

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.42 of 2015

Arising Out of PS.Case No. -15 Year- 2013 Thana -MAHILA PS District- JEHANABAD

=====

1. Sanjeet @ Bhokaran Dom Resident of Village - Maya Bigha, P.S. - Ghoshi,
District - Jehanabad. Appellant/s

Versus

1. The State of Bihar Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Nitya Nand Niraj, Adv

For the Respondent/s : Mrs. Abha Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 31-07-2017

Sole appellant Sanjeet @ Bhokaran Dom has been found guilty for offences punishable under Sections 376(1) IPC, 307 IPC vide judgment of conviction dated 13.11.2014 and sentenced to undergo RI for 10 years under each head as well as to pay fine of Rs. 10,000/- (composite) in default thereof, to undergo SI for 3 months additionally, vide order of sentence dated 18.11.2014 passed by Adhoc Additional Sessions Judge-1st , Jehanabad in Sessions Trial No. 349 of 2013/153 of 2013.

2. (Name withheld) victim (PW-1) while was admitted at Sadar Hospital, Jehanabad gave her Fard-e-beyan on 18.02.2013 at 2:00 P.M. disclosing thereunder that on the same day at about 7 :00 A.M. she along with her sister, Soni Kumari had gone to ease in a field lying east to her house. They both sat at two different places. During midst thereof, Sanjeet @ Bhokaran Dom, who happens to be relative of her villager, came, caught hold of her, threw her on the ground, gagged her mouth and then raped her. After committing



the rape, he got up whereupon, she raised hue and cry attracting the persons nearby whereupon, Sanjeet @ Bhokaran Dom gave Chhura blow and then, ran away. She was taken to hospital by her family members as well as villagers.

3. Jehanabad Mahila PS Case No. 15/2003 was registered thereupon followed with an investigation and after completing the same, charge-sheet was submitted under Section 376 IPC, 307 IPC which ultimately facilitated the trial before the court of sessions with a finding adverse to the appellant, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence. However, neither any DW nor any document has been exhibited on his behalf.

5. While assailing the judgment of conviction and sentence, it has been submitted on behalf of the appellant that save and except the victim herself examined as PW-1, none of the other witnesses who, though claimed to be in the surroundings of the alleged P.O. claimed to be an eyewitness to the occurrence. That being so, the narration having been advanced at the end of the victim happens to be uncorroborated and so, is fit to be rejected. Furthermore, it has also been submitted that the place of occurrence as alleged by the prosecution has not been substantiated properly



because of the fact that Investigating Officer, PW-6, had not found any sign, much less the blood stain at the place of occurrence in spite of the fact that there happens to be specific allegation against the appellant that he had inflicted Chhura blow. In likewise manner, it has also been submitted that on account of non examination of surgeon who had treated the alleged victim is another circumstance to which creates doubt over the genuineness of the occurrence. It has also been submitted that PWs-2, 4 are the doctors who examined the victim and during course of their evidence have not supported the contention of the prosecution by way of finding that no injury caused by sharp cutting weapon was ever found by them during course of examination of the victim. So, the allegation has been purposely introduced to give a slip to the prosecution witnesses as, victim being a major was a consenting party, was seen by others having been in a compromising position with the appellant and so, the evidence on record lacks such kind of deficiency.

6. Apart from this, it has also been submitted that the victim was examined on the same day but there happens to be absence of spermatozoa which could not have been. Therefore, the cumulative effect happens to be that the case of the prosecution is found dimidiated. Consequent thereupon, appellant should be acquitted.

7. Learned APP, while controverting the



submissions advanced on behalf of appellant, has submitted that occurrence is said to have been committed in a Rahar Field. The Investigating Officer during course of inspection had found the Rahar plant duly trampled and so, the aforesaid eventuality is suggestive of the fact that an occurrence had taken place and for that, the victim detailed the same corroborated by the other witnesses. Furthermore, it has also been submitted that neither the victim was suggested nor there happens to be cross-examination on that very score at the end of appellant that she was major and was a consenting party. So, neither the court could infer on its own that she was a consenting party nor the evidence available on the record suggests like so. Therefore, the alternative argument having raised on behalf of appellant has got no leg to stand. Furthermore, it has also been submitted that PW-2, a Gynecologist has examined the victim and found injuries over the private part of the victim suggesting that she was ravished and so, the learned lower court had rightly convicted and sentenced the appellant.

