

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No.499 of 2003

**(Arising out of judgment of conviction dated 18.02.2003
and order of sentence dated 19.02.2003 passed by Learned
Additional District & Sessions Judge, Fast Track Court
No.-I, Gumla, in S.T. Case No.123 of 2002)**

Sanjay Toppo, son of John Toppo, resident of Village Sai Nagar,
P.S. Dumari, District Gumla. **... .. Appellant**

Versus

The State of Jharkhand. **... .. Respondent**

**PRESENT : SRI ANANDA SEN, J.
: SRI GAUTAM KUMAR CHOUDHARY, J.**

For the Appellant : Mr. Sunil Kumar, Advocate
For the State : Ms. Shweta Singh, A.P.P.

J U D G M E N T

By Court, :

14th November, 2024

This Criminal Appeal is preferred on behalf of the appellant being aggrieved by the judgment of conviction dated 18.02.2003 and order of sentence dated 19.02.2003 passed by Learned Additional District & Sessions Judge, Fast Track Court No.-I, Gumla, in S.T. Case No.123 of 2002, whereby and wherein the appellant has been convicted for offences under Sections 363 and 376 IPC. He was sentenced to undergo rigorous imprisonment for 05 years under Section 363 IPC and further to undergo rigorous imprisonment for 10 years under Section 376 IPC with fine of Rs.5,000/-. Both the sentences were ordered to run concurrently.

2. Heard learned counsel for the appellant and learned counsel for the State and perused the material available on record.

3. Learned counsel representing the appellant prays for acquittal of the appellant by arguing that there is gross contradiction in respect of time of occurrence as there is no eye-witness to the occurrence. He submits that P.W.-2 who claimed to have seen the appellant with the victim, has turned hostile. His deposition cannot be relied upon. He also states that the medical

examination report of the victim nowhere indicates any external or internal injury on the person of the victim. He further submits that a false case has been foisted against the appellant as no one had protested while the said incident occurred. He submits that there are very bleak chances of the appellant being convicted in this case solely on the basis of testimony of the victim.

4. Learned A.P.P. representing the State submits that the appellant has been rightly convicted in this case. She stated that this case is primarily based on the testimony of the victim which reveals that the appellant had committed rape upon her and there is nothing in her deposition to disbelieve her statement. Her statement remained consistent in her cross-examination also. Her statement is also corroborated by the medical examination report of the Doctor which indicated the sign of sexual assault as the hymen was found ruptured.

5. The prosecution case as delineated in the written report dated, lodged by the informant, is that on 20.01.2002, he received invitation to have meal at the house of Philip Toppo, who is the co-villager, where he along with his family members went there. When they were having meal, daughter of the informant (victim) went to ease herself outside the house. Meanwhile, one boy of his village namely Sanjay Toppo (appellant herein) who was lying in ambush waiting for an opportunity, forcefully abducted his daughter and took her towards the forest to a remote area. His daughter was kept hostage by Sanjay Toppo for three days. Thereafter, his daughter managed to escape by making an excuse of nature's call and since then his daughter has been with the informant. His daughter stated to him that the appellant committed forcible sexual assault upon her for three days without her consent.

6. On the basis of the aforesaid written report, F.I.R. being Dumri P.S. Case No.3/2002 was registered under Section 363 and 376 IPC and charge-sheet was submitted against the appellant and on plea of not guilty, charge was framed under Section 363 and 376 IPC and trial proceeded.

7. To prove the prosecution case, the prosecution has

examined altogether 09 witnesses:-

a) P.W.-1 namely Kalayan Toppo, stated that he was also a part of the party held at the house of Philip Toppo. He heard that daughter of the informant went to wash her mouth at the well but not returned. Her father and mother told him that Sanjay Toppo abducted their daughter and kept her hostage for few days and committed rape upon her without her consent.

b) P.W.-2 namely Bernadit Ekka, has been declared hostile. However, she stated that she saw the appellant catching the victim, which she informed to the mother of the victim.

c) P.W.-3 namely Johani Minz, stated that she had also attended the party with the informant and his family members. She stated that the victim went towards the courtyard with Berna on the well for washing hands and feet. Her sister told her that one Sanjay Toppo abducted her. After three days, the victim managed to escape by making the excuse of nature's call. In cross-examination, she stated that the police did not record her statement.

d) P.W.-4 namely Lily Kujur deposed that she along with her family attended the house of Philip Toppo for meal. Her daughter along with one Berna went to wash her hand and feet at the well but she did not return and after three days she returned and told her about the incident. They lodged missing report of her daughter to the police.

e) P.W.-5 is the informant of this case. He stated akin to his statement made in his written report. Apart from that he stated that his daughter did not return after washing her hand at the well, but did not return. They went in search of his daughter. Berna, who accompanied the victim to the well for washing hand and feet, was crying. On asking her, she told that Sanjay Toppo on the point of knife abducted the victim by keeping a cloth in her mouth. When he went to the house of Sanjay Toppo and asked his family members about his daughter, they told that they knew nothing about this. He lodged missing report of his daughter with the nearby police station. After three days, his daughter returned to her home and stated about the entire incident. In his cross-

examination, he stated that there was no relationship between the victim and the appellant in past.

f) P.W.-6 is the victim. She deposed that on 20.01.2002 she along with her father and mother went for meal at the house of Philip Toppo. She went with Berna for washing mouth and hand at the well which is near house, where Sanjay Toppo came and at the point of knife, caught her hand, by gagging her mouth with a cloth, abducted her by dragging her towards the forest. Sanjay committed rape upon her for three days without her consent. She managed to escape by making the excuse of nature's call. When she reached home, she narrated entire incident to her father and mother and thereafter reported the same to the Police Station.

