

(2010) 09 JH CK 0011

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 74 of 2007

Ashok Mahato

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 17, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 164, 313
- Penal Code, 1860 (IPC) - Section 34, 365A, 366A, 376(2)

Citation: (2011) 1 JLJR 39

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Advocate: A. Srivastava, K.K. Srivastava and D.K. Maltiyar, in Cr. Appeal S.J. No. 74 of 2007, P. Modi and Sarvendra Kumar, Cr. Appeal S.J. No. 80 of 2007 and M.K. Dey and A.K. Dey, in Cr. Appeal S.J. No. 150 of 2007, for the Appellant; Tapas Roy, Assistant Public Prosecutor in Cr. Appeal (S.J.) No. 74 of 2007, Anita Sinha, Assistant Public Prosecutor in Cr. Appeal (S.J.) No. 80 of 2007 and 150 of 2007 for the State and Yogesh Modi and R.K. Bobby for the Informant, for the Respondent

Final Decision: Dismissed

Judgement

D.K. Sinha, J.

All the three appeals are taken up together arising out of common judgment of conviction and order of sentence recorded by Shri Rambabu Gupta, Additional Sessions Judge, F.T.C.-I, Bermo at Yenughat, Bokaro in S.T. No. 32 of 1999, arising out of Nawadih P.S. Case No. 16/1998, corresponding to G.R. No. 322/1998.

2. All the Appellants, referred to hereinbefore, viz. Chetlal Mahto, Ashok Mahato, Ranjit Kumar Mahto and Niranjan Mahto were held guilty u/s 366A of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs. 5000/- each with default stipulation to undergo simple imprisonment for three months/Appellants Chetlal Mahto, Ashok Mahato

and Ranjit Kumar Mahto (except Niranjan Mahto) were further convicted u/s 376(2)(g) of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- with default stipulation to undergo simple imprisonment for six months each. The Trial Court further observed that both the sentences shall run concurrently and sixty per cent of the fine amount realized from the convicts would be given to the victim/prosecutrix.

3. The Criminal Law was set in motion on the basis of the written report presented by the informant P.W.-5 Munshi Nayak before the Nawadiah police narrating therein that on 16.5.1998 at about 7:00 p.m his elder daughter Parvati Devi aged about 17 years went out from the house to answer the call of nature, but she did not return back. Thereafter members of his family made extensive search in the village as well as in the neighbourhood and in course of search, the informant gathered that Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto kidnapped his daughter Parvati Devi in the said evening and took her away in a blue coloured Maruti Van vide its registration No. BR-20C-0093 with the ulterior motive and the van was driven by Niranjan Mahto.

4. The written report gave rise to Nawadjh P.S. Case No. 16/1998 registered on 17.5.1998 for the alleged offence u/s 366A of the Indian Penal Code and after investigation, the Investigating Officer submitted charge sheet under Sections 376/366A/34 of the Indian Penal Code against all the four Appellants. The Appellants were put on trial by the Additional Sessions Judge, Bermo at Tenughat, Bokaro after framing of charge against each of them under Sections 376/34 and 366A of the Indian Penal Code. It would be relevant to mention that the victim girl Parvati @ Baby returned back on 18.5.1998 and she underwent medical examination for injuries if any and determination of her age and to ascertain as to whether she was subjected to sexual intercourse. The lady Doctor P.W.-7 Usha Singh determined her age about 16 years and the witness did not find any sign of rape on the victim. Victim's statement was recorded u/s 164 of the Code of Criminal Procedure on 20.5.1998, wherein she admitted that she was kidnapped by Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto, who gagged her mouth with the help of cloth and forcibly brought her to Durgapur in a Maruti van. She was kept confined in the van for the whole of night of Saturday and all the three committed rape on her one by one. She was brought to Ramgarh on Sunday from Durgapur by trekker and whenever she requested to take her back, they used to terrorize her by brandishing dagger. She anyhow escaped from Ramgarh where she was confined in a room and came to Ranchi Road and from there she came to Bhandaridah after boarding a train and from there to her home.

