

## **Criminal Appeal (S.J.) No. 444 of 2002**

*[Against the Judgment of conviction dated 06.06.2002 and Order of sentence dated 12.06.2002 passed by learned 1<sup>st</sup> Additional Sessions Judge, Bokaro, in Sessions Trial No. 287 of 2000]*

Vijay Diggar @ Pawroti, S/o Mahavir Diggar, resident of Village – Bansgora, P.S.- Marafari, District - Bokaro.

... .. **Appellant**

Versus

1. The State of Jharkhand
2. Ghanshyam Hembram, S/o Runka Hembram.
3. Shanti Hembram, D/o Ghanshaym, both resident of Village – Bansgora, Steel Tolla, P.S. Marafari, District – Bokaro.

... .. **Respondents**

### **P R E S E N T**

**SRI ANANDA SEN, J.**

**SRI PRADEEP KUMAR SRIVASTAVA, J.**

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For the Appellant : Mr. Sanjay Kumar, Advocate.

For the State : Mr. Shailesh Kr. Sinha, A.P.P.

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### **JUDGMENT**

**C.A.V. on 11.12.2024**

**Pronounced on 20.12.2024**

**Per Pradeep Kumar Srivastava, J.**

1. Heard learned counsel for the parties.
2. The present appeal is directed against the judgment of conviction dated 06.06.2002 and order of sentence dated 12.06.2002 passed by learned 1<sup>st</sup> Additional Sessions Judge, Bokaro in Sessions Trial No. 287 of 2000, whereby and whereunder, the appellant has been held guilty for the offence under Sections 366 and 376 of the I.P.C. and sentenced to undergo rigorous imprisonment for ten years for the offence under Section 366 of the I.P.C. and further sentenced

to undergo rigorous imprisonment for ten years for the offence under Section 376 of the I.P.C. Both the sentences were directed to run concurrently.

### **FACTUAL MATRIX**

- 3.** The factual matrix giving rise to this appeal is that on 12.06.2000 at about 7-7:30 P.M., the victim girl went out from her house for walking, but she did not return to home till late night. It is alleged that her parents and neighbours started searching her at the adjoining places, but no trace was found. In course of search, the informant came to know that the present appellant namely, Vijay Diggar @ Pawroti of same mohalla had taken away minor victim girl for illicit inter-course. The family members also went to house of Vijay Diggar, but he was not found and his family members did not offer any satisfactory reply.
- 4.** On the basis of written report of the informant, Marafari P.S. Case No. 34 of 2000 (G.R. No. 627 of 2000) was registered for the offence under Sections 363, 366, 366(A) and 376 of the I.P.C. The charge of investigation was undertaken by S.I. Md. Kasim (P.W.-9). In the course of investigation, he raided the house of the accused Vijay Diggar, who was absconding. Ultimately, accused surrendered on 22.06.2000 before the court of concerned Judicial Magistrate. The I.O.

also received a telephonic message that the victim girl is wondering near the house of MLA, Sri. Samresh Singh at Sector-IV, B.S. City. Accordingly, the victim was recovered in presence of witness, Santosh Kumar, who identified her. Thereafter, the victim girl was medically examined and handed over to her father. After finding sufficient evidence against the sole accused for the offences under Sections 363, 366, 366(A) & 376 of the I.P.C. charge sheet was submitted against him. The case was committed to the court of Sessions, where S.T. Case No. 287 of 2000 was registered. Charges were read over and explained to the accused, to which, he pleaded not guilty and claimed to be tried.

- 5.** After conclusion of trial, the trial court has held the appellant guilty for the offence under Sections 366 & 376 of the I.P.C. and acquitted from the charges under Sections 363 and 366(A) of the I.P.C. and sentenced him for R.I. for 10 years for each of the offences, which has been assailed in this appeal.
- 6.** Learned counsel for the appellant has vehemently argued that the victim girl was not minor, rather she was aged about 25 years on the date of occurrence as is well-proved by her medical evidence and no School Certificate of the victim was properly proved in this

