

SUPREME COURT OF INDIA

Md.Eqbal & Anr

Vs.

State of Jharkhand

22.07.2013

(B.S. Chauhan, J. S.A. Bobde, JJ.)

Crl.A.No. 109-110 of 2011

J U D G M E N T

Dr. B.S. Chauhan, J.

1. These appeals have been preferred against the impugned judgment and order dated 2.9.2009 passed by the High Court of Jharkhand at Ranchi in Criminal Appeal Nos. 316 and 218 of 2002, by which the Court has affirmed the judgment and order of the trial court dated 22.5.2002 passed in GR. No. 151 of 1999, by which the appellants had been convicted for the offence punishable under Section 376(2)(g) of Indian Penal Code, 1860 (hereinafter referred to as the 'IPC'). They were sentenced to undergo RI for a period of 10 years and further, to pay a fine of Rs.5,000/- each, and in default of the same, to further undergo RI for a period of 6 months. However, both the appellants were acquitted of charges punishable under Sections 3(1)(xii) and 3(2)(v) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

2. Facts and circumstances giving rise to these appeals are that: A. Aliva Kongari (PW.10) – the prosecutrix at about 10 a.m. on 13.6.1999 came to the district headquarters Simdega from her village Jhingur Pani Toli. There she met her friends Kiran and Shashi and alongwith them she went to enjoy a movie at the cinema hall. Thereafter, she proceeded towards the vegetable market. Here, she was followed by two boys (appellants) who told her to accompany them. Though, she refused to go with them, they caught hold of her hands and took her forcibly to a school situated in Bhatli Toli and there she was subjected to rape by both of them.

B. Subsequently, other boys also came there and some of them also raped her. However, she was tired and became unconscious. She regained her consciousness in the morning and nearby, she saw an old lady. One of the appellants, was also there just outside the school. On enquiring, the old lady told her that his name was Iqbal. C. The prosecutrix went to the police station and lodged a complaint. Her statement was recorded. Her clothes, particularly

her petticoat was taken by the police and she was taken to the hospital for medical examination. In view of the aforesaid complaint, investigation started and the appellants were arrested after 2-3 days. D. After the conclusion of the investigation, the chargesheet was filed against the accused appellants. They pleaded not guilty and thus, were put to trial. E. During the trial, most of the witnesses turned hostile. However, the trial court vide impugned judgment and order dated 22.5.2002 convicted and sentenced the appellants as referred to hereinbefore. Their appeals have also been dismissed by the High Court vide impugned judgment and order dated 2.9.2009.

Hence, these appeals.

3. Ms. Kumud Lata Das, learned counsel appearing for the appellants has submitted that the version of the prosecutrix is not in consonance with medical evidence and the conduct of the prosecutrix was very unnatural. Even the father of the prosecutrix who had been examined as a prosecution witness turned hostile and did not support the case of the prosecution. Therefore, the version of the prosecutrix that she had been taken from the market by the appellants to the school building where she was subjected to rape, is very unlikely as these are public places where someone would have come to her rescue. Furthermore, in spite of the fact that the school, where she was subjected to rape had two rooms she was raped in a verandah, this too seems unlikely. The prosecution failed to examine the material witnesses particularly the old lady who disclosed the name of one of the appellants as Iqbal to the prosecutrix. No Test Identification Parade was conducted. Even the evidence of Surendra Kumar (PW.9) is far from satisfactory. Due to the aforementioned contentions, benefit of doubt should be given to the appellants. Therefore, the appeals deserve to be allowed.

4. Mr. Jayesh Gaurav, learned counsel appearing on behalf of the State, has opposed the appeal as there are concurrent findings recorded by the courts below. The test identification parade could not be conducted because the prosecutrix had left her village for some other place under the threat/pressure of the accused. Further, witnesses have turned hostile because of the pressure exerted by the accused-appellants. Thus, the appeals are liable to be dismissed.

5. We have considered the rival submissions made by learned counsel for the parties and perused the record.

6. Aliva Kongari, (PW.10), the prosecutrix, is the most material witness. She deposed, that she was forcibly taken by the appellants from the vegetable market to the school and was subjected to rape. Subsequently, other boys also came and some of them also raped her. She raised hue and cry and was very tired. Thus, she became unconscious. After regaining consciousness in the early morning, she approached the police station and lodged the complaint. She showed her blood stained clothes as well as stains of a semen like substance on them. She had been medically examined on 15.6.1999.

