
(2025) 10 JH CK 0080

Jharkhand HC

Case No: Criminal Appeal (D.B.) No. 476 Of 2004

Kadru @ Misi Murmu,
son of Late Shakal
Murmu

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 17, 2025

Acts Referred:

- Indian Penal Code, 1860 — Section 341, 342, 376

Hon'ble Judges: Rongon Mukhopadhyay, J; Pradeep Kumar Srivastava, J

Bench: Division Bench

Advocate: Anupam Anand, Sardhu Mahato

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. The instant criminal appeal is directed against the Judgment of conviction and Order of sentence dated 29.08.2003 and 30.08.2003 respectively passed by learned Addl. Sessions Judge, Fast Track Court, Sahibganj in Sessions Case No. 75 of 2002, whereby and whereunder the appellant has been held guilty for the offences under sections 341/342 and 376 of the Indian Penal Code and sentenced to undergo simple imprisonment for one month under Section 341 of IPC; R.I. for one year for the offence under Section 342 of IPC and R.I. for life for the offence under section 376 of IPC.

2. We have already heard the arguments of Mr. Anupam Anand, learned counsel for the appellant and Mr. Sardhu Mahato, learned APP for the State.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that on 12.08.2001 at about 7:30 PM prosecutrix was going for her natural call, meanwhile, Kadru Murmu @ Misi Murmu subdued and took away

her in a field, laid down on the earth, forcibly untying her clothes committed rape upon her. It is further alleged that after committing rape, she was brought by the accused gagging her mouth to his own house under threat of death and again subjected to rape. It is further alleged that father and brother of the victim were passing through the passage of the house of the accused, they heard the sound of weeping of prosecutrix and entered into the house of the accused and having seen them, the accused Kadru Murmu @ Misi Murmu fled away. The prosecutrix narrated the above occurrence to her father and brother. Thereafter, she was brought to her house and this case was lodged.

On the basis of above information, FIR was registered as Barhait P.S. Case No. 48/2001 for the offences under sections 341/342 and 376 of IPC against the accused Kadru Murmu @ Misi Murmu. After completion of investigation, charge-sheet was submitted for the aforesaid offences against the sole appellant.

4. After commitment of the case, Sessions Case No. 75 of 2002 was registered. The accused did not plead guilty and claimed to be tried. After conclusion of trial, impugned judgment was passed which has been assailed in this appeal.

5. In the course of trial, altogether 9 witnesses were examined by the prosecution.

P.W.-1 Usha Hembrom (Informant-cum-victim) P.W.-2 Barka Soren (Pradhan of Petkhasa Village) P.W.-3 Gudiya Murmu (Informant's mother)

P.W.-4 Lakhi Ram Hembrom (Informant's father)

P.W.-5 Mangal Besara P.W.-6 Dr. Sunita Prasad P.W.-7 Bholi Bhakti

P.W.-8 Filip Hembrom (Informant's brother)

P.W.-9 Lalan Kumar

6. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution: -

Ext.1- The signature of prosecutrix on fardbeyan

Ext.1/1 and 1/2- The signature of Dr. J.L. Sahu and Dr. A.K. Mandal on medical report of victim

Ext.2- Medical Report of victim by Dental Surgeon

Ext.3-Fardbeyan of the prosecutrix

Ext.4- Endorsement on the Fardbeyan for registration of FIR

Ext.5-Formal F.I.R.

7. On the other hand, defence has examined altogether five witnesses:

D.W.-1 Mahadeo Hembrom D.W.-2, Nachon Maraiya D.W.-3, Rita Bagati D.W.-4, Makku Soren D.W.-5, Dhananjay Bagati

8. However, no documentary evidence has been adduced by the defence.

Submissions on behalf of appellant: -

9. Learned counsel for the appellant assailing the impugned judgment has submitted that no such occurrence as alleged by the prosecutrix has taken place. There was love affair between the prosecutrix and appellant and both were intending to solemnize marriage with each other but father of the prosecutrix objected the same. The prosecutrix has given false evidence against the appellant under influence of her father and brother. The learned trial Court has not properly appreciated the unimpeached evidence of defence witness, who are also co-villagers and aware of the love affairs between the appellant and prosecutrix. The prosecution story is also not corroborated from medical report of the alleged victim girl. It is further submitted that I.O. of this case has not been examined by the prosecution which has seriously prejudiced the case of the defence. Therefore, the conviction and sentence of appellant is fit to be set aside and he deserves acquittal from the charges levelled against him.

