

**(2010) 04 JH CK 0054**

**Jharkhand High Court**

**Case No:** None

Chandrika Prasad Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

**Date of Decision:** April 1, 2010

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 376

**Hon'ble Judges:** Pradeep Kumar, J

**Bench:** Single Bench

### **Judgement**

Pradeep Kumar, J.

The appeal is directed against the judgment of conviction and order of sentence dated 16th June, 2001 passed by Shri S. H. Kazmi, IVth Additional Sessions Judge, Dhanbad in Sessions Trial No. 22 of 2000, by which judgment he found the appellant guilty u/s 376 of the Indian Penal Code and sentenced him to undergo R.I. for 3 years.

2. It is submitted by the learned Counsel for the appellant that the appellant has falsely been implicated in this case and it will appear from the complaint made by the father, Teso Mahto of the victim girl to the Panchyat, which has been proved by the defence as Ext. -A that no allegation of rape was made in the original complaint and subsequently after three days this false F.I.R. was lodged and hence the conviction of the appellant is bad in law and fit to be set aside.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that all the prosecution witnesses, including the victim girl, Paru Kumari, who was examined as P.W.8, has fully supported the prosecution case and as such the conviction of the appellant is well-founded and it requires no interference by this Court.

4. After hearing both the parties and going through the record, it appears that the prosecution case was started on the basis of a fardbeyan given by the victim, Paru

Kumari aged about 14 years on 25.5.99 at 16:30 Hrs. before Barora Police Station, Dhanbad stating therein that on 23.5.99 at about 7 P.M. in the evening when she was going towards east of her village near the tank for easing herself and while coming from the tank, the accused? appellant, Chandrika Prasad Mahto aged about 19 years son of Kali Charan Mahto caught hold of her and took her to his hut, which was situated by the side of the tank and when she wanted to make "Hullah" then the accused-appellant, Chandrika Prasad Mahto closed her mouth and took her inside the hut and after putting her on a cot inside the hut. Thereafter, the accused-appellant, Chandrika Prasad Mahto opened her clothes and committed rape upon her. After committing rape he asked to go back to her house without making any "Hullah" Then, she put her clothes and went back to her house and when her father met with her on the way then she told him about the occurrence. Yesterday, a Panchayati was called, but the accused- appellant, Chandrika Prasad Mahto did not come, hence he was asked to lodge the F.I.R. before the police.

5. On the basis of the said fardbeyan, police registered a case u/s 376 of the Indian Penal Code and after investigation submitted charge-sheet.

6. Since, the case was exclusively triable by a court of sessions, the learned Chief Judicial Magistrate after taking cognizance of the case committed the same to the court of sessions where the case was finally heard and the appellant was found guilty and convicted as aforesaid.

7. It appears from the record, I find that in course of the trial the prosecution has examined 10 witnesses. P.W.1, Mathur Karmakar, P.W.2, Gujar Mahto, P.W.3, Bhola Karmakar, P.W.4, Sudhir Kumar Mahto, P.W.5, Gopal Mahto, P.W.6, Suchi Ram, Mahto, P.W.7, Tesu Mahto-father of the victim girl, P.W.8, Paru Kumari-victim girl, P.W.9, Dr. Lakshmi Pandey, who examined the victim girl and P.W.10, Bindeshwari Singh, I.O. of the case.

8. It is important to note that P.Ws. 1 & 6-turned hostile and they have not supported the prosecution case. The prosecution has been supported by the evidence of the victim girl, Paru Kumari ( P.W.8) and her father, Tesu Mahto ( P.W.7) and other witnesses.

9. The defence has also examined 4 witnesses. D.W.1, Dhirendra Prasad Mahto, D.W.2, Sumari Devi, D.W.3, Upasi Devi and D.W.4, Dhiru Mahto.

10. P.W.1, Mathur Karmakar stated that he does not know about the occurrence and he was declared hostile.

11. P.W.2, Gujar Mahto stated that on 23.5.99 when he was present at his "Kulhi" then he met with Tesu Mahto (father of the victim girl) and he told him that his daughter has been raped by accused-appellant, Chandrika Prasad Mahto. He identified the accused in Court.

12. P.W.3, Bhola Karmakar also stated that on 23.5.99 at about 7 P.M. he was present at his house then the victim's father came weeping and told that the accused-appellant, Chandrika Prasad Mahto has committed rape upon his daughter, Paru Kumari near the village tank by force. Then, a Panchayati was held in the village on 24.5.99. In the said Panchayati the accused-appellant, Chandrika Prasad Mahto did not turn up then a case was filed. He identified the accused in Court.

13. P.W.4, Sudhir Kumar Mahto also stated that on 23.5.99 at about 7 P.M. in the evening when he was taking ration from the shop of Tesu Mahto-father of the victim then Paru Kumari-victim girl came weeping and told that the accused-appellant, Chandrika Prasad Mahto has committed rape upon her by force near the village tank.

14. P.W.5, Gopal Mahto also stated that on 23.5.99 he had gone to the house of Tesu Mahto-father of the victim at about 8-9 a.m. At about 4 P.M. Tesu Mahto told that the accused, Chandrika Prasad Mahto has committed rape upon his daughter, Paru Kumari. Then, they had gone to the house of the father of the accused and told him about the occurrence. He also identified the accused in court.

15. P.W.6, Suchi Ram Mahto also stated that he had gone to Panchayati on the request of Tesu Mahto and he does not know about the occurrence.

