

A SOHAN SINGH & ANR.
v.
STATE OF BIHAR
(Criminal Appeal No. 971 of 2003)

B OCTOBER 9, 2009

[V.S. SIRPURKAR AND DEEPAK VERMA, JJ.]

Penal Code, 1860:

C s. 376(2)(g) – Gang rape – Conviction by trial court,
confirmed by High Court – Pleas of accused regarding delay
in lodging FIR, absence of injury on the person of the victim
and their false implication due to enmity – HELD: Rightly
D rejected by both the courts below – There is consistency in
the evidence of three prosecution witnesses and there is no
reason to doubt their evidence about commission of crime by
accused – Conviction and sentence awarded by courts below
confirmed.

E The accused-appellants were prosecuted for
commission of offence punishable u/s 376(2)(g) IPC on
the allegation that at about 7 p.m. on 23.7.1983, when the
prosecutrix (PW-3) alongwith her sister-in-law (PW-1) was
returning home, both the accused ravished her. On the
alarm raised by PW-1, PW-2, the husband of the
F prosecutrix, reached there. He was assaulted by both the
accused appellants with the butt of the pistol. FIR was
lodged at about 8.30 a.m. the following day. The trial
court, relying upon the evidence of the PWs 1 to 3,
G convicted both the accused of the offence charged, but
considering their age being 19 and 22 years, sentenced
them to undergo rigorous imprisonment for 4 years. Their
appeal was dismissed by the High Court.

In the instant appeal filed by the accused, it was, *inter*

alia, contended for the appellants that the FIR was delayed and no valid reasons were assigned for the delay; that no external or internal injuries were found on the person of the victim; that there was enmity between the two families which resulted in their false implications.

Dismissing the appeal, the Court

HELD: 1.1. A critical examination of the material evidence of P.W.1, P.W.2 and P.W.3 discloses that they all have said in one voice with regard to the manner in which the offence was committed by the appellants. The said evidence inspires confidence, more so, when the evidence was recorded almost after eight years from the date of commission of the offence, yet, there is great consistency therein. There is no reason to doubt the truthfulness of the evidence so deposed by the said three witnesses. The conviction and sentence awarded by both the courts below is confirmed. [Para 12,13 and 18] [145-E-G; 146-G]

1.2. It cannot be said that there has been inordinate or unexplained delay in lodging the FIR. When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge FIR, and only after giving it a serious thought the prosecutrix must have decided to lodge the FIR. The delay has been found by both the courts below to be properly explained. [Para 14] [145-H; 146-A-C]

1.3. Admittedly, the prosecutrix was already a married lady and, therefore, it was not necessary that some external or internal injuries should have been found on her person. No doubt, the doctor could not give any definite opinion with regard to commission of offence, but, it was not the case of the appellants that they had not committed the rape; rather they had taken a plea of consensual sex with the prosecutrix which has not been

A **believed by the two courts below. [Para 15 and 16] [146-D-E]**

B **1.4. Enmity between the two families would not lead to such a serious consequence of lodging FIR of commission of gang rape by the appellants. [Para 17] [146-F]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 971 of 2003.

C From the Judgment & Order dated 17.12.2002 of the High Court of Patna in Criminal Appeal (SJ) No. 360 of 1991.

Anup Banerjee, Rajeev Kumar, Deba Prasad Mukherjee for the Appellants.

D Gopal Singh, Manish Kumar, Manoj Mishra for the Respondent.

The Judgment of the Court was delivered by

E **DEEPAK VERMA, J.** 1. Appellants, two in number, were charged and prosecuted for commission of offence under Section 376(2)(g) of the Indian Penal Code (for short, 'IPC') for having committed rape on prosecutrix at about 7.00 p.m. on 23rd July 1983 by 5th Additional Sessions Judge, Begusarai in Sessions Trial No.94 of 1998 decided on 26th September 1991, who found them guilty and awarded four years jail sentence to each one of them. The said judgment of the learned Sessions Judge was subject-matter of challenge at the instance of the appellants in the High Court of Patna by filing Criminal Appeal No.360 of 1991 decided on 17th December 2002. The appeal of the accused-appellants has been dismissed and the conviction of the appellants under Section 376(2)(g) of IPC has been upheld and sentence of four years awarded by Trial Judge has also been affirmed. Hence, this appeal.

2. The prosecution case, in short, is as under :

H On 23th July 1983 at about 7.00 p.m., P.W.3-prosecutrix

was returning home along with Shiela Devi, her sister-in-law, after giving fodder to cattle. After they had proceeded few steps from the place, Sohan Singh aged 19 years and his brother Mohan Singh aged about 22 years waylaid them. Mohan Singh confronted prosecutrix whereas Sohan Singh caught hold of Shiela Devi. They threatened them on the point of pistol not to raise any alarm, otherwise they would be met with dire consequences. Mohan Singh got in full grip of prosecutrix and forcibly took her to the nearby maize field. There, he committed offence of rape on the prosecutrix. Subsequently, Sohan Singh also repeated the crime of sexual assault upon her. In the meantime, on alarm being raised, P.W.2 - husband of prosecutrix came. He was assaulted by both of them, with the butt of the pistol. He sustained injuries. Thereafter, some other villagers came on the spot. Obviously, both the accused fled away from the place of occurrence.

