

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No. 60 of 2018

(Against the judgment and order of conviction and sentence dated 1.8.2017 (sentence passed on 2.8.2017) passed by Sri Anil Kumar Singh No.-II, the learned Additional Sessions Judge-I, Lohardaga in S.T. Case No. 27/11.

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| Maya Oraon. | ... | Appellant |
| Versus | | |
| The State of Jharkhand (through Railo Orain) | ... | Respondent |

CORAM: HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
: HON'BLE MR. JUSTICE DEEPAK ROSHAN

For the Appellant : Mr. Suraj Kumar, Advocate
For the State : Mr. Rajesh Kumar, A.P.P.

R. Mukhopadhyay, J. Heard Mr. Suraj Kumar, learned counsel appearing for the appellant and Mr. Rajesh Kumar, learned A.P.P. for the State.

2. This appeal is directed against the judgement and order of conviction and sentence dated 1.8.2017 (sentence passed on 2.8.2017) passed by Shri Anil Kumar Singh No. II, the learned Additional Sessions Judge-I, Lohardaga in S.T. Case No. 27/11, whereby and whereunder the appellant has been convicted for the offence punishable under section 376 IPC and has been sentenced to R.I. for ten years along with a fine of Rs.10,000/- and in default in payment of fine to further undergo rigorous imprisonment for ten months.

3. Initially a complaint case was lodged by Railo Orain against three accused persons wherein it has been stated that her daughter (hereinafter referred to as X) is aged about 16 years and is deaf and dumb. For the purposes of digging an irrigation well, Mangra Oraon had come to her village along with a labour Fagu Oraon and after a few months, Maya Oraon (appellant) son of Fagu Oraon came to take money from his father. Maya Oraon had thereafter come on several occasions to her village and also resided in her house for 2-3 days. It has been alleged that Maya Oraon on the pretext of marriage had committed rape upon her daughter. In course of treatment of Filaria of her daughter she came to know on 8.9.09 that her daughter is pregnant and on 23.9.09 she gave birth to a child. On being confronted, Maya Oraon had accepted the fact that he had established physical relationship with the daughter of the complainant. After a few days, Maya Oraon had called her to his village for settlement and when the complainant visited village-lthe, the uncle's of Maya Oraon claiming themselves to be belonging to an extremist group had threatened her. She

thereafter returned back to her village and went to Kisko P.S. to lodge a case but when no action was taken by the police she had instituted a complaint case.

4. The complaint was sent to the police by invoking section 156(3)Cr.P.C. pursuant to which Mahila P.S. Case No. 28/2010 was instituted against Maya Oraon and two others. On completion of investigation, charge sheet was submitted against Maya Oraon and Mical Oraon and after cognizance was taken the case was committed to the court of sessions where it was registered as S.T. No. 27/11. Charge was framed against the accused persons under sections 376, 201/34 IPC which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as eight witnesses in support of its case.

P.W-1-Aguan Lakra has stated that the incident is of two years back. Gobardhan Oraon was constructing a well in his land and the same was being done by Fagu Oraon who used to stay in the house of Gobardhan Oraon. Sometimes Maya Oraon who is the son of Fagu Oraon used to come to take money from his father and stayed in the house of Gobardhan Oraon. Maya Oraon used to stay for 3-4 days. Maya Oraon had sexually exploited victim-X, the deaf and dumb daughter of Gobardhan Oraon and the child was also born to victim-X. He has stated that victim-X had a Filaria kind of disease and in course of treatment it came to light that she is pregnant. He has stated that victim-X through gestures had indicated that it was because of Maya Oraon she had become pregnant. A meeting was held in the village wherein Maya Oraon had accepted his guilt and agreed to marry the victim-X who also had agreed to the marriage. However, later on Maya Oraon refused to solemnize marriage and the uncle of Maya Oraon threatened to eliminate them as they belong to an extremist group.

In cross-examination, he has deposed that Fagu Oraon had worked for Gobardhan Oraon for six months. Maya Oraon used to visit Gobardhan Oraon every month.

