

## Umesh Pandey Vs State Of Jharkhand

**Court:** Jharkhand High Court

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

**Acts Referred:** Code of Criminal Procedure, 1973 " Section 164, 281  
Indian Penal Code, 1860 " Section 34, 366A, 375, 376, 420

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

**Bench:** Single Bench

**Advocate:** Suraj Singh, Nehala Sharmin,

**Final Decision:** Partly Allowed

### Judgement

Pradeep Kumar Srivastava, J

1. The present appeal is directed against the judgment and order of conviction and sentence dated 31.08.2006 passed by learned Additional Sessions

Judge, FTC No. IV, Dhanbad in S.T. No.402 of 2001 whereby and whereunder, the appellant has been held guilty for the offences under sections 376

and 366A of Indian Penal Code and sentenced to undergo R.I. of 7 years and 5 years respectively. Both sentences are directed to run concurrently.

#### FACTUAL MATRIX

2. Factual matrix giving rise to this appeal is that the informant was in judicial custody in connection with Topchanchi P.S. Case No.11 of 2001 along

with his two sons and he was released on bail on 19.04.2001, when the informant returned to his home, then he came to know from his wife that his

minor daughter aged about 14 years has been taken out by Umesh Pandey, Nagesh Pandey, Lalita Devi and Noor Mohammad by inducing her to

solemnize marriage with Umesh Pandey. It is further alleged that the appellant and other associates have kidnapped his daughter by taking advantage

of absence of the informant. It is further alleged that the informant's wife had gone to the house of Umesh Pandey, where she was threatened on

the point of pistol saying that he has solemnized marriage with her minor daughter.

3. On the basis of written report of the informant Jagdamba Rawani, Topchanchi P.S. Case No.54 of 2001 dated 21.04.2001 was registered against

the accused persons for the offence under sections 366A r/w 34 of IPC. In course of investigation, the victim girl was recovered from the house of

the appellant (Umesh Pandey). The statement of the victim girl was recorded under section 164 of Cr.PC and she has disclosed about commission of

rape with her by the accused Umesh Pandey, hence section 376 of IPC was also added in the FIR. The victim girl was sent for medical examination

and after completion of investigation, charge-sheet under sections 366A, 376, 420/34 of IPC was submitted against four accused persons namely

Nagesh Pandey, Lalita Devi, Noor Mohamad and Umesh Pandey. After cognizance, the case was committed to the court sessions, accordingly S.T.

Case No.402 of 2001 was registered and trial proceeded against all the accused persons for the offence under section 366A, 420 r/w section 34 of

IPC and separate charge was framed against Umesh Pandey for the offence under section 376 of IPC. After conclusion of trial, the other accused

persons have been acquitted whereas the present appellant was held guilty and sentenced as stated above.

4. Learned counsel for the appellant has argued that the victim girl was major aged about 19 years and the appellant and the victim girl eloped with

their free consent and sexual intercourse was established voluntarily with the full consent of the victim girl and the appellant. The prosecution has

brought nothing concrete documentary evidence on record to establish the fact that the victim girl was minor at the time of marriage with the

accused/appellant. The victim girl has deposed before the court in her statement recorded under section 164 of Cr.P.C. under the influence of her

parents. The learned trial court has acquitted other accused persons for the offence under sections 366A and 420 of IPC, therefore, the present

appellant is also entitled for acquittal in this case as no ingredients either for the offence under sections 376 and 366A of IPC has been established by

the prosecution.

In alternative, it is submitted that this case is originating out of love-affair between the victim girl and the appellant, and marriage could not be

solemnized due to dissenting guardians. The appellant has remained in custody throughout of the trial of the case for 5 years and has sufficiently been

punished for his guilt, therefore, his sentence may be reduced to the extent of imprisonment already undergone, which will serve the ends of justice in

this case.

5. On the other hand, learned A.P.P. appearing for the State refuting the aforesaid contentions raised on behalf of the appellant has submitted that the

prosecution has proved through cogent reliable evidence that the victim was a minor girl aged about 14 years at the time of occurrence. She was

induced and taken away by the appellant with intention to solemnize marriage with her and also established illicit physical relationship with her. The

consent of the minor girl for the sexual intercourse is no consent in the eye of law. Therefore, the appellant has rightly been convicted and sentenced.

It is further submitted that the sentence awarded to the appellant is also proportionate to his guilt, which requires no alteration and this appeal is fit to

be dismissed.

6. In the instant case, the most important witness is the victim girl herself, who has been examined as P.W.3, she has disclosed her age at the time of

medical examination to be 16 years. According to her evidence, about 2 years ago, in the morning at about 9 AM, she was alone in her house when

Lalita Devi came to her house and induced her that she will manage her visit with her father in jail. Then, she came out of the house and in the way,

Nagesh Pandey, Umesh Pandey, and Noor Miya were also met and they brought to her Dhanbad where she was forced to sign on four blank papers

on the point of pistol. Thereafter, she was brought to Khaodih and confined in the house of Umesh Pandey for 10 days, where Umehs Pandey

assaulted her and forcibly established sexual relationship with her. This witness further deposed that she was recovered by the police from the house

of Umesh Pandey and her photographs (material Ext.1) was also taken. This witness was medically examined at the instance of police and her

statement was recorded by the Magistrate under section 164 of Cr.PC and she has proved her signature as Ext.1. Then, this witness was handed over

to her parents.

