
Sonalal Hansda Vs The State of Jharkhand

Criminal Appeal (S.J.) No. 494 of 2001

Court: Jharkhand High Court

Date of Decision: July 29, 2008

Acts Referred:

Evidence Act, 1872 & Section 118#Penal Code, 1860 (IPC) & Section 376

Citation: (2009) 57 BLJR 362 : (2008) 4 JCR 375

Hon'ble Judges: Ajit Kumar Sinha, J

Bench: Single Bench

Advocate: Dilip Kumar Prasad and S.K. Choudhary, for the Appellant; Assistant Public Prosecutor, for the Respondent

Final Decision: Dismissed

Judgement

Ajit Kumar Sinha, J.

The present appeal is directed against the judgment and order of conviction and sentence dated 28.9.2001 and

3.10.2001 respectively, passed by the learned Sessions Judge, Godda, in Sessions Trial No. 16 of 2000, whereby, the appellant has been

convicted for the offence u/s 376 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for a period of seven years for the

said offence.

2. The case of the prosecution, in brief, is set out as under:

On 09.09.1999 the victim Premlata Tudu along with her sister Pusplata Marandi were returning from Chandna Hatiya at around 5.00 p.m. in a

jeep. They came down from the jeep at about 6.00 p.m. at Bathantarn where they met the accused-appellant Sonalal Hansda. The Informant and

her sister Pusplata Marandi were having vegetables in a bag and the accused-appellant proposed to carry the vegetables in his bicycle and,

accordingly, they gave the bag to the accused-appellant to be carried in the bicycle.

Further case of the prosecution is that both the sisters went to Village-Sundarmore Sarak Tola to the house of Mery Kisku, their relative, and

demanding a torch from her but her nephew Haradhan Marandi agreed to accompany them and actually he accompanied them. On the way, the

accused-appellant asked Haradhan Marandi to return back and gave assurance that he will reach them safely to their house. Accordingly,

Haradhan Marandi returned back. Thereafter, when they reached near Tala Garha river at around 6.45 p.m., the accused-appellant stopped the

bicycle on stand and caught hold of the arm of the informant and forcibly started pulling her towards the jungle. Both the victim and her sister

started crying but the accused-appellant terrified the sister of the informant with a stone and threatened her, which compelled Pusplata Marandi to

run away from the place of occurrence and, thereafter, the accused-appellant floored down the victim (informant) and forcibly committed rape on

her.

3. It is also the case of prosecution that when the informant tried to raise alarm, she was slapped by the accused-appellant. The prosecution has

also stated that some semen was stained on the petticoat of the informant due to the rape committed on her. Thereafter, the accused-appellant fled

away on his bicycle and the prosecutrix raised an alarm which led the villagers, namely, Benisan Hansda, Suleman Soren, Luis Tudu and Lina

Besra assemble there but by that time the appellant had already fled away towards the jungle. The informant along with the villagers went to

Sundarmore Mission where the accused was working but the accused-appellant had not returned back. The informant, accordingly, returned back

to her house and due to late night she reported the matter to the police station on the next morning and, accordingly, the written report was lodged

by the victim (informant) on 10.09.1999 on the basis of which the present case was registered and after investigation charge-sheet was filed.

4. In order to prove the charge levelled against the accused/appellant, the prosecution has examined altogether six witnesses, namely, PW-1,

Benison Hansda, PW-2, Luis Tudu, PW-3, Sushi Peter Tudu, PW-4, Pusplata Marandi, PW-5, Premlata Tudu (the informant herself) and P.W.-

6, Dr. Lili Singh. The first three witnesses are the independent witnesses who were the villagers of Village-Sundarmore. PW-1, however, has been

declared hostile and the other independent witnesses have not supported the prosecution story. According to PW-1, Premlata Tudu, the victim,

had told him that the accused-appellant, Sonalal Hansda, had committed rape on her. As per the prosecution case, the evidence of PW-4,

Pusplata Marandi, who was the eye witness of the occurrence, and PW-5, Premlata Tudu, the victim herself, is of much importance. P.W.-6 is Dr.

