
(2025) 02 JH CK 0033

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 124 Of 2006

Uttam Biswas

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Feb. 12, 2025

Acts Referred:

- Code of Criminal Procedure, 1973 - Section 164
- Indian Penal Code, 1860 - Section 34, 366A, 376

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: Vani Kumari, Prabir Chatterjee

Final Decision: Allowed

Judgement

Pradeep Kumar Srivastava, JÂ

1. Heard learned counsel for the parties.

2. The present appeal is directed against the judgment of conviction dated 07.01.2006 and order of sentence dated 09.01.2006 passed by learned 2nd

Additional Sessions Judge, Jamtara in Sessions Case No. 266 of 2001 / 34 of 2005, whereby and whereunder the appellants have been held guilty for

the offence under Section 366A & 376 of the I.P.C. and sentenced to undergo R.I. of five years along with fine of Rs. 1,000/- for both the offences

under Section 366A & 376 of the I.P.C. with default stipulation. Both the sentences were directed to run concurrently.

FACTUAL MATRIX

3. The facts giving rise to this appeal is that on 28.06.2001, both appellants enticed the minor daughter of the informant Sahdeo Bauri and taken away

her for illicit intercourse on pre-text of marriage. Accordingly, Jamtara P.S. Case No. 133 of 2001 dated 28.06.2001 was registered on the basis of

written report of the informant for the offences under Sections 366A / 34 of the I.P.C.

4. In course of investigation, the victim girl was recovered and her statement under Section 164 of the Cr.P.C. was recorded and she was subjected to

medical examination and after conclusion of investigation, charge-sheet was submitted against the above-named appellants under Sections 366A / 376

/ 34 of the I.P.C. The case was committed to the court of Sessions for trial.

5. In course of trial, apart from documentary evidences, altogether 12 witnesses were examined by the prosecution. The defence has also examined

two witnesses and adduced some documentary evidences.

6. Learned counsel for the appellants assailing the impugned judgment and order of the appellants has vehemently argued that in this case two girls

were missing from the School, who happens to be the daughter of P.W.-1 Anil Bouri and P.W.-2 Sahdeo Bouri respectively, who have admitted in

clear terms in their evidence that both the victim girls were recovered by the police from the house of Professor Ashok Kumar Verma situated near

the School, where both the girls were studying. The trial court as well as the High Court declined the prayer of appellants to summon and examine

Professor Ashok Kumar Verma, who ought to be examined. Therefore, Honâ€™ble High Court has disposed of the Misc. Petition of the appellants

with observation that in case of non-examination of Professor Ashok Kumar Verma benefit of doubt can go in favour of the appellants, but the

learned trial court has miserably failed to appreciate the above aspect and direction issued by Honâ€™ble High court. The evidence of P.W.-1 and

P.W.-2 also finds corroboration from the evidence of P.W.-3 Dukhi Bouri, who is mother of one of the victim girls.

7. It is further submitted that one of the victim, who is daughter of P.W.-4 Amrawati Bouri, was married on the date of alleged occurrence and

according to P.W.-4 appellant Sufal Biswas brought her daughter from her sasural on pretext of solemnizing marriage with her. She has also admitted

that her daughter was not ready and willing to go to her sasural. P.W.-4 has herself disclosed the age of her victim daughter to be more than 18 years

on the date of occurrence.

8. It is further argued that one of the victim P.W.-5 has also admitted love affair with appellant " Uttam Biswas and due to love affair and her

consent, she does not raised any alarm at any point of time. Sexual intercourse has also taken place with consent of both parties. Similar statement

was given by the victim P.W.-5 in her statement recorded under Section 164 of the Cr.P.C.

9. It is further argued that P.W.-6 is another victim, who was under love affairs with the appellant-Sufal Biswas. She also admits that prior to two

years of the occurrence her marriage was solemnized with another person, but she never like to go with her husband and she voluntarily left her

matrimonial house and returned back to solemnize marriage with the appellant-Sufal Biswas.

10. It is further submitted that the main witnesses of facts have clearly admitted love relationship as well as one of the victims was also married.

Therefore, ingredients of offence under Section 366A of the I.P.C. are absolutely lacking in this case. Similarly, since both the victims were major and

have clearly admitted in their evidence about consensual sexual intercourse, therefore, no offence under Section 376 of the I.P.C. is attracted in this

case. The evidence of both the victim girls further fortifies with the evidence of P.W.-12 Dr. Aruna Chatterjee, who has medically examined them

and on the basis of radiological and clinical examination found that hymen was old ruptured, but there was no recent sign of rape or sexual intercourse.

The age of victim was also found in between 18-19 years.

11. It is further argued that the occurrence is alleged to have taken place on 24.06.2001, but the FIR was registered on 28.06.2001 without offering

any reasonable explanation for such inordinate delay. In view of above facts and circumstances, admitted by the prosecution as well as non-

examination of material witness viz. Professor Ashok Kumar Verma, the appellants are entitled for acquittal. Accordingly, impugned judgment and

order is fit be set aside and this appeal may be allowed.