In the alternative, it is argued that the appellant has remained in custody for substantial period of imprisonment about 13 years 2 months and 22 days and including the remission, he has undergone 16 years 11 months 17 days imprisonment, thereafter, he was granted bail during pendency of this appeal vide order dated 22.07.2014. The appellant has sufficiently been punished for his guilt. It is not such a brutal commission of rape rather the story of love affair. Hence, maximum sentence of life imprisonment awarded to the appellant is absolutely disproportionate to his guilt and harsh. Therefore, maintaining the conviction of the appellant, his sentence may be reduced to the extent of imprisonment of

16 years including the remission period already undergone by him.

Submissions on behalf of the State

10. On the other hand, learned A.P.P. appearing for the State has submitted that the learned trial Court has very wisely and aptly appreciated and analyzed the evidence available on record and rightly convicted the appellant. The impugned judgment of conviction and sentence of the appellant does not suffer from illegality or infirmity, calling for any interference. There is no legal substance in the grounds raised on behalf of the appellant. It is a serious and heinous offence of rape committed with a virgin victim girl. Therefore, the appellant does not deserve any leniency in the matter of sentence rather he has been adequately punished by the learned trial Court awarding the maximum sentence of imprisonment. This appeal is devoid of merits and fit to be dismissed.

11. We have gone through the record along with the impugned judgment in the light of rival contentions of the parties.

12. The sole point for determination in this appeal is whether the impugned judgment of conviction and sentence of the appellant suffers from any error of law, which requires any interference in this appeal?■

Analysis, reasons and decision:

13. Before imparting our verdict on the above point, it appears appropriate to discuss the evidence adduced by the prosecution and defence in this case.

P.W.-1 is the prosecutrix, according to her evidence, on 12.08.2001, in the evening at about 7:30 PM, she had gone to discharge natural calls towards southern Bari of her house. It was dark, meanwhile, Kadru Murmu came from behind, gagged her mouth, lifted her in his lap and brought towards field, thrashed her on earth, pulled her skirt and committed rape upon her. When she raised alarm, she was threatened to be killed. Thereafter, the accused dragged her towards his own home where again he committed rape on her. She sustained injuries on her private part and started weeping in the meantime her brother and father were passing through the house of the Kadru Murmu, they heard voice of weeping and came to the house of Kadru Murmu then he fled away and she was brought to her home and narrated the above incident to her father and brother. She was medically examined on Barhait Hospital. Her statement was recorded by the police over which she has proved her signature as Exhibit-1. She was also medically examined at Sahibganj Hospital and Ranchi Hospital.

In her cross-examination, she admits that in the year 2001, she was student of class 10th of Girls School, Barhait and prior to this, she had studied up to Class 8th in Rajkiya Adarsh Madhya Vidyalaya, Barhait. She does not recollect her date of birth mentioned in the School Leaving Certificate. She has been cross-examined at length but nothing has been elicited to rebut her testimony. It is very strange that nothing has reflected in her cross-examination suggesting any love affairs with the appellant accused rather it is only suggested and denied by the victim.

P.W.-2, Barka Soren is a hearsay witness from victim about the occurrence. According to him, on 12.08.2001, in the night, he was sleeping, it was 1:00 am when Lakhi Ram Hembrom woke him up and brought to his home, he came to his house and accompanied to his own home where the prosecutrix disclosed him that in the evening at about 7:30PM, she had gone to discharge natural calls in the field, then Kadru Murmu gagged her mouth, brought towards field and committed rape upon her and thereafter brought to his own house and again committed rape on her.

In his cross-examination, this witness admits that he is village Pradhan since 1988-89. He has further stated that he has not made any enquiry from the villagers about any love affairs between the prosecutrix and accused.

P.W.-3, Gudiya Murmu is the mother of the prosecutrix. She has also deposed that in the evening, her daughter went for discharging natural calls but did not return till night, then, her husband and

son went in search of her and heard sound of weeping from the house of Kadru. Then she was found there in torn clothes and blood was oozing from her private part. She was brought to home then she asked and her daughter said that Kadru Murmu has committed rape with her on the field and also brought to her home and again committed rape. Profuse bleeding was going on from her private part then she was admitted to Barhait Hospital thereafter to Sahibganj and Ranchi for treatment. There is nothing in her cross-examination to discredit her above testimony. She has denied the suggestion of defence about any love affair between them.

