

(2006) 10 JH CK 0010
Jharkhand High Court
Case No: None

Lakhu Manjhi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Oct. 16, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2006) 4 JCR 680

Hon'ble Judges: Dilip Kumar Sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dilip Kumar Sinha, J.

The sole appellant Lakhu Manjhi has preferred this Cr. Appeal against the judgment dated 10.12.1998 passed by the 4th Additional Sessions Judge in Sessions Trial No. 290/1997 whereby and whereunder the appellant was convicted u/s 376 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for 7 years.


2. The prosecution story as it stands narrated in the statement of the prosecutrix Shakuntala Devi (FIR) Ext. 2 is that on 8.7.1997 while she was proceeding to take bath in a rivulet situated outside the village, she came across the sister of the appellant namely Malti Manjhian and the prosecutrix asked her as to why she was entangled with her husband and there held altercation by exchange of filthy language between the two. After such event the prosecutrix returned to her matrimonial home. On the command of father-in-law the prosecutrix kept mum. Since she had not taken bath in the rivulet she again proceeded at about 12 O'clock and after having her bath while she was returning at about 2 O'clock she came across the appellant Lakhu Manjhi who chastised her by threatening that she had insulted his sister within the hearing of the villagers. It was raining that time and in

the same sequence he lifted the prosecutrix in his lap and forcibly removed her to the nearby forest and by removing her Saree he committed rape on her. Though she raised alarm to rescue her but there was none to come to her. After commission of the rape the appellant threatened her to be killed in case of communicating such incident to anyone and he escaped. She again returned back to the rivulet where she took bath and there she narrated the occurrence to one Pano Devi and she returned back to her matrimonial home. There also she narrated the occurrence to her husband and the members of the family and the neighbouring people. A panchayati was held soon thereafter in which the appellant was called for and he appeared but when he was interrogated about the occurrence he began to quarrel. Observing aggressive attitude of the appellant the punches advised her to institute a case at the police station. Finally she narrated that the Saree, which she was wearing at the time of commission of rape was washed in the rivulet.

3. Mr. Ananda Sen, learned Counsel appearing on behalf of the appellant submitted that the narration of the occurrence by the prosecutrix is not consistent. Admittedly, there was quarrel between the prosecutrix and the appellant's sister Malti Manjhian on the same day much prior to the alleged occurrence and for such reason (he appellant has been dragged into a false case without any corroborative evidence. The conduct of the prosecutrix that alter the alleged occurrence she again went to the rivulet and washed her Saree does not appear to be normal conduct of a victim of rape. Learned Counsel submitted that the normal conduct of a victim would be that after commission of an offence of rape she would have returned back to her home as soon as possible, instead of going to river with free mind and would spend lots of time in washing her dress to which the learned trial Court below failed to take into consideration of such situation. No sign of rape was found on the person of the prosecutrix in the medical evidence and that she was medically examined within 30 hours of the alleged occurrence. The learned trial Court erred by observing that the sign of rape vanishes within 24 hours of the incidents without reference to medical jurisprudence.

4. Advancing his argument, learned Counsel submitted that the prosecutrix has made substantial development in her substantive evidence before the trial Court and the learned trial Court failed to take into consideration that conviction cannot sustain on such statement of the prosecutrix, PW 1 Jitu Mallick though has admitted that his statement was not recorded by the police but he was produced as the prosecution witness in the trial Court and his evidence was recorded. Admittedly, there is no eye-witness of the alleged occurrence except the statement of prosecutrix herself before the trial Court making certain development from her earlier statement before police by way of stretching the sequence of the occurrence is nothing but a fiction which does not inspire confidence and therefore, the conviction of the appellant for the charge u/s 376, IPC and substantial sentence thereto is unsustainable in the eyes of law.

5. On the other hand, Mr. Tapas Roy, the learned APP submitted that the testimony of the prosecutrix as well as the other material witnesses are consistent leading to implication of the appellant for the charge u/s 376, IPC. The prosecutrix has consistently narrated that finding her alone, the appellant chastised her in revengeful manner that she had altercation with his sister only a few hours ago and in retaliation with the dominant intention to revenge the insult of his sister the appellant forcibly lifted her and removed to nearby forest and after removing her Saree, he committed rape on her. The prosecutrix has consistently explained that while going to rivulet for taking bath she was not wearing petticoat and therefore, it was not presented before the police. Similarly, she has explained that she had taken bath in the same Saree which she was wearing at the time of commission of rape on her. Concluding his argument Mr. Tapas Roy, learned Counsel appearing on behalf of the State submitted that the judgment and order passed against the appellant convicting him for the charge u/s 376, IPC is well discussed and there is no infirmity therein so as to call for interference of this Court in appeal.