12. Per contra, learned APP appearing for the State has vehemently opposed the aforesaid contentions raised on behalf of the appellants and

submitted that the prosecution has proved its case beyond all reasonable doubt. Learned trial court has very meticulously examined the evidence adduced by the prosecution as well as defence. Mere non-examination of Professor Ashok Kumar Verma, who admittedly was not aware about the fact that both the victims were residing in the office of his School for 4-5 days, as appears from the evidence of victim girls, hence, non-examination of this witness does not materially affect the prosecution case. The consent of the minor girls for the purpose of sexual intercourse has no legal relevance to exculpate the accused persons from the liability. There is no illegality or infirmity in the impugned judgment of conviction and order of sentence of the appellants and there is no merit in this appeal, which is fit to be dismissed.

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

14. For better appreciation of the case, brief resume of oral testimony of witnesses is required to be discussed.

15. P.W.-1 Anil Bouri is the father of one of the victims. He has deposed that on the alleged date of occurrence at 4:00 PM, he was not at his house

and had gone for doing work. The mother of victim had also gone to do the work and when they returned to the house, they found that the victim girl

was not at house. He started searching and during course of search, he got information that one another girl was also missing. He has further deposed

that he got information that Uttam, Sufal and two victim girls had gone towards the Benapathak. They came at Jamtara, in course of search and got

clue that both the girls were kept in the house of one Professor. Thereafter, they went to police station and informed to the police. Police came at the

house of Professor and recovered both girls, who were brought at police station. Both the victim girls have stated that Uttam and Sufal have

kidnapped them to solemnize marriage. He has further deposed that the age of his daughter was 15-16 years. In cross-examination, he has also stated

that police had recorded his statement and both the girls told that accused Uttam and Sufal took away them to perform marriage.

16. P.W.-2 Sahdeo Bouri is the informant of the case and father of another victim girl. He deposed that occurrence took place one year ago. On the

date of occurrence, he came at his house and saw that his daughter was not present. He started searching and in course of search, he got information that his daughter and another victim went towards Benapathak and Sufal Biswas and Uttam Biswas were also with them. He went to the house of Uttam and Sufal, but they were not present at their house. Thereafter, he lodged the case. His statement was recorded. He has further deposed that at that time, his daughter was aged about 14 years. Police recovered both the girls and informed him. He has further deposed that his daughter has told him that both Uttam and Sufal took her daughter and another victim and kept in a house at Jamtara. He has further deposed that his daughter has told him that both Uttam and Sufal told them that they will marry with them. Both the girls were sent for medical examination and thereafter, his daughter was handed over to him on Jimanamma and another victim girl was also handed over to her father on Jimanamma. He has further deposed that both the girls told that accused persons had enticed them to marry with them.

17. P.W.-3 Dukhi Bouri is the mother of the one of the victims. She has also deposed the same line as of P.W.-1 Anil Bouri.

18. P.W.-4 Amrawati Bouri is the mother of another victim. She has also deposed the same line as of P.W.-2 Sahdeo Bouri.

19. P.W.-7 Jamruddin Ansari â€" He has deposed that on the date of occurrence, when he was returning from Jamtara Market, he saw the victim girls along with Uttam Biswas and Sufal Biswas near the Benapatak. On the next day, father of one of the victims enquired, then he told him that he had seen her daughter with the accused persons. They were going towards Jamtara.

20. P.W.-8 Jainul Ansari â€" He is a hearsay witness.

21. P.W.-9 Mustkim Ansari â€" He has deposed that on the date of occurrence, while he was returning from Jamtara Market, then Sahdeo Bouri (P.W.-2) and Anil Bouri (P.W.-1) told him that Uttam Biswas and Sufal Biswas took away their daughter to anywhere. Both the girls were recovered after 4-5 days.

22. P.W.-10 Rabindra Prasad Singh â€" He is witness to the seizure list.

23. P.W.-11 Satyendra Narayan Singh is the I.O. of this case. He has deposed that on 28.06.2001, he was posted at Jamtara Police Station. Surya

Bhusan Sharma was the Officer-in-Charge. He has also proved the formal FIR. He has also proved the written report which is in the writing of Surya

Bhusan Sharma. He has further deposed that investigation was handed over to him and in course of investigation, he has recorded the statement of

informant and visited at Village Mohara and recorded the statement of Amrawati Bouri, Anil Bouri and Dukhi Bouri. On 29.06.2001, he recovered the

victim girls from the house of Professor Ashok Kumar Verma situated of both the girls and seizure list was prepared by Surya Bhusan Sharma. Both

the girls were sent for medical examination and their statement were recorded under Section 164 Cr.P.C. He received the medical reports and after

completion of investigation submitted charge sheet. He has also proved the requisition for medical examination.

