

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 590 of 2007**

Dhiren Mahto @ Dhirendra Mahto Appellant
Versus
The State of Jharkhand Respondent

CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Atanu Banerjee, Advocate
Ms. Khushboo Kumari, Advocate
Mr. Nehru Mahto, Advocate

For the State : Mr. Navin Kumar Ganjhu, A.P.P.

ORAL JUDGMENT IN COURT

10/21.03.2024 This Criminal Appeal has been filed on behalf of the appellant challenging the judgment of conviction and sentence dated 11.05.2007, passed by Sri Madan Mohan Singh, the learned Additional Sessions Judge, Fast Track Court No.VII, Hazaribagh, in Sessions Trial No. 145 of 2006, by which the appellant has been convicted for the offence under Section 376/511 I.P.C. and sentenced to undergo R.I. for Four (04) years.

2. The prosecution Story, in brief, is that the informant prosecutrix (Name not being disclosed), Daughter of Late Gokhul Manjhi of village Nawadih Tola Udusaram P.S. Gola, District Hazaribagh lodged her written report before the police of Gola Police Station, stating therein that on 24.10.2005, at about 01.00 p.m., while she was standing at Harubera Main Chowk Hotel, for coming to Gola, then in the

meanwhile, the accused Dhiren Mahto of village Sokala came there and on the pretext of solving the problem of her land, he (the accused) took her on the motorcycle for Nawadih, i.e. to the house of one Pradeep, son of Jahanwi Nandan of village Kotwar. It is further alleged that Dhirendar Mahto and Pradeep, both whispered and both of them brought her to Circle Office at Gola and as the C.O. was not available there, they brought the informant to the *Sasural* of one Pradeep, i.e. Ghutuwa Naya Nagar Colony. At about 6.00 P.M. they brought the informant to one politician and at about 9.00 P.M., the accused Dhiren Mahto brought the informant at a lonely place and then the informant became suspicious, so she tried to jump from the motorcycle, but the accused forcibly brought her towards Gola. It is further alleged that at about 11.00 P.M. in the night, the accused Dhiren Mahto forcibly tried to commit rape upon the informant and on protest, the accused threatened the informant with dire consequences and thereafter the informant bite the hand of the accused and the accused fled away leaving her. The informant thereafter reached at the house of Jai Kishun Bedia at village Chokarbera. The informant has further alleged that she was tired and seeing the injuries on the person of the informant, the people provided clothes, which were torn by the accused during the scuffle.

3. Heard Mr. Atanu Banerjee, learned counsel for the appellant and Mr. Navin Kumar Ganjhu, learned A.P.P.

4. It is submitted by learned counsel that the appellant is innocent. It is submitted that the impugned judgment of conviction and sentence passed by the learned Court below is illegal, arbitrary and not sustainable in the eye of law. It is submitted that the appellant has been falsely implicated by the informant with vested interest. It is submitted that there is no eye witness of the occurrence. It is submitted that there is no independent evidence to corroborate the case of the Informant-Prosecutrix. It is further submitted that no injury report of the prosecutrix has not been proved and hence, the impugned judgment of conviction and sentence may be set aside and this Criminal Appeal may be allowed.

5. On the other hand, learned A.P.P. has submitted that the impugned judgment of conviction and sentence passed by the learned Court below is fit and proper and no interference is required from this Court. It is submitted that the appellant has been named in the F.I.R. for committing offence of attempt of rape upon the prosecutrix. It is submitted that the P.W. 1 is the Victim Girl and the Prosecutrix, who has fully supported her case against the appellant. It is submitted that the P.W. 3, namely Mahabir Bedia, has also supported and corroborated the prosecution

case and has stated that the appellant had taken the victim girl on the Motor cycle and was moving with her. It is submitted that P.W.6, P.W.7 and P.W.8, namely Sukera Bedia, Ram Niwash Singh and Parvati Mosomat respectively have fully supported the prosecution case, hence there is no illegality committed by the learned Court below by convicting the appellant and this Criminal Appeal may be dismissed.

