

IN THE HIGH COURT OF JHARKHAND, RANCHI

Cr. Appeal (SJ) No. 1384 of 2003

(Against the judgment of conviction dated 26.08.2003 and order of sentence dated 26.08.2003 passed by the learned Additional Sessions Judge, Fast Track Court No. III, Hazaribagh in Sessions Trial No. 79 of 2000 arising out of Katkamsandi P.S. Case no.137/99 dated 10.11.99 in the District of Hazaribagh: Jharkhand)

Pachu Gope ... Appellant
 Versus
 The State of Jharkhand ... Respondent

CORAM: HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellants : Mr. Tirthankar Bose, Advocate
 For the Respondent : Mr. Santosh Kr. Shukla, A.P.P.

PRESENT

HON'BLE MR. JUSTICE NAVNEET KUMAR

Order No. 09 : Dated: 20th December, 2021

Navneet Kumar, J. This appeal is directed against the judgment of conviction dated 26.08.2003 and order of sentence dated 26.08.2003 passed by the learned Additional Sessions Judge, Fast Track Court-III, Hazaribagh in Sessions Trial No. 79 of 2000 whereby and whereunder the appellant **Pachu Gope has been convicted under sections 376/511 of IPC and sentenced to undergo Rigorous Imprisonment for three years.**

Prosecution Story

2. Briefly stating the prosecution case arising in the wake of written report dated 10.11.1999 of the informant (hereinafter referred to as 'victim') is that on 07.10.1999, the informant had gone to Ghoghari Forest for collecting fire woods and her husband had gone to Hazaribagh for working as labour. It started raining at about 4 P.M., then she hide herself beneath Mahuwa Tree near her Ghoghari field to save herself from rain. In the meantime, accused Pachhu Gope who happens to be her *Dewar (brother-in-law)* came and caught her hand and breast with bad intention and forcibly fell her on the ground. She protested to this action due to which he did not succeed

in committing rape on her. She shouted (*Hulla*), then accused-appellant Pachhu Gope fled away due to fear leaving behind her lying on the earth. She narrated the offence to her husband when he returned home in the evening and also to co-villagers Ramu Gope, Lado Gope and others. Her husband went to the house of Pachhu Gope to enquire about his misdeeds, then, the appellant and his brother (co-accused Basudeo Gope who has been acquitted during trial in the court below) abused him and assaulted him by *danda* (*Thick stick*) and slaps. She further stated that she did not go to the police for lodging information due to shame and prestige, but, now she came to police because both, the appellant and his brother Basudeo Gope who has been acquitted by the learned court below, were threatening her and her husband.

3. On the basis of the aforesaid written report dated 10.11.1999 of the victim, a formal FIR was drawn vide Katkamsandi P.S. Case no. 137 of 1999 dated 10.11.1999 for the offence punishable u/s 376/511 & 323 of IPC and the investigation of the case commenced.

4. After completion of the investigation the charge sheet was submitted vide charge sheet no. 174 of 1999 dated 30.11.1999 for the offence punishable u/s 376/511 & 323 IPC against the two accused persons including the appellant Pachhu Gope and one Basudeo Gope (since acquitted).

5. The Chief Judicial Magistrate on the receipt of charge sheet took cognizance for offences u/s 376/511/323 IPC vide his order dated 03.01.2000 and the case was committed to the court of sessions.

6. After commitment the learned trial court framed the charges for the offence punishable u/s 376/511 and 323 IPC against two accused persons including this accused appellant and one Basudeo Gope and trial of the case commenced and after concluding the trial the co-accused Basudeo Gope was acquitted and this accused appellant was convicted for the offence punishable u/s 376/511 IPC and sentenced to undergo R.I. for 3 years therein which is under challenge.

7. Heard Mr. Tirthankar Bose, learned counsel for the appellant and Mr. Santosh Kr. Shukla, learned A.P.P. for the State.

