

**IN THE HIGH COURT OF JHARKHAND AT RANCHI  
Cr. Appeal (S.J) No. 596 of 2003**

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Lagnu Ram Mahto son of Shri Ghanenath Mahto, resident of Village Durgapur, Tola Lalmatia, P.S. Kashmar, District-Bokaro

.....Appellant

**Versus**

The State of Jharkhand

.....Respondent

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**CORAM: HON'BLE MR. JUSTICE SANJAY PRASAD**

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For the Appellant : Mr. Pankaj Verma, Advocate

For the State : Mr. Pankaj Kumar, Public Prosecutor

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**ORAL JUDGMENT IN COURT**

**Order No: 34/ Dated: 05.12.2024**

This Criminal Appeal has been filed on behalf of the appellant by challenging the judgment of conviction dated 31.03.2003 and sentence dated 01.04.2003 passed by Sri Arun Kumar Datta, learned 4<sup>th</sup> Additional Session Judge, Bermo at Tenughat in Sessions Trial No. 64 of 2002 by which the appellant has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced to undergo R.I for seven (07) years.

2. The prosecution case, in brief, is that on 23.03.2000 at about 07:30 PM in the evening, while the informant Meena Devi had gone to answer the call of nature and in the meantime, the accused came out from the bush near Kila and the accused had closed the mouth of the informant and threatened her of dire consequences. Then, the informant kept quite and the accused had taken the informant Meena Devi at his cycle repairing shop and the accused had committed rape upon her for the entire night at his cycle repairing shop at the point of Dagger. It is further alleged that in the morning while the accused was taking the informant

Meena Devi to Ranchi. Then, she was seen by her village people and after seeing the people the accused had fled away. Thereafter, the informant Meena Devi came to her house and narrated the incident to her father and other village people. It is further stated in the F.I.R that the father of the accused had also come and he suggested to get the matter pacified in Panchayati and thereafter, Panchayati was held twice but the matter could not be settled. Therefore, on 13.05.2000 the informant Meena Devi had submitted a written report before the Kasmar Police Station on which the Kasmar Police had registered the case Kasmar P.S. Case No. 11/2000 dated 13.05.2000.

3. Heard Mr. Pankaj Verma, learned counsel appearing on behalf of the appellant and Mr. Pankaj Kumar, learned Public Prosecutor appearing on behalf of the State.

4. Learned counsel for the appellant has submitted that 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 not committed any rape upon the victim lady rather a false and concocted story has been put forward. It is submitted that PW-1, PW-2, PW-3, PW-4 namely Babu Ram Mahto, Moharai Mahto, Madhusudan Mahto, Jageshwar Mahto respectively are hearsay witnesses. It is submitted PW-5 Fagu Ram Mahto is tendered whereas PW-6 Shanker Mahto is a hearsay witness. It is submitted that PW-10 Dr. J.N Sriwastav is the Doctor in this case who had examined the victim lady and had found no sign of rape. It is submitted that PW-9 is the victim lady herself and stated an improbable case that appellant caught hold of her hand and taken her to his cycle shop and however, the victim lady did not try to flee away even when

the appellant was opening the lock of his shop and even the appellant was sleeping while the victim lady was awakened all through the night. Hence, the judgment of conviction and sentence may be set aside and the appellant may be acquitted.

5. On the other hand, learned Public Prosecutor has submitted that the judgment of conviction and sentence passed by the learned Court below is fit and proper and no interference is required. It is submitted that the learned Court below has considered all the material witnesses and facts. It is submitted that PW-1 is the brother of the informant who has fully supported her case. It is submitted that PW-2 is the father of the informant who has also fully supported the prosecution case and stated that the appellant had committed rape upon his daughter. It is submitted that PW-3, PW-4 and PW-5 namely Madhusudan Mahto, Jageshwar Mahto, Fagu Ram Mahto are the independent witnesses and although, they are hearsay witness and they have supported the commission of rape upon the informant. It is submitted that PW-6 and PW-7 namely Bhukal Mahto and Shanker Mahto, have also supported the prosecution case. It is submitted that PW-8 is an Advocate Clerk who has proved the formal F.I.R and written report marked as Exhibit-1 and Exhibit-2 respectively.