Lili Singh, who examined the informant on 10.09.1999 at about 11.30 a.m. and according to her, there was no extraordinary injury and she (the

doctor) did not find any spermatozoa on the vaginal swab of the prosecutrix nor any mark of violence was found on her person. She has also

stated that there was no foreign hair on her private part but at the same time as per the medical report, sexual intercourse took place, which cannot

be ruled out.

5. Even as per the medical report of the doctor, it appears that the prosecution produced semen stained petticoat.

6. PW-4, Pusplata Marandi, in her evidence has fully supported the case of the prosecution and has stated that on 9.9.1999 she with her cousin

Premalata Tudu had gone to Chandna Hat and further narrated the entire incident, corroborating the prosecution story, and even in her cross-

examination, the consistency of her evidence is proved beyond doubt. Upon being put to question in cross-examination, she reiterated that Sonalal

Hansda met with them and took the bag, containing vegetables, and hanged it on the bicycle. This also corroborates the prosecution case. She has

further in her cross-examination stated that the accused-appellant proceeded on the bicycle and was waiting before the river where both the sisters

i.e. PW-4, Pusplata Marandi, and her cousin Premalata Tudu (informant) met with him again. It has further come in her cross-examination that

Sonalal Hansda caught hold of Premalata Tudu, the victim, and started dragging her and under the threat of being hit by a stone, she fled away from

the site. This fact is also corroborated as per the prosecution case. It has also come in her evidence that on reaching the village, she raised an alarm

and the villagers assembled and thereafter, Premalata Tudu also came back.

7. Thus, from the evidence of this witness it is clear that she has fully supported the prosecutions story and there is absolutely no discrepancy in her

evidence nor there is any material contradiction by which the prosecution case can be disbelieved. Even P.W.-5, Premalata Tudu (the victim), has

clearly stated the time, the date and the place of occurrence and has further corroborated the entire case as laid down by the prosecution and,

thus, there cannot be any iota of doubt or suspicion and the consistency which has been reflected in the evidence of PWs-4 and 5 clearly proves

and corroborates the case made out by the prosecution.

8. The defence has also examined one Hari Shankar Marandi as D.W.1. He has said that he is the Village Pradhan and has come to say that he

did not convene Panchayati regarding an occurrence of rape on Premalata Tudu by the accused Sonalal Hansda nor any one has come to report the

occurrence of rape to him. From the prosecution side it is nowhere stated that the victim approached for Panchayati instead the matter was

reported to the police station on the very next morning at 8.30 a.m. Therefore, if she had not gone to this witness for Panchayati, then on that basis

it cannot be said that the prosecution story is false. It further appears that this defence witness is not a truthful witness because in the cross-

examination he has submitted that he does not know about this case. He was going to volunteer something and said that he knows so much only

and thereafter he became mum. Therefore, this defence witness cannot be believed. Further more, it appears that in the affidavit (Ext.A) it has been

mentioned that there was dispute between the accused and father of the victim, but while cross-examination of P.Ws. 4 & 5 no such question was

asked regarding any dispute. Therefore, the logical conclusion that follows is that there was no dispute between the father of the victim and the

accused and on that score also there was no chance of false implication.

9. The case of the appellant is that as per the medical report, there is no positive evidence of rape. The only suggestion is with regard to sexual

intercourse that cannot be interpreted as rape. However, the learned Sessions Judge has very rightly answered this by giving a finding that the

doctor who had examined the victim also recorded the fact that the woman was just married a month prior to the date of occurrence and, thus, she

was habituated to intercourse.

10. The appellant has further submitted that the prosecutrix was a consenting party as she offered no resistance and secondly there was no external

injury and, thus, Section 376 of the Indian Penal Code was not attracted.