Arguments on behalf of the appellant:

8. Assailing the impugned judgment of conviction and order of sentence it is submitted on behalf of the appellant that the trial court has failed to take into consideration that there is no corroborative evidence in the present case to convict the appellant and there has been serious contradictions amongst the prosecution witnesses particularly P.W. 1 & P.W. 2 which cast the serious doubts in the entire prosecution story.

9. Learned defence counsel has further submitted that the court below has failed to take into consideration that there is inordinate delay in lodging the FIR which has not been properly explained and no independent witness has been examined and further it has been pointed out that there are two parts of the occurrence one is attempt to commit rape and another followed by the assault by the accused persons upon the victim and her husband, but the second part i.e. assault by the accused persons have not been proved and, therefore, truthfulness of the connected offence i.e. attempt to commit rape also gets falsified. Further, the veracity of the solitary evidence of the victim is also not believable and trustworthy and, therefore, the impugned judgment of conviction and order of sentence is bad in law and fit to be set aside.

Arguments on behalf of the State:

10. On the other hand, learned A.P.P. appearing on behalf of the State strongly opposed the contentions raised on behalf of the appellant and submitted that the learned trial court has appreciated the evidences in a very meticulous manner and rightly held the appellant guilty for the offence punishable u/s 376/511 of IPC and there is no contradiction or illegality in the impugned judgment of

conviction and order of sentence and, therefore, this appeal deserves to be dismissed being devoid of any merit.

FINDINGS

11. Having heard the learned counsels Mr. Tirthankar Bose, learned counsel for the appellant and Mr. Satosh Kr. Shukla, learned A.P.P. and perused the record of the case including the lower court record.

12. It is admitted case of the prosecution that the accused appellant Pachhu Gope is the cousin brother-in-law (*devar*) and the FIR has been instituted after the lapse of more than one month as the occurrence had taken place on 07.10.1999 and this FIR was instituted on 10.11.1999.

13. It appears that the explanation given for the delay by the victim in her written report itself is that due to shame and honor, the victim could not come forward to institute the case. Further, she stated that the appellant along with his brother Basudeo Gope (who has been acquitted during trial in the court below) had given threatening to her and her husband which compelled her to institute the FIR. In support of the case, the prosecution has been able to examine only 3 witnesses out of which P.W. 1 Victim, P.W. 2 is her husband and the third witness examined on behalf of the prosecution P.W.3 has been tendered.

14. From the testimony of P.W. 1, who is said to be the victim of the incident stated in her examination-in-chief that she did not remember the exact date of the occurrence indicating weakness in the charges levelled against the appellant at the outset. It is further in para 19 of her cross examination she stated that on the date of the incident only her husband had gone alone to the house of the accused appellant whereas her husband-P.W. 2 in para 9 & 10 stated that she had also gone to the house of the accused appellant to inquire about the incident and making complaint, thus, the major contradiction is

found in the post incident assault which is said to have taken place between the husband of the victim and the accused persons.

15. It is evident from the FIR itself, that the husband of the informant on the same night went to the house of the accused persons in order to make query and it is alleged that the husband of the victim was abused and assaulted by the accused appellants by *danda* and fists, but, no independent witnesses have been examined to support the case of the prosecution on the point of the assault on the date of occurrence which took place between the accused appellant and husband along with his informant-wife and thus the different versions on the point of the assault have been found. From the deposition of P.W. 1 (victim) it appears that her husband P.W. 2 went there alone and, therefore, it is very difficult to accept the contradictory versions in absence of the evidence of any independent reliable witness and this incident of assault is consequence of the earlier incident of attempt to commit rape with P.W.1. The learned trial court has elaborately appreciating the evidence and deposition of P.Ws. 1 & 2 has rightly come to the conclusion to the falsity of the case with respect to the alleged assault of the date of occurrence and, therefore, the veracity and the truthfulness of the offence of attempt to commit rape by which the occurrence of assault had taken place also gets falsified.

