

Master Mirdha Vs. State of Bihar

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Court : Patna

Decided On : Feb-22-2000

Judge : Ravi Nandan Sahay, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 78 of 1993 (SJ)

Appellant : Master Mirdha

Respondent : State of Bihar

Advocate for Def. : Addl. Public Prosecutor

Advocate for Pet/Ap. : Uma Kant Prasad, Abinash Kumar and Ram Kripal Shahu, Adv.

Disposition : Appeal dismissed

Judgement :

Ravi Nandan Sahay, J.

1. The appellant, Master Mirdha, who is a resident of Village Birajpur, P.S. Hausdiha in the District of Dumka has appealed against his conviction under Section 376 of the Indian Penal Code for which he has been sentenced to undergo

7 years' rigorous imprisonment. He was tried by the 8th Additional Sessions Judge, Dumka.

2. The case of the prosecution in brief is that on 23-12-1991 the Informant, Tale Murau (P.W. 6) was returning from Gangawarahat along with her husband, Sitalal Besra, P.W. 4. they boarded a Maxi for going to their village Barahatti. The conductor of the Maxi informed her husband that the Maxi will not stop at their village Barshatti. The husband got down from the Maxi but surprisingly the Informant did not get down with her husband. The Maxi proceeded further and stopped at Village Markund. It is alleged that the appellant took the prosecutrix out of the Maxi on the protest that it was Village Barshatti. The appellant took her towards the forest of Akasia and she was raped at a lonely place. She raised hulla but none came to her rescue. Her husband somehow reached there to whom she informed about her ordeal.

3. The defense of the appellant was that he has been implicated on account of protest being made by the appellant against distilling of illegal liquor by the prosecutrix.

4. A number of witnesses were examined by the prosecution. The Doctor, who examined the victim on 24-12-1991 in her report says that she did not find any external or internal injury and ruled out the possibility of any resistance. She did not give any definite opinion of commission of rape.

5. According to the medical evidence the prosecutrix was aged about 25 years. The lady Doctor who examined the prosecutrix is of the opinion that absence of injury on the private parts and breast indicated that there was no resistance. No definite opinion of rape having been committed on the victim has been given by the Doctor in her evidence.

6. P.W. 1 Saligram Soren, a co-villager of the prosecutrix is a hearsay witness. P.W. 3, Dhana Tuddu is also a hearsay witness.

7. P.W. 4, Sitalal Besra, who is the husband of the prosecutrix has deposed that on the day of occurrence he and his wife had gone to a Hat (Bazar) and when they

reached Hansdiha Chowk at 9 hours, a Maxi was standing there. His wife boarded the Maxi but because the Maxi was packed to its capacity he could not board the Maxi. The appellant was also in the same Maxi. The witness returned home at 8. p.m. but he did not find his wife, then he went to search her and found her on the way. She disclosed that the appellant had raped her. She was carrying a Jhola of the accused. The same night a case was instituted.

8. P.W. 5, Lakhan Hansda is also a hearsay witness.

9. The prosecutrix, who was examined as P.W. 6, stated in her testimony that she along with her husband had gone to Gangwara Hatia. They came to Hansdihaat 6 p.m. There was a Maxi. Her husband tried to board the Maxi but could not. She, however, could manage to enter the Maxi. The appellant was also in the same Maxi. The Maxi proceeded ahead but did not stop at Village Banahatti. It stopped somewhere between Banahattati and Markunda. The appellant told her that they have reached Banahatti and asked her to get down. He took her to a jungle on the pretext of reaching her village, Banahatti. The appellant raped her in the jungle after making her naked. He thereafter ran away but she managed to snatch his Jhola. She was going to her village when she found her husband coming in search of her. She told her husband about the incident and so narrated to Ram Lal, Saligram etc.

10. The prosecutrix has given her evidence in straightforward manner. There appears no reason to disbelieve her testimony. It cannot be argued that this was a consent affair. If this was so she would not have taken the Jhola of the appellant. According to the medical evidence spermatozoa was found after Swab Test.

11. The appellant is Chowkidar of the village. Although the appellant in his examination under Section 313, Cr.P.C. alleged false implication but no such suggestion was given either to the prosecutrix or any other witness examined on behalf of the prosecution. There was no delay in instituting the case at the Police Station.

12. For the reasons stated above I am satisfied that the prosecutrix had given the true version of the occurrence and there is no evidence regarding the plea of the

appellant that he has been falsely implicated in the case. The plea of the appellant was rejected by this Court at the time of admission. He has served out his sentence. The Appeal is dismissed.

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