

Criminal Appeal (S.J.) No. 1504 of 2006

[Against the Judgment of conviction dated 06.09.2006 and Order of sentence dated 11.09.2006, passed by learned Additional Sessions Judge, XIIIth, Dhanbad, in Sessions Trial No. 112 of 2004]

Harendra Bouri, Son of Sri Panchanan Bouri, resident of Village – Berketni, P.S. – Tundi, District - Dhanbad.

... .. **Appellant**

Versus

The State of Jharkhand **Respondent**

.....

For the Appellant : Mr. Mahesh Tewari, Advocate.

For the Respondent : Mr. Rajesh Kumar, A.P.P.

.....

P R E S E N T

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA
JUDGMENT

C.A.V. on 19.11.2024 Pronounced on 20.12.2024

- 1.** Heard learned counsel for the parties.
- 2.** Above-named sole appellant has preferred this Criminal Appeal for setting aside the judgment of conviction dated 06.09.2006 and order of sentence dated 11.09.2006 passed by learned Additional Sessions Judge, XIIIth at Dhanbad in Sessions Trial No. 112 of 2004 (arising out of Tundi P.S. Case No. 50 of 2003), whereby and whereunder, the appellant has been convicted and sentenced for the offence under Section 376 of the I.P.C. and directed to undergo R.I. of five years along with fine of Rs. 500/- with default stipulation.

FACTUAL MATRIX

- 3.** The factual matrix giving rise to this appeal is that on 01.10.2003 at about 1-2 P.M. while the informant

(prosecutrix), aged about 16-17 years had gone to Village tank for washing clothes and to take bath and after washing clothes, she went to ease herself in the nearby field. In the meantime, present appellant taking advantage of the loneliness of the place came from behind and caught hold of the victim and committed rape with her. It is further alleged that the victim attempted to raise alarm, but the accused gagged her mouth. It is further alleged that fortunately the mother and aunt of the victim were also coming to take bath and seeing them, the accused fled away. The victim complaint to her mother and aunt about the said incident. Thereafter, they went to take bath in the pond and returned to their house. It is alleged that the father of victim had gone to attend his duty and returned at about 7:00 PM, then the matter was complained to the villagers and a Panchayati was also convened, but neither the accused nor his father turned up then F.I.R. was lodged on the next day at Tundi P.S. for the offence under Section 376 of the I.P.C. On the basis of written information, scribed by Ashok Bouri (P.W.-5) and Banshidhar Bouri (P.W.-7), victim put her RTI over the same.

- 4.** After completion of investigation, charge sheet was submitted against the sole accused for the offence

under Section 376 of the I.P.C. After taking cognizance of the offence, the learned Magistrate committed the case to the Court of Sessions; where S.T. No. 112 of 2004 was registered. The charge was read over and explained to the accused, to which, he did not plead guilty and claimed to be tried.

- 5.** In course of trial, the prosecution has examined altogether 13 witnesses and also adduced following documentary evidence:-

Exhibit-1 : Photocopy of Injury Report.

Exhibit-2 : Fardbeyan.

Exhibit-2/1 : Signature of Sunita Kumari.

Exhibit-2/2 : Signature of Ashok Bouri.

Exhibit-2/3 : Signature of Banshidhar Bouri.

Exhibit-3 : Original Injury Report.

- 6.** The learned trial court, after considering the oral as well as documentary evidence available on record, held the appellant guilty for the offence under Section 376 of the I.P.C. and sentenced him to undergo R.I. for 05 years along with fine as stated above.