6. Perused the Lower Court Records of this case and considered the submissions made by both the sides.

7. It transpires that the F.I.R. was lodged on 25.10.2005 for the occurrence taking place on 24.10.2005.

8. It appears from the F.I.R. that appellant took the prosecutrix on the pretext of helping the prosecutrix to meet some Lady Leader for solving her land dispute of the prosecutrix and she remained with him for the whole day and then she was being taken to a lonely place and the appellant is said to have tried to commit rape upon her and due to which her clothes were torn and she had sustained injury on her hand, leg and mouth.

9. It transpires that the police after completion of investigation, submitted chargesheet on 30.12.2005 under Section 376/511 I.P.C. against the appellant before the learned C.J.M., Hazaribagh and

the learned C.J.M. took cognizance on 27.01.2006 under Section 376/511 I.P.C against the appellant.

10. It transpires that the Charges were framed against the appellant by Shri Madan Mohan Singh, the learned Addl. Sessions Judge, F.T.C.-VII, Hazaribagh on 03.05.2006 to which he pleaded not guilty and claimed to be tried.

11. The prosecution, in support of its case, got examined eight (08) witnesses, who are as follows:-

- (1)P.W.1 is the victim-Informant (Name not being disclosed in the light of the judgment of the Hon'ble Supreme Court)
- (2)P.W.2 is Fekan Bediya,
- (3)P.W.3 is Mahabir Bedia,
- (4)P.W.4 is Jaikishun Bedia,
- (5)P.W.5 is Suresh Bedia,
- (6)P.W.6 is Sukera Bedia,
- (7)P.W.7 is Ram Niwash Singh and
- (8)P.W.8 is Parvati Mosomat

12. The prosecution, in support of its case, got marked following documents as Exhibits, which are as follows:-

- (i) Ext.1 is the signature of informant on the written report,
- (ii)Ext. 2 is the signature of Officer I/C on the formal F.I.R.

13. Thereafter, the appellant was examined under Section 313 Cr.P.C. on 25.04.2007, to which he denied the circumstances put forth before him.

14. Neither any defence witness was examined nor any document was marked as the Exhibit.

15. Thereafter, the learned Court below had convicted the appellant for the offence under Section 376/511 I.P.C. and sentenced him to undergo R.I. for a period of four (04) years. Hence, this Criminal Appeal has been filed.

16. So far as F.I.R. is concerned, it reveals from the F.I.R. that the appellant, on the pretext of solving the land dispute of the Prosecutrix, took her on his Motor Cycle on the pretext of meeting with a lady Leader and firstly she was taken to a house of one Pradeep and thereafter, while she was being taken to a lonely place then she jumped from the motor cycle due to which she sustained injury, however, the appellant again got her seated on the motor cycle and took her towards Gola and stopped the motor cycle between the village Gobargada and Ghasihagada, at around 11 p.m. and tried to commit rape upon her, which was protested by the informant and she bite his hand and then the appellant fled away and the informant came to the house of one Jai Krishun Bediya at Village Chokarbera and where she was given meal and clothes by the villagers.

17. So far as the oral evidence is concerned, P.W.1 is the victim girl, i.e. the Prosecutrix, and stated that on 24.10.2005, when she arrived near the Shreyas Hotel then the appellant induced her to solve her land dispute and took her to the house of one Pradeep Khotwar of Nayadih village and from

there he took her to the office of the C.O. and induced to take her to the house of the Minister Chandra Prakash Chowdhary, but he brought her to the ‘Sasural’ of one Pradeep Khotwar. However, she could not meet said Pradeep Khotwar and then he took her to a lonely ‘Gully’ and then the informant jumped from the motor cycle due to which she sustained injury and blood started oozing out and she fell in an unconscious like condition in the Motor cycle and they arrived at the place between Ghasiyagada to Gobargada, where the appellant tried to commit rape upon her and had torn her clothes and she also bite the appellant by her teeth and then he fled away after giving her threatening and he also tried to throttle her neck. She has proved her signature on the F.I.R. marked as Ext. 1.