In her cross-examination she stated that when she was near the well, Sanjay Toppo came there from behind, caught her and threw her outside the boundary wall and thereafter took her towards the forest in remote area where she was unable to see anything due to darkness. In para-15 she stated that Sanjay pressed her feet to the ground and continuously raped her. She was made hostage by him and he did not leave her even for a moment. After three days, she fled from there on the plea of nature's call.

g) P.W.-7 namely Dr. Shakuntala Pandey is the Doctor who examined the victim. She observed auxillary and pubic hairs present. Breast fully developed. Breast painful on touch. No marks of injury on body externally and no marks of injuries on private parts. She was menstruating. On her vaginal examination, the Doctor found that her hymen was ruptured. Vagina painful on touch and vaginal orifice admits two fingers tightly. Not habitual in sexual act. On vaginal swab examination, no spermatozoa was found. Age of the girl was assessed 14 years. The Doctor further opined that she is not habitual in sexual act but most probably sexual act has been done. Her physical examination report was marked as Ext.2.

h) P.W.-8 namely Syed Md. Ali Rizvi, is the Investigating Officer of this case. He stated that he recorded the statement of the victim and her mother in the Police Station. He sent the

victim for medical examination at Gumla Sadar Hospital. He reached the village of the appellant - Sanjay Toppo and arrested him. He recorded the statement of witnesses and inspected the place of occurrence. He also inspected the courtyard and the well from where the victim was abducted. He stated that the victim was abducted forcefully by Sanjay Toppo from the well towards the forest and she was raped. In his cross-examination he deposed that the place of occurrence is a well and there was boundary wall around that well.

i) P.W.-9 namely Sudhir Kumar Singh is the police official of the concerned police station who marked and proved several exhibits.

8. Several documentary evidences were also exhibited, which are as follows:-

- i. Ext.1 :- Written Report.
- ii. Ext.2 :- Injury Report.
- iii. Ext.3 :- Formal F.I.R.
- iv. Ext.4 :- Case Diary

9. After hearing the arguments of both the parties and considering the evidence, the Trial Court convicted the appellant.

Now the impugned judgment passed by learned Additional District and Sessions Judge, Fast Track Court No.I, Gumla is under challenge.

10. From perusal of the F.I.R. along with the testimony of the witnesses, we find that the appellant has been made an accused for abducting the victim and committing rape upon her.

11. When we go through the evidence of the prosecution witnesses we find that the prosecution case is totally based on the testimony of the victim on the point of rape. Admittedly, the victim was minor at the time of incident, as she was aged about 14 years. The victim in her statement clearly stated that she was forcefully abducted by the appellant who committed rape upon her. She is a reliable witness as her statement remained unshaken in her cross-examination also and the same also corroborates with the medical evidence, showing mark of sexual assault. It bears noting that though P.W.-2 was declared hostile

but she saw the appellant abducting the victim. The argument of learned counsel representing the appellant that no external or internal injury was found on the person of the victim stands mellowed down, as the Doctor though did not find any external injury or any injury on the private part but she found that the hymen was ruptured and there was pain in her private parts. The Doctor also opined that the victim was subjected to sexual assault.

12. We are also not in agreement with the argument assailing the conviction of the appellant on the basis of sole testimony of the victim for the reason that perusal of the evidence of the victim makes it amply clear that the appellant abducted her from the well and took her to the forest in a remote area and continuously raped her until she escaped from his clutches which also means that if the victim did not make an excuse of defecation, the appellant would not let her go.

We find no reason to doubt the credibility or trustworthiness of the victim as corroboration is not the *sine-qua-non* for a conviction of the accused in a case of rape. Therefore, the aforesaid submissions are to be rejected outrightly.

13. The Hon'ble Supreme Court in the case of ***Ravindra Vs. State of M.P.*** reported in ***(2015) 4 SCC 491***, held that if the testimony of the prosecutrix found reliable, by itself, it may be sufficient to convict the culprit and no corroboration of her evidence is necessary which has been reiterated by the Hon'ble Supreme Court in the case of ***Phool Singh v. State of Madhya Pradesh*** reported in ***(2022) 2 SCC 74***, wherein it has been held that in case the version of prosecutrix was found to be credible and trustworthy, further corroboration is not required.

14. Having gone through the totality of facts and circumstances of the case, the evidences of the prosecution witnesses specially the victim, as well as the dictums of the Hon'ble Supreme Court, we do not find any reason to interfere with the conviction awarded by the Trial Court against the appellant.

15. Thus, the instant Criminal Appeal stands **dismissed**

sans any merit. The impugned judgment of conviction dated 18.02.2003 and order of sentence dated 19.02.2003 passed by Learned Additional District & Sessions Judge, Fast Track Court No.-I, Gumla, in S.T. Case No.123 of 2002, are hereby affirmed.

16. However, since we find that the sentence awarded to the appellant is of the year is 2003 and more than 21 years have elapsed and the age of the appellant is now 43 years, thus, we hereby reduce the sentence of the appellant from 10 years to 07 years.

17. As the appellant is on bail, he is directed to surrender before the Trial Court to serve rest of the sentence. If he does not surrender, the Trial Court is directed to take appropriate steps in accordance with law.

18. Pending interlocutory application, if any, stands disposed of.

19. Trial Court Record be transmitted back to the Court concerned.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

HIGH COURT OF JHARKHAND, RANCHI
Dated:- 14/11/2024
AFR / Prashant