P.W.-4, Lakhi Ram Hembrom who is the father of the prosecutrix. According to his evidence, on 12.08.2001, her daughter had gone to discharge natural calls. When she did not return, then his wife told him that his daughter did not return. Then, he along with his son went for search and when they were passing through the house of Kadru Murmu, they heard the sound of weeping of her daughter, when they entered the house of the Kadru Murmu, the accused fled away and found her daughter whose clothes were torn and soaked in blood. When he asked her daughter, how she came here, she narrated that when she went to discharge natural calls, meanwhile, Kadru Murmu gagged her mouth from behind and brought to field and committed rape upon her, then, he dragged her away to his own home and again committed rape upon her. He brought her daughter to his own home and then he went to wake up Barka Soren, P.W.-2, Village Pradhan and she narrated the occurrence to village Pradhan and admitted to Barhait Hospital, Sahebganj and then Ranchi for treatment.

In his cross-examination also, nothing has been elicited showing that he was protesting against the marriage of victim girl and the accused or there was any love affair between the prosecutrix and the accused. He has been cross-examined at length but remained intact. He has denied the suggestion of defence that there was love affair between the daughter and the accused and both were intending to solemnize the marriage but he was protesting the same hence falsely implicated the accused.

P.W.-5, Mangal Besara. According to his evidence, when he was returning from discharging his natural calls in the morning of that night, he saw Lakhi Ram Hembrom, who was carrying her daughter through Rickshaw to Hospital. When he asked about the happening from victim and her father, the prosecutrix narrated that when she went to discharge her natural calls, meanwhile, Kadru Murmu came from behind, gagged her mouth and brought toward field and committed rape upon her in the field and again committed rape upon her in his own house.

In his cross-examination, he has been cross-examined at length but denied the most of the suggestions made by defence.

P.W.-6, Dr. Sunita Prasad. According to her evidence, on 13.08.2001, She was posted at Sadar Hospital, Sahibganj as Lady Medical Officer, P.P. Programmer. On the same day, she examined the victim and found the following:-

Clothingâ€™s brought by the attendants of the girl, which was also sealed with blood, which was sealed and preserved.

General condition was very low, bleeding per vaginally and the girl is in agony and complains of pain and weakness, body built average. At first, she is treated for her problem by some injection also of fluids.

No injury was found on her body.

During vaginal examination, Examination was painful and tenderness was found on perennial region. Ruptured of hymen was found and margin of hymen are red and oozing of blood found from hymen.

Vaginal tear was also found. Vaginal bleeding was found. Vaginal swab was taken and sent to pathologist Sadar Hospital, Sahibganj for microscopic examination for presence of spermatozoa. She has further deposed that victim girl was examined under general anesthesia on the same day at 4:45 PM. Tear in vaginal canal was found in lateral fornix of right side. The vaginal tear was repaired by a cat gut. She has further deposed that according to pathologists report, Sadar Hospital, Sahibganj few alive spermatozoa and plenty of red blood cells was found during microscopic examination of vaginal swab. She has further stated that according to the report of dental surgeon, victim is above 14 years of age.

Therefore, depending upon the physical findings and pathologists report, this witness has opined that there is evidence of sexual intercourse with the victim girl within 24 hours from the time of her examination.

P.W.-7, Bholi Bhakti, according to his evidence, he has stated that his home is side of the road and he saw that Lakhi Ram Hembrom and his three sons and his wife accompanied by Village Pradhan were carrying the victim by a Rickshaw. He asked about the happening, then the victim's father narrated that when her daughter went to discharge her natural calls, Kadru Murmu came from behind and gagged her mouth and brought towards field and committed rape on her and again committed rape on her by bringing her in his own house. He also saw the blood stained bad-sheet on which she was lying and blood on her clothes.