8. In order to substantiate its case prosecution had examined altogether 13 witnesses out of whom PW-1, is the victim herself, PW-2, Dr. Mina Kumari, PW-3, Dr. Ranvijay Prasad, PW-4, Dr. Ramadhar Sharma, PW-5, Dr. Deoraj Chaudhary, PW-6, Susma Kumari, Investigating Officer, PW-7, Saheb Yadav, PW-8 Rakesh Das, PW-9, Lalti Devi, PW-10, Soni Devi, PW-11, Baliram Yadav, PW-12, Sonbarti Devi, and PW-13 is, Rajendra Ram. Side by side



had also exhibited Ext-1, Signature of victim over Fard-e-beyan, Ext-1/A, Signature of victim over 164 statement, Ext-2, injury report issued by PW-2, Ext-3, report of medical board, Ext-3/A, another report issued by medical board, Ext-4, Fard-e-beyan, Ext-5, Formal FIR, Ext-6, seizure list. As stated above defence had not examined any DW nor exhibited any chit of paper.

9. Now coming to the status of the witnesses, it is evident that save and except, the victim PW-1 none is an eyewitness to occurrence. PW-11, Baliram Yadav, and PW-7, Saheb Yadav, though corroborated the prosecution case but failed to identify the accused in the dock. So, even substantiating the case of the prosecution, these witnesses have given a lifeline by way of withdrawing themselves to identify the appellant as culprit.

10. PW-10 is Soni Devi, own sister of victim. From her evidence it is evident that although, she was not declared hostile but she had not supported the case of the prosecution relating to rape as well as assault by means of Chhura though she had spoken that the accused had come along with Chhura but did not do anything.

11. With regard to remaining witnesses, that means to say, PW-8, Rakesh Das who happens to be brother of victim, PW-9, Lalti Devi, PW-12, Sonbarti Devi, mother of victim and PW-3, Rajendra Ram, they all have stated that they came to know about the occurrence from the victim. Furthermore, excluding PW-8 as well as PW-12



other have also stated that they had seen the appellant fleeing from the place of occurrence along with Chhura when they reached on an alarm raised by the victim after the occurrence. From their respective cross-examination, it is evident that they have not been sacked save and except identifying their eagerness to say that they had accompanied the victim from the place of occurrence to her house. PWs-8 and 12 who are brother and mother of the victim have stated that they came to know with regard to the occurrence from the victim who had narrated the incident regarding which, they stated and during course of cross-examination also, the aforesaid event has properly been substantiated.

12. Now coming to the evidence of the victim PW-1, it is evident that she had categorically stated that while she was easing, the accused came from behind, caught hold of her, threw her on the ground, gagged her mouth and then raped her. When he got up, she raised alarm attracting people of the surrounding whereupon, the accused gave a Chhura blow over her vagina and then ran away. Copious blood was there from the injury. She was taken to her house and then to hospital where her Fard-e-beyan was recorded (exhibited). During cross-examination, she had stated that the accused was not known to her from before. Again she stated that the accused was the relative of her villager. Then she said that who disclosed the name of accused, she is not remembering. At para-4, she had stated that



accused after inflicting Chhura fled away. In para-8, she had stated that there was no animosity prevailing in between. In para-9, she had stated that the occurrence took place for an hour. In para-11, she had stated that she had taken education up to Class-VII. In para-12, she stated that the accused came from behind, caught hold of her, threw her on the ground, gagged her mouth and then raped her. After removing of hand as he stood after occurrence, she raised alarm whereupon accused gave a Chhura blow. In para-13, she had stated that she became unconscious and so, she is unable to say with regard to subsequent event. In para-14, she had stated that Salwar was taken away by Darogaji. When she regained her sense, she found herself admitted in Jehanabad Hospital. In para-17, she had stated that the place of occurrence happens to be Rahar Field. She is unable to say whether the Investigating Officer had visited the place of occurrence or not. Then had denied the suggestion that no occurrence had taken place with her.

13. PW-6 is the Investigating Officer who had stated that on the alleged date she was posted at Mahila Thana, Jahanabad. On that day, she was entrusted with the investigation of Mahila Thana PS Case No. 15/2012. Then she had exhibited the relevant documents. She further stated that she also received seizure list (exhibited). Took further statement of informant, statement of other witnesses, Soni Kumari, Sonbarti Devi. Then came at the place of occurrence and



inspected the same. Then identified the place of occurrence i.e. Rahar Field. Properly identified by the boundary. She had found eastern side Rahar plant of the field trampled. She had also found excreta at one place. She took statement of other witnesses. Seized Salwar of victim (exhibited seizure list). Got the victim examined and received report. Got the victim examined under Section 164 Cr.P.C. Accused has surrendered whereupon took the accused on police remand and then got him medically examined. After completing the investigation submitted charge-sheet.

