

Cr. Appeal (S.J.) No.406 of 2006

[Against the judgment of conviction and order of sentence dated 18.03.2006 passed by learned Additional Sessions Judge-VI, Fast Tract Court No.III, Godda in Sessions Case No.105 of 2003 & Sessions Case No.32 of 2006]

Sanjay Mahaldar Son of Shri Subodh Mahaldar, Resident of Village Meharma, P.S. Meharma, District-Godda

.... Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Manoj Kr. Sah, Advocate

For the State : Mr. Tarun Kumar, A.P.P.

PRESENT

HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGEMENT

Dated-18/11/2024

By court:

1. Heard, Mr. Manoj Kumar Sah, learned counsel for the appellant and Mr. Tarun Kumar, learned Additional Public Prosecutor appearing for the State.
2. The present appeal has been preferred by the appellant challenging the judgment of conviction and order of sentence

dated 18.03.2006 passed by learned Additional Sessions Judge-VI, Fast Tract Court No.III, Godda in Sessions Case No.105 of 2003 & Sessions Case No. 32 of 2006 whereby and whereunder, the appellant has been held guilty for the offences under section 376 and 354 of Indian Penal Code and sentenced to undergo R.I. for 7 years for the offence punishable under section 376 and R.I. for 6 months for the offence punishable under section 354 of IPC.

FACTUAL MATRIX

3. Factual matrix giving rise to this appeal is that the prosecutrix aged about 16 years was working as a maid servant. It is alleged that in the night of 26.03.2003 at about 08:00 PM, while she was returning from the house of Biru Mirdha after completing domestic work, in the way, Sanjay Mahaldar caught hold her from behind, gagged her mouth and brought towards Manjhali Pokhar and laid down her on earth and committed rape upon her. Thereafter, the accused fled away. It is further alleged that due to fear and shame, she did not disclose the said incident to anyone in the night. But again on 27.03.2003 at about 9:00 PM, when the prosecutrix came out of her house for disposing dirty water, meanwhile, the said accused suddenly gagged her mouth and brought towards

Manjhali Pokhar and forcibly committed rape upon her. It is further alleged when the accused started fleeing, she caught him and raised loud alarm then her brother Dilip Mirda and Billu Mirdha arrived at the place of occurrence but the accused managed to flee away. The prosecutrix disclosed the above incident to her brothers as well as father and villagers. Thereafter, a panchayati was called upon in village wherein the accused did not turn up, hence, some delay was caused and FIR was lodged on 29.03.2003 at Meharma Police Station being Meharma P.S. Case No. 55 of 2003.

4. On the basis of above information, FIR was registered for the offence under section 376 of IPC. After completion of investigation, charge-sheet was submitted against the above named sole appellant. After taking cognizance, the case was committed to the court of Sessions for trial and disposal. The accused did not plead guilty and claimed to be tried. After completion of trial, the impugned judgment and order of conviction and sentence of the appellant was passed, which has been assailed in this appeal.
5. Learned counsel for the appellant has vehemently argued that it is out and out a false case against the appellant. The prosecution has examined as many as 10 witnesses in this case

out of them **P.W.1 Boka Tudu, P.W.2 Shaligram Tudi, P.W.3 Biru Mirda and P.W.6 Pawan Kumar Mirda** have not supported the case. P.Ws.1 to 3 have been declared hostile by the prosecution. The so-called brother of the victim, whose name has been mentioned in the FIR as an eye-witness, has also not supported the prosecution story as alleged by the prosecutrix. The conviction and sentence of the appellant is based solely on the evidence of victim girl (P.W.8) whose testimony also suffers from material contradictions and improvements and also not corroborated from the medical evidence. The place of occurrence is not proved conclusively by the prosecution. There are two places of occurrence alleged by the prosecutrix but the brothers of the victim girl have alleged only one place of occurrence i.e. near pond. But the victim has stated that when she came out from her house for disposing dirty water, immediately, she was caught hold by the accused and rape was committed bringing her to same pond. She did not disclose about the occurrence to anyone for 2-3 days and the factum of the panchayati was also not proved by any of the witnesses. The learned trial court has miserably failed to properly appreciate the evidence adduced by the prosecution and arrived at wrong conclusion. Hence the

impugned judgment and order is fit to be set aside, allowing this appeal.