It is further submitted that PW-9 is the victim lady who has fully supported her case and stated during her evidence that the appellant had committed rape upon her by threatening her and he refused to marry with her. It is submitted that the delay took place due to Panchayati which was conducted thrice and as such, there was some delay in lodging the F.I.R. It is submitted that PW-10 is the Doctor in this case who has found no sign of rape but the same is not relevant as victim lady was examined after

much delay and hence, the prosecution has successfully proved its case beyond all reasonable doubts and hence, the judgment of conviction and sentence is fit and proper and no interference is required and hence, this appeal may be dismissed.

6. Perused the Lower Court Records and considered the submissions of both the sides.

7. It transpires that the victim lady "X" (name not being disclosed as per guidelines of Hon'ble Supreme Court) had lodged the F.I.R against the appellant and two others namely Lagnu Ram Mahto, Ghanenath Mahto and Uma Kant Mahto respectively on 13.05.2000 under Section 376 and Section 120-B of the Indian Penal Code for the occurrence alleged to have taken place on 23.03.2000.

8. It transpires that the police, after completing investigation, had submitted charge sheet against the appellant under Section 376 of I.P.C on 16.08.2000. Thereafter, the learned A.C.J.M, Bermo took cognizance against the appellant under Sections 376 of the I.P.C on 24.08.2000.

9. After supplying the police papers to the accused person the case was committed to the Court of Sessions.

10. Thereafter, the charges were framed against the appellant on 06.03.2002 by Sri Arun Kumar Datta, learned 4<sup>th</sup> Additional Session Judge, Bermo at Tenughat for the offence under Section 376 of the I.P.C and to which he pleaded not guilty and claimed to be tried.

11. During trial the prosecution got examined ten (10) witnesses, who are as follows:-

(i) P.W-1 is Babu Ram Mahto,

- (ii) P.W-2 is Mohrai Mahto,
- (iii) P.W-3 is Madhusudan Mahto,
- (iv) P.W-4 is Jageshwar Mahto,
- (v) P.W-5 is Fagu Ram Mahto,
- (vi) P.W-6 is Bhukal Mahto,
- (vii) P.W-7 is Shanker Mahto,
- (viii) P.W-8 is Satyendra Kumar Sinha
- (ix) PW-9 is Meena Devi (i.e. the informant)
- (x) PW-10 is Dr. J. N Srivastav (i.e. the Doctor).

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

- (i) Exhibit-1 is the F.I.R of Kasmar 11/2000,
- (ii) Exhibit-2 is the fardbeyan of Kasmar 11/2000,
- (iii) Exhibit-3 is the X-Ray Report of Meena Devi,
- (iv) Exhibit-4 is the X-Ray Plates,
- (v) Exhibit-4/1 is the X-Ray Plates,
- (vi) Exhibit-4/2 is the X-Ray Plates,
- (vii) Exhibit-4/3 is the X-Ray Plates,
- (viii) Exhibit-4/4 is the X-Ray Plates,
- (ix) Exhibit-5 is the Injury Report of Meena Devi.

13. Thereafter the appellant was examined under section 313 Cr.P.C on 11.03.2003 by the learned Court below and to which the appellant denied the circumstances put forth before him.

14. Neither any defence witness was examined on behalf of the appellant nor any document was marked as exhibit on behalf of the appellant.

15. Thereafter hearing both the sides, the learned court below has convicted the appellant for the offence under section 376 of the I.P.C and sentenced him to undergo rigorous imprisonment for

a period of seven (07) years. Hence, the appreciation of the evidence of the prosecution witnesses is required.

16. It reveals that the informant had lodged the F.I.R on 13.05.2000 before the Officer-in-Charge stating therein that the appellant had committed rape upon her on 23.03.2000 in his cycle repairing shop at the point of knife. Thereafter, on the next day she informed the matter to her father and her villagers and after which panchayati was conveyed but the matter could not be settled and hence, the F.I.R was lodged. Thus, it is evident that F.I.R was lodged after delay of about one and half month and no plausible explanation has been given. Even the date of Panchayati has not been disclosed in the F.I.R

17. So far as the evidence of prosecution witnesses is concerned, PW-1 is Babu Ram Mahto, who is the brother of the victim lady and has stated during his evidence that the appellant had committed rape upon the victim lady in his cycle shop and while she was being taken to Ranchi then the victim lady was caught and the matter was reported to the villagers and Panchayati was conveyed thrice which was attended by Surendra Mahto, Gayaram Mahto, Sidheswar Mahto etc and Panches had decided to get married the appellant with the victim lady but the appellant had fled away.