5. Altogether eight witnesses were produced and examined on behalf of the prosecution. Besides, the prosecution proved signature of the informant Munshi Nayak on his Fardbeyan Ext.1, endorsement of the officer-in-charge of the police station with his signature on the Fardbeyan Ext.1/1, injury report of the victim Ext.2,

formal F.I.R. Ext.3, statement of the victim recorded u/s 164 of the Code of Criminal Procedure Ext.4 and paragraphs Nos. 1 to 102 of the case diary of Nawadih P.S. Case No. 16/1998 Ext.5, all without objection from the defence Side. Besides, two witnesses were produced on behalf of the defence viz. D.W.-1 Bhola Mahto and D.W.-2 Mithlesh Kapardar.

6. P.W.-1 Lakhan Saw testified that on 16.5.1998 Munshi Nayak came to his house and apprised about the missing of his daughter Baby Devi. He then came out with Munshi Nayak in search of her. He further testified that on the day of occurrence, he had seen a blue coloured Maruti car roaming around the village, with Chetlal Mahto, Ashok Mahato, Niranjan Mahto and Ranjit Kumar Mahto sitting therein. He identified all of them in the dock. He admitted that Munshi Saw was his uncle, who could not ascertain any information about the missing girl in the house of Daulat and Bhuneshwar Saw. He admitted having seen blue coloured car on the road, opposite his house and denied the suggestion that false case was instituted against Chetlal on account of vengeance.

7. P.W.-2 Govind Sah deposed that on 16.5.1998 Munshi Nayak came to him and narrated that his daughter Baby Devi, who had gone out to answer the call of nature, did not return back, as such, he came out in search of her. The witness further stated that he gathered at about 10:30 p.m. that Chetlal Mahto, Ashok Mahato, Niranjan Mahto kidnapped the girl in a blue coloured Maruti van and escaped towards Chatania road. Girl could be recovered after two days. In the cross-examination, the witness admitted that the informant Munshi Nayak was his cousin and that Baby Devi was already married at the time of occurrence and that he came across the girl after two days of the occurrence when she narrated the entire story. Her statement was recorded in the evening of 17.5.1998 but admitted having not seen the occurrence.

8. P.W.-3 Mohart Lal Saw testified that on 16.5.1998 at about 7:30 p.m. he came out on hearing noise and learnt that the daughter of Munshi Nayak, namely, Baby Devi did not return back to her home after she had been to answer call of nature. He learnt that 3-4 boys were roaming around in a blue coloured Maruti van during day hours of 16.5.1998. They were Chetlal Mahto, Ashok Mahato, Niranjan Mahto and Ranjit Kumar Mahto. He further gathered that these people had kidnapped Baby and took her towards Phusro in the said vehicle. He admitted having not seen the occurrence but testified that he had seen the vehicle at about 5:00 p.m. He admitted that the informant was his maternal uncle. Girl was married one and she had come from her matrimonial home only a few days prior to the alleged occurrence.

9. P.W.-4 Permehswar Saw testified that he came to know from Munshi Nayak in the evening of 16.5.1998 that his elder daughter Parvati Devi @ Baby did not return back to her home and later on, he learnt from Munshi Nayak that she was forcibly taken away by Chetlal Mahto, Ashok Mahato, Niranjan Mahto and Ranjit Kumar Mahto. The girl was found out after two days. He admitted having not seen the

occurrence and that Munshi Saw was his cousin.

