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**(2005) 05 JH CK 0013**

**Jharkhand High Court**

**Case No:** Criminal Appeal No. 140 of 1990

Sk. Chunia

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

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**Date of Decision:** May 3, 2005

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 376

**Citation:** (2005) CriLJ 4238 : (2005) 2 BLJR 1547 : (2005) 3 JCR 247

**Hon'ble Judges:** Amareshwar Sahay, J

**Bench:** Single Bench

**Advocate:** K. Purnima, Amicus Curiae, for the Appellant; Anshu Dubey, APP, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

Amareshwar Sahay, J.

This appeal arises against the judgment dated 22.3.1990 passed by the Session Judge, Godda in session trial No. 64 of 1988, whereby the learned Sessions Judge convicted the appellant for the offence u/s 376 of the Indian Penal Code and sentenced him to undergo RI for a period of 7 years.

2. The prosecution case, in short, is that the victim, Gyanwati Devi (PW 6) lodged FIR (Ext. 2) on 14.1.1988 at about 3 p.m. against the appellant alleging therein that on 13.1.1988 at about 4 p.m. while she was picking up cow-dung from the field of appellant, he (appellant) who was grazing his buffalo came there and threw her on the ground and then committed rape on her. She tried to stand up but the appellant did not allow her to do so and then she raised alarm and on alarm Dhurkhaili Ravidas, Basudeo Ravidas, Nakul Ravidas and others, who were working in the Bahiyar, arrived there and saw the appellant fleeing away from the place of occurrence. They tried to catch the appellant, but they could not succeed. A panchayati was held in the Village but since the dispute could not be resolved and

then the FIR was lodged.

3. The Investigating Officer after completing the investigation, submitted charge-sheet against the appellant. The case was committed to the Court of Session and the charges were framed against the appellant. The defence case was of false implication and denial of the offence.

4. In all 8 witnesses were examined on behalf of the prosecution. Out of whom PW 1 is the Doctor, who medically examined the victim (PW 6), PW 2 is Nakul Das, who came to the place of occurrence on alarm raised by the informant. PW 3 is Sagar Ravidas a hearsay witness, PW 4 is Basudeo Ravidas, who also reached at the place of occurrence on alarm of the informant, PW 5, Panchu Ravidas and PW 7 the husband of the victim have been tendered, PW 6 is Gyanwati Devi (victim lady) and PW 8 is the Investigating Officer.

5. PW 1, Lily Singh the Doctor, her evidence, has stated that possibility of rape could not be ruled out but in her cross-examination she has stated that she could not come to any definite conclusion as to whether rape was committed or not. She has further stated that no evidence or sign of any injury either internal or external on the person of the victim was found by her.

6. PW 2, Nakul Das. In his examination-in-chief, has stated that on hulla of Gyanwati Devi (victim) he went to the place of occurrence and saw that Gyanwati Devi was lying on the ground and he also saw the appellant fleeing away from the place of occurrence. He also stated that when he reached at the place of occurrence Gyanwati Devi told him that the appellant had committed rape on her. In cross-examination this witness has stated that Gyanwati Devi was raising alarm as "Dauro Bachao". He further stated that he saw the Blouse and Sari of Gyanwati Devi in torn condition. He further stated that prior to him two other persons have already reached at the place of occurrence their name as Dhurkhaili Das and Basudeo Das. The witness has admitted that he is related to the victim and also to the witness, Dhurkhaili, who is his cousin brother.

7. PW 3, Sagar Ravidas, has stated that Gyanwati Devi came to his house with" her husband and told that the appellant has committed rape on her then he advised her to go to the Police Station.

8. PW 4, Basudeo Ravidas has stated that he saw the appellant bent on the victim and on seeing him, the appellant fled away but in his cross-examination, has stated that he was deposing for the first time in Court and he was not examined by the police. Therefore, in my view, his evidence is of no value.

9. PW 5 and PW 7 have been tendered.

10. PW 6, the victim. In her cross-examination, has stated that on her alarm the witnesses came running there, who were Nakul, Dhurkhaili and Basudeo. She narrated the story to her mother-in-law and her husband. Mother-in-law of the

victim has not been examined by the prosecution and the husband, Mahadeo Ravidas has been tendered. In para 6 of the evidence she has stated that the appellant firstly fell her down and thereafter he assaulted by means of "Paina" due to which she received injury on her elbow; She was also assaulted on her ribs by means of "Paina" by the appellant. She has further stated that since she was struggling to come out from the clutches of the appellant and as such she received injuries on her back and elbow. She further stated that she also handed over the cloths containing sperm to the Doctor.

11. In para 10 of her cross-examination, she has stated that by the time the witnesses arrived at the place of occurrence, the appellant had already fled away. In view of this statement of the victim, the evidence of the other witnesses, namely, Nakul Das (PW 2) and Bashudeo Ravidas (PW 4) become totally unreliable. If the evidence of the PW 2, PW 4 are discarded then nothing remains on the record, which can corroborate the statement of the victim. No doubt in every case of this nature corroboration of the statement of the victim is neither possible nor is required, but at the same time if a conviction is to be based on the solitary statement of the victim then the statement should be of such nature which may inspire confidence and it should be wholly believable, but in the present case, I find that the evidence of the victim is contradictory on all material facts. At one place she says that she received injuries on her back, elbow and ribs due to assault by the appellant but the doctor did not find any injury on her person. Similarly she stated at one place that on her alarm PW 2 and PW 4 arrived at the place of occurrence and the witnesses saw the appellant fleeing away but in her cross-examination, she says that by the time the witnesses had arrived at the place of occurrence, the appellant had already fled away. Similarly she made statement that she narrated the story of rape on her to her mother-in-law and to her husband but curiously enough, the mother-in-law has not been examined and her husband has been tendered.

12. Accordingly, in view of the discussion made above, I hold that the conviction and sentence of the appellant passed by the trial Court, cannot be sustained and as such this appeal is allowed, the conviction and sentence passed by the trial Court against the appellant is hereby set aside. The appellant, who is on bail, is discharged from the liability of his bail bonds.