During cross-examination, he admitted that victim lady is elder to the appellant. He also admitted that victim lady was married four (04) years ago and who lived in her matrimonial house for one year and thereafter, she is living in her Naihar for more than two years. He further admitted that at Para-16 he was not present at his house on the date of occurrence as he had gone outside for giving examination in Sector-4, Bokaro Steel City and

had stayed in the house of his Mausi and his exam was scheduled on 26.03.2000 and he returned to his house on 28.03.2000. He admitted that if the appellant Lagnu Ram Mahto had married the victim lady then this case was could not have been instituted. He denied the suggestion that the character of his sister was not proper and hence, his husband is not keeping her. He also denied the suggestion for making the appellant as his Behnoi.

18. Thus, from scrutinizing the evidence of PW-1, it is evident that he is a hearsay witness and although, he is brother of the victim lady but he wanted to marry his sister with the appellant Lagnu Ram Mahto which was not practically possible. It is also evident that the victim lady is elder to the appellant in age. He also could not say the date of Panchayati. Thus, the evidence of PW-1 is not reliable.

19. PW-2 is Mohrai Mahto, who is the father of the informant and has stated during his evidence that while the victim lady had gone out to attend the call of the nature then she did not return and the on the next day, she came back and informed that the appellant had committed rape upon the victim lady in his cycle shop and while she was being taken to Ranchi by the appellant then he was encircled by the villagers. Thereafter, the Panchayati was conducted twice but the appellant did not appear and fled away.

During cross-examination, he admitted that his daughter is married with Surendra Mahto three years ago and after marriage his daughter i.e. victim lady is living in his house. He also admitted to have informed the occurrence to his son-in-law Surendra Mahto and after marriage his son-in-law had gone to Bombay. He also admitted that on the date of occurrence, when his daughter had gone to attend the call of nature he was not there

in the house. He further admitted in Para-10 that he wanted to marry his daughter Meena Devi i.e. the Victim lady with the appellant Lagnu Ram Mahto but he had not informed this fact to his son-in-law. He further admitted to have not seen his daughter i.e. the victim lady with the appellant Lagnu Ram Mahto at any point of time.

He further admitted and stated that the victim lady is still ready to marry with the appellant and if the appellant Lagnu Ram Mahto would marry with the victim lady then he would not have been instituted this case. He denied the suggestion that character of his daughter is not good and hence, his son-in-law has left her.

20. Thus, from scrutinizing the evidence of PW-2, it is evident that he is an interested witness and he wanted to forcibly marry his daughter with the appellant who is elder in age to the appellant. He had not named the Panches who had conducted the Panchayati twice and he had also not informed the matter to the police when she did not return. He had also not taken the name of any person who had seen his daughter victim lady with the appellant Lagnu Ram Mahto while she was being taken to Ranchi. Thus, the evidence of PW-2 is also not reliable.

21. PW-3 is Madhusudan Mahto who is also a hearsay witness and stated during his evidence that he had learnt about the occurrence of rape from the victim lady and Panchayati was held twice at Durgapur School and Panches wanted to marry the victim lady with the appellant Lagnu Ram Mahto.

During cross-examination, he admitted that the occurrence had not been taken place before him on 23.03.2000. He also admitted to have gone to the Police Station on 24.03.2000. He also could not say about the first date of Panchayati and

second date of Panchayati.

22. Thus, from scrutinizing the evidence of PW-3, it is evident that he is also a hearsay witness and he wanted that the appellant should marry with the victim lady and hence, PW-3 is an interested witness and not reliable.

23. PW-4 is Jageshwar Mahto who is also hearsay witness and stated during his evidence that he had learnt about the occurrence of the victim lady and for which he also stated that Panchayati was conducted twice which was attended by 80-90 persons and it was decided in Panchayati that Lagnu Ram Mahto should marry with the victim girl but the family members of the appellant did not agree.

During cross-examination, he admitted to be acquainted with Lakhal Lal Mahto who was Mukhia at Durgapur Panchayat. He admitted that Mohrai Mahto is his Gotia and living at a distance of 250 yards from his house. He further admitted that the occurrence was not held during his presence and is giving evidence as hearsay witness. He also admitted that in Para-12 that the victim lady is a married lady.