P.W-2-Jagat Pal Oraon has stated that Maya Oraon had committed wrong with the daughter of Railo Orain and for which he and the others had gone to the house of Maya Oraon. The uncle of Maya Oraon namely Mical Oraon was threatening them of dire consequences as he claimed himself to be a member of MCC. The victim-X was subjected to rape by Maya Oraon

resulting in her becoming pregnant. The victim-X had given birth to a child who is now two years old. He has further stated that the victim-X had disclosed through gestures that Maya Oraon on the pretext of marriage had established physical relationship with her.

In cross-examination, he has deposed that the daughter of the informant is deaf and dumb and though attempts were made to get her marriage solemnized but it failed.

P.W-3-Mukti Lakra has reiterated what has been stated by P.W-1 and P.W-2 in her examination in chief.

In cross-examination, she has deposed that the distance between her house and the house of Railo Orain is about twenty yards. The doctor had disclosed about 7-8 months prior to the delivery that the victim-X is a pregnant.

P.W-4-Railo Orain is the informant who has stated that at the time of the incident she was in her house along with her husband and daughter who was aged around 16 years. She was allotted funds for construction of well and accordingly she was taking steps for such construction in the village. For such purpose, she had called Mangra Oraon and along with him one labour namely Fagu Oraon had come. During the process of construction, the son of Fagu Oraon namely Maya Oraon used to come to take money and the frequency of Maya Oraon in coming to her house increased. In the meantime since the body of her daughter was bloating she was taken to Sadar Hospital, Lohardaga and it was disclosed that she was pregnant. Her daughter is deaf and dumb and when the doctor asked her about her pregnancy she disclosed in gestures that Maya Oraon on the pretext of marriage had established physical relationship with her which resulted in her becoming pregnant. Her daughter gave birth to a child who is now aged 2 and ½ years. She has stated that when she returned home, Martial Paster and Maya Oraon had called and invited her to their village for a settlement. She went to the village of Maya Oraon with six persons and the meeting was held but Mical Oraon did not allow a settlement to be arrived at and instead threatened them.

In cross-examination, she has deposed that after the well was constructed Fagu Oraon had left for his village but Maya Oraon regularly used to visit her house.

P.W-5-Rama Kant Sharma was posted as an A.S.I.in Mahila P.S. Lohardaga and on 16.07.2010 he was given the charge of investigation. He

has identified the handwriting and signature of the then Officer in charge, Mahila P.S. in the endorsement in the complaint petition, which has been marked as Ext-1/I. He has proved the signature of the Officer in charge, Mahila P.S. in the formal F.I.R. which has been marked as Ext-2. He had inspected the place of occurrence which is at Kocha Barnag in the tiled house of the informant. He had recorded the restatement of the informant as also the statements of Gowardhan Oroan, Mahli Oraon, Jeevan Lata Oraon and Arjan Lakra. The victim was sent for medical examination before the Medical Board and he had obtained the report. The investigation was complete but since he was transferred he had handed over the investigation to the Incharge, Officer in charge, Mahila P.S.

In cross-examination, he has deposed that the victim has not instituted any case before the birth of the child.

P.W-6 is Victim-X who is deaf and dumb and whose statement was recorded with the assistance of an expert. She through her gestures had stated that the construction of well was going on and her father and others were busy in such activity. The accused had expressed his desire to marry her and used to establish physical relationship with her. This resulted in a son having been born to her who is now aged about five years. She has indicated that the accused has not married.

In cross-examination, she has stated that Maya did not come to construct the well and it was being constructed by his father. The accused used to impress upon her not to disclose the incident to anyone.

P.W-7-Dr. Marsa Topno was posted as a Medical Officer at Sadar Hospital, Lohardaga and on 6.9.2010 she had examined victim-X and had found the following:-

Secondary sex Character:-

- (i) Auxiliary hair present.
- (ii) Breast well developed.
- (iii) Stria Albicans-Present.
- (iv) Breast-Pendulous.
- (v) Milk-Secretion-Present.
- (vi) Public hair present.

Abdominal Examination

- (i) Stria Albicans-Present.
- (ii) Marks of violence was not found on any part of the body.

Examination of Private Parts

- (i) No matting of public hair present.
- (ii) Old tear of hymen present.
- (iii) There is old epiriotomy part on right lateral portion of perineum.
- (iv) Vaginal orifice admit two fingers.
- (v) Vaginal Swab taken and examined by microscope. No spermatozoa found.
- (vi) Uterus-normal in size.
Cervix-Slip like.

