

(2003) 04 JH CK 0032

Jharkhand High Court

Case No: Criminal Appeal No. 25 of 1999 (R)

Somra Oraon

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision: April 21, 2003

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2003) CriLJ 3093 : (2003) 2 JCR 648

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: T. Mishra, for the Appellant; K.K. Singh, Addittional Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Deoki Nandan Prasad, J.

This criminal appeal is directed against the judgment of conviction and sentence dated 21.12.1998 passed by Shri Tarkeshwar Prasad, Sessions Judge, Gumla in S.T. No 181 of 1997, whereby and whereunder, the learned Sessions Judge convicted the appellant u/s 376 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years.

2. The case of the prosecution in brief is that the victim Sabita Lakra aged about twelve years lodged a first information report alleging therein that she had gone to collect fire wood when the accused/appellant came there and caught hold her and got her down in the field and thereafter committed rape on her forcibly. She cried and weeped and also raised alarm but none has come for her rescue. Thereafter the accused/appellant threatened her for dire consequence and directed to keep mum about the incident otherwise she would be killed. She returned to her house but could not narrate the incident out of fear. It is further alleged that after 8 to 10 days again she had gone to the village side for collecting dried leaves and again the

appellant came there and caught hold her and committed rape on her forcibly for about half an hour and thereafter he threatened her to keep mum. It is further claimed that in the last December, 1997 she had gone to Tanr area where the appellant again came there and caught hold her and thrown her on the ground and forcibly committed rape on her twice. Thereafter the victim came to the house and narrated the incident to her mother who told to wait for her father to return from Himachal Pradesh who had gone for livelihood and when her father came back from there, she narrated the incident and thereafter the victim along with her father went to the police station and lodged a first information report.

3. The police investigated into the case and submitted charge sheet against the accused/appellant. The case was committed to the Court of session. Accordingly, the appellant appeared before the learned Sessions Judge. The charge was framed u/s 376 of the Indian Penal Code which the appellant denied his allegation.

4. The witnesses were examined in the Court below and after hearing both sides, considering the evidence on record, the learned Session Judge passed the order of conviction and sentence by the judgment impugned, hence this appeal.

5. Altogether eight witnesses have been examined in support of the case of the prosecution. PW 5 (Sabita Kumari), the victim aged about 14 years, stated that the appellant had first committed rape on her forcibly in the month of Chait but she could not narrate the incident to any other person because of fearness and again the appellant committed rape on her and third time when she was subjected to physical assault by the appellant, she narrated the incident to her mother and after coming back to his father from Himachal Pradesh lodged a first information report. She was also examined by the doctor at the relevant time. She narrated the incident in detail as to how the appellant was committing rape forcibly on her after putting threat. This fact has also been admitted by PWs 1 and 2, Mukhiya and Sarapanch who can said to be the independent witnesses on the point. They claimed to have visited the police station as well at the time of lodging the first information report with the victim who had gave out the entire episode to them as well PW 3, the father and PW 4, the mother of Sabita Kumari also stated about the incident and because of fearness, the matter could not be reported earlier to the police station and they waited for arrival of the victim's father from Himachal Pradesh for lodging the first information report. She was also examined u/s 164 of the Code of Criminal Procedure, which has been proved by PW 6 who had recorded her statement, PW 7 is the Doctor, who found the victim aged about 14 to 15 years and opined that the victim was admittedly minor at the relevant time. It is true that the doctor did not find any sign of sexual intercourse, but in view of the evidence of PW 5 corroborating the evidence by other witnesses including the independent witnesses, namely, PWs 1 and 2, which is overwhelming at this stage to establish that the appellant committed rape forcibly on her and the Court below rightly passed Judgment finding the appellant guilty for the offence charged. The testimony of the

victim is quite convincing and truthful and, as such, even on the basis of the sole evidence, the prosecution has been able to establish the charge for committing rape attracting the offence u/s 376 of the Indian Penal Code.

6. In the result. I find that the Court below has rightly convicted the appellant for the offence charged which is, accordingly confirmed.

7. So far the sentence is concerned, it is apparent that the appellant has already been in custody since 9.2.1992 and, as such, in my view and for the ends of justice, the appellant has sufficiently been punished and the period already undergone by him in jail custody will suffice the sentence for the offence charged.

8. Thus with this modification in the sentence i.e. the period already undergone by the appellant in jail custody, this criminal appeal is dismissed. The appellant, namely, Somra Oraon has already been in custody. He is directed to be released forthwith, if not wanted in any other case.