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**(2009) 04 JH CK 0108**  
**In the Jharkhand High Court**

Sulendar Sahu @ Surendar Sahu

APPELLANT

Vs

State of Jharkhand

RESPONDENT

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**Date of Decision :** 02-04-2009

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 313, 376, 420

**Citation :** (2009) 2 JCR 489

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

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Pradeep Kumar, J.—The appeal is directed against the judgment dated 5.9.2001 and order of sentence dated 6.9.2001 passed by Shri R.P. Shrivastava, IVth Additional Judicial Commissioner, Ranchi in Session Trial No. 498 of 1999, by which Judgment the learned Sessions Judge found the appellant guilty u/s 376 of the Indian Penal Code and convicted him there under and sentenced him to undergo R.I. for 10 years.

2. The prosecution case was started on the basis of a fardbeyan given by the informant, Leela Kumari on 12.3.1999 stating therein that she is aged about 15 years and her parents work as labourers and they used to do labour-works outside her house and the victim alone used to live in her house. On 8.10.1998 when she was alone in her house then accused, Sulendra Sahu @ Surendra Sahu came to her house and wanted to drink water. When, she was going Inside the house for to bring water then the accused brought out a knife and at the point of knife he committed rape upon her. She wanted to raise "hullah" but at the point of knife he threatened her to commit her murder. After rape the accused said that he will marry her and hence she did not disclose the occurrence to anybody. She stated thereafter in assurance of marriage he committed rape upon her several times. When, the accused postponed the proposal of marriage then she informed her parents. Then her parents informed the villagers about the incident of rape and on 10.3.1999 a panchayati was held and in that panchayati the

accused, Sulendra Sahu @ Surendra Sahu refused to marry her, then panches asked her to lodge a case.

3. On the basis of the said written report signed by the informant a case u/s 376 of the Indian Penal Code was registered and after investigation police submitted charge-sheet under Sections 376, 313 and 420 of the Indian Penal Code. 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 case was tried by 4th Additional Judicial Commissioner, Ranchi, who found the accused guilty and convicted him as aforesaid.

4. It is submitted by the learned Counsel for the appellant that it will appear from the statement of the victim girl as given in the FIR as also in Court when she was examined as PW 1 that right from 8.10.1988 she had sexual intercourse with the accused and she did not disclose the matter to anybody till 10.3.1989 i.e. about 5 months and as such the conviction of the appellant u/s 376 of the Indian Penal Code is bad in law and fit to be set aside.

Learned counsel relied upon a decision reported in Uday Vs. State of Karnataka, wherein it was held that if consent is present from the facts and circumstances of the case then case u/s 376 of the Indian Penal Code is not made out.

5. On the other hand, learned Counsel for the State has opposed the prayer and submitted that there is no voluntary consent given by the prosecutrix at any stage. It will appear from the statement of the victim girl, who was examined as PW 1 that on the date of occurrence i.e. on 8.10.1998 the accused entered into the house in the pretext to drink water, but later at the point of knife he committed rape upon the victim girl by force, hence there is no question of any consent. Subsequently, since he also promised to marry her and under the impression that he will marry her, she kept silent. Moreover, it is submitted by the learned Counsel for the State that on the date of occurrence the victim girl was minor and her consent has got no meaning and hence the appellant has rightly been convicted.

6. After hearing both the parties and going through the evidence, I find that in course of trial the prosecution has examined 11 witnesses. PW 1, Basudeo Sah is the co-villager, PW 2, Rambrit. Mahto is also co-villager, PW 3, Kali Charan Sahu, PW 4, Puni Nath Mahto, PW 5, Bhola Mahto, PW 6, Fulmani Devi is mother of the victim girl, PW 7, Lakhan Sahu is father of the victim girl, PW 8, Lila Kumari is the victim girl, PW 9 is Dr. Subhana Toppo, who examined the victim girl, PW 10, Anil Kumar Jha, is Investigating Officer and PW 11, Jivdhan Prasad is the Head Master of Bargain School. The defence has also examined one witness as DW 1, Raja Ram Singh.

7. The prosecution case is based mainly on the evidence of the victim girl (PW 8), Leela Kumari, which is corroborated by the evidence of PWs 6 & 7 - her parents. PWs 1 to 5 are village witnesses, who were present in the panchayati and they have also corroborated the fact that at the time of panchayati the

accused admitted his guilt but refused to marry her, hence they asked her parents to lodge FIR

8. PW 8, Leela Kumari, who was found to be aged about 16 years on 9.3.2000 by the Court and stated in Court that on 8.10.1998 at about 10.30 a.m. the accused, Sulender Sahu @ Surendar Sahu came to her house and asked for a glass of water at that time nobody was present in her house when she wanted to go inside the house then he came from behind and caught hold of her when she wanted to make a hullah the accused closed her mouth and brought out a knife and threatened her to commit her murder. Thereafter, he put her on the cot and after opening her clothes committed rape upon her. After rape he stated that he will marry her hence she should not make any hullah about the occurrence. Out of fear and on the promise of marriage she did not disclose the occurrence to anybody. After few days finding her alone in her house, again the accused committed rape upon her and said that very soon he will marry her. She also stated in Court that she became pregnant then he gave some medicine for the abortion of the pregnancy and asked her to run away with him. Then, she told about the occurrence to her parents then they called a panchayati in the village where the accused admitted his guilt and wanted to marry her. Subsequently, another panchyati was called on 10.1.1999 where he refused to marry the victim girl then the panches asked her to lodge a case. She identified her signature on the written report as Ext. 1/1. She also filed her school living certificate.

