

(2006) 08 JH CK 0144
Jharkhand High Court
Case No: Criminal Appeal No. 18 of 2003

Azad Khan @ Ajju

APPELLANT

Vs

The State of
Jharkhand

RESPONDENT

Date of Decision: Aug. 21, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376, 511

Citation: (2007) 4 JCR 491

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: R.S. Mazumdar and P.A.S. Pati, for the Appellant;

Final Decision: Dismissed

Judgement

Narendra Nath Tiwari, J.

The appellant was put on trial for the offence u/s 376 of the Indian Penal Code (for short "IPC") and was convicted and sentenced to undergo rigorous imprisonment for seven years and further to pay fine of Rs. 1000/- and in default to undergo simple imprisonment for one year.

2. The prosecution case, in short, is that on 17.4.2000 at about 9:00 A.M. P.W. 6, Priya Kumari, the victim girl, aged about six years, was sexually assaulted and raped by the accused-appellant in the cabin of his truck parked nearby his house. P.W. 5, Punam Singh (informant), the victim's mother, witnessed the incident when she went near the cabin and peeped inside she found the appellant lying physically on her daughter removing her underclothes. On seeing the informant (P.W. 5), the appellant ran away through the opposite door closing the zip of his pant. P.W. 5, the informant, found her daughter lying senseless with injuries and swelling on her private parts.

3. On the basis of the fardbeyan of the informant, case was registered u/s 376 IPC against the appellant. After investigation the police submitted charge-sheet u/s 376 IPC against the accused appellant.
4. The prosecution altogether examined nine witnesses, out of them P.W. 5, Punam Singh is the informant and mother of victim girl; P.W. 6, Priya Kumari is the victim girl; P.W. 7, Rana Pratap Singh is the father of victim-girl; P.W. 8, Dr. Arun Chatterjee was the member of the medical board; P.W. 9, Bijay Kumar Singh is the Investigating, Officer.
5. Learned trial court after giving thorough consideration of the evidences of the said witnesses i.e. P.Ws. 2, 3, 4 along with the P.Ws. 5 to 9 found the charge against the appellant fully proved beyond all reasonable doubts and has passed the said judgment of conviction and order of sentence.
6. Learned counsel appearing on behalf of the appellant assailed the impugned conviction and sentence mainly on the ground that learned trial court has not appreciated the evidences on record in proper perspective and has ignored vital contradictions in the evidences of the witnesses. Particularly in the statements of P.Ws. 5 and 7 whose testimony have been highly relied for convicting and sentencing the appellant. Learned Counsel submitted that P.W. 5, the informant, has stated that P.W. 6 Priya Kumar, the victim girl, had become unconscious and she regained consciousness after a while when she was brought back to the house but the same has not been corroborated by the evidence of the victim girl - P.W. 6. He further submitted that the medical evidence also contradicts the ocular evidence and creates serious doubts in the prosecution version. On such doubtful testimony, the conviction and sentence against the appellant cannot be maintained.
7. In view of the said submissions of learned counsel, I meticulously examined and scrutinized the evidence on record. P.W. 5, who is the informant, has stated in paragraph-2 that when she went nearby the said truck in search of her daughter, she peeped inside through the window of the truck and found the accused appellant physically lying on her daughter removing her under-cloth when the accused saw the informant, he ran away through the opposite door. She found her daughter lying senseless with the injuries on her private parts. She has thus fully corroborated her statement made in the FIR (Ext. 1). P.W. 6, the victim girl, has corroborated the informant version and stated about the pains and injuries on her private parts. P.W. 6 was aged about seven years when she was examined. She claims to have identified the accused appellant. There is no contradiction whatsoever in her deposition. Other P.Ws. have also corroborated the prosecution case. P.W. 8, Dr. Arun Chatterjee, who is one of the members of the medical board who examined the victim girl, stated that he had found the injuries on the private parts of the victim girl. On internal examination of private parts, several injuries were found such as linear abrasion at right side of labia minora at the level of urethral orifice. An abrasion 25cm x 25cm was found on the lower part of the introitus. However, the hymen was

found intact and the pathological report has not shown any presence of spermatozoa. Learned Counsel submitted that the prosecution failed to prove the required ingredients to prove the charge u/s 376 IPC. The doctor has only opined that the victim was forcibly put under sexual offence attempted and as such there can be charge u/s 511 IPC. From the evidence of P.W. 8 (the doctor) and the medical report (Ext. 2) it is evidence that the doctor on examination found the internal injuries of sexual assault on the private parts of the victim girl who was a minor of about six years, which go to prove the charge u/s 376 IPC. Only because there was no evidence of full penetration or presence of spermatozoa, the conviction of the appellant cannot be said to be bad, as the evidence both ocular and medical is sufficient to prove the required ingredients to establish the charge u/s 376 IPC.

8. Learned court below has thoroughly scrutinized the evidence and has also considered all relevant aspects and has rightly come to the conclusion that there are sufficient materials on record to prove the said charge against the accused appellant. I do not find any infirmity or illegality in the judgment of conviction and order of sentence passed by learned court below. No ground could be made out and substantiated by the appellant so as to interfere with the said conviction and sentence of the appellant. This appeal is, accordingly, dismissed. The bail bond of the appellant is cancelled and he is directed to surrender before the court below for serving out the sentence. Learned court below is also directed to take the required coercive step in accordance with law for the apprehension of the appellant for serving the sentence.