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**(2009) 12 JH CK 0041**  
**In the Jharkhand High Court**

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| Samir Rajbanshi        | Vs | APPELLANT  |
| The State of Jharkhand |    | RESPONDENT |

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**Date of Decision :** 08-12-2009

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 376

**Citation :** (2009) 12 JH CK 0041

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

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Pradeep Kumar, J.—This appeal is directed against the judgment of conviction dated 7.1.2002 and order of sentence dated 8.1.2002 passed by Shri Rakesh Ranjan Prasad, Sessions Judge, Pakur in Sessions Case No. 261 of 2000/ 38 of 2001, by which judgment he found the appellant, Samir Rajbanshi guilty u/s 376 of the Indian Penal Code and sentenced him to undergo R.I. for 5 years.

2. It is submitted by the learned Counsel for the appellant that it is a case where the victim girl had love affairs with the accused and accused had sex with the victim with her consent and that is why she kept silent for seven months and when the pregnancy was apparent the matter was reported, hence a lenient view may be taken against the appellant although the victim was a minor girl. Learned Counsel has relied in a judgment reported in State of Punjab Vs. Kulwant Singh @ Kanta, wherein a similar condition the court had taken a lenient view while sentencing the accused.

3. Learned Counsel for the State has opposed the prayer and submitted that it is a case of rape upon minor girl and her consent has got no importance and as such the appellant has rightly been found guilty u/s 376 of the Indian Penal Code by the trial court.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a first Information Report filed by

the prosecutrix, Manuwara Khatoon stating therein that on 26.4.2000 at about 11 A.M. that the appellant, Samir Rajbanshi about 10-12 months back used to negotiate her for marriage, but she always avoided as she was a minor girl. She also stated that 9-10 months back in the evening when she had gone to village tank for easing then accused Samir Rajbanshi at the point of dagger committed rape upon her and said that he will marry her if she did not disclose the matter to her parents. She also stated that subsequently he also committed sexual relation with her, but when she was having a pregnancy then she requested the accused to marry her, but he refused to do so. Then she informed the matter to the village panches, namely, Madhu Sk. Giyas Sk. etc. The panches also asked him to marry her, but he refused to do so. Then, she made a complaint and put her L.T.I. on the same.

5. On the basis of the said First Information Report, the police registered a case u/s 376 of the Indian Penal Code and after investigation submitted charge-sheet against the appellant. Since the case was exclusively triable by a Court of Sessions the learned Magistrate after taking cognizance of the case, committed the same to the Court of Sessions and lastly the Sessions Judge himself after framing of charge u/s 376 of the Indian Penal Code, who convicted the appellant as aforesaid.

6. It appears that in course of trial the prosecution has examined as many as 9 witnesses. P.W.1, Tamali Sk. P.W.2, Rashid Sk., P.W.3, Dr. Anita Sinha, P.W.4, Madhu Sk., P.W.5, Kurban Sk., P.W.6, Madheshwar Mandal., P.W.7, Roshna Bibi mother of the prosecutrix, P.W.8, Manuwara Khatoon the prosecutrix and P.W.9, Subodh Kumar Banerjee, Investigating Officer of the case.

7. It is important to note that the prosecutrix, who was examined as P.W.8 supported her case and stated that about 9 months back the accused at the point of dagger and also by gagging her mouth through cloth committed rape upon her when she had gone to the village tank for easing herself and thereafter he said that she did not disclose the occurrence to anybody, otherwise she would be killed and as such she did not disclose the occurrence to anybody. But when she was having a pregnancy then she requested the accused to marry her, but he refused to do so. Then she disclose the occurrence to her parents. Then, her father asked the appellant's father for marriage, but he refused then a Panchyati was called, in which Panches also asked the appellant-accused to marry her, but he refused to do so. Then, she went to the police station and gave her statement and the same was read over to her and she put her L.T.I. on the same. She also referred to the doctor. She identified the accused in court.

