SUPREME COURT OF INDIA

Jai Krishna Mandal

Vs.

State of Jharkhand

Crl.A.No.1076 of 2007

(H.S. Bedi and C.K. Prasad, JJ.)

03.08.2010

ORDER

H.S. Bedi, J.

1.This appeal arises out of the following facts: on 7-2-1999 at about 4.00 p.m. the prosecutrix, PW 6, the daughter-in-law of the first informant, went out of the village for grazing her goat. As she did not return for some time it was thought that she had gone to visit her mother, but when she did not return even the next day, the family set out in search of her but could not find her. They however ascertained that the appellants herein, Jai Krishna Mandal and Munna Das were also missing from the village from 7-2-1999. The two appellants however returned to the village on 11-2-1999 and were duly interrogated by the villagers on which they admitted that they had kidnapped the prosecutrix and kept her in Village Maheshadih. A case under Sections 366 and 376 was accordingly registered against the two.

2. The prosecutrix also returned to the village on 16-2-1999 and her statement under Section 164 CrPC was recorded wherein she stated that she had gone out of the house at 10.00 a.m. to graze her goat and as she came out of the village the two appellants and Shanker Singh, a third co-accused, absconding, had caught hold of her and had closed her mouth and administered some medicine to her to make her unconscious and they had then taken her to another village and thereafter raped her repeatedly and that she had subsequently been moved from village to village till her release about four days later, whereafter she had returned to the village of her maternal grandfather. She was also medically examined at about 11.30 a.m. on 16-2-1999 and the attending doctor did not find any injury on her person nor any evidence of spermatozoa on the vaginal smear. The doctor, however, opined that the possibility of sexual intercourse could not be ruled out.

3. On the completion of the investigation the appellants were charged for the aforesaid offences and were brought to trial. The trial court held that the statement of the prosecutrix itself was good enough to record a conviction against them and as there was ample evidence

to show that the appellants had also disappeared from the village at about the same time as the disappearance of the prosecutrix was also a corroborating factor. The trial court also relied on the evidence of PW 2, the husband of the prosecutrix and several other witnesses as well. The trial court also held that the uncertain medical evidence with regard to the rape could not be taken against the prosecution for the simple reason that the prosecutrix was a married woman with two children and a third pregnancy was about IV2 to 2 months on, and as such it was obvious that she was habituated to regular intercourse. The finding of the trial court was affirmed in appeal by the High Court.

4. Mr M.P. Jha, the learned counsel for the appellants has raised only one argument during the course of the hearing. He has pointed out that the only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality the story projected by the prosecutrix was so improbable that it could not be believed. He has pointed out that some corroboration for her story could perhaps be found if the medical evidence was categorical about the commission of rape. He has also submitted that as per the statement of the prosecutrix she had been wearing the same saree for five days after she had been kidnapped and had also been wearing the same saree when she had been gang-raped, and that this saree had been handed over to the investigating officer as per the doctor's statement but this officer had not even appeared as a witness in court.

5. The learned State counsel has however supported the judgment of the trial court and the High Court and has urged that there was absolutely no reason to doubt the veracity of the evidence of PW 6 who was none other than the victim herself.

6. It is the admitted position that there was deep enmity between the family of the prosecutrix and the appellants. The reason for this was some dispute over a piece of land. We have also gone through the statement of the prosecutrix and find it to be completely unworthy for acceptance. She stated that she had been moved from village to village over a period of five days and though she had ample opportunity for making a hue and cry she had not even attempted to do so. She also admitted that she had been wearing the same petticoat and saree during the period of five days after she had been raped but the Darogaji had not seized the saree or petticoat.

7. We find this statement to be contrary to the statement of the lady doctor who deposed that she had taken the saree from the prosecutrix and handed it over to the investigating officer. The doctor also does not support the prosecution story. She stated that there was no evidence of rape, no injury on her person and that she was a "multi-persons lady". We are unable to comprehend what exactly this term means and in the context that it had been used, we assume that she was a lady having regular sexual intercourse with several persons.

8. We also find that as per the prosecution story the appellants were missing from the village on the date that the prosecutrix also disappeared that is 7-2-1999 and though they came back to the village on 11-2-1999, the FIR had been recorded after three days although they had been interrogated by the investigating officer on 11-2-1999 itself. The very fact that the

investigating officer has not been examined also causes prejudice to the appellants. As per the doctor's evidence the petticoat and saree had been handed over to the 10. These articles were not sent for examination nor even produced in evidence.

9. We also see from the order of the High Court that at the initial stage only a case under Section 366 read with Section 34 IPC had been registered against the appellants but it was only after the statement under Section 164 had been recorded by the Magistrate that Section 376 had been added as well.

10. For these reasons we find that the conviction of the appellant is not sustainable. We accordingly allow the appeal, set aside the judgments of the courts below. The appellants who are in custody shall be released forthwith if not required in connection with any other case.