

**Malindo Marandi Vs. State of Bihar**

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**Court :** Jharkhand

**Decided On :** Jul-05-2003

**Reported in :** 2003CriLJ4431

**Judge :** Hari Shankar Prasad, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 376

**Appeal No. :** Criminal Appeal No. 145 of 1993

**Appellant :** Malindo Marandi

**Respondent :** State of Bihar

**Advocate for Def. :** T.N. Verma, A.P.P.

**Advocate for Pet/Ap. :** M.J. Rahman, Adv.

**Disposition :** Appeal allowed

**Judgement :**

**Hari Shankar Prasad, J.**

1. This appeal is directed against the judgment of conviction and order of sentence dated 29-3-1993 passed in Sessions Trial No. 365 of 1992 whereby and whereunder the learned 3rd Additional Sessions Judge, Dumka held the appellant Malendo Marandi guilty under Section 376 of the Indian Penal Code (IPC) and

convicted him and sentenced him to undergo R. I. for seven years.

2. The prosecution case in brief is that on 14-10-1991, prosecutrix was going from her Naihar to her husband's village alone and her daughter aged two years was in her lap. It is further alleged that when she reached a little ahead of village Jai Pahari. this appellant appeared and snatched the child from her lap, kept her aside and committed rape on the victim lady and then proceeded towards village Jai Pahari. The prosecutrix after reaching her village narrated the happenings to her husband and thereafter on the next date, a panchayati took place at village Jai Pahari where she identified the appellant, but the appellant refused to confess his guilt, but after being assaulted by the victim lady and her husband, the appellant confessed his guilt upon which, Panchayati fined the appellant Rs. 300/- and when he refused to pay the fine, the victim-prosecutrix lodged the case against the appellant with Dumka Muffassil P. S. for the offence committed under Sections 376, 341, 354 and 323 IPC. On the basis of statement of prosecutrix, a case being Dumka (M) P. S. Case No. 109/91 was registered under Sections 376, 341, 354 and 323 IPC and I. O. after investigation submitted charge sheet. Cognizance in the case was taken and case was committed to the court of session where charges were framed and the learned court below after recording evidence. - both oral and documentary - came to a finding and held the appellant guilty and convicted and sentenced him as aforesaid .

3. The judgment was assailed on the ground that without examining the Mukhia, learned court below has come to a finding against the appellant. The judgment was also assailed on the ground that the prosecutrix was aged lady having one child and doctor has also not supported the case of rape. The judgment was further assailed on the ground that rape is said to have been committed on the hilly track but prosecutrix has not sustained any injury. The judgment has further been assailed on the ground that I.O. of the case has not been examined.

4. Prosecution has examined ten witnesses in the case. PW 1 is Pano Marandi who is the victim lady. PW2 is Mangal Soren. He is the husband of the informant. PW3 is hearsay witness. PW4 is also hearsay witness. PW5 has been tendered for cross-examination. PW 6 is doctor who examined the victim lady. PW7 is a

witness on the point of panchayati. PW8 is the witness who has been tendered. PW9 has also been tendered. PW10 is Dina Nath Mishra. He was then officer-in-charge of the PS but he did not conduct investigation.

5. PW1 is prosecutrix. She has stated that she was coming from Naihar to her sasural and when she was passing through Gando Pahari Pagdandi, then a Santhali Yuvak was going ahead of her and when she reached near bush of chattan then that Santhali Yuvak caught her and snatched her child and kept her aside and committed rape upon her. She further stated that the appellant tore her blouse and there was some abrasion on her breast. She had raised alarm but nobody turned, as there was none. After committing rape, the appellant fled away towards Jai Pahari. She came to her village and narrated the occurrence to her husband and on Tuesday went to Jai Pahari and a Panchayati was convened there where all the persons of the village assembled and she identified the appellant who committed rape upon her from among the persons but appellant did not confess his guilt in the Panchayati. When she and her husband gave two dandas to the appellant, then he confessed his guilt in the Panchayati and the appellant was fined Rs. 300/- but when he could not pay the fine, then she lodged the case. She has further stated that the through which, she was going was the road of going and coming from her naihar to her sasural and from sasural to naihar. She has further stated that ahead of her three persons were going and two of them when proceeded towards Jai Pahari, this appellant had hidden himself. She has further stated that when she was feeding milk to her child in Jaipahari, then appellant disappeared. After breast feeding by her to her child, she travelled about one kilometer, then appellant came and caught her.