In her cross-examination, she stated that she does not know how to read and write Hindi. She also stated that the appellant always used to have sex with her on the false assurance of marriage. She also stated that on the date of occurrence finding her alone at the tank for easing herself then, the accused-appellant committed rape upon her. She also stated that then she informed the matter to the village panches, namely, Madhu Sk. Giyas Sk. etc. The panches

also asked him to marry her, but he refused to do so and a paper was also prepared in the panchyat.

The prosecutrix's father, Kurban Sk. (P.W.5) has also supported the evidence of P.W.8 and stated in court that about 9 months ago when her daughter, Manuwara Khatoon had gone for easing to the village tank the accused-appellant committed rape upon, her at the point of dagger. After six month when he came to know about the occurrence then he contacted the accused father to allow his son to marry with her daughter, but he refused to do so. Then, a Panchyati was convened, in Which it was decided that accused should marry the prosecutrix but the accused and his father refused to accept the proposal. He further stated that at the time of occurrence his daughter was aged about 14-15 years. He identified the accused in Court. At para 10, in his cross-examination, he stated that for the first time, he came to know about the occurrence that after 7 months of the occurrence when he found that his daughter is pregnant then he disclosed the person who committed rape upon her daughter. He denied that there is any dispute with the father of the accused with regard to the land of mosque.

P.W.7 mother of the victim girl, has also supported the prosecution case and stated that her daughter, Manuwara Khatoon was raped by the accused about two years back when her daughter had gone to the village tank for easing herself at the point of dagger. She approached the matter to the father of the accused-appellant for marriage, but he refused to do so. Then, a Panchyati was also called, but the finding of the panches was not accepted.

At para 8, in her cross-examination, she stated that she came to know for the first time when 7 months pregnancy was found. Before that she had no knowledge about the occurrence. She also stated that at the time of occurrence her daughter was aged about 13-14 years.

P.W.3, Dr. Anita Sinha who examined the prosecutrix on 26.4.2000 also found that the victim girl was aged about 14-16 years and having pregnancy of 30-32 weeks.

8. The other prosecution witnesses have also supported the prosecution and as such it appears that although it is a case where the victim girl and the accused, who are neighbours living side by side may be having some love affairs and taking advantage of the said love affairs the accused-appellant has committed rape upon the prosecutrix, by the consent of a minor has got no value and it cannot be said that the rape was committed with consent of the girl. More so, the parents of the prosecutrix wanted to compromise the matter, but it failed.

9. In that view of the matter, I find that the accused has committed the offence and his conviction u/s 376 of the Indian Penal Code is well founded. However, her parents P.W.5 & 7, have no complaint about the sexual assault for seven months, in that view of the matter, accepting the judgment relied upon by the counsel for the appellant reported in State of Punjab Vs. Kulwant Singh @ Kanta, .

10. In the aforesaid ruling the Hon''ble Supreme Court after considering the fact and evidence that although victim girl was a minor, the victim was having love affairs with the accused, reduced the sentence and also imposed fine on the accused person. Since the case is very much similar, the victim did not disclose the occurrence for seven months and in her statement she has stated that for the first time although a rape was committed at the point of dagger, but subsequently also she had sexual intercourse with the accused, which she never disclosed to her parents and nobody in the village, in that view of the matter, it seems that it is a case of love affairs between them and the appellant who is in jail custody for last four years, has sufficiently been punished. Hence, the sentence of 5 years is reduced to 3 years 9 months already undergone by him from the date of custody i.e. 15.5.2000 till he was granted bail by this Court's order dated 27.2.2004 plus a fine of Rs. 7,000/- to be deposited within three months from today. In case of default in making the deposit he will further, undergo sentence of 1 year S.I. and if the fine amount is deposited Rs. 5,000/-, will be paid to the victim girl.

11. The appellant is on bail, he is directed to surrender forthwith for serving out the remaining sentence or deposit the fine, (sic) the court below shall issue warrant of arrest for serving the sentence.

12. Accordingly, the appeal is allowed in-part.