10. P.W.-5 Munshi Nayak, the informant of this case, deposed that the occurrence took place on 16.5.1998 at about 7:30 p.m. His daughter Parvati @ Baby Devi, aged about 16 years, went out from the home to answer call of nature but when she did not return back, he along with the members of his family came out in search of her. During course of search, he learnt that the co-villager Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto forcibly took away his daughter in Maruti Van No. BR-20C-0093, which was driven by Niranjan Mahto. They had kidnapped his daughter and took her to Durgapur with ill motive where all the three had committed rape on her one by one. He had given information to the police on 17.5.1998 by presenting a written report. He proved his signature in the written report Ext.1. He came across his daughter in the morning of 18.5.1998, who apprised him that she escaped and returned from the confinement of the culprits and further narrated about the gang rape that was committed on her by them one by one. She was medically examined by Dr. Usha Singh and her statement was recorded by the police. She had delivered her statement in the Court as well. He identified all the accused in the dock. In the cross examination, the witness admitted that his daughter had proceeded to answer call of nature after informing her mother and very often the females used to go for the said purpose. He went out in search of his daughter Parvati along with other witnesses till late in the night. He informed the police by presenting a written report on subsequent day, which was signed by him. He admitted having not seen the occurrence but came to learn from his daughter on 18.5.1998 when she narrated the occurrence in presence of the members of his family who surrounded her. Police was informed on the same day in the morning. He further admitted that (sic) part of occurrence including the commission of rape with his daughter could be witnessed by him. He denied the suggestion that Chetlal was falsely implicated in the instant case for the reason that he had not made payment of the hired trekker which he had taken from Chetlal on the eve of the marriage of his daughter Parvati and whenever Chetlal demanded the fare, he tried to subterfuge the matter, to which a panchayati was held.

11. P.W.-6 Parvati @ Baby Devi is the victim of the case. She deposed that the occurrence took place on 16.5.1998 at about 7:00-7:30 p.m. She had proceeded from the home to answer call of nature but there three boys came, amongst whom she identified Chetlal, Ashok and Niranjan. Her mouth was gagged with the help of cloth by Chetlal and they forcibly took her inside the Maruti Van and extended threat that she would be killed in case of raising alarm. From there she was taken to Durgapur at a lonely place. All had been teasing her in the vehicle during journey. All the three Chetlal, Ashok and Ranjit ravished her one by one. The vehicle was driven by Niranjan. After some time a trekker was brought there by Chetlal and from there she was taken to Ramgarh in the trekker where she was kept confined in a house. She further testified that whenever she requested them to return her back to her home, she was threatened to be killed. Culprits had committed rape without her

consent. She escaped from Ramgarh and came to Ranchi Road and from there to Bhandaridah by boarding a train and from there to her parental home at about 10-11 o'clock in the night and narrated the occurrence to her father. She went to the police station with her father in the morning of 18.5.1998. She was sent to a Doctor for check up on 19.5.1998. She was interrogated by the police during such period. Her statement Was recorded on 20.5.1998. She identified the accused Ashok and Ranjit, who were present during her statement during trial in the dock and claimed to identify two other culprits. In the cross examination, she admitted having studied upto Class-X at Binod Bihari High School, Gunjardih but stressed that none of the accused studied there. They were not known to her from before prior to the occurrence. She could know their names in the van while they had been interacting themselves, but the name of Chetlal was known to her from before as he was her co-villager. Culprits had kidnapped her at a distance of about 15-20 yards from her house, which was a lonely place but she found the vehicle there. The head light of the van was switched off when she was forcibly put in the vehicle and at that time, she could not identify any one in the vehicle. She could gather from the interaction of the culprits that she was brought to Durgapur but she could not say as to whether it was a town or village. She could not remember date of her birth recorded in the school. She admitted having not raised alarm at Ramgarh as she was under constant threat and that she had not carried money from her home while she had been to answer call of nature. She further admitted having not ever visited Ranchi Road Station prior to the occurrence. She could not purchase train ticket for train journey from Ranchi Road. She was already married and admitted having consummated prior to the offence and there was bleeding at the time of rape. As the culprits had removed her garments, there was neither stain of blood nor stain of semen stuck in her clothes. Finally, she deposed that the accused Niranjan was not known to her prior to the occurrence. She put to rear sit of the Maruti van, which was driven by Niranjan from the very beginning to end and she had no interaction with Niranjan.

12. P.W.-7 Dr. (Mrs.) Usha Singh while was posted at Referral Hospital, Bermo had examined Baby Kumari daughter of Munshi Nayak on 19.5.1998. On examination, the witness did neither find any external injury nor any foreign body or external genitallia of Baby Kumari but she had sign of regular coitus. Her age was assessed about 16 years. She proved the medical report/injury report Ext.2 and admitted having not mentioned in the report about the process by which she ascertained the age of Baby Kumari and that she denied the suggestion that she had mentioned the age of the girl according to the wishes of the victim and not on the basis of any examination.