She further deposed that she was being persistently threatened from the appellants/accused, therefore, she left her house after the incident and went to stay with her sister at Bokaro. She

identified both the appellants/accused in the court. Her mother had died. She had informed her father about the incident when he came to police station on 14.6.1999. She denied all the suggestions made by the prosecution that she was a girl of easy virtue or bad character and she was a consenting party to the said incident or she was habitual to sex.

7. Dr. Jacika Dehm (PW.7) who had examined the prosecutrix on 15.6.1999, found that her hymen was ruptured and noted the following injuries on her person:

“3” x ½” abrasion on the medical side of right thigh. “½” x ½” abrasion on the medical side of left thigh, which may be due to sanitary pad.

In the opinion of the doctor, spermatozoa was not found in vaginal swab examination and there was no injury in her private parts. The patient was habitual to sexual intercourse.” Dr. Jacika Dehm (PW.7) proved the medical report.

8. Surendra Kumar Singh, S.I., (PW.9), the Investigating Officer of the case, deposed that in order to hold the T.I. parade, he tried his best to locate the prosecutrix as she was not residing in her village. Her father had given in writing that the prosecutrix had shifted to Calcutta. Therefore, there would be no sanctity of T.I. parade after such an inordinate delay.

9. Majahar Alam (PW.1), Bablu Khan (PW.2), Kulanand Prasad (PW.3), Md. Yakir (PW.5) and Abdul Rashid (PW.6) were the prosecution witnesses. Their statements under Section 161 of the Criminal Procedure Code, 1973 (hereinafter referred to as ‘the Cr.P.C.’), were only to the extent that they had gone to the place of occurrence after hearing commotion, but they turned hostile and did not support the case of the prosecution. Chaturdhan Pradhan, (PW.9), remained merely a formal witness who had to prove FIR only.

10. Father of the prosecutrix Edmon Kongari, (PW.4), had turned hostile, however, at the most, he could depose what the prosecutrix had told him on 14.6.1999 when he came to meet her in the police station.

11. Statement of the prosecutrix had been duly corroborated by medical evidence. Since she was examined two days after the incident, it is natural that spermatozoa would not be found in her vaginal swab.

12. The test identification parade could not be held as the prosecutrix had fled away from her village and gone to reside with her sister at Bokaro after being threatened by the accused, therefore, appellants should not be allowed to take the benefit of this circumstance.

13. The trial court has thoroughly appreciated the facts of the case and come to the conclusion that in view of the provisions of Section 114-A of Indian Evidence Act, 1872 there is a presumption as to absence of consent in case of gang rape and it will be presumed that the prosecutrix did not give consent, as this presumption is based on the reasoning that nobody can be a consenting party to several persons simultaneously. Thus, consent is not possible in the case of gang rape.

14. There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

In *Narender Kumar v. State (NCT of Delhi)*, AIR 2012 SC 2281, this Court has observed that even if a woman is of easy virtues or use to sexual intercourse, it cannot be a licence for any person to commit rape and it further held:

“24. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.” (See also: *Vijay @ Chinee v. State of Madhya Pradesh*, (2010) 8 SCC 191)

15. In the statements of the accused/appellants under Section 313 Cr.P.C., only a bold statement had been made by both the accused/appellants that they were innocent. No explanation had been furnished by either of them as to why the prosecutrix had deposed against them and involved them in such a heinous crime.

16. Rape cannot be treated only as a sexual crime but it should be viewed as a crime involving aggression which leads to the domination of the prosecutrix. In case of rape besides the psychological trauma, there is also social stigma to the victim. Majority of rapes are not sudden occurrences but are generally well planned as in this case. Social stigma has a devastating effect on rape victim. It is violation of her right of privacy. Such victims need physical, mental, psychological and social rehabilitation. Physically she must feel safe in the society, mentally she needs help to restore her lost self esteem, psychologically she needs help to overcome her depression and socially, she needs to be accepted back in the social fold. Rape is blatant violation of women’s bodily integrity.

17. After considering the case from all angles, we do not see any cogent reason to interfere with the findings of fact recorded by the courts below. The appeals lack merit and are, accordingly, dismissed.

.....J. (DR.
B.S. CHAUHAN)

.....J.
(S.A. BOBDE) NEW DELHI;
July 22, 2013