6. Having regard to the facts and circumstances of the case, argument advanced on behalf of the parties, I find that the charge against the appellant was framed u/s 376, IPC and as many as 10 witnesses were produced and examined on behalf of the prosecution. The occurrence as alleged took place on 8.7.1997 at "about 2 p.m. and the prosecutrix PW 8 Shakuntala Devi was medically examined by PW 10 doctor D. Nagi on 9.7.1997 at S.S.L.N.T. Hospital. Dhanbad. No injury or any foreign hair was found on her private part but there was an abrasion 1/4"  1/2" "incised on right shoulder joint found on her person. Her vaginal swab was taken and was sent for pathological examination but there was no report of such examination on the record. From the statement of the witnesses the facts which emanate are that Shakuntala Devi was married women having 1-1/2 year old child under lactation and there was no positive sign of rape since no injury was found on her private part in the opinion of the doctor. But at the same time one abrasion incised in nature was found on her right shoulder joint. She being the married woman, it was but natural that her hymen was found torn. Learned trial Court observed that in case of a married woman, habitual of sexual intercourse, the sign of rape of injury on her private parts vanishes within 24 hours of the occurrence. The trial Court further observed that the simple injury found on the right shoulder joint found on the victim was a corroborative evidence of the commission of rape and that when the prosecutrix had taken bath soon after the alleged occurrence the lack of any medical evidence was of no importance. The trial Court has discussed that the prosecutrix belonged to socially backward community, an illiterate lady living in remote area not at all sensitive to rush to the police station and to produce herself before a doctor prior of taking bath, after having been ravished. On account of such ignorance she immediately took bath in the rivulet and washed her cloths as a result of which no corroborative evidence was found except an injury on her right shoulder joint. I find substance in the observation of the Sessions Judge that the

prosecutrix was a helpless victim who became the prey of the lust of the appellant out of anger and anguish with an intention to revenge as there was altercation between the prosecutrix and the sister of appellant only a few hours prior to the occurrence and such situation proves the motive.

7. I further find that soon after the occurrence the prosecutrix PW 8 narrated the occurrence to her aunt (fufi) on the bank of rivulet while she had been there again to take her bath as also to her husband as well as other members of the family including the neighbouring people to which a panchayati was held.

8. PW 1 Jitu Mallick, PW 2 Santosh Mallick, PW 5 Surendra Mallick and PW 6 Panchu Mallick were the punches who were consistent in their statements before the trial Court that a panchayati was held where the prosecutrix narrated the occurrence of rape on her by the appellant Lakhu Manjhi upon being called upon when the appellant Lakhu displayed his aggressive attitude and began to quarrel with the punches on the question there being put to him related to allegation of rape against him. the punches having no way out advised the prosecutrix to lodge case at the police station and on the same day the case was instituted without any opportunity of deliberation and discussions. The Investigating Officer PW 9 had visited the place of occurrence and he narrated his objective finding before the trial Court that small plants were found crushed at the place of occurrence.

9. It is relevant and important to mention that Pano Devi was produced and examined on behalf of the prosecution as PW 4 to whom the prosecutrix had narrated the occurrence after a short-while, at the first point in time on the bank of rivulet. She has admitted in her statement before the trial Court that on the day of occurrence while prosecutrix Shakuntala Devi was returning after taking her bath she was there at the rivulet but after half an hour Shakuntala Devi returned back weeping and she narrated that the accused Lakhu Manjhi had ravished her. This witness asked the prosecutrix Shakuntala Devi to show the place of occurrence where she was ravished to which she was taken to that place by her and from there upon being satisfied, she took Shakuntala Devi to her home. I find that the statement of this witness is an important piece of corroborative evidence, which inspires confidence.

10. In [State of Rajasthan Vs. Biram Lal](#), the Supreme Court of India held (East Cr C page 326 para 14):

We, therefore, find it difficult to sustain the order of acquittal passed by the High Court in respect of the offence u/s 376, IPC. It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the Court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix. the conviction can be recorded. In appropriate cases, the Court may look for

corroboration from independent source or from the circumstances of the case before recording an order of conviction. In the instant case, we find that the evidence of the prosecutrix is worthy of credit and implicitly reliable. The other evidence adduced by the prosecution, in fact, provides the necessary corroboration, even if that was considered necessary.

11. In the facts and circumstances, I find that the prosecution has proved the charge u/s 376, IPC against the appellant Lakhu Manjhi and no ground has been made out on behalf of the appellant so as to call for interference in the impugned judgment of conviction and order of sentence passed against the appellant. The judgment and order of sentence passed by the 4th Additional Sessions Judge, Dhanbad in Sessions Trial No. 290/97 against the appellant Lakhu Manjhi is upheld and maintained.

There being no merit, this appeal is dismissed.