13. P.W.-8 Bijay Kumar, an Advocate's Clerk, a formal witness, proved the formal F.I.R. Ext.3 in the pen of Shri Anand Kumar Singh, the then officer-in-charge of Nawadih police station. He further proved the endorsement made thereon Ext.1/1. This witness proved the statement of Baby Devi recorded by Shri P D. Singh, Judicial

Magistrate, 1st Class, Bermo at Tenughat on 20.5.1998 u/s 164 of the Code of Criminal Procedure which was marked Ext.4. Paragraph Nos. 1 to 102 of the case diary was proved by him, related to Nawadih P.S. Case No. 16/1998 which was marked Ext.5. He admitted that none of the above exhibits was prepared in his presence.

14. After examination of the witnesses, all the Appellants were examined u/s 313 of the Code of Criminal Procedure and were confronted with the incriminating materials brought on the record in course of trial, to which each of them denied his guilt. As stated earlier, the defence produced D.W.-1 Bhola Mahto, who testified that Munshi Nayak of village Bunjardih was known to him, who got his eldest daughter married in the month of June, 1997. Witness further testified that Chetlal of village Bunjardih was also known to him and Ashok Mahato as well as Ranjit Kumar Mahto were the brother-in-laws of Chetlal. Chetlal was having a trekker in the year 1997, which was taken on hire by Munshi Nayak for three days on the eve of marriage of his daughter Baby. But in spite of constant demand of the fare of his trekker, Munshi Nayak refused to make payment. In the month of September, 1998, Munshi Nayak threatened Chetlal by brandishing stick and using abusive language to his mother and sister, whereupon both the brother-in-laws of Chetlal came out and protested as to why he was abusing, to which Munshi Nayak had threatened that he would institute a case against them. He after counselling his caste men instituted a case against them and that prior to institution of case, he had sent his daughter to her matrimonial home. However, the witness admitted that Munshi Nayak had not taken the trekker on hire with his consent, but he came to learn about such hire of trekker from Chetlal. He admitted that the fact that Munshi Nayak had threatened Chetlal and others by brandishing stick was also communicated to him by Chetlal and Chetlal happened to be his nephew in relation. No action was taken with respect to the incident that took place in the year 1997. Even no initiative was taken for realization of the freight of the trekker. He denied the suggestion that his statement was not recorded by the police. D.W.-2 Mithlesh Kapardar admitted that he was a driver for the last five years and used to ply the trekker on Madhukarpur-Ramgarh route. He expressed his ignorance about the instant case but stated that there was no train route from Ramgarh to Bhandaridah.

15. Counsels appearing on behalf of the Appellants in different sets of appeals are consistent in their arguments that P.W.-1 Lakan Saw, P.W.-2 Govind Sah, P.W.-3 Mohan Lal Saw, P.W.-4 Permehwar Saw and even the informant P.W.-5 Munshi Nayak were not the eye-witnesses of the alleged occurrence of taking away Baby Devi from the village in Maruti Van while she came out to answer call of nature, rather, they were consistent that they derived information from the villagers that it were the Appellants, who kidnapped Parvati @ Baby Devi in a Maruti van. None of the above witnesses disclosed the name of any villager or the source from whom they derived information about the complicity of these Appellants in the alleged offence, as such, their statements on the point of kidnapping are secondary in

nature and no direct: evidence could be adduced on behalf of the prosecution on the factum of kidnapping and complicity of the Appellants therein except the statement of the girl Parvati. In the written report submitted by the informant P.W.-5 Munshi Nayak, he had named the Appellants merely on suspicion and he testified during deposition in the trial Court as contained in para-10 that he could know the name of the culprits only on 185.1998 upon arrival of his daughter. So in the circumstances, the prosecution failed to explain as to how the informant preconceived and had given the names of the Appellants in the written report as the culprits.