24. The most important witnesses in this case are victim girls i.e. P.W.5 & P.W.-6.

25. P.W.-5 is the first victim girl in this case. According to her evidence, on the date of occurrence, it was Sunday and in the evening at about 4:00

PM, she was alone in her house, meanwhile, Uttam Biswas came to her home and assuring her to solemnize marriage, took away from her house and

in the way, another victim girl and appellant Sufal Biswas also meet them, then all the four came to Jamtara and were kept in a house of an Officer,

adjacent to the Jamtara Police Station. Both victims were brought by the accused persons on assurance of solemnization of marriage and all over the

day, the accused persons used to go outside and return in night. She also admits that in the night Uttam used to establish physical relation with her. She

also admits that due to love affair with the accused, she was living in the house of the Officer. After two days, she was brought by police. She along

with another victim girl was brought by Jamtara Police to Dumka, where both were medically examined and their statements were recorded by

Magistrate and handed over to their respective parents, who were also present in the Court. She was also provided food, drinks and other articles by

the accused persons.

She also admits in the cross-examination that since six months ago, she was under love affairs with the accused Uttam Biswas.

She also denied the suggestion of defence that on the date of occurrence, she was about 19 years old and on tutoring by her parents, she has disclosed

her age before Court to be 15 years.

26. P.W.-6 is another victim, who was under love affair with appellant Sufal Biswas. According to her evidence also on the date of occurrence at

about 5:00 PM Sufal Biswas came to her house allured her to solemnize marriage and took away with him. Another victim was also brought by Uttam

Biswas. All the four came to Jamtara and were living in a room of a Professor of the School situated near the police station. She has also deposed

that both the accused persons used to come in the night and were providing food and drink to them and also having sexual intercourse in the night. She

along with another victim (P.W.-5) were recovered by Jamtara Police and brought to Dumka and her statement was also recorded by Magistrate and

medical examination was conducted at Dumka. She also admits in her cross-examination that prior to two years of occurrence, she was married with

a boy of Village " Gabra. She was living at her matrimonial home and just one day prior to occurrence, she has come to her parental home.

She has also admitted in her cross-examination that prior to occurrence, she was under physical relation with the accused and another victim was also

under physical relation with the Uttam Biswa.

She has also denied the suggestion of defence that on the date of occurrence she was more than 20 years old and due to love affairs she eloped with

the accused Sufal Biswas and she was never kidnapped or forced for sexual intercourse.

27. P.W.-12 Dr. Aruna Chatterjee was the Member of the Medical Board constituted for examination of the victim girls of this case. According to her

evidence, she has examined the victim girl (P.W.-6) on 30.06.2001 at about 11:05 AM. No internal or external injury was found on her body or private

part. Hymen shows old rapture. As per x-ray report of the victim conducted by Dr. S.N. Jha, Orthopedic Surgeon, the age of victim girl (P.W.-6) was

about 15 years. However, no definite opinion can be given as to whether the victim was raped or not?

On the same day, another victim girl (P.W.-5) was also examined at about 10:55 AM, no internal or external injury was found. As per X-ray report,

the age of victim girl (P.W.-5) was assessed to be 18-19 years. However, no definite opinion can be given as to whether rape was committed or not?

In her cross-examination, she admits that the finding about age of the victim is based on x-ray report, but the x-ray report and plate is not available

before her. The reports about age of the victims have been given as per x-ray report conducted by Orthopedic Surgeon.

28. From the discussion of the evidence, as stated above, it appears that one of the victim girls (P.W.-6) was already married and aged about 18 to 19

years, therefore, no offence is committed either under Section 366A or under Section 376 of the I.P.C. as per admitted consensual relationship due to

love affairs. So far, another victim girl (P.W.-5) is concerned, as per the evidence of father of victim girl (P.W.-5), was 15-16 years on the date of

occurrence and as per X-report also the age of victim girl (P.W.-5) was assessed to be 15 years, but no Ossification test was conducted to assess the

actual age of the victim girls, which leaves room for ample doubt with regard to the correct age of the victim girls. The benefit of the aforesaid doubt

must naturally go in favour of the accused persons. From the evidence of victim girls itself, it appears that they have voluntarily accompanied with the

accused persons / appellants due to love affairs with them and prior to occurrence also, as admitted by P.W.-5 and P.W.-6 in their evidence, there

was physical relationship between the victim girls and accused persons.

29. It appears that the trial court has committed error of record while appreciating the evidence of witnesses in true and proper perspective and

arrived at wrong conclusion about guilt of the appellants, therefore, I find substance in the argument advanced by learned counsel for the appellants.

This appeal has merit, which is hereby allowed.

30. The judgment of conviction dated 07.01.2006 and order of sentence of dated 09.01.2006 of appellants is hereby set aside.

31. Appellants are on bail, as such they are discharged from the liability of bail bond. Sureties are also discharged.

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

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