24. Thus, from scrutinizing the evidence of PW-4, it is evident that he is also a hearsay witness and stated that Panches wanted to forcibly marry the appellant with the victim lady and hence, PW-4 is an interested witness and not reliable.

25. PW-5 is Fagu Ram Mahto who is also a hearsay witness and stated the same as stated by PW-4.

During cross-examination, he admitted that Mohrai Mahto is his Gotia and Meena Devi is in the house of Mohrai Mahto. However, he is not aware about the husband of the victim lady Meena Devi. He denied to have given false evidence at the

request of Mohrai Mahto.

26. Thus, from scrutinizing the evidence of PW-5, it is evident that he is an interested witness and Gotia of PW-2 Mohrai Mahto and hence, his evidence of PW-5 is not reliable.

27. PW-6 is Shanker Mahto who is also a hearsay witness and stated during his evidence that the appellant had committed rape upon the victim lady in his cycle shop and he learnt about the occurrence on the next day. Thereafter, Panchayati was held twice and Panches wanted to marry the victim lady with the appellant but he refused.

During cross-examination, he admitted that victim lady was married 4-5 years ago but he neither met the husband of victim lady nor he is aware of the name of her husband. Victim lady is till living in her Naihar. He further admitted that Panchayati was held twice but he failed to name any Panches.

28. Thus, from scrutinizing the evidence of PW-6, it is evident that he is a hearsay and formal witness. Hence, the evidence of PW-6 is not reliable as he is a hearsay witness.

29. PW-8 is Satyendra Kumar Sinha who is an Advocate Clerk and has proved the formal F.I.R marked as Exhibit-1 and also proved the written report marked as Exhibit-2.

During cross-examination, he admitted that the formal F.I.R and written report were not written during his presence.

30. Thus, from scrutinizing the evidence of PW-8, it is evident that the evidence of PW-8 is not reliable as he is not a competent witness to prove the formal F.I.R and written report. He also admitted the he is Munshi of A.P.P and he is giving evidence at the instruction of Babu Ram Mahto who is the brother of the victim lady. Thus, the evidence of PW-8 is also not reliable.

31. PW-10 is Dr. J. N Sriwastav who has stated during his evidence that on 13.05.2000, he was at Bokaro and on the same day, he had taken the X-Ray of Meena Devi on the request of Medical Officer, Sadar Referral Hospital, Chas. However, after performing the X-Ray on victim lady, had found following on her person as follows:-

- (i) From Pelvis A.P. view the facts were all the secondary ossification centers of different bones of pelvis have joint with their respective bones, so the age of the lady seems to be 25 years or above.
- (ii) X-Ray of right knee A.P. and lateral the secondary ossification center of lower end of femur and upper end of tibia have joint with their respective bones, so age must be 20 years or above.
- (iii) Right elbow A.P. lateral, 1<sup>st</sup>- the secondary ossification center of medial Epicondyle has joined, so the age is 20 years or above. 2<sup>nd</sup>- the secondary ossification centers of other bones around elbow fuse earlier with the respective bones. So they were not considered while determining the age of lady.
- (iv) Right available A.P. and lateral the secondary ossification centers of lower end of falula end that of Tibia have fused with the respective bones, so age is above 18 years.
- (v) Right wrist A.P. and lateral the secondary ossification centres of lower end of ulna end that of radius have joint with their respective bones, so age is 19 years or above.

He also stated that the victim lady was aged about 25

years from the date of occurrence and has proved the X-Ray Report marked as Exhibit-3 and has further proved X-Ray Plates marked as Exhibit-4 to Exhibit-4/A respectively.

32. It transpires that the prosecution has not examined the victim lady before the Doctor on the point of commission of rape rather she had been examined by Dr. J. N Srivastav on the point of determination of age. Thus, the victim lady was not examined on the point of commission of rape.

33. PW-9 is Meena Devi i.e. the victim lady herself and stated during her evidence that on the date of occurrence while she had gone to attend the call of nature then the appellant came and caught hold of her hand at the point of knife and took her to his cycle shop where he committed rape upon her for the whole night. She further stated that after returning to her house, she informed the matter to her parents and then the Panchayati was conducted thrice and several peoples had assembled but the appellant never turned for Panchayati rather his uncle and other persons had appeared before Panchayati. Thereafter, the Panches had decided that one Umakant would pay her Rs. 700/- per month. However, when the appellant did not return then she went to the Police Station and F.I.R was written by Siddheswar Mahto and she put her thumb impression. She futher stated that Mithila Devi is her mother and she is ill.