14. During cross-examination at para-8, she had stated that she had not found blood stains at the place of occurrence. In para-9, she had stated that she had not mentioned in the case diary whether leaves of Rahar plant was attached with the body of the victim. She had not mentioned the fact that soil was found over the body of victim. In para-10, she had stated that save and except injury over vagina no other injury was found over her body. In para-14, she had stated that 8-10 villagers had stated that they failed to apprehend the accused while fleeing after committing the occurrence. In para-17, she had stated that she is unable to say whether the accused happens to be lame. Further she stated that no one could perceive on bare perusal of accused to be lame. In para-19, she had not found any injury over the person of appellant.

15. PW-3, Dr. Ranvijay and PW-5, Dr. Devraj apart from



others were members of the medical board who had examined appellant, Sanjeet @ Bhokaran Dom on 02.03.2013 that means to say, after 20 days of the alleged occurrence and so, rightly no external injury was found. Furthermore, he was found capable of cohabitation and his age was identified in between 20-23 years.

16. PW-2 had examined the victim on 18.02.2013 at 11.50

A.M. and found the following injuries:-

- Secondary cervical characters well developed.
- Profuse bleeding, P/V present.
- Lower 1/3rd of vagina lacerated. Tear extended posteriorly up to anus. Anal splinter torn.
- Microbiological report of vaginal swab given by Dr. Sanjay Gupta.
- Spermatozoa ---- Not found.
- RBCS ---- Present.
- Radiological report given by Dr. B.S. Kashyap, the age of pt. seems to be in between 16-17 years.
- M.I—Til on Rt. Cheek,
- Above injury suggests possibility of rape.

17. In the opinion of doctor, nature of injury suggests that she was raped.

18. PW-4 is the doctor who along with others were members of the Medical Board. During course of examination of the victim including that of PW-2 and as per opinion regarding age of the victim, the same was 16-17 years.

19. Before coming to analyze the evidence, it is apparent from the prevailing circumstance that inspite of specific direction by the Hon'ble Apex Court at different occasions that the victim of rape should not be medically examined in order to ascertain the age. For



that purpose, the rules so prescribed under the Juvenile Justice Act for determination of delinquent in conflict with law is to be followed as held in the case of **Jernail Singh v. Haryana 2013 Cr.L.J. 3976** as reported in **2013 Cr.L.J** and have directed under para-20 that the age of victim should also be determined by exercising the same process whereunder the age of juvenile in conflict with law is determined. For better appreciation paragraph- 20 is quoted herein below:-

“20. On the issue of determination of age of a minor, one only needs to make a reference to Rule 12 of the Juvenile Justice (Care and Protection of Children) Rules, 2007 (hereinafter referred to as the 2007 Rules). The aforesaid 2007 Rules have been framed under Section 68(1) of the Juvenile Justice (Care and Protection of Children) Act, 2000. Rule 12 referred to hereinabove reads as under :

12. Procedure to be followed in determination of Age.? (1) In every case concerning a child or a juvenile in conflict with law, the court or the Board or as the case may be the Committee referred to in rule 19 of these rules shall determine the age of such juvenile or child or a juvenile in conflict with law within a period of thirty days from the date of making of the application for that purpose.

(2) The court or the Board or as the case may be the Committee shall decide the juvenility or otherwise of the juvenile or the child or as the case may be the juvenile in conflict with law, prima facie on the basis of physical appearance or documents, if available, and send him to the observation home or in jail.

(3) In every case concerning a child or juvenile in conflict with law, the age determination inquiry shall be conducted by the court or the Board or, as the case may be, the Committee by seeking evidence by obtaining .

(a) (i) the matriculation or equivalent certificates, if available; and in the absence whereof;

(ii) the date of birth certificate from the school



(other than a play school) first attended; and in the absence whereof;

(iii) the birth certificate given by a corporation or a municipal authority or a panchayat;

(b) and only in the absence of either (i), (ii) or (iii) of clause (a) above, the medical opinion will be sought from a duly constituted Medical Board, which will declare the age of the juvenile or child. In case exact assessment of the age cannot be done, the Court or the Board or, as the case may be, the Committee, for the reasons to be recorded by them, may, if considered necessary, give benefit to the child or juvenile by considering his/her age on lower side within the margin of one year.

and, while passing orders in such case shall, after taking into consideration such evidence as may be available, or the medical opinion, as the case may be, record a finding in respect of his age and either of the evidence specified in any of the clauses (a)(i), (ii), (iii) or in the absence whereof, clause (b) shall be the conclusive proof of the age as regards such child or the juvenile in conflict with law.

(4) If the age of a juvenile or child or the juvenile in conflict with law is found to be below 18 years on the date of offence, on the basis of any of the conclusive proof specified in sub-rule (3), the court or the Board or as the case may be the Committee shall in writing pass an order stating the age and declaring the status of juvenility or otherwise, for the purpose of the Act and these rules and a copy of the order shall be given to such juvenile or the person concerned.