It has been opined that there is no medical evidence found in favour of recent sexual activity and the victim is a porous lady. She has proved the medical report which has been marked as Ext-3. The Medical Board had assessed the age of the victim-X as between 18 to 20 years. She has identified the signature of Dr. Janardhan Prasad Sinha on the Medical Report which has been marked as Ext-4.

In cross-examination, she has deposed that she had not found any marks of violence on external or internal part of the body of the victim-X.

P.W-8-Jhoku Ram had taken over the investigation of the case from Ramakant Sharma and had submitted chargesheet against Maya Oraon and Mical Oraon.

In cross-examination, he has deposed that he had not taken the statement of any of the witnesses.

6. The statement of the accused was recorded under section 313 Cr.P.C.in which he has denied his involvement in the offence.

7. The defence has examined two witnesses in support of its case.

D.W-1-Sanika Oraon has stated that the informant was pressurizing Maya Oraon to solemnize marriage with her daughter and when he refused he was falsely implicated in a case.

In cross-examination, he has deposed that whatever has been disclosed by him was told to him by Fagu Oraon.

D.W-2-Manjita Bakhla has stated that her marriage was solemnized with Maya Oraon in March, 2008. When Maya Oraon refused to solemnize marriage with the victim, a false case of rape was instituted.

In cross-examination, she has deposed that though the informant knew about her marriage with Maya Oraon but even then she was pressurizing Maya Oraon to solemnize marriage with her daughter. Maya Oraon has denied the paternity of the child born to the victim.

8. It has been submitted by Mr. Suraj Kumar, learned counsel appearing

for the appellant, that there is no specific evidence that the appellant had sexually exploited the victim on the pretext of marriage. It has been stated that it would not be believable that in spite of knowing about the pregnancy of the victim, the case was instituted after an inordinate delay which creates a doubt over the prosecution case. It has also been submitted that no DNA test was carried out to ascertain the biological father of the child. The evidence of the victim who is deaf and dumb suffers from infirmities and infact the learned trial court should have exercised due diligence to ascertain as to whether she possesses the requisite amount of intelligence for giving her evidence.

9. Mr. Rajesh Kumar, learned A.P.P., has submitted that the evidence of the victim has fully been corroborated by her mother P.W-4. The appellant had called for a settlement and when the informant and others went to his village they were threatened by the uncle of the appellant which further reveals the conduct of the appellant.

10. We have heard the learned counsel for the respective sides and have also perused the Lower Court Records.

11. The allegation against the appellant is of sexually exploiting the deaf and dumb daughter of the informant which resulted in her pregnancy and ultimately she gave birth to a male child. Attempts to arrive at a settlement failed.

12. So far as the delay in instituting the case is concerned, the same has been sufficiently explained in the complaint petition. The informant on seeing the victim having developed a bloated persona had taken her to a doctor as she was apprehending about the victim suffering from Filaria but on 8.9.09 the doctor had opined that she was pregnant at which she was admitted in the hospital where ultimately she gave birth to a child on 22.9.09. The complaint case was instituted thereafter which sufficiently explains the delay. The informant who has been examined as P.W-4 has stated about the frequent visits to her house by the appellant and even after the construction of the well was completed the appellant used to visit her house. There apparently seems to be no reason for the appellant to have such frequent visits as he was not involved in the construction of the well and he also used to stay in the house of the informant. The victim who has been examined as P.W-6 through her gestures interpreted by an expert has specifically disclosed as to how the appellant on the pretext of marriage had sexually exploited her. The doctor who has been examined as P.W-7 has also stated

about attempts made by the victim through her gestures to indicate about the commission of rape upon her. The evidences of the witnesses therefore prove beyond any reasonable doubt about the appellant having sexually abused the deaf and dumb daughter of the informant on the pretext of marriage which resulted in the birth of a child. The learned trial court has exhaustively dealt with all aspects of the case and had accordingly convicted the appellant for the offence under section 376 IPC.

13. We do not find any reason to differ with such finding and consequently we dismiss this appeal.

(R. Mukhopadhyay, J.)

(Deepak Roshan, J.)

**Jharkhand High Court, Ranchi,
Dated the 10/06/2024
Rakesh/NAFR**