

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1421 of 2018**

Arising Out of PS. Case No.-53 Year-2017 Thana- MAHILA P.S. District- Kaimur (Bhabua)

Chedi Bind @ Chhedi Vind Son of Late Suresh Bind Resident of Village-
Matar, P.S. Bhagwanpur, Distt.-Kaimur Bhabua

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Kumar Sunil, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 16-07-2024

Heard Mr. Kumar Sunil learned Advocate for the
appellant and Mr. Abhimanyu Sharma, learned APP for the
State.

2. The sole appellant/Chedi Bind @ Chhedi Vind has been convicted for the offence under Section 376(1) of the IPC *vide* judgment dated 12.10.2018 passed by the learned Additional District & Sessions Judge, 1st -cum-Special Judge, Kaimur (Bhabua) in connection with Sessions Trial Registration No. 32 of 2017 – POCSO Case No. 32/2017, arising out of Bhabua Mahila P.S. Case No. 53 of 2017. By order dated 15.10.2018 he has been sentenced to undergo R.I. for 15



years, to pay a fine of Rs. 15000/- and in default of payment of fine to further suffer R.I. for six months for the offence under Section 376(1) of the IPC.

3. The victim is alleged to have been raped by the appellant in the night intervening between 2nd-3rd of September, 2017.

4. A typed written report was filed by the victim on the basis of which Bhabua (Mahila) P.S. Case No. 53 of 2017 was registered for investigation against the appellant under Section 376 of the IPC and Section 4 of the POCSO Act, 2012.

5. In the written report, the victim has disclosed her age to be 15 years. She has alleged that her parents were away in connection with treatment of her younger brother. However, her father had left behind his mobile telephone so that in any eventuality, the victim could be contacted. At about 12.45 in the night of 02.09.2017, a call was received on the mobile telephone of her father. At that time, she was sleeping in her house along with her very old maternal grand-mother and her younger siblings. When she could not hear the voice clearly on the mobile telephone, she walked up to the door of



her house so that the voice becomes clear. However, in the meantime, the appellant, a neighbour and a co-villager, came , gagged her and took to a desolate boring chamber near her house and committed rape on her. While the appellant was at the act, a co-villager Narendra Bind (P.W. 3) also arrived, who abused the appellant and also tried to apprehend him. However, the appellant ran away. Many persons of the village saw the appellant running away from the P.O.

6. When her father was informed on telephone at Varanasi, where he had gone for treatment of the brother of the victim, he came back home and was told that the appellant had raped the victim.

7. It has also been alleged in the written report that the family of the appellant had been threatening the victim of dire consequences. She had come to the Mahila Police Station on 03.09.2017 to lodge the written report.

8. The police after investigation, submitted chargesheet against the appellant whereafter he was put on trial.



9. The Trial Court after having examined eight witnesses on behalf of the prosecution convicted and sentenced the appellant as aforesaid.

10. Mr. Kumar Sunil, learned Advocate for the appellant has submitted that an absolutely false case has been lodged against him. The falsity of the case would appear from the fact that the victim is not a minor but aged about 18-20 years. That apart, it has been argued that the medical evidence is completely in dissonance with the ocular testimony. He has further submitted that Narendra Bind (P.W. 3) about whom it has been stated by the victim that he is a co-villager and he had seen the occurrence is none else but the maternal uncle of the victim, which relationship has been completely hidden by the other witnesses and even the prosecutrix.

11. It was not inadvertent but deliberate.

12. There appears to be a possibility, it has been argued, that the victim and the appellant were having consensual sex, which was witnessed by P.W. 3 and therefore, this false case has been lodged. The appellant after his arrest was not subjected to any medical examination. No forensic



examination to affirm the factum of rape was ever held. Lastly, it has been submitted that the 164 Cr.P.C. statement of the victim also is absolutely different from what she has alleged in the written report and what she had to offer to the Trial Court.

13. Mr. Abhimanyu Sharma, learned APP, on the other hand, has submitted that in cases of rape, there are every chances of there being no other witness except the victim. Assuming but not admitting that P.W. 3 is related to the victim, that would in no way discredit the evidence put forth by the victim. In rape cases, medical testimony is not to be taken as the last word while assessing the correctness of the allegation. A rape could be consummated even without causing any physical injury to the victim. Hence, any dissonance in the medical report will not render the prosecution case unworthy of reliance. There is nothing on record, Mr. Sharma has argued, which would indicate that the appellant was falsely implicated at the hands of the victim. The victim knew the appellant as he is a co-villager and a neighbour. Lastly, it has been submitted that merely because the mandate under Section 53(A) Cr.P.C. has not been followed, that would,



by itself, not render the prosecution story doubtful and worth rejecting.

14. We have examined the records of this case in some detail.

15. As noted above, a typed written report was brought to Mahila Police Station by the victim. In her statement, she has described her to be 15 years of age. She was subjected to medical examination by Dr. Siddharth Raj Singh (P.W. 4) on 03.09.2017. On physical examination of the body of the victim as also the radio-logical examination and X-ray reports, P.W. 4 assessed the age of the victim to be 18-20 years.

16. True it is that for assessment of age, medical report is to be resorted only in the absence of other admissible documents. No effort appears to have been made by the prosecution to get the age of the victim determined. However, in the absence of any objection on the part of the appellant to question the jurisdiction of the Special Court Act, this aspect of the matter is relegated to the background. Nonetheless, we



have taken note of the assessment of the age of the victim to be 18-20 years.