case. The medical examination report of the victim also does not corroborate the factum of commission of rape with her. The victim girl herself has not attributed any forceful sexual intercourse with her against her will by the appellant. Just after recovery, the victim has not complained any illicit conduct and behaviour of the appellant with her. The victim girl herself specifically admitted that throughout her alleged travel with the appellant, she never raised any alarm nor complained any ill-treatment with her at the hands of the appellant. The love letters written by the victim girl addressed to the appellant which was submitted before the Investigating Officer by the victim herself clearly indicate the consent of the victim due to love affairs with the appellant. Therefore, no offence as alleged and charge against the appellant is constituted. It is further submitted that the appellant and the victim girl had jointly made a petition during pendency of the trial that they are ready and willing to marry with each other in accordance with law and in the matter of sentence a lenient view may be taken, but that was not considered, since the offence levelled against the appellant were not compoundable in nature.

7. In alternative, it is submitted that the case is of the year 2000 and now more than two decades has been

elapsed. There was consensual affair between the appellant and the victim and now she is married with any other person and appellant is also living his life in his own ways. The appellant has also undergone two years imprisonment during trial of the case, as such, he has been sufficiently punished in this case for the offence committed by him. Under such facts and circumstances of the case, the sentence passed against the appellant may be reduced to the imprisonment already undergone.

- 8.** Per contra, learned A.P.P. appearing for the State has opposed the contentions raised on behalf of the appellant and has submitted that there is no illegality or infirmity in the impugned judgment of conviction and order of sentence of the appellant. The learned trial court has rightly observed that the offence is non-compoundable. Hence, compromise between the parties cannot be accepted, which was filed after recording of prosecution evidence and at the stage of argument. The offence is very serious in nature. The victim girl has fully proved her case constituting offence under Section 366 & 376 of the I.P.C. Therefore, no leniency may be taken for reducing the sentence of the appellant for such a heinous offence. This appeal is devoid of merit is fit to be dismissed.

- 9.** We have gone through the record of the case along with impugned judgment and order in the light of contentions raised on behalf of both side.
- 10.** It appears that out of nine witnesses examined in this case, the most important witness is the victim girl herself, who has been examined as P.W.-5 disclosing her age about 16 years. According to her evidence, on 12.06.2000 at about 7 – 7:30 PM, she went outside of her house for walking and reached near temple of the mohalla, meanwhile, present appellant along with his friend Amod Rawani and one other boy came there and showing knife threatened her to keep silence and she would follow with them and she was forcibly got boarded on trekker and brought towards Sector-IX, where she was stayed for one night. On next day, she got boarded on a bus and brought to Tatanagar Dak Bangla, where she was kept for three days. Thereafter, she was brought to Chandankiyari at the house of elder brother of Bijay Diggar (appellant) and kept for 2-3 days. Again, she was brought to Telidih Chas Bokaro and kept in the house of unknown person for two weeks. Thereafter, present appellant brought her to Chas Court, where she was forced to put signature on some documents in presence of an Advocate. Those documents are also marked as Exhibit-3 & 3/1.

She has also deposed that after execution of some documents in the Civil Court, she was brought to Balidih in the house of Narayan Diggar and kept there for two weeks. Thereafter, she was left near a School in front of house of MLA Sri Samresh Singh. She has categorically stated that at all the places mentioned above, where she was kept by accused person, the accused Vijay Diggar (appellant) had established sexual intercourse with her against her will and without her consent. It is alleged that from the school near the house of MLA Sri Samresh Singh, she was brought at police station by the police and she disclosed all the incident to the police, which was recorded. Thereafter, she was medically examined at the instance of police and handed over to her father.

She has been cross-examined at length by the defence, but noting has been elicited to rebut her aforesaid testimony.

- 11.** P.W.-7 Ghanshyam Hembrum is the father of the victim girl – cum – informant of this case. He has proved the contents of fardbeyan that on 12.06.2024 at 7-7:30 P.M. his minor daughter went for walk, but did not return and on search, he came to know that one Vijay Diggar residing in his mohalla has kidnapped his daughter for illicit intercourse.

