

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No.698 of 2003

[Against the judgment of conviction and sentence of the appellant dated 20.03.2003 and 21.03.2003 passed by learned Sessions Judge, Dumka in Session Case No.35 of 2002 arising out of Dumka (Masanjor) P.S. Case No.81 of 2001]

Manble Soren @ Manwel Soren, Son of Lardhu Soren, resident of
village and P.O.-Bagnal, P.S.-Dumka (Masanjor), District-Dumka

.... Appellant

Versus

The State of Jharkhand Respondent

For the Appellant : Mr. Rajeeva Sharma, Sr. Advocate
Mr. Om Prakash, Advocate
Ms. Maksuda Khatun, Advocate
Mr. Ritesh Kumar, Advocate
Ms. Sanjana Tirkey, Advocate
For the Resp. State : Mrs. Vandana Bharti, A P.P.

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

JUDGMENT

CAV On 13/10/2025

Pronounce On 30/10/2025

Per- Pradeep Kumar Srivastava, J.

1. Heard Mr. Rajeeva Sharma, learned counsel for the appellant and Mrs. Vandana Bharti, learned A.P.P. appearing for the State.
2. The instant appeal is preferred for setting aside the judgment of conviction and sentence of the appellant dated 20.03.2003 and 21.03.2003 passed by learned Sessions Judge, Dumka in Session Case No.35 of 2002 arising out of Dumka (Masanjor) P.S. Case No.81 of 2001, whereby and whereunder the

appellant has been held guilty for the offence under Section 376 of Indian Penal Code and sentenced to undergo R.I. for 10 years along with a fine of Rs.10,000/-.

Factual Matrix:-

3. Factual matrix giving rise to this appeal is that on 10.09.2001, when the prosecutrix was returning from Bagnal Hatia to her home and reached near Dobha Dungri bushy area, suddenly the accused, Manwel Soren came out from the bush and caught hold of her and pulled her towards the bush and committed rape upon her and when the prosecutrix attempted to raise alarm, then she was threatened to be killed. It is further alleged that the prosecutrix placed the matter before village *panchayat* but no result yield then, she lodged a written report before the police station on 13.09.2001.

On the basis of above information, Dumka (Masanjor) P.S. Case No.81 of 2001 was registered for the offence under section 376 of Indian Penal Code. After completion of investigation, charge-sheet was submitted against the above named appellant for the aforesaid offence. After taking cognizance, the case was committed to the court of Sessions, where Session Case No.35 of 2002 was registered. The accused person did not plead guilty and claimed to be tried.

4. In course of trial altogether, 9 witnesses have been examined by the prosecution namely:

P.W.1-Kunji Ram Tuddu

P.W.2-Baneshwar Soren

P.W.3-Raj Kumar Tuddu

P.W.4-Gupin Hembram

P.W.5-Silip Hembraum

P.W.6-Naresh Tudu

P.W.7-Informant/victim

P.W.8-Dr. Aruna Chatterjee

P.W.9-Sujit Rai

5. Apart from oral testimony of the witnesses, following documentary evidence has been adduced:-

Ext.1- Injury report

Ext.2- Signature on written report

Ext.3- FIR

6. On the other hand, no oral or documentary evidence has been adduced by the defence. The case of defence is denial from occurrence and false implication due to village politics.
7. Learned trial court after apprising and evaluating the oral as well as documentary evidence available on record has held the appellant guilty and sentenced him as stated above.

Submission on behalf of appellant:-

8. Learned senior counsel for the appellant has strenuously argued that out of 9 witnesses examined in this case, P.W.8, Dr. Aruna Chatterjee has conducted medical examination of the prosecutrix, who found no sign of rape and no physical violence either external or internal on the body of the victim. It is further submitted that the prosecutrix is a married lady and except her, none of the witnesses are eye-witnesses of the occurrence. It is further submitted that the prosecutrix has

categorically admitted in her evidence that there are two factions in the village, one is headed by Kunji Ram Tudu(P.W.1) and another by the accused, Manwel Soren. The prosecutrix also admits that Kunji Ram Tudu has lodged a case of rape at the instance of his wife against one village teacher, Chandra Shekhar. It is further submitted that the said Kunji Ram Tudu was quite instrumental in lodging this false case at the instance of the prosecutrix against the appellant also. It is further submitted that the testimony of the sole eye-witness-cum-prosecutrix is absolutely unreliable in view of the fact that she along with her husband (P.W.6) had gone to Hatia for selling meat of pig, but neither P.W.6 nor P.W.7 have stated as to when the prosecutrix returned from Hatia alone. Learned counsel further submits that the prosecutrix has also not stated the time of occurrence and the exact place of occurrence in her deposition before the court. The Investigating Officer (P.W.9) has also not been able to prove the exact place of occurrence, where the alleged occurrence took place. The cause of delay in lodging the FIR after four days has not satisfactorily been explained in as much as none of the village *panchayat* members has been examined to corroborate the factum of any *panchayati* convened by the prosecutrix or her husband in respect of the alleged occurrence. The true fact is that except the hearsay witnesses examined on behalf of the prosecution, the said occurrence was never told to any of the villagers, which makes

the entire story false and concocted. It is further submitted that although there is no legal impediment in basing the conviction on solitary testimony of the prosecutrix, if she is found absolutely believable but in the instant case, there are several contradictory circumstances as to none disclosure of the incident to any villagers, non-explanation of delay in lodging the FIR and also non-examination of any members of the village *panchayat* and the prosecutrix herself is a member of opponent group of the factions in the village headed by Kunji Ram Tudu (P.W.1). It is further submitted that the medical examination report of the victim is also not corroborative of the occurrence as alleged by her, even minor abrasions are bound to cause the victim, if she was dragged to a bushy area and forcibly thrashed down on earth before commission of rape. Therefore, learned trial court has committed serious error of law in not taking notice of above glaring vital aspects of the case, which falsify the prosecution story. Hence, the impugned judgment of conviction and sentence of the appellant is liable to be set aside, allowing this appeal.