18. During cross-examination, she has stated that she had gone outside the house for taking medicine from the doctor as her younger sister Bali Kumari was ill, however, she had no prescription of any doctor and she had not gone before any doctor and was waiting near Suresh Hotel for arrival of the vehicle. She further stated that land of her father had been taken possession of by some unknown and the accused induced her for getting favourable decision in her favour and hence, she sat on the Motor-cycle with him. She further stated that the appellant had taken her to the Office of the Circle Officer, but she had not

made any protest even on the motor cycle at Ramgarh, however, she could not meet any lady leader.

She further stated during her cross-examination that she had disclosed the fact of tearing of her clothes before the police and she also disclosed of tearing of her salwar before the police.

She was treated in government hospital by a local doctor who prescribed her some medicine. She further stated that prior to institution of this case, a Panchayati was held on 20.01.2005, with regard to love affairs.

19. Thus, from scrutinizing the evidence of P.W.1, i.e., the Informant, it would appear that she had improved her version on the point of occurrence as in the F.I.R. she had stated that she went with the appellant to the house of one Pradeep Kotwar for solving her land dispute and thereafter, she was brought to the office of Circle Officer, Gola. However, during her cross-examination, she had stated that she had gone outside the house for purchasing the medicine prescribed by the Doctor as her younger sister was ill.

However, her evidence will be again discussed after discussion of the evidence of other witnesses.

20. P.W. 4 is one Jai Kishun Bediya, who stated during his evidence that when he opened the

door at night then the victim girl came inside and her cloth was wet and he had not seen her torn clothes.

P.W. 4 has been declared hostile by the prosecution.

During cross-examination he had stated that he does not know about the occurrence and he had not given any statement before the police and thus, the evidence of P.W.1, i.e. Informant-Prosecutrix is contradictory to the evidence of P.W. 4 on the point that she had been given clothes by P.W.4, namely Jai Kishun Bediya and P.W.4 has not supported the prosecution case.

21. P.W.2 is Fukan Bediya, who tried to support the prosecution case as stated by the Informant, however, during cross examination he stated that he was giving evidence as per information disclosed by the victim girl.

Thus, it is evident that P.W.2 is a hear-say witness and his evidence cannot be relied upon.

22. P.W.3 is Mahabir Bediya, who stated during his evidence that the victim girl arrived at his house in the morning wearing full pant and asked for lady clothes.

During cross-examination, he stated that he had handed over some clothes to the informant of this case. He also admitted that informant-Victim Girl is his sister in relation.

Thus, it is evident that P.W.3 is also a hear-say witness as the victim girl arrived in his house on the next day after the occurrence and is also an interested witness as he happens to be the brother of the informant in relation and hence, evidence of P.W.3 is also not reliable.

23. P.W.5 is Suresh Bediya, who has also been declared hostile by the prosecution.

During cross-examination, he has stated that he is a shop keeper. Thus, the evidence of P.W.5 is not reliable.

24. P.W.6 is Sukra Bediya, who stated to have seen the appellant and informant near the Hotel of one Suresh and the appellant asked him to accompany him to the house of one Pradip, but he refused to go there and he left. He further stated that on the next day he learnt from the victim girl that the appellant moved with her at several places and at lonely places and tried to commit rape upon her.

During cross-examination, he admitted that he was giving evidence on the basis of information received from the victim girl and he is a hear-say witness. He also admitted that the informant is his sister in relation.

25. Thus, from the evidence of P.W. 6, it is evident that though he had claimed to have seen the victim and the accused together on the date of occurrence, but he himself admitted that he heard

about the occurrence from the victim girl and thus, he is a hear-say witness and he also admitted his relationship with the victim girl and hence, his evidence is also not reliable.

