

(2007) 05 PAT CK 0157

Patna High Court

Case No: Criminal Appeal No. 260 of 1992

Chandra Yadav @ Chandra
Matho

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: May 9, 2007

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 161
- Penal Code, 1860 (IPC) - Section 341, 376, 448

Citation: (2007) PLJR 142

Hon'ble Judges: Abhijit Sinha, J

Bench: Single Bench

Advocate: Daya Nand Singh and Sucheta Yadav, for the Appellant; Jharkhandi Upadhaya, for the Respondent

Final Decision: Dismissed

Judgement

Abhijit Sinha, J.

The sole appellant aggrieved and dissatisfied with the judgment of conviction dated 1st September 1992 and order of sentence dated 3rd September 1992 passed by Sri D.N. Chakravarty the then 7th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 311 of 1985 (arising out of Katoria P.S. Case No. 74 of 1985) has preferred this appeal. The appellant on being found guilty for commission of offence punishable u/s 376 I.P.C. has been sentenced to undergo Rigorous Imprisonment for 7 years and a fine of Rs. 1000/- in default whereof to suffer further R.I. for 6 months. The prosecution case is based on the fardbeyan of one Tago Devi wife of Jageshwar Mahto recorded at the Police Station at about 12.15 P.M. on 24.5.1985 and was in respect of an incident which took place earlier that morning. It is stated that at the relevant time when she was feeding straw to the bullock, as her husband was away from home for the past four months, suddenly co-villager Chandra Mahto carrying a lota came over and caught hold of her hand and gagging her mouth with his hand

forcibly took her to the osara where she and her son had slept in the night. It is alleged that even as her son slept the accused threw the informant on to the cot gagged her mouth with cloth and raped her. It is said that as soon as he got an opportunity she woke up her sleeping son Shambhu Mahto but the accused having discharged his semen in her vagina began to flee. It has been stated said that the prosecutrix and her son caught hold of the accused and raised alarm but the accused freed himself by throwing the prosecutrix and her son on the ground and fled. It is further stated that attracted by the alarm raised by the prosecutrix Basudeo Pandey, Raghunandan Pandey, Ishwar Mahto, Shankar Yadav, Raman Yadav, Kendu Mahto and others arrived and saw the accused fleeing from the place of occurrence. On the basis of the fardbeyan Katoria P.S. case No. 74 of 1985 was registered under Sections 448, 341 and 376 I.P.C. and after due investigation a charge sheet under the same provisions was submitted against the sole appellant.

2. At the trial a charge only u/s 376 I.P.C. was framed against the accused who pleaded not guilty and claimed to be tried. The further defence plea was that he has been falsely implicated in this case due to land dispute existing between the husband of the informant and the accused. The defence examined two witnesses and adduced several documents as exhibits to prove its innocence and negate the prosecution case.

3. At the trial the prosecution examined as many as 5 witnesses in support of its case and also sought to adduce several documents as Exhibits.

4. The learned trial Court on consideration of the materials available on record and the submissions advanced by the respective parties recorded a verdict of guilt against the sole appellant and sentenced him in terms as stated above.

5. The learned counsel for the appellant in support of the appeal sought to point out that except for the prosecutrix none else had supported the prosecution case and that the son of the prosecutrix who had, with his mother, allegedly apprehended the accused had not been examined by the police u/s 161 Cr. P.C. but figured as P.W. 4 in Court and as such the entire occurrence becomes doubtful. The son Shambhu Yadav figured as P.W. 4 and he has in clear terms narrated the fact of Chandra Mahto climbing on top of his mother who had been thrown on to the cot by Chandra. He also talks of raising hulla and of Chandar throwing him onto the ground and of the arrival of the witnesses on being attracted by the alarm raised. In course of his cross examination he has categorically stated that he had given his statement before the police 4-5 days after the occurrence. Therefore, the assertions of the learned counsel for the appellant that he had not been examined by the police u/s 161 Cr. P.C. does not stand to reason.

6. The prosecutrix figuring as P.W. 3 in course of her testimony in Court has supported her fardbeyan story in toto. She has categorically stated that she was ravished by Chandra after being thrown onto the cot and her mouth as also the

mouth of her son being gagged. In course of her cross examination she could not say if there was any litigation between her husband and the accused since the past 20 years.

7. It is by now well settled by a catena of decisions of the Apex Court that the statement of the prosecutrix in Court was sufficient to invite conviction notwithstanding there being discrepancies in the evidence of the witnesses. I am supported in my view by the decision of [State of Himachal Pradesh Vs. Asha Ram](#), [Vishnu @ Undrya Vs. State of Maharashtra](#), and [Om Prakash Vs. State of U.P.](#) .

8. As observed by the Apex Court in the traditional non-permissive bounds of society of India, no girl or woman of self respect and dignity would depose falsely, implicating somebody of ravishing her chastity by sacrificing and jeopardising her future. In doing so she not only would be sacrificing her future, but also would invite the wrath of being ostracised and cast out from the society she belongs to and also from her family circle. The Court have further held that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. The Supreme Court in the case of Om Prakash (supra) has observed that 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 and suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. It is also a well settled principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under the given circumstances. Minor contradiction or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out and otherwise reliable prosecution case.

9. It was also sought to be submitted by the learned counsel for the appellant that the LO. and the doctor not having been examined a definite prejudice had been caused to the defence case. I am also unable to accept these submissions.

10. Both these submissions raised by the learned counsel for the appellant become a non-issue in view of the judgments of the Hon'ble Apex Court. Even otherwise it will appear from the impugned judgment that the witnesses who arrived at the scene. The statement of the I.O. not being examined is also falsified from the fact that he has been examined as P.W. 5 and he states of having recorded the fardbeyan of the prosecutrix and the statement of Basudeo Pandey, Ishwar Mahto, Shankar Yadav, Kendu Mahto etc. He also states of having seen injured Shambhu Mahto go for the treatment to the hospital and as which is marked as Ext. 2/1 and of sent a prosecutrix Tago Devitor medical examination which has been marked as Ext. 2.

11. P.W. 1 Shankar Yadav in course of his statement in Court stated that being attracted by the cries of alarm he has gone to the house of the prosecutrix and had

seen the accused ravishing the informant, in his cross examination he had stated that he had given a similar statement to the I.O. P.W. 2 Ketu Yadav @ Ketu Mahto had also gone to the house of the informant and had seen the accused fleeing therefrom. He has denied the defence suggestion that he has deposed falsely as he happened to be a cowherd of the informant.

12. From the above it is clear that irrespective of the ratio of the decisions of the Apex Court referred to above, the impugned judgment stands on its own merit notwithstanding the minor discrepancies in the testimony of P.W. 1.

13. Due regard being had to the facts and circumstances of the case I find no merit in the appeal which is accordingly dismissed.

14. However, considering the fact that the occurrence took place way back on 25th May 1985 that is almost 22 years back I feel inclined to reduce the sentence imposed.

15. Due regard being had to the facts and circumstances of the case and the attending circumstances I am of the opinion that the ends of justice will be fully met if the sentence awarded to the appellant is reduced to the period already undergone. In the result the appeal is dismissed with modification in sentence. The appellant who is on bail is discharged from the liabilities of his bail bonds.