3. The prosecution case was based on fard bayan of P.W.3-prosecutrix.

4. P.W.3-prosecutrix did not lodge an FIR immediately. The same was lodged on 24th July 1983 at about 8.30 in the morning. Reasons have been assigned by her as to why she was not able to lodge the FIR immediately, which have been found by both the courts below to be reasonable and plausible.

5. P.W.1- Shiela Devi has deposed that incident had taken place about eight years back on one Saturday evening. On the said date, she, along with prosecutrix was returning home. When both of them reached maize field of Garif Singh, Sohan Singh took out his pistol and pointed it towards them. Other accused Mohan Singh dragged prosecutrix in the nearby field and committed rape. After coming out from the field, the other brother also went to commit the same but on commotion being raised, husband of prosecutrix, viz., Ram Prakash appeared. Ram Prakash was assaulted by both the accused and thereafter they ran away from there. Both the accused were identified by P.W.1. Even though she was cross-examined at length by

A learned counsel appearing for the appellants but veracity of her evidence could not be doubted.

6. The evidence of P.W.2-Ram Prakash also reflects that his wife was raped about 7-8 years back on an evening by the appellants. He was at home at that time. On hearing the alarm of Shiela Devi, he went to the spot where he found that his wife was coming from the field towards its boundary. Her clothes were torn. He further deposed that when he reached the spot, both the appellants - Mohan Singh and Sohan Singh - started assaulting him. He had also sustained injury on account of blow of the butt of the revolver/pistol. His wife then informed that they had committed offence of rape. In the meanwhile, on account of commotion, several other persons also reached the spot. In his cross-examination, he has admitted that they belong to low caste and several persons had gathered after the incident to decide the future course of action. They then decided that FIR should be lodged and then they had gone to the police station with prosecutrix on the next day to lodge the FIR. He has also deposed that after being assaulted by accused, he had gone for treatment to Dr. Chandra Prakash.

7. Similarly, P.W.3-prosecutrix also deposed in categorical terms with regard to the manner in which the offence of rape was committed on her - first by Mohan Singh and the same assault was thereafter committed by his brother Sohan Singh. Thus, the evidence of P.W.1, P.W.2 and P.W.3 clearly establishes that it was appellants who had committed rape/assault on the prosecutrix. Although copy of the evidence of P.W.3 is not available in the paper book, we have scrutinized the same from the original record available in the Registry.

8. Prosecutrix was also examined by P.W.6-Dr. (Smt.) B. Mishra on 24th July 1983 who had not found any external or internal body injuries on the person of the prosecutrix. Her hymen was found to be ruptured. Her uterus was of normal size and she was menstruating during that period. No dead or alive spermatozoa was found. Doctor was not able to give any

definite opinion regarding rape.

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9. Learned Sessions Judge, on appreciating the evidence available on record, recorded a finding of commission of offence of gang rape on the prosecutrix but, looking to the tender age of the appellants at that time, awarded them sentence of four years each.

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10. As mentioned hereinabove, the said judgment was further challenged by filing an appeal in the High Court but the same also met the fate of dismissal.

C

11. Learned counsel for the appellants strenuously contended before us that :

- (i) FIR was delayed and no plausible or valid reasons have been assigned for the delay;
- (ii) no external or internal injuries were found on the body of the victim or even on her private parts;
- (iii) the prosecutrix failed to inform Dr. Chandra Prakash who had examined her husband and given him the treatment; and
- (iv) there was enmity between the two families which has resulted in false implication of the appellants.

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12. We have critically gone through the material evidence of P.W.1, P.W.2 and P.W.3. They all have said in one voice with regard to the manner in which the offence was committed by the appellants. The said evidence inspires confidence, more so, when the evidence was recorded almost after eight years from the date of commission of the offence, yet, there is great consistency therein.

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G

13. There is no reason to doubt the truthfulness of the evidence so deposed by the aforesaid three witnesses.

14. As far as delay in lodging the FIR is concerned, we are also satisfied that it cannot be termed to be inordinately

H

A delayed. Even otherwise, in our considered opinion too, it cannot be said that there has been inordinate or unexplained delay in lodging the FIR. When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner. Obviously, prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR. Precisely this appears to be the reason for little delayed FIR. As mentioned hereinabove, the delay has already been found to be properly explained by both the courts below. Thus, we are not required to deal with this issue any more.

D 15. Admittedly the prosecutrix was already a married lady and, therefore, it was not necessary that some external or internal injuries should have been found on her person.

E 16. No doubt, it is true that doctor could not give any definite opinion with regard to commission of offence, but, it was not the case of the appellants that they had not committed the rape but they had taken a plea of consensual sex with the prosecutrix which has not been believed by the two courts below.

F 17. Enmity between the two families would not lead to such a serious consequence of lodging FIR of commission of gang rape by the appellants.

G 18. Thus, looking to the matter from all angles, we are of the opinion that there is no merit or substance in this appeal. The same is accordingly hereby dismissed. The conviction and sentence awarded by the two courts below is hereby confirmed. Appellants are on bail. They shall surrender to their bail bonds within seven days from today so as to undergo the remaining part of the jail sentence.

H R.P.

Appeal dismissed.