(5) Save and except where, further inquiry or otherwise is required, inter alia, in terms of section 7A, section 64 of the Act and these rules, no further inquiry shall be conducted by the court or the Board after examining and obtaining the certificate or any other documentary proof referred to in sub-rule (3) of this rule.

(6) The provisions contained in this rule shall also apply to those disposed off cases, where the status of juvenility has not been determined in accordance with the provisions contained in sub- rule(3) and the Act, requiring dispensation of the sentence under the Act for



passing appropriate order in the interest of the juvenile in conflict with law.

Even though Rule 12 is strictly applicable only to determine the age of a child in conflict with law, we are of the view that the aforesaid statutory provision should be the basis for determining age, even for a child who is a victim of crime. For, in our view, there is hardly any difference in so far as the issue of minority is concerned, between a child in conflict with law, and a child who is a victim of crime. Therefore, in our considered opinion, it would be just and appropriate to apply Rule 12 of the 2007 Rules, to determine the age of the prosecutrix VW-PW6. The manner of determining age conclusively, has been expressed in sub-rule (3) of Rule 12 extracted above. Under the aforesaid provision, the age of a child is ascertained, by adopting the first available basis, out of a number of options postulated in Rule 12(3). If, in the scheme of options under Rule 12(3), an option is expressed in a preceding clause, it has overriding effect over an option expressed in a subsequent clause. The highest rated option available, would conclusively determine the age of a minor. In the scheme of Rule 12(3), matriculation (or equivalent) certificate of the concerned child, is the highest rated option. In case, the said certificate is available, no other evidence can be relied upon. Only in the absence of the said certificate, Rule 12(3), envisages consideration of the date of birth entered, in the school first attended by the child. In case such an entry of date of birth is available, the date of birth depicted therein is liable to be treated as final and conclusive, and no other material is to be relied upon. Only in the absence of such entry, Rule 12(3) postulates reliance on a birth certificate issued by a corporation or a municipal authority or a panchayat. Yet again, if such a certificate is available, then no other material whatsoever is to be taken into consideration, for determining the age of the child concerned, as the said certificate would conclusively determine the age of the child. It is only in the absence of any of the aforesaid, that Rule 12(3) postulates the determination of age of the concerned child, on the basis of medical opinion.

20. Moreover, during course of examination of PW-6, the



I.O., she was not at all examined by the prosecution on that very score nor cross-examination at the end of defence that in spite of having been disclosed by the victim to be student of Class-VII, the I.O. during course of investigation did not care to procure the date of birth from the admission register. However, in the present case, that has not become the relevant factor as, while cross-examining the victim, PW-1. Defence had not challenged her status to be major and further, she was a consenting party. Absence of spermatozoa is not a condition precedent for constituting an offence of rape as, defined under Section 375 of the IPC that slight penetration is sufficient to constitute the rape. Neither PW-2 has been cross-examined on that very score nor the victim and so, from the evidence on record, the factum of rape is duly substantiated. Apart from this, still under Indian culture and social panorama the prestige of a woman is measured with her virginity. The event of rape in the present social atmosphere is a stigma not against the physical body rather it happens to be a scar over the sole of a female. Virtually, the incident of rape makes the victim difficult to survive as, she has to carry stigma till her life. That happens to be the reason behind that still the female, even being victimized are reluctant to come forward to institute a case against her rapist. Furthermore, no woman would allow her to carry the stigma by way of instituting a false case and that happens to be the reason behind that the evidence of victim has been found sufficient to



constitute the conviction without corroboration, unless and until some sort of infirmity is found whereupon the corroboration is needed. So far present case is concerned, it is apparent that there happens to be no animosity prevailing since before. It is further evident that no cross-examination of victim has been made relating to previous acquaintance. In likewise manner, she has not been cross-examined that she happens to be a major and was a consenting party. Then in that event, the veracity of her evidence neither should be doubted nor even on flimsy grounds, should be discarded.

21. Consequent thereupon, her allegation against appellant to be her rapist is found properly substantiated and for that, the learned lower court had rightly convicted and sentenced.

22. So far offence relating to Section 307 of the IPC is concerned, though there happens to be allegation at the end of the victim that she was given Chhura blow over her vagina, as per evidence of PW-2, the Gynecologist, tear was found up to anus but she had not stated that the aforesaid injury was out of sharp cutting weapon. That being so, it appears that while suffering from trauma of rape, she could not perceive whether Chhura blow was given over the vagina or she had sustained injury due to rape or due to Chhura blow and so the conviction and sentence recorded against the appellant relating to Section 307 of the IPC did not find favour and is accordingly, allowed exanimate.



23. With the aforesaid modification, the instant appeal is dismissed. The appellant is under custody which he will remain till saturation of sentence.

(Aditya Kumar Trivedi, J)

perwez

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	02.08.2017
Transmission Date	02.08.2017