16. Counsels were further consistent that in the written report, the informant had given the age of the girl to be 17 years but the lady Doctor Usha Singh determined her age only 16 years without adopting the required medical tests for determination of age. Even X-ray of her iliac crest was not taken to find out fusion of bones and therefore, the age of the girl determined by the Doctor cannot be relied upon. The girl quite major and was already married prior to the alleged occurrence and that no sign of rape/ gang rape could be found on her. Yet, it was natural when the lady Doctor observed that the girl was habitual of sex. In her statement recorded u/s 164 of the Code of Criminal Procedure, Parvati @ Baby Devi was consistent that she was gang raped by Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto one by one. She had not taken the name of Niranjan Mahto in the entire occurrence right from her kidnapping up to the allegation of gang rape in the vehicle. But in her substantive evidence, she testified that she was gang raped by Chetlal, Ashok and Ranjit one by one, whereas Niranjan was driving the vehicle. She neither did raise alarm nor she ever tried to attract the attention of by-passers for her rescue, which seems unusual conduct as such false implication of the Appellants cannot be ruled out. Specific defence of the Appellant Chetlal was of false implication as the informant refused to pay the freight of his trekker which was taken by him on hire on the eve of marriage of his daughter Baby.

17. Investigating officer of the instant case abstained from the witness box during trial and according to the learned Counsels for the Appellants, such abstinence immensely caused prejudice to the defence of the Appellants as they have been denied opportunity to examine him on various issues including on the issue of the seizure of Maruti van and his objective finding as to whether any sign of rape or any incriminating material could be detected from inside the cabin of the Maruti van. It was the specific case of the prosecution from the very beginning that Baby was kidnapped in a Maruti van after gagging her mouth and she was taken to Durgapur where she was gang raped by three boys and from there she was taken to Ramgarh where she was kept confined in a room and from there she escaped and returned back to her parental home. Prosecution story appears improbable in the sense as well the learned Counsels asserted that there was not a single eye-witness in support of the entire journey right from her kidnapping till she returned to her home back. She travelled all through Maruti van in day and night and she also

travelled by train from Ranchi Road without ticket but at no point of time, she attracted the attention of the passengers or the police on her way to the Station, though she had stated that she had reached Ranchi Road railway station by inquiring about the way from the people. She had no money with her but travelled all through by train and different modes.

18. Learned Counsel appearing for the Appellant Niranjan Mahto asserted that the statement of Parvati @ Baby Devi is self contradictory. In her statement recorded u/s 164 Code of Criminal Procedure, she narrated that she was kidnapped by Chetlal, Ashok and Ranjit, who took her to Durgapur and in a Maruti van and committed gang rape in the vehicle itself, but in her substantive evidence before the trial Court, she took the name of Niranjan by implicating that Niranjan was all through driving the vehicle, unconcerned with the offence committed by the other three inside the vehicle, hence her statement was not trustworthy, improbable and fit to be discarded. There was sufficient cause for the false implication of the Appellant Chetlal for differences arose on the issue of payment of freight of his trekker, consequently other two Ranjit and Ashok being the brother-in-laws of Chetlal were also implicated. Appellant Niranjan was implanted as a driver was needed to drive the alleged Maruti van which could never be recovered.

19. Learned Additional Public Prosecutors on behalf of the State-Respondent in different sets of appeal submitted by admitting at the outset that there was no eye-witness of the occurrence except the victim-girl herself, who has consistently narrated the entire occurrence right from her kidnapping, when she came out late in the evening to answer call of nature, by the Appellants, who in furtherance of their common intention forcibly took her inside the Maruti van by gagging her mouth who took her to Durgapur. Initially she could not name Niranjan Mahto who was on the driving seat. She did not get opportunity as being confined by the Appellants in the Maruti Van, she could not raise alarm to attract the attention of by-passers on her way to Durgapur where she was gang raped by three of the Appellants Chetlal, Ashok and Ranjit, whereas Niranjan was driving the Maruti van. Though there was no eye-witness of the occurrence, but the witnesses produced and adduced on behalf of the prosecution were consistent by claiming that they had seen a blue coloured Maruti van roaming in the village in the evening hours and that Parvati Devi was kidnapped and taken away by the said van which was a strong circumstance. Statement of the girl Parvati @ Baby Devi was recorded u/s 164 of the Code of Criminal Procedure as also by the trial Judge and in both of her statements, she was consistent that she was gang raped by Chetlal, Ashok and Ranjit with minor discrepancy that she did not disclose the complicity of Niranjan which was later on explained in the trial Court that Niranjan was all through driving the van and his attention was on the road. The light of van at the time of kidnapping was switched off.

