

Pramod Mahto and Others

Vs

State of Bihar

Criminal Appeals Nos. 295-296 of 1989

(S. Natarajan, A. M. Ahmadi JJ)

21.04.1989

JUDGMENT

NATARAJAN, J. –

1. After hearing learned counsel for the parties, we grant special leave confined to the question of sentence only.
2. The appellants have been convicted under Section 376 IPC and sentenced to undergo imprisonment for life and also to pay a fine of Rs. 1000 in default to undergo RI for two years. The four appellants who were arrayed as A-2, A-3, A-4 and A-1 will hereafter be referred to in the order of their array before the Sessions Judge.
3. The four appellants and one Umesh Mahto (accused 5) besides 11 others who were acquitted were charged under Section 380 and 376 read with Section 149 IPC for having entered the house of the victims and committing rape on them and thereafter removing cash and valuables from the house on the night of March 16/17, 1984. The prosecution case was that while accused 6 to 16 stood outside the house, accused 1 to 5 entered the house through the roof after dismantling a portion of it and thereafter accused 1 to 4 committed rape on the victims while accused 5 stood guard over them with a gun in his hands in order to over-awe them and make them submit to the rape committed on them without protest. Accused 1 to 4 are said to have committed rape first on PW 1 Jaiboon Nisa, an unmarried girl aged about 15 or 16 years and thereafter accused 1 caught hold of PW 2 Roshanara to commit rape on her but on her entreating him that she may be spared as she was pregnant she was released and thereafter accused 1 to 4 committed rape on PW 6 Sakina Khatoon, sister-in-law of PW 2 Roshanara. Then accused 1 and 4 are said to have committed rape on Maimum Nisa, another sister-in-law of PW 2 Roshanara. Thereafter accused 1 to 5 are said to have opened the boxes kept in the house and removed cash and articles and left the place.
4. After the culprits had left the house the victims went to the house of one Latif Mian and spend the rest of the night there and in the morning they went to the police station and PW 1 Jaiboon Nisa lodged the first information report.
5. The investigation in the case was conducted by Sub-Inspector late Mahdev Prasad and after his death by PW 9 Sub-Inspector Govind Prasad.
6. The victims were sent to the hospital and were examined by PW 7 Dr. Abha Singh. Though the doctor could not find visible symptoms of sexual assault on the married women Sakina Khatoon and Maimum Nisa, she found telltale marks and injuries on the unmarried girl PW 1 Jaiboon Nisa to

show that she had been subjected to rape.

7. The Sessions Judge acquitted accused 6 to 16 of both the charges and accused 1 to 5 of the charge under Section 380 IPC. He, however, found accused 1 to 4 directly guilty under Section 376 IPC, and accused 5 Umesh Mahto also constructively guilty under Section 376 IPC by invoking Explanation I to clause (g) of sub-section (2) of Section 376 IPC and sentenced all the five accused in undergo imprisonment for life and also to pay a fine of Rs. 1000 each in default to undergo RI for 2 years.

8. In the appeals preferred by the five convicted accused, the High Court confirmed the convictions and sentences of accused 1 to 4 and in the case of accused 5, while confirming his conviction under Section 376 IPC, the High Court reduced the sentence to RI for 2 years. It is in such circumstances accused 1 to 4 have approached this Court with the special leave petition.

9. Mr. A. K. Sen, learned senior advocate appearing for the appellants, sought leave to canvass to conviction of the appellants on its merits and contended that the case has been foisted on the appellants due to communal feelings, that there has been inordinate delay in lodging the first information report and that the prosecution case that the appellants had committed rape in succession on a plurality of victims is a biological impossibility and hence the prosecution case is wholly unworthy of acceptance. We found no merit in those contentions because even if communal feelings had run high, it is inconceivable that an unmarried girl and two married women would go to the extent of staking their reputation and future in order to falsely set up a case of rape on them for the sake of communal interest. As regards the delay in lodging the first information report, the Sessions Judge and the High Court have considered the matter fully and held that the delay has been satisfactorily explained and we found no reason to differ from the view taken by the Session Judge and the High Court. Insofar as the last contention is concerned, we found that the defence has not been able to explain how else PW 1 Jaiboon Nisa, an unmarried girl aged about 15 or 16 years, could have come to sustain the telltale marks and injuries of rape on her persons as were found by PW 1 Dr. Abha Singh unless she had been raped by the appellants. Once it is established that the appellants had acted in concert and entered the house of the victims and thereafter raped PW 1 Jaiboon Nisa, then all them would be guilty under Section 376 IPC in terms of Explanation I to clause (g) of sub-section (2) of Section 376 IPC irrespective of whether she had been raped by one or more of them. The Explanation in question reads as under :

"Where a woman is raped by one or more in a group of persons acting in furtherance of their common intention, each of the persons shall be deemed to have committed gang rape within the meaning of this sub-section."

10. This Explanation has been introduced by the legislature with a view to effectively deal with the growing menace of gang rape. In such circumstances, it is not necessary that the prosecution should adduce clinching proof of a completed act of rape by each one of the accused on the victim or on each one of the victims where there are more than one in order to find the accused guilty of gang rape and convict them under Section 376 IPC.

11. It was on account of these factors we declined leave to the appellants to canvass the correctness of their conviction under Section 376 IPC and granted leave confined only to the question of sentence when Mr. A. K. Sen, made a fervent plea that at least in the matter of sentence the accused are entitled to be heard. It was urged by him that there was no compelling reason for the Session Judge to have awarded the maximum sentence of imprisonment for life on accused 1 to 4 instead of

awarding them the minimum sentence which is by itself adequately rigorous viz. RI for ten years. It was also urged by him that when the High Court had modified the sentence on accused 5 from imprisonment for life to RI for 2 years, the High Court should have similarly reduced the sentence of accused 1 to 4 also. Learned counsel for the respondent-State submitted that accused 1 to 4 cannot seek parity of treatment with accused 5 in the matter of sentence because they had actually committed rape on PW 1 Jaiboon Nisa and the other victims. He, however, said that if any reduction of sentence is ordered, the reduction should not be below the minimum sentence of ten years RI prescribed under Section 376 IPC.

12. Having given the matter our due consideration, we are not inclined to modify the sentence imposed on accused 1 Dr. Bharti because of the leading role played by him in the commission of the offences. However, in the case of accused 2 to 4 viz. appellants 1 to 3 we think that the ends of justice would be met by awarding them the minimum sentence of ten years RI, as it is by itself a severe punishment, and because of the admission made on behalf of the State that there are no special circumstances to call for the imposition of the maximum sentence of imprisonment for life on these three appellants. Consequently, we allow the appeal in part insofar as appellants 1 to 3 (accused 2 to 4) are concerned and modify their sentence of imprisonment for life to RI for ten years and dismiss the appeal insofar as it relates to appellant to appellant 4 Dr. Bharti (accused 1). The appeal is disposed of accordingly.

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