34. During cross-examination, she admitted to be a married lady and she remained in her matrimonial home for about 8-9 days. However, she is living in her Naihar. She also stated that after the occurrence, she had not gone to her matrimonial home. She has been thoroughly examined on the point of her living at Sasural and to which she has been given contradictory statements.

35. During her further cross-examination, she stated that one Khanjo River flaws near the door of her Naihar which is situated at around 250 steps. She also admitted that the villagers and other ladies used to attend the call of nature near the said river. She admitted Dashrath Mahto had established the brick Kiln, who is the son of his brother in Gotia and she used to work in his brick Kiln. She further admitted in Para-12 of her cross-examination that while she was returning from Brick Kiln of Dashrath Mahto along with 4-5 ladies then on the way, the appellant Lagnu Ram Mahto caught hold of her hand and took her to his cycle shop which was situated at a distance of 60-70 step. She also admitted for following the appellant Lagnu Ram Mahto and at that time, there was Kirtan Party near Bajrang Bali Temple. She also admitted that Lagnu Ram Mahto had opened the lock of the shop while his key was in his pocket and she was standing ahead of him.

Therefore, it is evident that the victim lady never tried to flee away even when she was not caught by the appellant rather, she was following the appellant while he took her to his cycle shop which is completely an improbable story.

She further stated in Para-18 of her cross-examination that she never slept for whole night whereas, the appellant Lagnu Ram Mahto was sleeping for the whole night.

Thus, it is evident that the victim lady never tried to leave the alleged place of occurrence while she was sleeping with the appellant Lagnu Ram Mahto. She admitted that while she was being taken to the village and she had seen by the several ladies of the village, however, she failed to take name of any ladies. She also admitted in Para-21 of her cross-examination that she had gone to the police station after one and half months after the

occurrence. She further admitted before Officer-in-Charge that Panchayati had decided that Umakant will pay Rs. 700/- per month to her. She also admitted in Para-26 of her cross-examination that Panchayati wanted to marry her with the appellant Lagnu Ram Mahto forcibly. She on her own further stated that she still wants to marry with the appellant Lagnu Ram Mahto.

36. Thus, from scrutinizing the evidence of PW-9, it is evident that she wanted to marry with the appellant Lagnu Ram Mahto who is younger in age to the victim lady and hence, she has falsely implicated the appellant in order to marry with him. Although, the victim lady is a married woman and her husband is one Surendra Mahto but still she wanted to marry forcibly with the appellant by putting the allegation of rape.

37. It reveals from Exhibit-3 which is the X-Ray Report that the victim lady is aged around 25 years on the date of her examination on 13.05.2000 whereas, the appellant Lagnu Ram Mahto was aged about 19 years on the date of occurrence. Even the PW-10 Dr. J. N Srivastav stated during his evidence that the victim lady is aged about 25 years and above on the date of occurrence.

38. Thus, it is evident that victim lady was not living at her matrimonial home despite the fact that she is a married lady and one Surendra Mahto is her husband.

39. Thus, the evidence of PW-9 victim lady is not credible and her evidence is not worthy to convict the appellant. Her evidence does not inspire confidence in view of manner of occurrence and the subsequent events.

40. In view of the facts and in the circumstances of this case, this Court finds that the prosecution has failed to prove the

prosecution case beyond the shadow of all reasonable doubt against the appellant rather, the appellant Lagnu Ram Mahto has been falsely implicated in this case.

41. Under the circumstances, the judgment of conviction dated 31.03.2003 and sentence dated 01.04.2003 passed by Sri Arun Kumar Datta, learned 4<sup>th</sup> Additional Session Judge, Bermo at Tenughat in Sessions Trial No. 64 of 2002 by which the appellant has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced to undergo R.I for seven (07) years, are set aside and the appellant namely Lagnu Ram Mahto is acquitted for the offence under Section 376 of the I.P.C and the appellant, Lagnu Ram Mahto is discharged from the liability of his bail bonds.

42. Thus, the Criminal Appeal (S.J) No.596 of 2003 is allowed.

43. Let the Lower Court Records be sent back to the learned court below at once by the office.

**(Sanjay Prasad, J.)**

Avinash/  
N.A.F.R