

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Revision No.228 of 2012

Mathura Thakur Petitioner
Versus
The State of Jharkhand Opposite Party

CORAM: HON'BLE MRS. JUSTICE ANUBHA RAWAT CHOUDHARY

For the Petitioner : Mr. Sanjay Kumar Pandey, Advocate
For the Opp. Party State: Mr. Manoj Kumar Mishra, Advocate

Through Video Conferencing

09/17.04.2021 Heard Mr. Sanjay Kumar Pandey, learned counsel
appearing on behalf of the petitioner.

2. Heard Mr. Manoj Kumar Mishra, learned counsel
appearing on behalf of the opposite party - State.

Arguments of the petitioner

3. Learned counsel appearing on behalf of the petitioner while advancing his arguments has submitted that the incident of the present case is of 07.03.1985 at 11 p.m and the fardbeyan was recorded on 08.03.1985 at 17.00 hours and the F.I.R was registered on 09.03.1985 at 8.45 hours under Sections 376/511 of Indian Penal Code. The charge sheet was submitted on 22.03.1985 and charge was framed on 03.07.1989 under the aforesaid Sections.

4. The learned counsel has submitted that in the instant case although there were 6 (six) witnesses, but only 5 (five) were examined and the Investigating Officer of the case was not examined. He has also submitted that except P.W.5 rest of the witnesses are interested witnesses. P.W. 4 is the informant of the case. P.W. 1 is the father of the victim. He further submits that the informant of the case is the mother of the victim, but she herself is hearsay witness as she has stated in her evidence that she was sleeping inside the room and came out of the room upon alarm raised by the victim. He further submits that P.W. 1 is the father of the victim, who was admittedly not available at

the time and place of occurrence and it was the mother, who had narrated the entire incident to the father and accordingly father and mother both are hearsay witnesses. He further submits that P.W. 5 is also not the eye witness to the occurrence and had arrived at the place of occurrence when there was alarm raised by the informant and the other witnesses. The learned counsel submits that P.W. 2 and P.W. 3 are the victim witnesses. He submits that serious prejudice has been caused to the petitioner as the Investigating Officer of the case has not been examined and there is only one exhibit i.e., the fardbeyan, which has been exhibited and the F.I.R itself has not been exhibited.

5. The learned counsel has further submitted that there was previous enmity and the learned Sessions Judge in para 8 of the judgment instead of relying upon the prosecution evidence has relied upon the fact that the defence did not lead any evidence regarding previous enmity.

6. The learned counsel submits that there are material contradictions in the evidence of the witnesses and the aforesaid aspects of the matter have not been properly considered by the learned courts below.

7. The learned counsel has also submitted that at best the present case is the case under Section 354 of Indian Penal Code and the basic ingredient for attempt to commit rape and offence under Sections 376/511 is not made out.

8. The learned counsel has referred to the judgments passed by the Hon'ble Supreme Court reported in *(2004) 4 SCC 379* paragraph nos.11, 13 and 14; *(2006) 8 SCC 560* and *(2004) 3 SCC 602* to submit in support of his contention that at best offence under Section 354 of Indian Penal Code is made out. The learned counsel has further submitted that the incident in the present case is of the year 1985 and at that point of time, the maximum punishment for offence under Section 354 of Indian

Penal Code was 2 years. He has also submitted that during the pendency of the present criminal revision petition, the petitioner had surrendered before the learned court below on 16.02.2012 and was enlarged on bail vide order dated 25.09.2012. The learned counsel submits that as per the judgment of conviction, it has been recorded that the petitioner was 35 years of age on 03.10.1994 and accordingly the present age of the petitioner would be more than 60 years of age.

9. The learned counsel further submits that without prejudice to the aforesaid, the present offence is the first offence of the petitioner and the petitioner is already out of employment. The learned courts below have refused to give the benefit of Probation of Offenders Act, 1958 to the petitioner.

10. During the course of arguments, it is not in dispute in the present case that no defence evidence was led by the petitioner and the petitioner was in total denial of the incident while recording his statement under Section 313 of Cr.P.C.

Arguments of the State

11. The learned counsel on behalf of the opposite party-State, on the other hand, while opposing the prayer has submitted that there are consistent findings recorded by the learned courts below and there is no scope for reappraisal of evidences and coming to a different finding. He has further submitted that there is no illegality, perversity or impropriety in the impugned judgments calling for any interference in revisional jurisdiction. The learned counsel has also submitted that considering the nature of offence, the petitioner is not entitled to the benefit of Probation of Offenders Act, 1958 and this criminal revision petition is fit to be dismissed.

12. Arguments concluded.

13. Order reserved.

(Anubha Rawat Choudhary, J.)