

(2006) 10 JH CK 0023
Jharkhand High Court
Case No: None

Madhu Das		APPELLANT
	Vs	
State of Bihar (now Jharkhand)		RESPONDENT

Date of Decision: Oct. 31, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3

Citation: (2007) 1 JCR 15

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Allowed

Judgement

D.G.R. Patnaik, J.

This appeal is directed against the judgment of conviction dated 9.8.1999 and corresponding sentence, passed by the 1st Additional Sessions Judge, Jamshedpur whereby the appellant was convicted for the offences u/s 376, IPC and Section 3 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 and sentenced to undergo imprisonment for 7 years and 1 year respectively for the said offences.

2. Facts of the case which was registered on the basis of the fardbeyan of the prosecutrix on 4.4.1997, is that about five months prior to the lodging of the FIR when the prosecutrix had gone to the river in the afternoon at about 2.00 p.m. for her. bath, present appellant, finding her alone, forcibly took her to a nearby secluded place near a brick kiln where he first made proposal to her for sexual relation, but on her refusal, he felled her down on the ground and committed rape on her. When she wanted to raise alarm, he gagged her mouth and later, under threats as well as by false promise of marrying her, he continued to exploit her sexually and as a result of which, she had conceived. When her pregnancy was

delected about five months later, she reported the matter to her mother accusing the appellant as having caused her pregnancy. On being informed, her parents took her to the house of the appellant, but the appellant and his parents refused to allow her entry into their house or to have any marital relation with her. Thereafter, prosecutrix accompanied by her uncle Bhrigu Kalindi went to the police station where case was registered on the basis of the fardbeyan of the prosecutrix.

3. Appellant had pleaded not guilty to the charge and had preferred to be tried.

4. As many as seven witnesses were examined at the trial by the prosecution, out of whom, one witness namely, Amit Kalindi (PW 5) was declared hostile on his failure to support the prosecution's case. Other witnesses on whose evidences prosecution had relied upon, are the prosecutrix (PW 4) herself and her parents as well as the doctor who had medically examined the prosecutrix.

5. Learned trial Court, basing reliance upon the testimony of the prosecutrix, had recorded its finding of guilt for the offence u/s 376 of the Indian Penal Code and Section 3 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989 against the appellant and after convicting him for the aforesaid offences, had sentenced him to undergo imprisonment as mentioned above.

6. Amongst the several grounds raised by the appellant against the impugned judgment of conviction and sentence, the main ground is that the evidences on record do not fulfill the ingredients of Section 376 of the Indian Penal Code, nor does it invite the ingredients of Section 3 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989. Learned Counsel explains that from the evidence of the prosecutrix, it would be apparent that she was a consenting party to the sexual intercourse and this fact is evident from the delay of more than five months in lodging the FIR. It is further contended that the prosecutrix has not offered any reasonable explanation for the delay in lodging the FIR or even for not informing the matter to her own parents and it was only when the appellant had refused to marry her, that she has come up with a false story of rape against the appellant. Learned Counsel adds further that the learned Court below has erred in failing to consider and read the evidences of the prosecutrix and other witnesses in proper perspective.

7. Learned Counsel for the State, on the other hand, while submitting, has argued that though there is delay of about five months in lodging the FIR, but the same has been adequately explained by the prosecutrix. Learned Counsel explains that the prosecutrix is an illiterate, rustic, teenaged girl and out of fear and shame, she did not report the matter to her parents promptly. Furthermore, it was on account of the threats and of the false inducement of marriage that the prosecutrix had to remain silent.

8. The primary issue for determination, as raised by the learned Counsel for the appellant, is whether the prosecutrix was a consenting party to the alleged sexual intercourse and whether the allegation of rape is false and concocted without there

being any corroborative evidence in respect of the same.

