

## Marshal Barla Vs State Of Jharkhand

**Court:** Jharkhand High Court

**Date of Decision:** Jan. 28, 2025

**Acts Referred:** Indian Penal Code, 1860 " Section 376

**Hon'ble Judges:** Pradeep Kumar Srivastava, J

**Bench:** Single Bench

**Advocate:** Durga Charan Mishra, Jitendra Pandey

**Final Decision:** Dismissed

### Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. Present criminal appeal is directed against the judgment of conviction dated 26.09.2006 and order of sentence dated 27.09.2006 passed by learned

1st Additional Sessions Judge, Gumla in Sessions Trial No. 103 of 2004, whereby and whereunder, the appellant has been held guilty for the offence

under Section 376 of the I.P.C. and sentenced to undergo R.I. of eight years along with fine of Rs. 1,000/- with default stipulation.

#### FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that on 31.12.2003 at about 2:00 P.M., the prosecutrix was at her home, meanwhile, her neighbor

Marshal Barla, aged about 45 years came to her house, caught hold of her hand and forcibly dragged towards his own home. It is alleged that upon

protest by prosecutrix, she was threatened to be killed, so that she became frightened and followed to the house of accused, where she was confined

in a room and when children of Marshal Barla slept then at about 10:00 hours in night, he untied the petticoat and lifted the saree of the prosecutrix

and committed rape with her. It is further alleged that since then, the accused has been committing rape with her for about one year in absence of her

husband putting her under threat. The accused is a powerful person in the village and no villager dare to raise protest against him. On the basis of

written report of prosecutrix, Kamdara P.S. Case No. 01 of 2004 was registered for the offence under Section 376 of the I.P.C.

4. After completion of investigation, charge sheet was submitted against the abovenamed sole appellant. The case was committed to the court of

Sessions and after conclusion of trial, impugned judgment of conviction and order of sentence has been passed.

5. Learned counsel for the appellant has submitted that except prosecutrix and her husband, no other witnesses have supported the prosecution story.

It is quite strange that the victim, who was being ravished for one year, at the instance of the accused, will not even disclose to her husband or any of

the villagers or at any police station or before Village Panchayat. The victim lady has stated in her cross-examination that she was dragged towards

the house of the appellant, but not a single scratch was found on her body and no sign of rape has been opined in her medical examination report. The

Investigating Officer and Medical Officer have not been examined in this case, which has caused serious prejudice in the effective defence of the

appellant. Both, victim as well as her husband have materially improved their version during trial of the case. P.W.-2 is the husband of the prosecutrix,

who has disclosed that on 01.01.2004 in the morning, he along with police went to the house of present appellant, whereas wife has been recovered

from the house of the appellant. The prosecutrix has also stated the same thing, but in the very first part of the case diary, it is mentioned that both

husband and wife came to the police station together and lodged the report against the appellant and there is no recovery, memo of the victim from

house of the appellant. It is further submitted that the husband of the victim (P.W.-2) has also given a different story, as stated before police, that he

had come to his house at lunch break about 2:00 P.M., he was going to discharge his duty again, then accused forcibly took away his wife to his home,

he forbade him, but he threatened. Thereafter, he went to police station and lodged FIR, is totally against the documentary evidence available on

record, which discloses that both P.W.-1 & P.W.-2 hatched conspiracy against the appellant and falsely implicated him in this case. Hence, their

testimony is absolutely not reliable and on that basis, conviction and sentence of the appellant is not legally sustainable and is fit to be set aside.

Therefore, this appeal may be allowed.

6. On the other hand, learned APP appearing for the State has controverted the aforesaid contentions raised on behalf of the appellant and submitted

that there is direct and specific allegation about commission of rape with the victim against her will and consent and due to fear of death extended by

the appellant, the prosecutrix could not disclose the commission of rape with her for a period of one year. There is no reason to disbelieve the

testimony of the prosecutrix. Hence, there is no merit in this appeal, which is fit to be dismissed.

7. I have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both side.

8. It appears that in course of trial, four witnesses have been examined this case.

P.W.-1 : Prosecutrix, who has corroborated the contents of the written report and specifically stated that she was forcibly brought to the house of the

accused dragging her, where she stayed overnight and rape was committed by the accused at about 10:00 P.M.

She has further alleged that in the morning that her husband came with police, then she was brought out from the house of the accused.

In her cross-examination, she has stated that the accused lifted her and brought her to his home. Again, she reiterated that she was dragged by hand

towards the house of the accused. She also admits that son and daughter of the accused are 6 & 12 years old, who were also present in the home, but

could not resist due to fear. She also admits that her four month old child was also accompanied with her, when she was brought to the house of the

accused. She further states that at about 8:00 AM in the next day, police arrived at the house of accused then she was recovered by police.

9. P.W.-2 Tanish Barla (husband of the victim lady) has given testimony like eye-witness. According to his evidence on 29.12.2003 at about 12 hours,

he returned to his home for lunch. Thereafter, accused dragging his wife brought to his home. He protested but the accused did not pay any heed then

this witness went to police station Kamdara and informed about incident. According to him, on 01.01.2004 at about 05:00 AM police arrived at the

house of accused and his wife was recovered, then his wife, in presence of police, told that the accused has committed rape with her.

10. P.W.-3 Tignesh Barla and P.W.-4 Tilsita Barla have not supported the prosecution case.

11. From perusal of evidence of P.W.-1 & 2, there appears material contradiction regarding the manner of occurrence. According to prosecutrix, her

husband was not present at the time of the occurrence, but the husband has given evidence like eye witness. The FIR was also lodged at the police

station, where both husband and wife were present and both have signed over the written report, but the victim and her husband in their testimony

before the Court have stated that police went to the house of accused in the morning and the prosecutrix was recovered from his house. The Medical

Officer has not been examined in this case. The Investigating Officer, who might have explained the material contradictions appearing in the evidence

of witnesses, has also not been examined.

12. In the given situation, it cannot be said that that prosecutrix is wholly reliable witness particularly when she was being ravished since a period of

one year, she did not disclose the same to anyone in the village or before any public authority. It also appears that the victim and appellant were in

compromising situation since long and the husband of the victim was not aware of it, but on the date of occurrence, when he was not present in the

house and did not return in the night, due to some urgent work and returned in the next day morning, then he came to know that his wife is at the

house of the accused along with newly born baby. When the prosecutrix was caught raid handed by her husband, then in order to save her skin,

manipulated a false case of commission of rape against the appellant.

13. In view of aforesaid discussions and reasons, I find that the learned trial court has miserably failed to properly appreciate the evidence of witness

and arrived at wrong conclusion about the guilt of the appellant.

14. Considering the materials available on record, the impugned judgment of conviction dated 26.09.2006 and order of sentence dated 27.09.2006

passed by learned 1st Additional Sessions Judge, Gumla in Sessions Trial No. 103 of 2004 is hereby set aside. Accordingly, this appeal is allowed.

15. Pending I.A., if any, stand disposed of.

16. Appellant is on bail. He is discharged from the liability of bail bonds and sureties are also discharged.

17. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.