7. P.W.1 Puja Devi is mother of the victim girl, P.W.2 and P.W.4 are brothers of the victim girl namely Arun Kumar and Manoj Rawani respectively

and all the witnesses have supported the prosecution story as heard from the victim girl.

P.W.5 Jagdamba Rawani is the informant of this case, this witness has also proved the contents of the written report and also stated that when his

minor daughter was handed over to his custody, then she disclosed about the commission of rape with her by the accused. This witness has denied the

suggestions of the defence that Umesh Pandey used to visit his house frequently and with consent of his wife, the victim girl went with Umesh

Pandey and solemnized marriage with him.

P.W.6 Rajgrih Rai is the second Investigating Officer of this case and he has submitted the charge-sheet against the accused persons.

P.W.7 Bandana Bakhla is the first Investigating Officer of this case. According to his evidence, he has recorded the re-statement of the informant

visiting the place of occurrence and recovered the victim girl from the house of Umesh Pandey and this witness has also arrested the accused Umesh

Pandey. He has got the statement of the victim girl recorded under section 164 of Cr.PC and sent to her PMCH, Dhanbad for medical examination.

Thereafter, on 20.06.2001, further charge of investigation was handed over the then Officer-in-Charge Ashok Kumar.

P.W.8 Dr. Laxmi Pandey is the medical officer, who has examined the victim girl on 22.04.2001 at about 7:00 PM. According to her evidence, no

internal or external injuries were found on the body of the victim and there was also no recent sign of rape rather hymen was found old ruptured.

According to radiological report, the age of the victim girl is appeared to be 16-17 years. Her report has been marked as Ext.5.

P.W.9 is the Judicial Magistrate Swarn Shandar Prasad, who has recorded the statement of the victim girl under section 164 of Cr.PC, which is

marked as Ext.6.

8. On the other hand, the case of the defence is denial from the occurrence and false implication. The defence has also examined 4 witnesses. It is

pleaded by the appellant in his statement under section 281 of Cr.P.C that on 26th February, 2001, he has solemnized registered marriage with the

victim girl with her consent in presence of victim's mother and she was residing with him. The father of the victim girl has lodged this false case

against him.

Apart from the above plea, four witnesses have been examined by the defence Kedharnath Mahto (D.W.1), Md. Alauddin Ansare (D.W.2), Sitaram

Mahto (D.W.3), Brijnandan Mahto (D.W.4) have stated about the marriage of the victim girl with Umesh Pandey with the consent of the victim girl

and her mother and also filed original notarized marriage certificate (Ext.B) and signature of notary advocate is proved as Ext.A.

9. From the aforesaid above discussion particularly the testimony of the victim girl, it is apparent that she has categorically deposed about her

kidnapping and obtaining forceful signature on certain papers and commission of rape with her by the appellant. The age of the victim girl was also

proved in between 16-17 years and there is no evidence on record to prove that she has attained the age of majority on the date of occurrence. It has

also come in the evidence that the present appellant was visiting the house of the victim girl prior to the occurrence in connection with offering

puja and other religious ritual organized by father of the victim from time to time. In the course of frequent visit, the intimacy was developed

between the victim girl and the appellant. The prosecution story also finds corroboration from the medical examination report of the victim girl and her

earliest statement recorded under section 164 of Cr.P.C. by learned Magistrate (P.W.9). The defence plea about consensual marriage as well as

consensual sexual intercourse with the victim girl cannot be entertained in view of the minority of the victim, who was not capable to accord consent

for physical relation with her.

10. So far conviction of the appellant for the offence under section 366A of IPC is concerned in the factual aspects of the case as discussed above,

the ingredients of offence under section 366A is absolutely lacking in this case in as much as there was no procurement of minor girl with intention that

she would be forced and seduced to illicit intercourse with some other person. In the instant case, the accused himself is alleged to have induced the

minor girl and taken her away with intention to solemnize marriage with her and also established sexual intercourse with her.

11. So far offence under section 376 of IPC is concerned; the prosecution has well proved the ingredients of the said offence as defined under section

375 of IPC.

12. So far as alternative plea of the appellant regarding reduction of sentence is concerned, the factual aspects of the case as brought on record

clearly goes to reveal that there was intimacy between the victim girl and the appellant prior to the occurrence. The appellant was all along in judicial

custody throughout the period of trial consuming 5 years and 4 months. Maximum sentence awarded to the appellant is 7 years. Therefore, the

appellant has sustained considerable period of sentence during trial of the case. Now, more than two decades had been lapsed from the date of

occurrence and the victim girl as well as the appellant have mend their life in their own ways without indulging in any other criminal activities.

13. In the aforesaid facts and circumstances, the conviction of the appellant for the offence under section 366A of the IPC is set aside but his

conviction for the offence under section 376 of IPC is maintained and upheld. So far, the quantum of sentence is concerned, the sentence awarded by

the learned trial court is reduced to the sentence of imprisonment already undergone by the appellant during trial of the case. Accordingly, this appeal

is partly allowed with modification in conviction and sentence as stated 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 trial court for information and needful.