external injury. She also denied the fact that there was any sign of dragging while the informant in her fardbeyan stated that she was dragged by the accused to the jungle. In that view of the matter, the prosecution case has become doubtful and the Appellant is given benefit of doubt and acquitted from the charges leveled against him.

13. The judgment of conviction dated 5.9.2002 and order of sentence dated 6.9.2002 passed by Shri Binay Kumar Sahay, Additional Sessions Judge-XIII, Dhanbad in Sessions Trial No. 241 of 2001 arising out of Baliapur P. S. Case No. 80 of 2000 (G.R. No. 3231 of 2000) is set aside and the appeal is allowed.

14. The Appellant is on bail, he is discharged from the bondage of his bail bond.