

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No.43 of 2020

(Against the Judgment of conviction dated 17.08.2019, and order of sentence dated 26.08.2019 passed by learned Addl. Sessions Judge-I, Pakur, in S.T. No.52 of 2017 [arising out of Maheshpur P.S. Case No.264 of 2013 and G.R. No.1082 of 2013].

Chunka Soren Appellant
Versus

The State of Jharkhand Respondent

P R E S E N T

HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

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For the Appellant : Mr. Yogesh Modi, Advocate
For the State : APP

By Court:- Heard learned counsel for the appellant and learned APP for the State.

1. The instant Criminal appeal is directed against the Judgment of conviction dated 17.08.2019, and order of sentence dated 26.08.2019 passed by learned Addl. Sessions Judge-I, Pakur, in S.T. No.52 of 2017 [arising out of Maheshpur P.S. Case No.264 of 2013 and G.R. No.1082 of 2013] whereby the sole appellant has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced him to undergo RI for 7 years and fine of Rs 5000/- and in default of payment of fine, further to undergo RI for 2months.
2. The prosecution case, in brief, is that on 20.07.2013 at about 11 p.m, it is alleged that when the prosecutrix was lying on her bed, all of a sudden, the appellant entered into the house with a knife and warned her not to make noise or else she will suffer dire consequence. The appellant taking advantage of the situation i.e absence of her husband in the house, caught hold of the prosecutrix and forcefully committed rape with her. Thereafter appellant asked for the key of box. Then the prosecutrix handed over the keys and appellant took out purse containing gold necklace and cash of Rs 4500/- from the box. Thereafter prosecutrix started shouting and by hearing the noise, people of the locality reached at the place of occurrence & saw the appellant running away from there. It further revealed that the complainant contacted the Police State, but her complaint was not entertained. Hence, PCR No.393 of 2013 under Sections 376, 379 and 450 IPC was registered.
3. On the basis of the PCR No.393 of 2013, the Police instituted First Information Report being Maheshpur (Pakur) P.S. Case No. 264 of 2013) corresponding to

G.R. No.1082 of 2013 under Section 376 of the Indian Penal Code against the sole appellant/accused.

4. Police after investigation found the case to be true and submitted charge-sheet and after cognizance, the accused person/ appellant was put on trial.
5. Altogether six witnesses have been examined on behalf of the prosecution and relevant documents have been adduced into evidence and marked as Exhibits.
6. After prosecution evidence, the statement of the accused person has been recorded under Section 313 Cr. P. C. which is of innocence and false implication.
7. Learned counsel for the appellant has submitted that the complaint filed by the prosecutrix is the basis of the case. There is an inordinate delay of 10 days in filing the complaint petition. As per the allegation, the incidence took place on 20.07.2013, whereas the complaint was filed on 30.07.2013.
8. It is submitted that in this case, altogether four material witnesses have been examined, out of which, P.W.3 and P.W.5, being independent witnesses have not at all supported the case of prosecution and were declared hostile. The prosecution case rests upon the testimony of prosecutrix and her husband. It has been stated in the complaint/FIR that on hulla being raised, several people of the locality reached the spot and saw the appellant running away from the place of occurrence. However, the prosecutrix at Para-1 has deposed that the offence was committed under threat and duress and she was not permitted to raise any alarm. However, at Para-3, she has deposed that at the time of incidence, no one had come there.
9. It is further submitted that it has been deposed by the prosecutrix and her husband that panchayati was held after the said incidence, but there is no evidence of panchayati being held subsequent to the said incidence. The prosecutrix was not examined by the Doctor after the incidence rather after about 7 months, she has been examined, but the Doctor immediately did not find any mark of violence.
10. It is submitted that as per the FIR, the appellant had committed the theft of gold ear-ring, but in her deposition, she has deposed that she has lost her ear-ring.
11. Learned APP for the State has defended the impugned judgment of conviction and sentence.
12. I find force in the argument advanced on behalf of the defence/appellant that this case is riddled with improbabilities, and contradictions to place an unflinching reliance on the solitary account of the prosecutrix. It begins with delay in lodging of FIR and then there is contradiction in the account as to whether she raised any

alarm or not, and if she raised alarm as stated in the FIR, who came to her rescue. In view of the vital contradictions in the deposition of the prosecutrix, this Court is of the view that the uncorroborated solitary testimony of prosecutrix will not be sufficient to return a judgment of conviction and sentence. As such, the appellant is entitled to get benefit of doubt.

Accordingly, the impugned judgment of conviction and sentence is set aside and the sureties are discharged from the liability of their bail bonds.

The instant Criminal Appeal is allowed.

Let L.C.R. along with a copy of this judgment be sent to the court concerned at once.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi

Dated 03.05.2024.

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