26. P.W.7 is Ram Nivas Singh, i.e. the A.S.I., who is the I.O. of this case and he stated during his evidence that after institution of the F.I.R. by the Officer-in-Charge, he was handed over the investigation of this case. Thereafter, he recorded the subsequent statement of the Informant and he inspected at the place of occurrence situated near village Ghasidagada at Muri Road and stated that there is no house for a long period and there is *Jungle Jhari*.

He described the boundary and found nothing at the place of occurrence. Thereafter, he recorded the statement of P.W.2, P.W.3, P.W.4, P.W.5, P.W.6 and P.W.8, namely Fekan Bediya, Mahabir Bediya, Jaikishun Bediya, Suresh Bediya, Sukera Bediya and Most. Parvati Devi respectively and thereafter he had arrested the appellant and had submitted chargesheet against him under Section 376/511 I.P.C. He proved the formal F.I.R. as Ext. 2.

During cross-examination, he stated that he had not recorded any statement of any person near the place of occurrence as it was a lonely place.

However, he also admitted that he had not sent the victim girl for medical examination before

the doctor when she arrived at the police station and nothing was seized from her.

27. Thus, from scrutinizing the evidence of P.W.7, i.e. the I.O., namely Ram Niwash Singh, it is evident that he had not sent the victim girl for medicals examination and the injury on the person of the victim girl had not been proved. He also had not seized the torn clothes of the victim girl and it was also not handed over by the victim girl.

Thus, the evidence of I.O. does not corroborate the prosecution case.

28. P.W. 8 is Parvati Devi, who is the mother of the victim girl and had supported the prosecution case.

However, during cross-examination, she stated that the informant-victim girl had left the house at 10 a.m. and no one was unwell in her house. She stated that there was a Panchayati with regard to Land as the land was snatched by some other people. However, she did not give any detail with regard to the land in question. She also stated that though her daughter is not a leader of MALE (i.e. a political Party), but she is a social worker of MALE and she is not aware of the date and time of the occurrence.

Thus, it is evident that P.W.8 is also a hear-say witness and whatever she had stated during her evidence is on the basis of the information received from the victim girl.

Hence, the evidence of P.W.8 is also not reliable.

29. It transpires that there are several inconsistencies in the prosecution case. Firstly, the torn clothes of the victim girl was not handed over to the police and nothing was seized by the police.

30. It transpires that the victim girl was not medically examined by the Doctor and injury on her person has also not been proved.

31. It further transpires that any details of land has not been given by either by the victim girl, i.e. the P.W.1 or her mother, i.e. P.W.8, namely Most. Parwati and nothing has come during investigation with regard to land dispute with any person.

32. It further transpires that the victim girl on her own had moved with the appellant for the whole day and they had stayed at several places including the Office of the Circle Officer, Gola and one Pradeep Khotwar, but the police had neither examined Pradeep Khotwar nor any person in the house of Pradeep Khotwar nor any employee in the Office of the Circle Officer, Gola.

33. Considering the inconsistencies and contradictions in the evidence of prosecution witnesses and also considering the fact that the evidence of P.W.1, i.e. the Informant - the Victim Girl is not supported by P.W. 4, namely Jai Kishun

Bediya, this Court finds that reliance upon evidence of victim girl cannot be made.

34. Under the circumstances, in view of the discussions made above, judgment of conviction and sentence dated 11.05.2007, passed by Sri Madan Mohan Singh, the learned Additional Sessions Judge, Fast Track Court No.VII, Hazaribagh, in Sessions Trial No. 145 of 2006 are set aside and the appellant, namely Dhiren Mahto @ Dhirendra Mahto is acquitted for the offences under Section 376/511 I.P.C. and he is discharged from the liability of his bail bonds.

35. Thus, this Criminal Appeal, i.e. Cr.Appeal (S.J.) No. 590 of 2007 is allowed.

Let the entire Original Lower Court Records be sent to the learned Court below at once.

(Sanjay Prasad, J.)

Jharkhand High Court, Ranchi
Dated 21st March, 2024
s.m.