11. The learned Counsel for the appellant has cited a judgment, rendered in the case of Joseph v. State of Kerala reported in 2000 (3) PL.JR 109

and has relied upon paragraph No. 15 of the judgment, which is quoted as under:

15. The charge u/s 376, IPC, is mainly fastened upon the appellant on the "last seen together" theory. The fact of rape of the deceased is sought

to be proved from Ex. P20, a report on examination of vaginal smear collected and said to confirm the presence of semen and spermatozoa,

indicating that she should have had sexual intercourse before her death. Ex. P21, chemical report also showed that semen was detected in one of

the under skirts found on the body of the deceased Ex. P8, certificate issued by PW-15, the doctor, also showed that the accused appellant was

potent. But in the Report, Ex. P21, it was specifically stated that the dhoti of the appellant, subjected to chemical examination, contained no stains

of blood or semen. If there had been any forcible sexual intercourse, the victim must have made some strong resistance being a grown up lady and

in the process, some injuries would have been found on the vagina/private parts of the body or some other parts indicative of any such use of force

and it would be too much to assume that there would have been no injuries whatsoever on the body, on this account. Though injuries on the body

is not always a must or sine quo non to prove a charge of rape, having regard to the case of the prosecution that the victim had been subjected to

brutal rape and forced sexual intercourse, this aspect of the matter cannot be completely lost sight of. The deceased was stated to be of about 26

years age, when she died and she is the sister of the wife of the appellant. It is not as though they were shown earlier to be on inimical terms.

Anything possible might have happened and the facts found proved do not irresistibly lead to the only conclusion of the guilt of the appellant in

respect of an offence u/s 376, IPC. Consequently, we are prepared to give the benefit of doubt to the appellant and acquit him of the offence u/s

376, IPC, and the conviction recorded and the sentence imposed by the High Court upon the appellant on this account is set aside.

12. On reading of the aforesaid judgment it appears that the Hon"ble Supreme Court itself held that injuries on the body is not always a must or

sine qua non to prove the charge of rape.

13. The Hon"ble Supreme Court in a recent judgment reported in J.T. 2008 (4) 271 (Moti Lal v. State of M.P.) at paragraph No. 7 held as under:

It is settled law that the victim of sexual assault is not treated as an accomplice and as such, her evidence does not require corroboration from any

other evidence, including the evidence of a doctor. In a given case even if the doctor, who examined the victim, does not find sign of rape, it is no

ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even

before her family members much less before public or before the police....

14. Rape is not merely a physical assault. It is often destructive of the whole personality of the victim. A murder destroys the physical body of a

victim; the rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a greater responsibility while trying an accused on

charges of rape. It must deal with such cases with utmost sensitivity. The court should examine the broader probabilities of a case and shall not get

swayed by minor contradiction or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an

otherwise reliable prosecutrix case. If evidence of the prosecutrix inspires the confidence, it must be relied upon without seeking corroboration of

her statement in material particulars. The prosecutrix of a sex-offence cannot be put on par with an accomplice that she is in fact a victim of the

crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a

competent witness u/s 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in cases of physical

violence.

15. If a prosecutrix is an adult and of full understanding, the court is entitled to base a conviction on her evidence unless the same is shown to be

infirm and untrustworthy. The totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not and cannot

have any motive to falsely involve/implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence. This

position has also been highlighted in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, .

16. In view of the recent judgment, rendered by the Hon"ble Supreme Court in the case of Moti Lal (supra), even a solitary allegation of the victim

of rape is sufficient to convict the accused. The Hon"ble Supreme Court has further held that even the third party by way of ocular evidence can

also prove the case of rape.

I find no infirmity or any inconsistency to disbelieve the case of the prosecution as upheld by the learned Sessions Judge nor do I find any material

contradiction to disbelieve their testimony. There is absolutely no reason to suggest false implication of the accused/appellant in this case and both

the witnesses (PWs. 4 & 5) are fully reliable.

17. In the aforesaid background the impugned judgment and order of conviction and sentence passed by the learned Sessions Judge is upheld.

18. This appeal is accordingly dismissed without any order as to costs.