P.W.-8, Filip Hembrom, according to his evidence, on 12.08.2001, her sister had gone to discharge natural calls, when she did not return, then his mother told his father that his daughter did not return. Then, he along with his father went for search and when they were passing through the house of Kadru Murmu, they heard the sound of weeping of her sister, when they entered the house of the Kadru Murmu, the accused fled away and found her sister from whose clothes blood was oozing. When his father asked her sister, how she came here, she narrated them that when she went to discharge her natural calls, meanwhile, Kadru Murmu gagged her mouth from behind and brought towards field and committed rape upon her. Again, the accused brought her in his own house and committed rape on her. She also told that the accused has threatened to death if she told somebody in this regard. He brought her sister to his own home and then his father went to wake up Barka Soren, P.W.-2, Village Pradhan and she narrated the occurrence to village Pradhan and admitted to Barhait Hospital and thereafter Sahebganj Hospital for treatment.

In his cross-examination, he has denied the suggestion that his sister was ready to get marry with Kadru and his father was protesting the marriage between them.

P.W.-9, Lalan Kumar has proved the signature of S.I. Rameshwar Singh on the Fardbeyan which has been marked as Exhibit-3. He has also proved his writing and signature on endorsement made on the Fardbeyan which has been marked as Exhibit-4 and formal F.I.R. as Exhibit-5.

D.W.-1, Mahadeo Hembrom. According to his evidence, there was love affair between the prosecutrix and accused and both of them used to go to the house of each other and at that time, there was good relationship between the family of prosecutrix and the appellant. It is further deposed that prosecutrix has implicated the accused on the instigation of her father. It is further deposed that Kadru was ready to marry with the victim but her father protested and objected to get married with Kadru because her father was demanding money from Kadru Murmu and the appellant has falsely been implicated in the case of rape.

In his cross-examination, he admits that he did not know when the talk of marriage was going on between them and there was no discussion of transaction of money in front of him.

D.W.-2, Nachon Maraiya. According to her evidence, she has denied that any occurrence of rape has taken place on the alleged date. She also deposed that she used to see Kadru and Prosecutrix in the village and market together and both of them used to visit the house of each other and there was friendly relationship between them. She also deposed that Kadru and victim used to visit her house and they used to discuss about the marriage and attempt were also taken to get marry but her father demanded Rs. 50,000/- from Kadru Murmu for solemnizing marriage with her daughter but Kadru failed to arrange the amount and did not get married with the prosecutrix.

In her cross-examination, she admits that she did not remember when she had seen the Kadru and the victim together.

D.W.-3, Rita Bagati. According to her evidence, she used to see the prosecutrix in the house of Kadru and when the house of Kadru was being constructed, the prosecutrix were working there and told her that after completion of construction, they will get married and live there. She also used to see both of them visiting together in the village and market but due to demand of money from the side of her father, marriage was not solemnized.

D.W.-4, Makku Soren. According to her evidence, she also used to see Kadru and prosecutrix talking with each other in the market and village and also stated that the victim's father has falsely implicated the appellant in this case.

In her cross-examination, she had denied the specific date and time when she had seen both of them talking and visiting with each other.

D.W.-5, Dhananjay Bagati. He deposed that he had seen both of them used to go to the house of each other and used to go together for purchase of ration and Kadru had told him that he will marry with the victim. He has also stated that victim's father protested and objected the

marriage with Kadru and three to four years ago, victim's father used to beat her.

In his cross-examination, he has also denied any specific date and time that when both of them were seen together.

14. 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 present appellant that he committed rape with the victim in the night while she had gone to discharge her natural calls. 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, mother and brother and other prosecution witness. Medical report also corroborates the testimony of the prosecutrix wherein the Doctor has opined that there is evidence of sexual intercourse with the victim within 24 hours from the time of her examination. 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 defence witnesses have stated that victim and accused were used to be seen by them together in the village and market. Therefore, so far as the conviction of the appellant is concerned, the same is upheld and confirmed.

15. So far as the 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 and has remained in custody for substantial period of imprisonment about 13 years 2 months and 22 days and including the remission, he has undergone 16 years 11 months 17 days imprisonment, therefore, considering the facts and circumstances of the case, nature of offence committed by the appellant, age, character and antecedent, this Court deems fit to reduce the sentence of the appellant. Therefore, instead of undergoing substantive sentence of imprisonment for life as awarded by learned trial court, the sentence of appellant is reduced to the imprisonment already undergone by him.

16. This appeal is dismissed on merits with modification in sentence as stated above.

17. The appellant is on bail, hence, he is discharged from liability of bail bonds. The sureties are also discharged.

18. Pending I.A(s), if any, is also disposed of, accordingly.

19. Let a copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.