

**(2006) 08 JH CK 0053****Jharkhand High Court****Case No:** None

Hamid Mian

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision:** Aug. 18, 2006**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 376

**Citation:** (2007) 1 JCR 43**Hon'ble Judges:** Amareshwar Sahay, J**Bench:** Single Bench**Final Decision:** Allowed

### **Judgement**

Amareshwar Sahay, J.

This appeal arises against the judgment dated 24.2.2004 passed by the Addl. Sessions Judge, 1st Fast Track Court. Giridih, in S.T. Case No. 148/ 2001 whereby the learned trial Court convicted the appellant for the offence u/s 376, IPC and sentenced him to undergo rigorous imprisonment for a period of ten years and also to pay a fine of Rs. 2000/-, in default, to undergo rigorous imprisonment for a further period three months.

2. The present case, in short, is that on 1.4.2000 at about 10.00 p.m., the appellant, Hamid Mian, was hiding himself in front of the house of the informant, Saliman Khatoon (PW 6). When the informant came out of her house to urinate, the appellant caught hold of her and thereafter thrashed her on the ground and then forcibly committed rape on her. The informant raised hulla, on which her husband, Kurban Mian (PW 5), having a Torch in his hand, came out of the house and in the Torch light, he saw that Hamid Mian was fleeing away. Then the husband of the informant chased and caught the said Hamid Mian. On hulla, neighbours, namely, Karim Mian (PW 7), Zainul Mian (PW 4), Hanif Mian (not examined), and other villagers arrived at the place of occurrence. Thereafter, the informant narrated the

story of rape on her to them. In the FIR, she further alleged that a Panchayati was convened and since no decision was taken in the said Panchayati and then she lodged the First Information Report on 24.4.2000.

3. Therefore, it appears that, for the alleged occurrence, which took place on 1.4.2000. FIR was lodged on 24.4.2000, i.e. after an inordinate delay of 23 days. The defence case is the total denial of occurrence and of false implication.

4. In order to establish the charges, altogether 9 PWs were examined on behalf of prosecution. PW 1 is Md. Mustafa. He is a hear-say witness and is nephew of the husband of the victim. According to the prosecution, he arrived at the alleged place of occurrence after hearing the hulla raised by the informant. PW 2 is Dr. Rekha Jha, who examined the victim on 25.4.2000, i.e. after about 24 days of the alleged date of occurrence. Therefore, such medical evidence is of no value. PW 3. Manzoor Mian, is another nephew of the husband of the prosecutrix. He also arrived at the place of occurrence on hearing hulla. PW 5, Kurban Mian, is the husband of the prosecutrix. PW 6, Saliman Khatoon. is the informant herself. PW 7 is Karim Mian and is also the brother of the husband of the victim and PW 8, Ram Bachan Ram. is the Investigating Officer whereas PW 9, Md. Noor Ansari, is a formal witness who proved the signature of the scribe of the FIR.

5. From the evidence of prosecution, it appears that material witnesses are only PW 5, Kurban Mian, who is the husband of the prosecutrix, and the prosecutrix, PW 6, herself. PW 5, the husband of the prosecutrix, in his examination-in-chief, has stated that when he came out of the house on hearing hulla raised by his wife, he saw Hamid Mian standing there and then he caught the lungi of the accused, but he released himself and fled away. Thereafter, he raised hulla, on which Jainul Mian, Hanif Mian. Mustafa Mian came over there. In paragraph 8 of his evidence, he has stated that he did not see the accused committing rape on his wife. He also stated that none of the other witnesses saw the actual commission of rape. From the evidence of this witness, it appears that there is clear-cut contradiction, so far as the presence of the accused-appellant at the place of occurrence and commission of rape is concerned. In the FIR, the prosecutrix has stated that the accused was caught by her husband when he wanted to flee-away from the place of occurrence. But her husband, in his evidence before the Court, has stated that the accused-appellant fled away from place of occurrence. PW 6, the prosecutrix, Saliman Khatoon, in her examination-in-chief in paragraph 1, has stated that when she came out of her house at 10.00 p.m. for urination and when she sat on the ground for that purpose, the accused Hamid Mian came from behind and gagged her mouth by putting her saree and thereafter committed rape on her. On her hulla, she stated that other witnesses arrived at the place of occurrence. She has also stated that the accused fled away from the place of occurrence after pushing her husband. In cross-examination in paragraph 6, she has stated that Hamid Mian gagged her mouth by putting saree on her mouth and she could raise hulla after an

hour of the occurrence and then her husband came at the place of occurrence only after hearing her hulla. In paragraph 7, she further stated that she was raped after her saree was removed and after she was thrashed on the ground.

6. The evidence of the prosecutrix. PW 6, as has been noticed above, is wholly untrustworthy. So is the evidence of her husband, who has stated that when he came out the house, he saw the accused person standing there whereas the prosecutrix herself has stated in her evidence that she raised hulla after an hour; therefore, it could not be believed that the accused- appellant was standing there for such a long time after commission of rape.

7. In such a situation, it is not safe to convict a person on such unreliable and unbelievable story of the prosecutrix. The evidence of the prosecutrix is not trustworthy. She has developed and changed the story in Court. She made a different story in the FIR, which makes her statement unreliable.

8. Accordingly, I hold that the prosecution has not been able to establish the charges against the appellant beyond all reasonable doubt. The conviction of the appellant u/s 376, IPC cannot be sustained. Accordingly, this appeal is allowed and the conviction and sentence passed by the trial Court against the appellant is hereby set aside. As the appellant is on bail, he is discharged from the liabilities of bail bonds.