- 7.** Learned counsel for the appellant has vehemently argued that the sole eye-witness in this case is the victim girl and all other witnesses are hearsay from

her. The victim was not medically examined in this case. F.I.R. was also lodged in the next date of the alleged occurrence without offering any cogent explanation. It is further submitted that most of the witnesses who have been claimed to be associated with Panchayat have been declared hostile by the prosecution and all other witnesses are close relative of the victim and admittedly not eye-witness. The manner of occurrence as stated by the victim girl is itself not believable. She has stated that she was forcibly laid down on the earth. She resisted the attempting rape, even then the accused succeeded in committing rape with her. In spite of this struggle, the medical examination report of the victim shows that no internal or external injury was found on the body or on private part. No spermatozoa was detected after chemical examination of the vaginal swab. The hymen was found old ruptured. Further, the conduct of the victim, her mother and aunt, who knowing about commission of rape, peacefully bath in the pond without complaining to any person about such a heinous offence and remained silent throughout the night, cast doubt on the prosecution story.

- 8.** It is further submitted that there was business relationship between maternal uncle of the victim

namely, Banshidhar Bouri, scribe of written report and the father of the appellant as well as dispute about landed property with the father of the victim girl, who have falsely implicated the appellant in this case. The victim girl herself has deposed that FIR was written by her maternal uncle Banshidhar Bouri, who along with her father met with the police and presented the written report, on which she has put her thumb impression only. The victim is an illiterate girl. The victim was also not interrogated by the police officer at the time of lodging the FIR. These facts also cast serious doubt even on the very initiation of the process against the accused appellant.

- 9.** In the above premises, the learned counsel for the appellant submits that the learned trial court has failed to properly consider the aforesaid glaring defects appearing in the prosecution case, which makes it absolutely unreliable and arrived at wrong conclusion regarding guilt of the appellant. As such, the impugned judgment and order is liable to be set aside.
- 10.** In alternative, it is pleaded on behalf of the appellant that out of 05 years imprisonment awarded to the appellant for the offence committed by him, he has

already been undergone more than three years custody during trial / post-trial of the case. At the time of occurrence, the petitioner was aged about 21 years old. The occurrence is of the year 2003 and more than 20 years have been lapsed. The petitioner has undergone agony of trial for a long period. Hence, sentence of imprisonment awarded by the trial court may be reduced to the sentence already undergone.

11. On the other hand, learned APP appearing for the State has opposed the contentions raised on behalf of the appellant and defends the impugned judgment and order on merits and submits that the reason for false implication, as pleaded by the appellant, is baseless and not substantiated through any cogent and reliable evidence, therefore, the learned trial court has rightly disbelieved the plea taken by defence during cross-examination of witnesses or as a matter of suggestion. The victim girl has remained consistent throughout her deposition and there is no reason to disbelieve her testimony merely on the ground that no injury was sustained by her at the time of struggle or medical evidence is not able to prove the recent commission of rape.

12. He further submits that it is settled law that the testimony of victim, if found fully reliable, it requires

no corroboration from any source for basing conviction of the accused. Therefore, there is no illegality or infirmity in the impugned judgment and order of conviction of the appellant.

13. However, so far quantum of sentence is concerned, learned APP admits that the accused has remained more than 03 years custody during trial and 20 years has been elapsed from the said occurrence. Therefore, an appropriate order may be passed in the matter of sentence.

14. I have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both sides.

15. It appears that the appellant has faced trial for commission of offence of rape. In course of trial, altogether 13 witnesses were examined by the prosecution, out of them, P.W.-1 – Narayan Bouri, P.W.-2 – Sunil Bouri, P.W.-3 – Koku Bouri and P.W.-4 Madhusudan Bouri have been declared hostile by the prosecution and expressed their no knowledge about the occurrence.

16. P.W.-5 : Ashok Bouri is hearsay witness and father of the victim, who came to know about the occurrence from the victim girl and his wife. Thereafter, he

attempted to convene Panchayati, in which he could not succeed. Hence, due to night, he went to lodge the report on the next day morning at the police station. The written report scribed by Ashok Bouri and Banshidhar Bouri and FIR was lodged.

