(2010) 12 JH CK 0021

Jharkhand High Court

Case No: Criminal Appeal No. 662 of 2002

Bholo @ Balram Singh and Others		APPELLANT
	Vs	
State of Jharkhand		RESPONDENT

Date of Decision: Dec. 1, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 323, 34, 341, 342, 376

Citation: (2011) 1 JCR 308 : (2011) 7 RCR(Criminal) 470

Hon'ble Judges: Dilip kumar sinha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dilip Kumar Sinha, J.
The instant Criminal Appeal is directed against the judgment of conviction and order of sentence recorded against the Appellants by the Assistant Sessions Judge-II, Simdega in Sessions Trial No. 191 of 1998 corresponding to G.R. No. 27 of 1998 on 1.10.2002 arising out of Jaldega P.S. Case No. 1 of 1998.

2. All the Appellants were convicted u/s 376(2)(g) as also under Sections 342/34 of the Indian Penal Code by the Assistant Sessions Judge-II and each of them was sentenced to undergo R.I. for a term of 10 years, however, no sentence was passed against any of the Appellants for their conviction under Sections 342/34 of the Indian Penal Code.

3. The criminal law was set on motion on the statement of the prosecutrix Anita Devi at the Jaldega Police Station on 23.1.1998 relating to the offence, which was committed by the accused persons on 10.1.1998. She narrated in her statement that in the night of 10.1.1998 when she came out from her house at about 8 p.m. to answer the call of nature and proceeded at some distance, the Appellant Bholo @ Balram Singh, all of a sudden

appeared before her and caught hold to which she resisted after identifying him in the moon light night but when he did not leave, she screamed then he gagged her mouth but in the meantime the other Appellants Litha Munda, Shambhu Pradhan and Ratan Singh @ Perda all came there. She was lifted by all the four Appellants who took her towards a lonely place at the distance of about 500 yards ahead. Whenever she attempted to get herself released from their clutches, she was threatened to be killed and dumped in the nearby well. Her clothes were removed by the Appellant Bholo @ Balram Singh and thereafter all the four Appellants committed gang rape on her. She further narrated that it was Bholo @ Balram Singh, who first committed rape on her by removing his own undergarment and thereafter Litha Munda, Ratan Singh @ Perda followed by Shambhu Pradhan one after another. She was trembling throughout during commission of rape but they had gagged her mouth with the help of clothes. She became semi unconscious. The Appellants extended threat while retreating that in case of narrating the occurrence to anyone, the bodies of her parents would be thrown out after committing their murder and that they would also be implicated in false case. She laid there for as short while out of pain and thereafter she returned back wearing her clothes but could not narrate the occurrence to anyone of the inmates in the home out of fear. She narrated the occurrence to her mother after about 4/5 days of the occurrence when she suspected some fault with her daughter and thereafter the matter was communicated by her mother to her father and only then the case could be instituted at the Police Station. She put her signature at the foot of her statement recorded at the Police Station (Ext. 1) in presence of her father Lodha Baraik. The police instituted Jaldega P.S. Case No. 1 of 1998 for the offence under Sections 341/323/376 (g) of the Indian Penal Code against all four named accused i.e. the Appellants herein. The prosecutrix was sent for medical examination. She was examined on 24.1.1998 wherein her age was determined about 15/16 years. The Investigating Officer submitted charge-sheet against all the four Appellants under Sections 342/376(g) of the Indian Penal Code and thereafter the Appellants were put on trial after framing of charge under two heads viz. under Sections 342/34 and u/s 376(g) of the Indian Penal Code to which they pleaded not guilty and claimed to be tried.

4. As many as eight witnesses were examined on behalf of the prosecution. The Appellants had produced four defence witnesses in support of their contention that they were falsely implicated in the instant case on account of enmity prevailing between the parties.