6. On the other hand, learned Additional Public Prosecutor appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the learned counsel for the appellant and submitted that the prosecutrix has very vividly and in explicit term has deposed the commission of rape by the accused. The evidence of prosecutrix does not suffer from any embellishment and she appears wholly reliable witness hence, learned trial court has committed no error of law and rightly held the appellant guilty for the offence under section 376 of IPC and sentenced him. Accordingly, there is no merit in this appeal, which is fit to be dismissed.
7. I have gone through to the entire record of the case along with impugned judgment and order in the light of the contentions raised on behalf of both the side
8. For better appreciation of the case, a brief resume of testimony of witnesses appears to be just and apposite.
9. It appears that altogether 10 witnesses have been examined in this case. Out of them, **P.W.1 Boka Tudu, P.W.2 Shaligram Tudi, P.W.3 Biru Mirdha** have been declared hostile by the prosecution and not supported the prosecution story.

P.W.4 Md. Mustafa Kalam, is the first Investigating Officer of the case, he has proved the fardbyan of the victim recorded by the then Officer-in-Charge Bishwajeet Singh as Ext.1 and formal FIR marked as Ext.1/1. He has recorded the restatement of the victim during the investigation and visited the place of occurrence. According to him, the place of occurrence of this case is ridge of Majhali Pokhar(pond) situated in village Pahar Khand, Turi Tola. The place of occurrence is a square type field measuring 10ft. x 10ft. x 3ft. deep. It was apprised to him that on both occasions, the victim was ravished at that place by the accused. The house of the victim is situated at a distance of 100 yards south from the place of occurrence and he has sent the victim for medical examination. Thereafter, he handed over the charge of investigation to Officer-in-Charge of the police station.

P.W.5 Dr. Nila Besra has medically examined the victim girl and found following:

External Examination

- Small abrasion on forehead, size- $\frac{1}{4}$ " x 1/6 ", which is superficial in nature caused by hard and blunt substance.

Internal Examination

→No injury on private part. Hymen is obliterated. Uterus normal size.

Macroscopic Examination

→Spermatozoa not found.

→It is opined by the doctor that there is old tear of hymen.

→No recent sign of rape.

→Vagina indicate not sure of intercourse.

→The age of victim is assessed about 16-17 years **to be confirmed by X-ray.**

The medical examination report is marked as Ext.2.

P.W.6 Pawan Kumar Mirdha has simply stated that the incidence happened on Sunday at about 9 PM, and he heard *hulla* from his house and came to place of occurrence then saw that the victim girl, who was disclosing about the commission of rape by Sanjay Mahaldar(appellant). He has also deposed that a panchyati was called in the village but the accused did not turn up.

In his cross-examination, this witness admits that Mehrama Police Station is about 100 yards away from the place of occurrence. His statement was recorded by the police on the next day of occurrence. He also admits that when he

reached at the place of occurrence, the accused had managed his retreat and he could not be chased and apprehended. In the same breath, he also states that when he reached at the place of occurrence, the victim was raising alarm apprehending the accused but they did not went to the house of the accused in the night.

P.W.7 Dilip Mirdha is brother the victim girl. According to his evidence, at about 9 PM, his wife told him that the victim girl is raising alarm, then he along with his brother Billu Mirdha (P.W 10) went near the Pokhar and saw that his sister had caught hold of the accused Sanjay Mahaldar but when they reached there, the accused forcibly liberated himself and fled away. Then, the victim girl told about commission of rape by the accused. A panchyati was also held but the accused did not obey the panchyati.