20. The victim girl Parvati Devi narrated her miseries by narrating as to how she escaped from the confinement of the Appellants at Ramgarh and came to Ranchi Road station and from there she came to Bhandaridah by boarding a train and from there to her parental home at village Gunjardih within Nawadih police station.

The girl was kidnapped in the evening of 16.5.1998 at about 7:00 p.m. and in the written report presented by the informant P.W.-5 Munshi Nayak, registration number of the blue coloured Maruti van vide BR-20C-0093 was given, being driven by the Appellant Niranjan Mahto. Munshi Nayak presented the written report on 17.5.1998, on the basis of which, case was initially registered for the offence u/s 366A of the Indian Penal Code wherein he had given the age of his daughter Parvati to be 17 years. She returned back on 18.5.1998 and on the police requisition, she was sent for medical check up, but no external injury was found either on her body or private parts and she was found to be habitual of regular sex. Her age was determined to be 16 years but without giving the reasonings for such determination. The girl was already married and only a couple of days prior to the occurrence she had come to her parental home from her matrimonial home. Prosecution case cannot be disbelieved in absence of injuries on the genitallia or private parts or on any part of the body of the victim as consistently held by the Apex Court when the statement of the victim appears to be trustworthy and reasonable. All the Appellants were convicted u/s 366A of the Indian Penal Code but three of them viz, Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto were separately held guilty u/s 376(2)(g) of the Indian Penal Code and each of them was sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 10,000/- with default stipulation.

21. Having regard to the facts and circumstances of the case, arguments advanced on behalf of the parties, I find from the statement of the victim-girl, which was recorded at the first instance u/s 164 of the Code of Criminal Procedure after she returned back that she was kidnapped by the Appellants Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto in furtherance of common intention and it was the Appellant Chetlal Mahto, who had gagged her mouth when she had come out in the evening of 16.5.1998 to answer the call of nature. Such occurrence usually takes place in remote villages for want of toilet facilities in the homes. The females of the house come out either collectively or alone in case of exigency to answer the call of nature. There was no eye-witness of the occurrence on the factum of kidnapping except the statement of the injured victim who was subjected to sexual assault. But, at the same time, I find that the witnesses deposed in unequivocal terms that they had seen a blue coloured Maruti van roaming around the village prior to the alleged time of occurrence. The occurrence of 16.5.1998 at about 7:00 p.m. was reported to the police on 17.5.1998 where in the written report complicity of all the four Appellants was disclosed besides use of Maruti van by the informant Munshi Nayak. The witnesses were consistent that they derived information about the complicity of the Appellants in the alleged kidnapping and use of the Maruti van from the