In the alternative, it is argued that the whole of the prosecution story as projected by P.W.7 although denied by the appellant, but it is also a fact that the appellant has remained in custody during trial of the case from 14.09.2001 to 08.03.2006 without any rhymes and reasons as such he has

sustained imprisonment about 4 ½ years and has sufficiently been punished for his guilt. The appellant is also a married person having family and children and enjoying the privilege of bail during pendency of this appeal since 08.03.2006. The appellant has not indulged in any criminal activities after his release on bail and enjoying his life in main stream and even prior to the occurrence, he was never credited to any criminal antecedent, therefore, again sending the appellant for sustaining the rest period of his sentence will serve no useful purpose in the ends of justice. Therefore, the sentence awarded to the appellant may kindly be reduced to the extent of imprisonment already undergone.

Submission on behalf of State:-

9. On the other hand, learned A.P.P. appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellant and has submitted that the prosecutrix is wholly reliable witness and her husband has also corroborated the prosecution story as narrated to him by his wife. The cause of delay in lodging FIR has also been reasonably explained by the prosecution. It is further submitted that the testimony of the prosecutrix cannot be disbelieved merely on account of the fact that she was indulged at first in deciding the matter through *panchayat*, which caused some delay in lodging FIR. Similarly, her medical examination after 4-5 days of the occurrence is also sufficient to vanish all scratches and

abrasions caused to her. Since, the prosecutrix is a married lady, therefore, injury on private part is not always necessary. Learned trial court has very wisely and aptly considered all aspects of the case and recorded findings about the guilt of the appellant and a moderate sentence of 10 years rigorous imprisonment along with a fine of Rs.10,000/- was awarded. Therefore, the reduction of sentence of the appellant is also not warranted under the facts and circumstances of the case, where the minimum sentence of the offence is 7 years, hence, this appeal has no merits and fit to be dismissed.

Analysis, Reasons and Decision:-

10. We have gone through the entire evidence adduced in this case and find that except the prosecutrix, none of the witnesses of facts were present at the time of occurrence rather they have heard about the incident from the prosecutrix including her husband. It is also fact that no member of the village *panchayat* has been examined in this case, although the plea taken by the prosecution about delay in lodging the FIR is that the prosecutrix was taking recourse before the village *panchayat* to resolve the matter. It is admitted fact that there was previous enmity with the appellant, which has also been brought on record showing that there are two factions in the village, one is headed by Kunji Ram Tudu(P.W.1) of which, the prosecutrix also supports. The said Kunji Ram Tudu has lodged a rape case through his wife against a teacher in his village and he

was also instrumental and went to the police station along with the prosecutrix and her husband for lodging this case. The victim is an illiterate lady and put her R.T.I. over the written report, but there is no whisper in the entire evidence about the scribe of the written report. The medical examination report of the victim also does not corroborate her testimony. In the aforesaid facts and circumstances of the case, the prosecutrix does not appear to be wholly reliable witness. At the same time, no glaring material has been brought on record showing any bitter enmity for lodging a false case against the appellant. Therefore, we are not inclined to interfere with the judgment of conviction of the appellant passed by the learned trial court, which is, hereby upheld.

11. So far the quantum of sentence awarded to the appellant is concerned, it appears that the occurrence as alleged to have been committed in the year 2001 prior to Criminal Law Amendment Act, 2018 (22/2018) Section 4 by which the sentence portion under Section 376 of I.P.C. has been amended w.e.f. 21.04.2018 adding the minimum sentence of 10 years, but which may extend to imprisonment for life and shall also be liable for fine. Prior to this amendment, the Court has discretion to award the sentence of imprisonment less than 07 years by providing special reasons. The relevant provision is quoted hereinbelow:-

376. Punishment for rape.-(1) Whoever, except in the cases provided for by sub-section (2), commits rape shall be punished with imprisonment of either description for a term which shall not be less than seven years but which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both:

Provided that the court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than seven years.

12. We have considered all the aspects of the case particularly the testimony of the victim/prosecutrix, who happens to be a married lady, the manner and place of occurrence as described by the Investigating Officer (P.W.9), which is situated towards south side of Domadungri hilltop near pedestrian road, where Palash trees and Sonajhuri bushes is situated and in this bushy area, the rape was committed with the prosecutrix but nothing material was noticed there. We are also conscious about the fact that the appellant had no criminal antecedent prior to the occurrence and even post conviction in this case, he has not indulged himself in any criminal activities. The appellant has also undergone 4 ½ years imprisonment during trial of the case and he is also enjoying the privilege of bail since March, 2006. Considering the totality of the circumstances and also the condition of the prosecutrix, who was a married lady at the

time of occurrence and still enjoying her conjugal life without any adverse impact through the alleged occurrence.

13. In view of the aforesaid special reasons, we are inclined to extend the benefit of proviso to section 376 of IPC in the matter of sentence awarded to the appellant less than the minimum sentence of 7 years. Accordingly, the sentence awarded to the appellant by learned trial court for R.I. of 10 years is, hereby reduced to the imprisonment already undergone. Accordingly, this appeal is **dismissed** on merits with modification in sentence of the appellant to the extent mentioned above.
14. The appellant is on bail, hence, he is discharged from liability of bail bond. The sureties are also discharged.
15. Pending I.A(s), if any, is also disposed of accordingly.
16. Let a copy of this judgment along with Trial Court Records be sent back to the concerned trial court for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, at Ranchi

Date: 30/10 /2025

Pappu/- N.A.F.R.

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