For better appreciation, it would be necessary to refer to the evidence of the prosecutrix as also to that of her parents namely, PW 2 and PW 3 respectively while reading the same along with the fardbeyan of the prosecutrix. The prosecutrix (PW 4) in her deposition, has stated that over 20 months prior to the date of her deposition when she had gone to the river for her bath, the accused/appellant Madhu Das had accosted her and had forcibly taken her towards a ditch near a brick kiln where he committed rape on her and when she wanted to raise alarm, the accused had gagged her mouth. Thereafter, he assured her that he would marry her, so she should not worry. She adds that she conceived on account of the sexual intercourse. Four months later, accused had offered her some medicine, but she had refused the same. Later, she reported the matter to her mother. Her parents thereupon took her to the house of the accused, but the father and brother of the accused had refused to accept her in the house saying that she belongs to a lower caste. Thereafter, she lodged information at the police station.

In her cross-examination, she has stated that she had gone to the river at about 2.00 p.m. after finishing her household chores. She explains that on the date of occurrence, she did not reveal the matter to her parents on account of fear, though 15 days later, she reported the matter to her mother. In her fardbeyan, she has claimed that she usually goes to the river for her bath and accused was a frequent visitor to the river bank and he used to tease her and had even proposed to marry her. She claims that on the date of occurrence when the accused had wanted to have sexual intercourse with her, she had refused due to the fact that she was undergoing her menstrual period, but he committed forcible sexual intercourse with her. She claims further that since after that day, the accused used to meet her regularly and on the promise of marriage and used to indulge in sexual intercourse with her at the brick kiln. Later, when she became pregnant, she told about her pregnancy to the accused, who offered her some medicine to abort her pregnancy but she had refused to accept the medicine and had insisted that he should marry her. When he refused to meet her demand, she informed her mother. It is apparent from the fardbeyan of the prosecutrix that she has though stated that the accused had forced himself upon her against her will, but she had not alleged that she was subjected to any kind of threats or any kind of violence. Neither does she claim that the accused had gagged her or had threatened her to silence. Rather, she admits that she had remained silent on account of the promise made by the accused to marry her. It, therefore, appears that the portion of her evidence recorded in course of the trial wherein she has claimed that she wanted to raise alarm, whereupon the accused gagged her mouth with cloth, is a definite improvement in her original version. It is further significant to note that after she had become pregnant and informed the accused about her pregnancy, he had refrained himself from meeting her.

9. The evidence of PW 3 Malti Devi ho is mother of the prosecutrix, is that when she detected the pregnancy of her daughter (prosecutrix), the girl informed that she was impregnated by the accused Madhu Das. Thereafter, she took her daughter to the house of the accused, demanding that the accused should marry her daughter, but the parents of the accused refused to accept the proposal on the ground that the girl was of a lower caste. It is significant to note that the mother has not claimed that her daughter had made any allegation that the accused had subjected her to forcible sexual intercourse. It is also significant to note that neither prosecutrix, nor her parents have claimed that on the alleged date of first sexual intercourse prosecutrix was a minor below the age of 16 years or even below the age of 18 years. On the contrary, evidence of the prosecutrix and her mother indicate that the prosecutrix had continued to maintain sexual relation with the accused albeit, on the belief that the accused would marry her. It is apparent from the admission of the prosecutrix that at the time when she had first sexual intercourse with the accused, prosecutrix was aware that the accused was not her husband and with such knowledge, she had allowed herself to be sexually exploited by the accused. The delay of over five months in lodging the FIR does not appear to have adequately and reasonably been explained by the prosecutrix. Evidences of the prosecutrix and her mother read with the fardbeyan of the prosecutrix give enough room to raise bona fide doubt and reason to believe that the prosecutrix was a consenting party to the alleged sexual intercourse with the accused. It appears from the impugned judgment that the learned trial Court had placed implicit reliance upon the testimony of the prosecutrix, finding support from the medical evidence about pregnancy of the prosecutrix, but in the process, has failed to examine in proper perspective the circumstances which indicate that the prosecutrix was a consenting party to the sexual intercourse with the accused.

10. For the reasons stated above, I find merit in this appeal. Accordingly, this appeal is allowed. The impugned judgment of conviction and sentence is hereby set aside. Accused/appellant is acquitted of the charges for the offence u/s 376, IPC and Section 3 of the S.C. & S.T. (Prevention of Atrocities) Act, 1989. Since appellant is already on bail, he is absolved from the liability of his bail bond.