17. She was also examined by Dr. Kiran Singh (P.W. 1) on 03.09.2017 only but at 6.00 P.M. P.W. 1 did not find any tear or patches in her clothes. No mark of violence was found over any part of her body and genitalia. The pubic hair was not matted with semen or blood, either dried or wet. No white or red patches were found on the external genitalia. No foreign hair also was found. In the internal examination of the victim, the vaginal swab was collected and sent for pathological examination. In the pathological report, no spermatozoa was found, either dead or alive. However, pus cell and epithelial cells were found to be present in the vaginal swab. The hymen membrane of the victim was found to be old, ruptured and healed. No other injury was found otherwise on any part of the body of the victim. The victim was advised for urine examination for pregnancy test and Ultrasound of the whole abdomen. The Urine test as well as the Ultrasound examination disclosed nothing which could be any indicator of the victim having been sexually assaulted.



18. The victim was examined without any delay. In such a situation, no injury having been found on the person of the victim makes the prosecution story somewhat doubtful. The doubt further get strengthened when it is found that in her 164 Cr.P.C. statement, a totally different sequence of facts was stated by the victim.

19. Before the learned Magistrate (P.W. 7), who recorded the statement of the victim under Section 164 Cr.P.C., she had stated that the appellant threw a stone at her. She came out of her house when she was taken to a desolate place, an ante-room where boring pump is situated and committed rape on her. At that time, P.W. 3 arrived, who saw the occurrence and tried to rescue her. This narration is absolutely different from what the victim had to say in her written report and in her deposition before the Trial Court.

20. If the victim is to be believed, she had come near the door of her house so that she could hear the caller on the mobile telephone clearly. This could be one of the circumstance which could have been taken advantage of by the appellant, if he had the intention of committing rape on the victim.



21. On the contrary, the first statement made by the victim before the learned Magistrate is that she was given a signal by the appellant, who threw a stone at her, when she came out of her house. This suggests that perhaps the appellant and the victim were known to each other.

22. There is some force in the submission of the learned Advocate for the appellant that there could be a possibility of the victim having gone to the desolate chamber along with the appellant but when P.W. 3 arrived at the scene, she in order to save her image as also to give some explanation as to her presence in that chamber along with the appellant, this false case was instituted.

23. The investigator of this case viz. Kumari Anchala (P.W. 8) has completely abdicated her functions as a police officer with any sensitivity. She accepted the typed written report by the victim and thereafter, recorded the statement of the father of the victim. She thereafter brought the victim and her father to Sadar Hospital and made a request to the Civil Surgeon to medically examine her. After the medical examination, she proceeded to the village where the



occurrence is said to have taken place and also made raids in the house of the appellant for his arrest but did not inspect the P.O. Perhaps it was late in the night and therefore the P.O. was not inspected by her. However, on the same day, she recorded the statement of the mother of the victim as also of Narendra Bind (P.W. 3). She went to the P.O. on 04.09.2017. She found a dilapidated and an abandoned chamber meant for keeping the peter-pump. The chamber was in a down-to-heel condition and it had no door. Thereafter, the statement under Section 164 Cr.P.C. of the victim was recorded at the instance of the investigator.

24. In her cross-examination, she has admitted that P.W. 3 had not told her that he had seen the appellant having taken off the clothes of the victim and raping her. He had also not told before her that when he confronted the appellant, the appellant accepted his guilt. He also did not say before the investigator that he had threatened the appellant that he shall be beaten up by the villagers. He had only spoken about the appellant having run away before he could be apprehended.



25. The investigator was candid enough to admit that she did not examine any person of the neighbourhood and did not even try to know the name of the doctor who medically examined the victim. She was not handed over any clothes of the victim by her family members. There was no DNA examination of the appellant or the victim.

26. Thus, for all practical purposes, we find that the investigation was not done in the proper manner.

27. Narendra Bind (P.W. 3), as already noted, has also not stated anything about his relationship with the victim. In his cross-examination, he stated before the Trial Court that he did not find any injury on the person of the victim. The victim was also not found to have been gagged. The appellant, according to him, had actually placed his hand over her mouth to gag her. The appellant also did not have any injury on his person. He had not seen the clothes of the victim torn. He did not bring the victim to police station as her parents were not available and it was quite late in the night.

28. What was the reason for P.W. 3 to have hidden his relationship with the victim?



29. In any view of the matter, the way in which he has narrated about the occurrence, it appears to be quite doubtful that he had seen the appellant in *flagrante delicto*. No independent person also has come forward to at least confirm that they had heard about the victim having been raped by the appellant.

30. What flummoxes us is the reason why appellant was falsely implicated, if at all the arguments on his behalf is to be believed.

31. There is nothing on record to indicate any enmity but the evidence suggests that the victim and the appellant were neighbours. Was this consensual? The age of the victim also has not been established for the Special POCSO Court to have assumed the jurisdiction of trying this offence. All these grounds make the prosecution story doubtful.

32. The appellant needs to be given benefit of doubt.

33. Giving benefit of doubt to the appellant, we set aside his conviction and sentence and set him free.

34. The appeal stands allowed.



35. The appellant is in custody since 13.11.2017. He is directed to be released from jail forthwith, if not wanted or detained in any other case.

36. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

37. The records of this case be returned to the Trial Court forthwith.

38. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
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