16. P.W.7, Tesu Mahto-father of the victim girl has supported the prosecution case and stated that on 23.5.99 at about 7 p.m. when he was present at his house and his daughter, Paru Kumari had gone to the village tank for easing, but she did not return then he went in search of his daughter towards the village tank, and he met with his daughter on the way as she was coming weeping and she told that the accused-appellant, Chandrika Prasad Mahto has committed rape upon her by force near the village tank by putting her on the cot, which was kept inside the hut by the side of the tank. Then, he along with others went to the house of the accused and found him lying in the cot. He caught hold of him, but he fled away. Then, he told about the occurrence before his co-villager and called a Panchayati, but the accused and his father did not come in the said Panchayati. Then, he went with his daughter to the police station and lodged a case. He identified the accused in Court. He also stated that he has got four brothers and he has got one son and three daughters. He also stated that his village consist of five hundred people.

In his cross-examination, he stated that he met with his daughter when he had gone about 150 yards towards tank in her search. He also admitted that on 18.5.99 the accused-appellant, Chandrika Prasad Mahto had stopped him from fishing in his tank. He also denied that he was pressing the accused's father for marriage of his daughter with Chandrika Prasad Mahto-accused.

17. P.W.8, Paru Kumari-victim girl has also supported the prosecution case and stated that on 23.5.99 when she was going to the village tank for easing herself then the accused-appellant, Chandrika Prasad Mahto caught hold of her and took her

inside the hut by the side of his tank. She wanted to make "Hullah" then the accused closed her mouth thereafter by putting her in the cot inside the hut, committed rape upon her by opening her clothes. After committing rape she was asked to go back to her house and when she was returning towards house weeping then she met with her father and told about the occurrence. Thereafter, on 25.5.99 she went to the police station with her father and gave the statement. She was also examined by doctor.

In her cross-examination, she stated that she has studied upto Class-VIth. She further stated that her uncle lives separately, but they have got common "Angan". While she was coming to her house she told about the occurrence to everybody. She denied that her father had made any written complaint in the Panchyat. She further stated that the Gram Panchyat is at Nichitpur. She does not know the name of the Mukhiya and Surpanch. She further denied that she had sexual intercourse before this occurrence. At para 23 she denied that on the date of occurrence she had met with Sudhir Kumar Mahto. She also stated that she cannot say as to when she met Gopal Mahto prosecution witness before the occurrence.

18 P.W.9, Dr. Lakshmi Pandey, who examined the victim girl on 26.5.99 and she found that no external injury or internal injury nor injury was also found on the private part of the victim girl; no seminal stain was also present on the private part of the victim girl. She had old ruptured hymen. On pathological examination, no spermatozoa was found in vaginal swab. According to the radiological examination, the victim girl was aged about 16 years and she found no sign of rape and she also found the hymen was ruptured from before this occurrence.

19. P.W.10, Bindeshwari Singh, I.O. of the case, has proved the F.I.R., which is marked as Ext. -3. He also proved the formal F.I.R as Ext. -4. He gave a detailed place of occurrence and stated that after examination of witnesses and obtaining the medical report he submitted charge-sheet in this case.

20. The defence witness No. 1, Dhirendra Prasad Mahto stated that he was the Mukhiya of Nichitpur and on 24.5.99 father of the victim girl-Tesu Mahto gave a written complaint to him on which the Panchyat was called. He proved the written complaint, which is marked as Ext.A. He stated that this written complaint was given by Tesu Mahto on the evening of 23.5.99 itself.

21. D.Ws. 2, 3 & 4 tried to say that Tesu Mahto was pressuring the father of the accused to agree for the marriage of his daughter and since he refused this false case has been lodged.

22. After considering the evidences, as discussed above, I find that the prosecution witnesses, namely, P.Ws. 2, 3, 4 and 5 all have stated that the occurrence was told to them by the father of the victim girl, Tesu Mahto on 23.5.99 itself, but no F.I.R. was lodged on the same day i.e. date of occurrence. The victim's father has admitted that on 23.5.99 he informed the village panchyat and told about the occurrence.

Then, a Panchyati was called on the next day i.e. on 24.5.99 and when the accused did not turn up in the said Panchyati then, F.I.R. was lodged, but the Mukhiya of the Panchyat i.e. Nichitpur Panchyat stated that a written complaint was given to him by the victim's father, Teso Mahto on 23.5.99 in the evening itself and hence a Panchyati was called on the next date. It appears from Ext. -A the written complaint made by the father of the victim before the Panchyat. He has stated that on 23.5.99 at about 9 P.M. in the night the accused-appellant, Chandrika Prasad Mahto, who is residing at his "sasural" has enticed the victim girl, Paru Kumari to elope with him and his daughter, Paru Kumari is absconding from her house. He also stated that he saw them talking near the village tank and when he chased them, both of them ran away. He also stated that subsequently boy came back to his house and when he went there and inquired about his daughter then the father of the accused, Kali Charan Mahto asked him to go away and file a case and hence wanted justice from the Panchyat.

23. Thus, it appears from the complaint-Ext.A made to the Panchyat that there is no allegation of rape against the accused- appellant, Chandrika Prasad Mahto. Moreover, not a single family member of the victim girl including her mother, sister or her uncle and aunt, have came to support the prosecution case that any rape was committed upon her on 23.5.99. The doctor-P.W.9 has stated that no sign of rape was found on the victim and she was used to sex from before. In that view of the matter, the prosecution case appears to be doubtful and the defence version that the appellant wanted the marriage with the victim or there was some enmity between the parties, which resulted in this case.

24. Hence, in my opinion, the benefit of doubt goes to the accused, which is given to him and he is acquitted from the charges as levelled against him.

25. The appellant is on bail. He is discharged from the liability of his bail bond.