- 17.** P.W.-6 : Dr. Manjula Rani Saha is a formal witness and submitted photocopy of final medical report of the victim, which is marked Exhibit-1 with objection.
- 18.** P.W.-7 : Banshidhar Bouri is scribe of the FIR and specifically stated that after occurrence, he was called upon by the mother and aunt of the victim girl, then the victim girl stated all the story of commission of rape with her by the accused Harendra Bouri and after returning of her father, this case was lodged.
- 19.** P.W.-8 is the victim girl herself, who has categorically stated that she had gone to village pond for washing clothes and taking bath and after washing the clothes, she went to discharge nature's call, meanwhile, she was caught from behind by the accused Harendra Bouri. She attempted to flee away, but forcibly laid down on earth and raped by accused. She has also stated that in the meanwhile, her mother and aunt were come to take bath in the pond, then accused fled away. She narrated the above story to her mother and

aunt (*fuwa*). Her father returned at about 7:00 PM in the night, then matter was disclosed to him also. There was no means of transportation, hence, in the next day morning, case was lodged.

In her cross-examination, she admits that witness Madhusudan is her *mamera* brother and Banshidhar is *fufera* brother. She has been cross-examined at length, but no material has been elicited to discard or disbelieve her testimony.

20. P.W.-9 : Dr. Manorama Beck has medically examined the victim girl on 2nd October, 2003. Radiological report about age assessment of the victim was also obtained, which shows that she was about 17 years. Upon examination, she has not found any external or internal injury on the private part of the victim and vaginal swab examination also did not show any spermatozoa. The vagina was old rapture. Therefore, she has not given any definite report about commission of rape with the victim.

21. P.W.-10 : Rekha Kumari is the *fuwa* of victim girl, who has clearly stated that when she was going to take bath along with her sister-in-law, the victim met and told about commission of rape with her by Harendra Bouri.

- 22.** P.W.-11 : Bhakt Bouri is the father of victim girl, who is also hearsay witness. When he returned to home, came to know about occurrence and attempted to convene Panchayat in the village, which could not be succeeded, then on the next day, he lodged the FIR. There is no other material in his evidence.
- 23.** P.W.-12 : Bablu Bouri has also been declared hostile by prosecution.
- 24.** P.W.-13 : Raj Gope is Advocate Clerk and formal witness, who has proved the FIR as Exhibit-3.
- 25.** On the other hand, one witness namely, Ujwal Bouri has been examined as defence, who has attempted to prove the allotment of work in connection with Scheme No. 04/03 issued by Circle Officer, Dandi in favour of this witness and Banshidhar Bouri, scribe of the FIR and specifically admits that the father of the victim is not involved in this contract and the copy of contract is also not produced.
- 26.** In view of aforesaid discussion of the prosecution evidence, it is crystal clear that the victim girl has narrated the prosecution story and prompt complaint to her mother and aunt about the occurrence thereafter to the villagers. There is no reason to disbelieve her testimony and no material has been

brought on record to cast any doubt on the prosecution story or to prove anything else showing false implication of the appellant. Therefore, the impugned judgment appears to be well-considered and in accordance with law. There is no reason to interfere with the impugned judgment of conviction of the appellant for the offence charged against him.

- 27.** So far quantum of sentence is concerned, admittedly at the time of occurrence, the appellant was around 19-20 years old and he was all along in the judicial custody throughout the trail of the case and has undergone more than 03 years imprisonment. Now, from the date of commission of offence, two decades has been passed and the appellant has not been involved in any other criminal activities much less the type of offence, for which, he has been convicted in this case. The appellant mend himself and came into main stream of life. Now, it will not be just and proper to send him to custody for suffering rest of the imprisonment. In my considered view, imprisonment already undergone by the appellant would meet the ends of justice in this case and is sufficient punishment in the peculiar facts and circumstances of this case.

- 28.** In view of aforesaid discussions and reasons, the impugned judgment of conviction of the appellant is upheld, but the sentence passed by the learned trial court is reduced to imprisonment already undergone by the appellant during trial of the case.
- 29.** Accordingly, this appeal is dismissed on merits with modification in sentence as stated above.
- 30.** Appellant is on bail, he is discharged from the liability of bail bonds, sureties are also discharged.
- 31.** Pending I.A., if any, stand disposed of.
- 32.** Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 20th December, 2024.

Sunil / **N.A.F.R.**