At para 18 of her cross-examination, she stated that after committing first rape on 8.10.1998 at the point of knife the accused committed rape upon her three times more on assurance of marriage. She denied that she ever consented for the rape.

9. The evidence of the prosecutrix is corroborated by the evidence of PWs 6 & 7 as mother and father. PW 6, mother of the prosecutrix has stated that her daughter is aged about 15 years and two days before holi the accused, Sulender Sahu @ Surendar Sahu entered into her house in the pretext of drink water, but subsequently at the point of knife he committed rape upon her daughter. She also told that he promised her that he will marry her, hence she had not disclosed the occurrence earlier. When she came to know about the occurrence then her husband called a panchayati and in the panchayati the accused admitted his guilt, but subsequently refused to marry her then the case was lodged.

In her cross-examination at para 6, she stated that the accused agreed to marry her in panchayati for the first time, but subsequently, he refused by stating that he has got no relation with her. He is related to in-law family of her elder daughter.

PW 7 has also corroborated the evidence of PW 8 and submitted that eleven months back the accused entered into her house demanding drinking water from her daughter and thereafter at the point of knife committed rape upon her since

he promised to marry her, hence her daughter kept silent, but subsequently when she informed the parents after five months then he called a panchayati where he admitted his guilt, but subsequently, refused to marry her then the case was lodged.

In his cross-examination at para 11, he stated that he has got no relation with the accused.

10. The prosecution has also examined independent village witnesses as PW 1, Basudeo Sahu, who has stated that he was present in that panchayati on 10.3.1999 where the accused admitted his guilt, but subsequently he refused to marry her.

PW 2, Ram Prit Mahato also stated that he was present in that panchayati on 10.3.1999 where the accused admitted his guilt, but subsequently, he refused to marry her then the case was lodged.

PW 3, Kali Charan Sahu also stated that he was present in that panchayati on 10.3.1999 where the accused admitted his guilt, but subsequently, he refused to marry her then the case was lodged.

PW 4, Puni Nath Mahto, also stated that he came to know that rape was committed upon the victim girl.

PW 5, Bhola Mahto. also stated a panchayati was held in the earlier and he was present in that panchayati and in that panchayati where the accused admitted his guilt, but in the subsequent panchayati he refused to marry her, so all the villagers have corroborated the fact that the panchayati was held in which the accused admitted his guilt, but subsequently he refused to marry her due to which the case was lodged.

PW 9, Dr. Subhana Toppo, who examined the victim girl on 13.3.1999 stated that she found no injury on the body of the victim girl. By radiological test she found the victim girl was aged between 18-20 years.

In her cross-examination, she stated that she had not given any information as to whether rape was committed or not because Pathological Reports were not brought before her.

PW 10, Anil Kumar Jha, who is the Investigating Officer of the case, has proved the written report as Ext. 3. He also proved the Formal FIR as Ext-4. He stated that he got the victim examined by Doctor in the hospital. He also gave a detailed of the place of occurrence examined witnesses and submitted charge-sheet in the case after supervision of the superior authority.

PW 11. Jivdhan Prasad is the Head Master of Bargain School, has proved the school leaving certificate filed by the victim girl and stated that her school leaving certificate, which was granted by his school and date of birth of the victim girl is 15.4.1984. He also proved the writing of Assistant Teacher, Kishore Minz, who had issued the certificate. The certificate was marked as Ext. 5. He

also proved the register on the basis of which the certificate was granted. It is stated that the register was filed by Assistant Teacher, Fagun Prasad. The register was also marked as Ext. 6.

The defence has also examined and DW 1 Raja Ram Singh, who is a formal witness and has only stated that he has not typed the written report.

11. Thus, after going through the entire prosecution evidence, I find that the evidence of the prosecutrix (PW 8) has fully been corroborated by the evidence of other witnesses and it has been proved beyond doubt that the victim girl (PW 8) was raped by the accused by force at the point of knife and subsequently he continued rape on the promise of marriage.

12. It has been argued by the learned Counsel for the appellant that subsequently after rape the victim became consenting party as she never disclose the occurrence to her parents or to anybody, but as has been claimed by the prosecution, the victim girl was aged about 15 years at the time of written report, as she has stated in her written report when she was examined in Court as PW 8 on that date i.e. 9.3.2000, the Court assessed her age to be 16 years. Her mother also stated in Court that her daughter is aged about 15 years. The school leaving certificate as Ext. 6 also shows that she was 15 years of age and as such the doctor has also found that she was aged about 18 years that means she may be 16 years on the date of examination and on the date of occurrence she was 15 years and odd.

13. Thus, in my opinion, the victim girl was minor and there is no value of her consent and as per the evidence of the victim girl in Court as also in her written report on the date of rape i.e. 8.10.1998 the accused entered into her house and committed rape by force at the point of knife and hence there is no question of consent. The Judgment relied upon by the appellant, has got no similarity with the facts and circumstances of the case since in the case of Uday Vs. State of Karnataka, , the prosecutrix was major aged about 18 years and she was deeply in love with the accused and knowing fully well, she allowed the accused to have Intercourse with her. That case has got no bearing as per this case is concerned where the accused entered her house on the pretext of taking water and subsequently committed rape at the point of knife. In my opinion, the accused has committed rape upon the victim girl. He has been rightly found guilty u/s 376 of the Indian Penal Code and convicted and sentenced there under.

14. I find no merit in this appeal and the same is dismissed.

The appellant is on ball, hence his bail bond is cancelled, the learned trial Court is directed to issue warrant of arrest against him for serving out the sentence.