In his cross-examination, this witness states that prior to him, his brother Billu Mirdha(P.W.10) went to the place of occurrence but at that time the accused fled away and no other villagers were present at the place of occurrence. In the next day morning, a panchyati was held at the house of Baba Ji pradhan. This witness also admits that ancestral house of the accused is situated in village Bajit but in the village Meharma,

he has also taken some land just adjacent to the house of this witness and constructed a house.

P.W.9 Manju Devi is sister-in-law of the victim girl, she states that she heard *hulla* of the victim girl in the night at about 9 PM and at first her husband rushed towards the place of occurrence then she also came out. The victim girl disclosed about commission rape by the accused and on the next day, a panchyati was held and the medical examination of the victim was also conducted by the doctor (P.W.5).

In her cross-examination, this witness has specifically stated that her statement was not recorded during investigation. She has not attended the panchyati. She also stated that the victim has sustained injury on her back and her clothes were torn. The torn clothes were handed over to the doctor.

P.W.10 Billu Mirdha is brother of the victim girl and stated that he heard *hulla* of his sister then his elder brother Dilip Mirdha(P.W.7) rushed towards the place of occurrence, thereafter he also went to the place of occurrence. There, he saw that his sister was lying at the Pokhar, the victim girl did not tell him anything and brought to his home. This witness

has not even complained against the accused as hearsay from the victim girl.

P.W.8 'X' is most important witness-cum-victim of this case. According to her evidence, she went to the house of Biru Mirdha for discharging some domestic work, whose house is just adjacent to her own house. She came out from the house of Biru Mirdha, then Sanjay Mahaldar caught hold of her from behind and brought near Manjhi Pokhar, where he committed rape with her and fled away. On that day, she did not disclose the said incidence to anyone. In the next day at night, she came out from her house for throwing dirty water then Sanjay Mahaldar again caught hold her from behind by gagging her mouth brought her to Manjhi Pokhar and committed rape with her. Then she raised alarm and her both brothers came to the place of occurrence and caught hold the accused and also informed the villagers about the said incidence of rape with this witness. A *panchyati* was held but no decision could be taken then this case was lodged.

There is nothing in her cross-examination to disbelieve or discard her testimony.

10. I have given anxious consideration to the ocular testimony of the witnesses particularly the evidence of victim girl (PW8)

and her medical examination report conducted by the doctor(PW 5) and evidence of other witnesses namely P.W.7 and P.W.10, who happens to be brother of the victim girl. It clearly emerges that the victim was ravished by the appellant on consecutive two days at same place. It is also apparent that the victim girl was aged about 16 years on the date of occurrence and there is no whisper at all that there was love affair between the appellant and the victim girl. Moreover, there is no question of any consent of the victim due to her minority. The appellant has not been able to bring on record any material through cross-examination of the witnesses and the victim to disbelieve their testimony or any other reason for his false implication in this case. In my considered view, the victim girl is absolutely reliable witness in this case and her evidence suffers from no discrepancies or embellishment. The learned trial court has properly apprised and appreciated the evidence adduced by the prosecution and rightly held the appellant guilty for the offences charged against him. I do not find any legal justification for taking a different view to interfere with the impugned judgment and order. I also find that this appeal is devoid of merits and fit to be dismissed. Accordingly, this appeal is dismissed.

11. The appellant is on bail, thus his bail bond is cancelled and sureties are discharged. Further, the appellant is directed to surrender before the concerned trial court to undergo the remaining sentence of imprisonment as awarded by the learned trial court, otherwise the learned trial court shall issue appropriate warrant and take into custody and send the appellant to serve the rest of the sentence.

12. Pending I.A(s), if any, is also disposed of accordingly.

13. Let the copy of this judgment along with Trial Court Record be sent back to the trial court for information and needful.

(Pradeep Kumar Srivastava, J.)

High Court of Jharkhand, Ranchi

Dated: 18/11/2024

N.A.F.R-Pappu/-.