6. PW2 is husband of the PW1. He is hearsay witness and he has stated that when his wife came from naihar, then she narrated the occurrence to him. He further says that he went to Jai Pahari and met pradhan and he called meeting for Panchayati where she identified the appellant. In the beginning, the appellant did not confess his guilt but when he was beaten, then he confessed his guilt. He was fined Rs. 300/- and when he did not pay the amount of fine, then the case was lodged against him.

7. PW3 is hearsay witness. He has come to say that PW2 communicated to him that while his wife was coming from her naihar, then a man of Jai Pahari committed rape on her. He further says that he along with other had gone to Jai Pahari.

8. PW4 is also hearsay witness. He has also stated that both husband and wife came to him and PW1 told him that while she was coming from her naihar, a man of Jai Pahari has committed rape on her. He further says that both of them went to PS where case was lodged.

9. PW6 is doctor who examined the victim lady and found the following. He has come to depose that on 4.40 PM on 16-10-1991 he examined the wife of Mangal Soren and found the following.

1. Height - 4 feet 11 inches

2. Weight 87 pounds

3. Teeth - upper 16 lower

4. Breast - developed

5. Axillary and pubic hair present

1. The following external injuries were found over her body

a. Abrasion 1/4' three in number over the upper part of right breast

b. Injury simple in nature caused by pointed weapon and it may be caused by finger nail. Age of injury within 48 hours.

2. On internal examination, no mark of injury found over private part. Hymen shows old rupture. Vagina Swab was taken and sent to pathology for microscopic examination of spermatozoa.

3. No definite opinion can be given regarding rape. Age about 19 years.

10. PW6 is Sufal Tudu. He says that a Panchayati was called and he was present in the Panchayati. The appellant was fined Rs. 300/- and Palo Marandi was also fined four Harias of wine but both did not pay the Jurmana. He has further stated that there was scuffle between both of them and for that purpose, panchayati was called. There was no matter regarding commission of rape on informant.

11. PW10 is Dina Nath Mishra. He has come to say that informant came to PS and gave statement, on the basis of which FIR was drawn up and case under Section 376, IPC was registered. He was then posted as officer-in-charge but he did not conduct the investigation.

12. Learned counsel appearing for the appellant submitted that there was some sort of scuffle that took place between both the parties and informant had complained to the Pradhan of that village on which, Panchayati was called and in the panchayati, she did not say that she was raped by the appellant as it will be evident from the evidence of the PW8 who has been wrongly numbered as PW7. Learned counsel further submitted that from the very evidence of PW1 and statement of PW2 who is the husband of PW1 that the appellant confessed his guilt when he was beaten and this very evidence on behalf of the prosecution is fatal for the case of the prosecution and on this very score, case should fail because confession has been obtained under pressure and threat of assault. Learned counsel further pointed out that at the time of alleged occurrence, PW. 1 had not identified that rapist but only on the ground that after commission of rape, the man proceeded towards Jai Pahari and among the persons present in the panchayati, she identified the appellant. Further, informant is aged 35 years as it appears from deposition in which aged has been given and age of the appellant has be assessed to be at 21 years by the trial Court and it cannot be believed that a boy of 21 years will be able to commit rape on a grown up lady without any resistance and, therefore, no case under Section 376, IPC is made out and it may be the case of some sort of assault.

13. From the discussions made above and from the evidence of doctor and other witnesses and the evidence to the effect that when appellant was given two lathi blows, he confessed his guilt and this is enough and the confession appears to

have been obtained under threat of assault and under pressure and on such confession, Further, that informant is aged 35 years and appellant is aged 21 years, there appears to be no possibility that a grown up lady was overpowered and rape will be committed on her without any protest and without any injury to the appellant.

14. In that view of the matter, I find merit in this appeal and it is accordingly allowed and judgment of conviction and order of sentence dated 29-3-1993 passed in Sessions Case No. 365 of 1992 is hereby set aside. The appellant is acquitted of the charges levelled against him and the appellant is discharged from the liability of the bail bonds.

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