villagers, but none of the witnesses disclosed the name of any of the villagers as the source from whom they derived information. I find substance in the argument advanced on behalf of the Appellants that so far the factum of kidnapping and the charge thereto u/s 366A of the Indian Penal Code was concerned, P.W.-1, P.W.-2, P.W.-3, P.W.-4 and P.W.-5 were the secondary evidence. When the victim-girl returned on 18.5.1998 from the confinement of the Appellants, she was taken to the police station and her statement was recorded before the Magistrate u/s 164 of the Code of Criminal Procedure where, at the first instance, she disclosed the complicity of Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto, who forcibly kidnapped her and took her to Durgapur in a Maruti van where she was ravished by them one by one in the vehicle itself. She did not disclose the complicity of Niranjan Mahto therein such statement and the role played by him in the entire incident, but in her statement recorded before the trial Court, she supported her earlier version that the Appellants Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto committed gang rape on her, whereas Niranjan was all through driving the Maruti van and she did not make imputation that Niranjan Mahto had participated in commission of gang rape on her. Defence had taken plea that the Appellant Chetlal Mahto had given his trekker on the eve of marriage of the victim-girl to her father Munshi Nayak and whenever he demanded the freight of the vehicle, the informant refused to pay and at one occasion, according to the D.W.-1, the informant had threatened Chetlal Mahto and his brothers-in-laws Ashok Mahato and Ranjit Kumar Mahto; to implicate them falsely in a case. Consequently, all the three were implicated in this case. Such defence does not appear to be reasonable and cogent. This is unbelievable that a father commanding some respect and holding prestigious position in the society, would put the chastity of Ms married daughter at a stake by declining payment of freight of trekker to its owner Chetlal and in the statements recorded u/s 313 of the Code of Criminal Procedure, none of the Appellants viz. Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto had taken such plea of false implication. Admittedly, Investigating Officer could not be produced in the trial Court but for that, I do not find that the defence of the Appellants has been prejudiced in any manner as the defence failed to show any convincing ground in this regard. Admittedly, Maruti van in question could not be recovered, though its registration number was given. The victim-girl Parvati narrated that the said vehicle was driven all through by Niranjan Mahto. She was cross-examined at length and credibility of her statement could not be discredited by the defence at her testimony appears trustworthy. She named the Appellant Niranjan Mahto that he was driving the Maruti van all through but without imputation of the offence of gang rape. As regards determination of age of Parvati @ Baby Devi, I find that such determination was not made on the basis of required medical and X-ray examination. The Doctor P.W.-7 determined her age 16 years, though her father Munshi Nayak had disclosed her age 17 years. Parvati Devi admitted by adducing evidence that she was a student in certain school but no step was taken on behalf of the prosecution to produce any relevant document before the trial Court for proving her date of birth,

recorded in the admission register of the school. There was no conclusive proof on the record as to whether Parvati @ Baby Devi was minor, below 18 years of her age, at the relevant time of occurrence so as to attract an offence u/s 366A of the Indian Penal Code or above that. For want of such evidence, it would not be proper to hold the girl a minor, below 18 years of her age at the relevant time of occurrence when it was admitted that she was married and according to the medical evidence, she was habitual of sex. For want of any positive evidence I am constrained to hold her minor at the relevant time below 18 years but I hold her major above 18 years. Argument was advanced that since the girl had not carried money with her, her statement that she travelled in the train from Ranchi Road to Bhandaridah without ticket cannot be relied upon. I do not subscribe the view taken by the learned Counsels for the Appellants as a girl in distress, who wanted to escape from the clutches and confinement of her kidnappers, would not care for train ticket, rather she would try to reach her home by any possible means concealing her identity. The train journey is unlike the bus journey in which one can board without a ticket. Statement of the girl is consistent and the trial Court rightly held the Appellants Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto guilty for the offence u/s 376(2)(g) of the Indian Penal Code. However, in the facts and circumstances, conviction of all the Appellants, namely, Chetlal Mahto, Ashok Mahato, Ranjit Kumar Mahto and Niranjan Mahto u/s 366A is modified into one u/s 366 of the Indian Penal Code as it could not be proved beyond reasonable doubt that Parvati @ Baby Devi was minor, below 18 years of her age, at the time of her kidnapping. Informant Munshi Nayak has stated that his daughter Parvati @ Baby Devi was kidnapped and was taken away by a blue coloured Maruti van with the given registration number, which has been supported by the victim that she was kidnapped in a Maruti van and it appears reasonable that in the given facts and circumstances, she had no occasion to see the registration number of the Maruti van, which was driven by Niranjan Mahto all through, as such, the complicity of Niranjan Mahto for the offence of kidnapping is also proved.

22. In view of the above discussions, upholding the conviction and sentence awarded by the Additional Sessions Judge, F.T.C.-I, Bermo at Tenughat, Bokaro in S.T. No. 32 of 1999 to the Appellants Chetlal Mahto, Ashok Mahato and Ranjit Kumar Mahto u/s 376(2)(g) of the Indian Penal Code, their additional conviction u/s 366A of the Indian Penal Code including the Appellant Niranjan Mahto is modified into one u/s 366 of the Indian Penal Code and each of them is sentenced to undergo rigorous imprisonment for a term of five years instead of ten years.

23. With such modification in the conviction and sentence in part, all the three appeals are dismissed by this common order.

24. Let appropriate steps be taken against the Appellants by the trial Court.