

Uttam Pandit Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 28, 2025

Acts Referred: Code of Criminal Procedure, 1973 â€” Section 161
Indian Penal Code, 1860 â€” Section 376

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: A.K. Sahani, Nehala Sharmin

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. Present criminal appeal is preferred against the judgment of conviction dated 30.05.2005 and order of sentence dated 31.05.2005 passed by learned

Additional Sessions Judge-I, Rajmahal in Sessions Case No. 40 of 2004 / Sessions Trial No. 02 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 seven years along with fine of Rs. 2,000/- with

default stipulation.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that in the night of 17.05.2003 the prosecutrix was sleeping in her house along with her two children

and her husband had gone to fetch medicine from Village - Ghanjori. It is further stated that at about 11:00 PM, she went out of the house for easing

herself, meanwhile, accused Uttam Pandit entered into her room and she identified him in the torch light. She tried to raise alarm, but the accused

caught hold of her hand, gaged her mouth and pushed on the cot. The informant resisted then accused threatened her to kill and forcibly committed

rape with her. It is further alleged that brother-in-law of the informant woke up hearing some sound of scuffle and raised alarm then some villagers

assembled, but the accused managed to escape taking advantage of darkness of night. She also narrated the story to her father-in-law and villagers.

The matter could not be resolved in pacific manner by the villagers then after arrival of her husband, the prosecutrix lodged the F.I.R. on 22.05.2023.

4. After completion of investigation, charge sheet was submitted against the above-named sole accused, who faced the trial and has been held guilty

and sentenced as stated above.

5. Learned counsel for the appellant assailing the impugned judgment and order has vehemently argued that in the instant case, the victim lady is the

sole eye-witness of the occurrence as per F.I.R, but in her evidence on oath, during trial, she has stated that after hearing hulla, her brother-in-law

Bibhuti Pandit also woke up and bolted the door from the outside and raised alarm. The door was opened after villagers assembled at the place of

occurrence. It is very strange to believe that inspite of bolted door from outside, accused managed to flee away from the place of occurrence in

presence of several villagers. The prosecution has also relied upon convening of Panchayati, which consumed 4-5 days, but not a single witness has

been examined to prove the Panchayati. In medical report of the victim, no sign of recent sexual inter-course was found. The appellant has been

falsely implicated in this case under deep rooted conspiracy between prosecutrix and her brother-in-law. The appellant is absolutely innocent. The

evidence of victim is also not reliable in view of fact that her brother-in-law Bibhuti Pandit had been declared hostile in this case and expressed no

knowledge about the occurrence. The learned trial court has miserably failed to properly appreciate the entire evidence available on record and

arrived at wrong conclusion, which is fit to be set aside, by allowing this appeal.

6. In alternative, it is pleaded that throughout the trial, the appellant was in judicial custody and was released on bail vide order dated 12.01.2007 and

about 3½ years, sentence has already been undergone by the appellant. Under circumstances of the case, appellant has been sufficiently punished.

Hence, his sentence may be reduced to the imprisonment already undergone.

7. Per contra, learned APP appearing for the State has controverted the aforesaid contentions raised on behalf of the appellant and submitted that

there is no contradiction or improvement in the testimony of prosecutrix and to disbelieve her testimony simply because her brother-in-law has turned

hostile is not sufficient to discard the un-blemish testimony of the prosecutrix. She is wholly reliable witness and there is no reason to falsely implicate

the appellant. The defence has brought no material on record indicating the fact that he has been falsely implicated. No motive for false implication

has been assigned by the defence. The learned trial court very wisely and aptly appraised and appreciated the evidence available on record. There is

no reason to interfere with the impugned judgment and order and no merits in this appeal, which is fit to be dismissed.

8. 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.

9. It appears that in course of trial, altogether 11 witnesses have been examined by the prosecution, out of them, P.W.-1 " Haru Pandit, P.W.-2 " Gopal Pandit, P.W.-3 " Man Maran Pandit, P.W.-4 " Subodh Pandit, P.W.-6 " Bibhuti Pandit, P.W.-7 Krishna Mohan Pandit and P.W. " 8

" Krishna Kumar Pandit have been declared hostile by the prosecution and expressed their no knowledge about the alleged occurrence.

10. P.W.-6 : Bibhuti Pandit has also got his statement recorded by the Investigating Officer under Section 161 of the Cr.P.C.

11. The prosecution case rest upon the evidence of P.W.-5 Rabi Pandit, father-in-law of the victim. P.W.-9 victim himself. P.W.-10 Dr. Sunita

Prasad and P.W.-11 ASI Sheo Narayan Kamath, I.O., whose testimony deserves to be discussed at length for proper appreciation of the case.

12. P.W.-5 : Rabi Pandit (Sasur of the victim) has stated that on 17.05.2003 at about 11:30 hours in the night his daughter-in-law, who resides at the

road side, was sleeping in her house along with her two children and her husband had gone to bring medicine in the night, then Uttam Pandit entered

into her room, when she had gone to discharge nature's call.

He also deposed that when her daughter-in-law (prosecutrix) raised hulla, then, he also rushed towards the place of occurrence, meanwhile his son

Bibhuti Pandit (P.W.-6) bolted the door from outside. Several villagers also assembled and suggested that matter will be resolved through Panchayati.

Meanwhile, Uttam Pandit fled away. He came to know from prosecutrix that the accused Uttam Pandit has committed rape with her. He has further

deposed that in the morning a Panchayati was held, but Uttam Pandit had not confessed and started abusing, then this case was lodged.

