

(2011) 12 PAT CK 0121

Patna High Court

Case No: Criminal Appeal (SJ) No. 336 of 1999

Ram Nandan Rai @ Gitti Rai and
Punit Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Dec. 1, 2011

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Hon'ble Judges: Gopal Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Gopal Prasad, J.

Heard learned counsel for the appellants and the State.

2. The appellants have been convicted u/s 376 of the Penal Code and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case as alleged in the fardbeyan that the occurrence took place on 28.05.1984. The informant works at Birpur Railway Station and his family lives at the village home and the informant have a daughter, Sanju Kumari, aged ten years. It is alleged that on the date of occurrence while the daughter of the informant was returning after giving milk to Arun Prasad, a co-villager, then she was intervened, her mouth was shut and was raped and ravished by which she became unconscious. The villagers came, informed the wife of the informant, who informed her husband by post, but, he did not get the information due to wrong address and when he has come on 21.06.1984 then ahs filed a case.

4. On the fardbeyan of the informant, the first information report lodged and after investigation the charge sheet submitted, cognizance taken and after commitment the charge was framed and trial proceeded.

5. During the trial seven witnesses were examined. Out of the seven witnesses, P.W. 1 is the mother, P.W. 2 is Itwari Devi, a witness, who has turned hostile, P.W. 3 is the Advocate Clerk, who has formally proved the protest petition, P.W. 4 is, again, an Advocate Clerk, a formal witness, who has proved the signature of the informant, who has died, P.W. 5 is the victim, P.W. 6 is Dr. Lila Pandey and P.W. 7 is the formal witness, who has formally proved Exhibits 5, 6 and 7.

6. The defence of the accused persons is the denial of the occurrence and has falsely been implicated.

7. The trial Court, taking into consideration the evidence of the witnesses held that the victim and her mother have supported the prosecution case and the victim, P.W. 5, after the next day of the occurrence was brought before the doctor where the victim complained about perennial tear and the doctor given the medicine for the treatment with a prescription which has been marked as Exhibit 4. However, there are some cutting in the said Exhibit 4 and the trial Court held that from the perusal of Exhibit on its top written by the doctor as perennial tear after rape though after rape has been erased and interpolation held that Exhibit 4 supports the case of rape. The trial Court, further, took into consideration Exhibit 7 where it has been recorded that the hymen intact though the doctor who gave the report, Exhibit 7, examined her on 21.06.1984 after three weeks of the occurrence and held that there will be no evidence of rape on the person of the victim and relying on the evidence Exhibit 4 held that it seems to be reliable and, further, took into consideration that since sole testimony of the victim girl is free from any absurdity and probability it can not be discarded for the sole reason that it is highly improbable that no person will allege a rape which touches her reputation and, hence, convicted the appellants, as mentioned above.

8. The learned counsel for the appellants, however, contended that there is delay in lodging the first information report. Nothing has been brought in evidence to suggest that the delay was due to the non-receipt of the postal communication and, further, the evidence in Exhibits 4 and 7 are quite contrary, the doctor who examined the victim on the very next day has not given any finding regarding the rape and has only stated in her evidence as P.W. 6 that she prescribed the medicine on the complaint of Sanju Kumari about the perennial tear and there is nothing in evidence of P.W. 6 about the reporting of any rape. Exhibit 4 only indicates about the prescription about mentioning of some medicine and about perennial tear and, hence, there is no allegation regarding rape at the earliest version, whereas the doctor, who examined the victim after lodging of the first information report has not been examined though the report of the said doctor has formally been proved, which has been marked as Exhibit 7, which mentions that the hymen intact and, hence, it is not a case in which the medical evidence is silent or not only not confirming the rape, but, it is a case where the allegation of rape is alleged is being belied by the evidence of Exhibit 7.

9. The learned counsel for the State, however, contends that the victim and the mother of the victim have supported the prosecution case and their evidence can not be rejected and conviction can be recorded on the sole testimony of the victim and the corroboration only is a role of prudent and not a role of law.

10. It is true that the girl in traditional bound society normally does not admit the incident of rape or the instance which likely to reflect the chastity and the corroboration may not require, but, it has been well settled that the rule of admissibility of corroboration must be present in the mind of the Court and if under the facts and circumstances is, as such, that the evidence of rape apparently appears to be without an embellishment, no corroboration is required and even the corroboration of the medical evidence is sufficient to record the conviction.

11. Having regard to the facts and circumstances of this case, the occurrence took place on 28.05.1984 and though the matter was reported after a month on 21.06.1984 and though the explanation given that the victim was examined by a doctor on the very next day and the victim in her evidence has stated that she has reported to the doctor about rape. The victim in her statement in paragraph 5 stated that she went to doctor along with her mother and disclosed about the rape and has, further, stated that the rape permeated for about an hour and P.W. 5 after lodging of the case on 21.06.1984 was, again, examined by a doctor on 21.06.1984 though the doctor has not examined by the prosecution, but, the report of the doctor has been proved and marked as Exhibit 7, which mentions the hymen intact and, hence, it belies the report of the doctor about the hymen ruptured and there is no evidence about the rupture of the hymen when the evidence of P.W. 6 does not support it. None of the witnesses of the village has come to support though there is evidence that several people have collected on seeing the victim unconscious and they have called the mother of the victim.

12. Hence, having regard to the fact it is not proper to rely upon sole testimony of the victim without any corroboration or any evidence which lend support to the material particular of the prosecution case to believe the prosecution story. However, having gone to the facts and circumstances, I find that the prosecution has not been able to prove the case beyond reasonable doubt and, hence, the order of conviction, recorded by the lower Court, is set aside and the appeal is allowed.