16. It is also found that no cogent explanation has been given for the delay of period of 1 months 3 days in lodging the case when the incident had taken place on 7.10.1999 and FIR was instituted on 10.11.1999. Although the P.W.2 the husband in para 14 has categorically stated that on the very next morning of the incident i.e. 08.10.1999 a *Panchayati* was called for and a number of persons including Jobar Gope, Ramu Gope and Lado Gope were present there including *Mukhiya* and *Chowkidar* of the village, but even after the *Panchayati* of the next date of occurrence (i.e. on 8.10.1999), the FIR could not be instituted and after more than one month the FIR was instituted although the legal personnel *chowkidar* of the village was

present in the said *Panchayati*. The testimonies of P.W.2 in para 14 of his cross-examination on the point of *Panchayati* is also vague with respect to the outcome of *Panchayati*. Further, the prosecution has miserably failed to examine any one of the members who had admittedly attended the said *Panchayat* including *Mukhiya* and *Chowkidar* and co-villagers Jobar Gope, Ramu Gope and Lado Gope etc. As a matter of fact the reasons for delay including dignity, honor and fear in lodging the FIR were also existing even after the lapse of more than one month rather dignity, honour and fear was more at stake on the date of occurrence when *mar-pit* also took place as per the charges levelled against the accused persons and on the very next date of the occurrence the *Panchayati* was also held where the *Mukhiya* and *Chowkidar* and the co-villagers of the village also attended the said *Panchayati* and hence the reasons given in FIR for delay of more than one month are neither cogent nor acceptable and, therefore, the defence taken on behalf of the accused persons that both the parties were closely related to each other as the accused appellant is admittedly *Dewar* (brother-in-law) of the victim and there was a landed property dispute between them and, therefore, false implication of the accused persons cannot be ruled out and it is also evident from the discrepancies emanating from the testimonies of P.W.1 & P.W.2 also.

17. Further, from the perusal of the statement recorded u/s 313 Cr.P.C. it is clearly established that the defence taken on behalf of the accused appellant was that 5 to 6 acres of land in the name of the father of the accused were standing and his father had three brothers and each brother had got 1.67 acres of land, but the husband of the informant (P.W.2) wanted some more land and insisted upon the accused-appellant to part with more land and for this reason this false case has been instituted and, therefore, the defence taken on behalf of the accused persons in the light of the aforesaid inconsistencies and contradictions in the testimony of P.W. 1 and P.W. 2 become more pertinent, more convincing, and more

believable. Further, so far as the second consequential incident i.e. assault upon the P.W. 2 by the accused appellant after the attempt to commit rape has been falsified by the learned court below and, therefore, the incident to commit attempt to rape also does not get corroborated because of the appraisal of the witnesses in the foregoing paragraphs where a number of inconsistencies and unacceptable facts have been found.

18. In the backdrop, it is well found that the learned trial court has committed error in the appreciation of the evidences in totality. The second part of the incident i.e. *mar-pit*, which is inextricably related to the first part i.e. the offence of attempt to commit rape, has not been proved on the basis of the evidences available on record by the learned trial court. As a result, the first part of the incident i.e. attempt to commit rape is not substantiated inasmuch as falsification of the second part i.e. *Mar-Pit* and also remained unproved in view of the major incoherency and inconsistency found in the testimonies of witnesses P.W. 1 and P.W. 2 coupled with the inordinate delay in lodging the FIR without any cogent explanation as appraised elaborately in foregoing paragraphs

19. Accordingly, the impugned judgment of conviction and order of sentence does not hold good and fit to be set-aside, hence this appeal is allowed and the impugned judgment of conviction and order of sentence dated 26.8.2003 passed in S.T. No. 79/2000 by Addl. Sessions Judge, Fast Track Court No. III, Hazaribagh is set-aside.

20. Since the appellant of this appeal is on bail and thus, he is discharged from the liabilities of his bail bond in this case.

21. Let the Lower Court records be sent back to the Court concerned forthwith, along with a copy of this Judgment.

(Navneet Kumar, J.)