In his cross-examination, he admits that prosecutrix lives separately from him and her house is at 100-125 meter from his house. He was alone in his

house. He has further admitted that when he reached the place of occurrence, Uttam Pandit was concealing himself under the cot in the room of his

daughter-in-law and at that time, Gopal Pandit, Shankar Pandit, Kashi Pandit, Shambhu Pandit and Phuchu Pandit were also present. Seeing them

Uttam Pandit came out from the cot and fled away. He also admits that in the Panchayati fine of Rs. 1,000/- was imposed upon the accused, which

was given by him to the member of Panch. He cannot tell that the said amount was paid to the victim or not? This witness denied the suggestion of

the defence that there is land dispute between him and father of Uttam Pandit. Hence, he has given false evidence against the accused.

13. P.W.-9 is the prosecutrix-cum-victim of this case : She has corroborated the contents of her fardbeyan and stated that in the night while she

had gone to discharge nature's call, leaving her children in the room, who were sleeping, meanwhile, Uttam Pandit entered into her room stealthily

and when she returned and entered into the room then saw the accused was standing in the corner of the room, when she protested then accused

forcibly laid down on the cot and committed rape with her by gagging her mouth and also threatening to kill her, if she raises alarm. She also states that

her brother-in-law after hearing hulla came to the place of occurrence and bolted the door. In the meantime, several villagers assembled then the bolt

was opened and Uttam Pandit fled away. A Panchayati was held in this case, but Uttam Pandit did not obey the Panchayati, hence, she lodged the

case. She has also stated that about half an hour there was struggle with the accused and she was resisting the act of commission of rape inside the

room.

In her cross-examination, she admits that her marriage was solemnized 5-6 years ago. She has two live children, aged about 06 and 04 years

respectively. She also admits that Uttam Pandit is her neighbour, but there was no talking term between them or visiting the home of each other. She

also admits that in the Panchayati, she was not present, but her husband and father-in-law were present. She has also denied the suggestion of

defence that in the Panchayati, fine was imposed upon the accused which was not paid to her, hence, in connivance of her husband, she has lodged

this case.

14. P.W.-10 : Dr. Sunita Prasad has medically examined the prosecutrix and found following:-

(i) Clothings already changed before coming to the Hospital.

Height 4'9". Weight 35 K.G., body built average, breast developed, pubic hair and auxiliary hair grown. She is mother of two children. First a

female child, four years old and second a male child two years old.

(ii) No injury was found anywhere on her body including her private part. No foreign hair was found in and around her private part. Old rupture of

hymen was found which was represented by tags of tissues. Vagina canal admits two fingers easily. Vaginal swab was taken and preserved. It was

sent to pathology Department, Sadar Hospital, Sahibganj for microscopic examination of spermatozoa.

(iii) Determination of age :- She was referred to Dhanbad Medical College Hospital for determination of her age. She has proved the injury report

Exhibit-1.

15. P.W.-11 : Sheo Narayan Kamath is the Investigating Officer in this case. He deposed that the written report (Exhibit-2) about the occurrence

was filed by the prosecutrix, over which, he endorsed for registration of the case. Accordingly formal FIR (Exhibit-3) was lodged. He recorded re-

statement of the victim and visited the place of occurrence and also sent victim for medical examination. He has further deposed that place of

occurrence of this case is Kacha house of the prosecutrix situated near the road in Village - Tilbhita and there was a door on main entrance. A cot

was lying in the room and the victim told that her children were sleeping on cot and the accused stealthily entered into her room and forcibly

committed rape with her. He has recorded statement of other witnesses also and found sufficient evidence against the accused for submitting charge

sheet.

In his cross-examination, he admits that the victim has not produced before him her wearing clothes. He has not recorded the statement of victim and

nor sent her for medical examination. The attention of this witness towards the statement of hostile witnesses of this case has not been drawn by the

prosecution. He has denied the suggestion of defence that his evidence is defective and without any concrete evidence. He has submitted the charge

sheet against the accused.

16. On the other hand, two witnesses have been examined by defence and documentary evidence Exhibit-A & A/1, B & C have been filed to the

effect that prior to lodging this FIR, the victim has lodged complaint case bearing P.C.R. Case No. 123/2003, which was dismissed due to non-

prosecution.

17. From the aforesaid evidence, it is crystal clear that the prosecutrix has remained intact in her cross-examination and there is direct and specific

allegation against the petitioner that he committed rape with the victim in the night while her husband was not present in the home. Nothing has been

elicited in the cross-examination of the prosecutrix to disbelieve or discard her testimony. Her testimony has also been corroborated by her father-in-

law. The defence evidence produced in this case related to filing of earlier complaint case by the victim could not be considered because during

examination of the victim, her attention was not drawn towards those documents and she has got no opportunity to explain the same. Therefore, there

appears no illegality or infirmity in holding the appellant guilty for commission of rape with victim. The prosecution case cannot be disbelieved merely

because some witnesses of facts have become hostile and not corroborated the prosecution story. The substantive evidence of victim inspired

confidence of the court. Therefore, the impugned judgment is hereby upheld and confirmed.

18. So far sentence of the appellant is concerned, it appears that on the date of occurrence, the appellant was unmarried boy and since after the

conviction in this case, he is alleged to be not involved in any criminal activity and was never convicted for any offence, therefore, considering the

facts and circumstances of the case, nature of offence committed by the appellant, age, character and antecedent, this Court deem fit to reduce the

sentence of the appellant. Therefore, instead of undergoing substantive sentence of imprisonment as awarded by learned trial court, the sentence of

appellant is reduced to the imprisonment already undergone by him.

19. With the aforesaid modification in sentence, this appeal is dismissed on merits.

20. Appellant is on bail, as such he is discharged from the liability of bail bond. Sureties are also discharged.

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

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