- 12.** P.W.-8 Choba Hembrum is the mother of the victim girl and hearsay witness of occurrence.
- 13.** P.W.-1 Mansi Tudu is a local person, who came to know about occurrence from mother and father of the victim.
- 14.** P.W.-2 Basant Sinku is a local tailor master. He also engaged in search of the victim girl at the instance of her parents. Thereafter, case was lodged.
- 15.** P.W.-3 Nandlal Hembrum is the younger brother of the victim, who has also deposed in the same line as the above witnesses.
- 16.** P.W.-4 Bachan Biruah, an auto-rickshaw driver, is the neighbour of informant. He has also come to know from the informant about missing of her minor daughter and during search, he came to know that Vijay Diggar has kidnapped her for some illicit purpose. They also went to house of the Vijay Diggar, but he has was not present at the house. Thereafter, case was lodged.
- 17.** P.W.-6 Dr. Rozy Shankar has medically examined the victim girl. On examination of private part, she did not find foreign hair in or around Vagina, hymen was old torn. There was no tenderness around the Vagina and on receipt of radiological and pathological report, she found that there was no recent intercourse with the



victim and her age was assessed in between 20-25 years. Her medical examination report, radiological report and pathological report have been proved by Exhibit-5, 5/1 & 5/2 respectively.

**18.** P.W.-9 is the Investigating Officer in this case, who after finding sufficient evidence against the accused appellant submitted charge sheet for the offence under Section 363, 366, 366(A), 376 I.P.C.

**19.** We have also gone through the defence evidence, it appears that father of the victim namely, Ghanshyam Hembrum (P.W.-7) has been produced as Defence Witness No. 1 (D.W.-1). After some understanding between family members of the accused and informant. He has brought on record a photocopy of letter purported to be written by the victim girl showing her desire to marry with the appellant and accepting love affair with the appellant and voluntary elopement with him. A joint compromise petition was also filed before concerned trial court with assurance that appellant is ready to marry with the victim girl.

**20.** The defence has also exhibited following documents:-

Exhibit-A : Statement of victim girl recorded by police on 04.07.2000 after her recovery.

Exhibit-B : Photocopy of letter purported to be written by victim girl.

- 21.** The learned trial court considering the offence to be non-compoundable and clear and cogent evidence available on record proving the guilt of the accused beyond all reasonable doubt for the offence under Section 366 / 376 of the IPC has passed the judgment of conviction and sentence of the appellant.
- 22.** We further find that the informant (P.W.-8), who happens to be father of the victim, has been examined as Defence Witness No. 1 (D.W.-1) has stated that although real age of the victim is 25 years, but in the school certificate, she is of 16 years, but no reliable documentary evidence has been produced herein in this case. The age factor of the victim is of no relevance in view of her specific testimony that she was ravished by appellant against her will and without her consent, which remains un-rebutted by the defence. There is no reason to disbelieve her testimony about forcible intercourse established with her. Merely because she was not raising any alarm due to fear at various places brought by the accused is not sufficient to draw inference of consent for having sexual intercourse with the appellant. It cannot be said that there was tacit consent of the victim.

- 23.** In view of the aforesaid discussion and reasons and un-rebutted testimony of victim girl, who appears to be fully reliable, the conviction and sentence of the appellant recorded by learned trial court, appears to be well-reasoned and based upon cogent evidence. We do not find any justification for any interference in the impugned judgment of conviction of the appellant.
- 24.** So far as sentence imposed upon appellant is concerned and subsequent development in the case and at the instance of the informant himself as discussed above and also in view of the fact that 20 years has been passed from the date of occurrence and the appellant has also undergone imprisonment for more than 02 years during trial of the case, we are inclined to reduce the sentence awarded to the appellant from R.I. of 10 years to the imprisonment already undergone for both the offences under Sections 366 & 376 of the I.P.C.
- 25.** For the aforesaid discussions and reasons, this appeal is dismissed on merit with modification in the sentence to the extent mentioned above. Appellant is on bail. He is discharged from the liability of bail bond and sureties shall also discharged.
- 26.** Pending I.A., if any, stand disposed of.

**27.** Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

**(Pradeep Kumar Srivastava, J.)**

**Per Ananda Sen, J. : I agree**

**(Ananda Sen, J.)**

Jharkhand High Court, Ranchi

Dated, the 20<sup>th</sup> December, 2024.

Sunil / **N.A.F.R.**