5. P.W. 1 Lodha Baraik is the father of the prosecutrix. He narrated in his evidence that he was not present in his house when the occurrence took place in the night of Saturday, as he had gone out to his matrimonial home and when he returned back after about 10/12 days his wife (P.W. 5) narrated the occurrence math when their daughter had been to answer the call of nature at about 8 p.m. all the four named accused forcibly took her towards Sarna and they committed gang rape by gagging her mouth with the help of clothes and at that time his daughter was only 13-14 years old. After the matter was communicated to him by his wife, he enquired from his daughter to which she supported

and on subsequent day on 23rd he went to the Police Station with his daughter where her statement was recorded which was read over to her and finding it correct she had put her signature with the date. He also attested the statement by putting his signature and date (Ext. 1/1) on her statement. In the cross-examination, he admitted that he was not communicated about the occurrence at the place where he was staying at his matrimonial home and when he returned back in the evening of Wednesday, the occurrence was narrated to him in the same evening. He had apprised the occurrence to his neighbours Lahsu Baraik, Sukra Naik and Moni Baraik etc. There were only four persons in his house besides him including his old mother, wife, 10 years old son and 13 years old daughter and none else. He had given the boundary of his house surrounded by the house of Bahal Mahto in the South, Raj Kishore in the North, Lahru Baraik and Tapeshwar Baraik in the East and Harinath Baraik, Sukra Baraik and Aghbu Baraik in the West. He further narrated that Sarna Basti was situated at the distance of about 500 yards from his house outside his tola which was an open space and no house was situated around it.

6. P.W. 2 Mahru Naik is the co-villager, who testified that in the evening of 21.1.1998 he was apprised by Lodha Baraik about the occurrence that his daughter Anita Kumari was ravished by four boys of the village namely, Bholo Singh @ Balram Singh, Pedra @ Ratan Singh, Shambhu Pradhan and Litta Munda on 10.1.1998 when Anita Kumari had been to answer the call of nature. He was further apprised that all the four had lifted her towards Sarna where they committed rape one after another and the fact was corroborated by Anita to him. His statement was recorded by the police. He admitted having interrogated Anita Kumari in the same evening and that seven persons in all had accompanied the victim to the Police Station and their statements were separately recorded by the police. The police visited the village after about 2/3 days of the institution of the case.

7. P.W. 3 Lahsu Baraik is also the co-villager. He corroborated the statement of the earlier witness P.W. 2 and narrated that he was apprised by Lodha Baraik that Bholo Singh @ Balram Singh, Pedra @ Ratan Singh, Shambhu Pradhan and Litta Munda had committed gang rape on his daughter Anita Kumari in the night of 10.1.1998. He also enquired from Anita about the occurrence. In the cross-examination, the witness testified that his house was situated at the distance of about 100 yards from the house of Anita who happened to be his grand niece in relation. Lodha Baraik narrated the occurrence to him in the evening of 21st and he visited his house in the morning of 22nd. He admitted in the cross-examination that Sukra Baraik and Mahru Baraik were known to him.

8. P.W. 4 Anita Kumari is the prosecutrix of the case. Her age was assessed about 18 years on the date of deposition on 11.9.2000 by the trial Court. She testified that the occurrence took place on 10.1.1998 at about 8 p.m. while she had come out from her home to answer the call of nature. On way Bholo Singh @ Balram Singh appeared and caught hold her. She asked him to leave her but when he did not, she raised alarm by calling "Abba" then he gagged her mouth. She was forcibly taken by Litta Munda, Pedra @ Ratan Singh and Shambhu Pradhan towards Sarna nearby a well at a lonely place.

Her undergarments were removed by them by holding her limbs and it was Bholo Singh who committed rape on her after laying her on the earth followed by Litta Munda, Pedra @ Ratan Singh and then Shambhu Pradhan one after another. She identified all the four culprits in the Court. They had asked her not to convey the occurrence to her mother but when she expressed her firm determination that she would convey it, all the four threatened that her father, mother and brother would be killed and so she was scared of. All the four escaped from the place of occurrence and she also left the place after taking rest for short while and wearing her clothes. She returned back to her home and went asleep without communicating the occurrence to her mother since the culprits had threatened that they would kill her parents. Her father had gone out of the home in relation, who returned back after about a week and only then the occurrence could be narrated to him by her mother. She was also enquired by her father to whom she conveyed the occurrence in details. Her father then consulted the uncles and only then she along with her father, uncle and other co-villagers went to the Police Station where her statement was recorded by the police which was read over to her. After finding it correct she put her signature there on her statement. She was sent for medical examination. In the cross-examination, she admitted that she was studying at class-V Ith at the relevant time and that she had only one younger brother. She could not remember the date of her birth but disclosed that her age was 18 years old. She admitted that she was menstruing for the last about 2 years prior to the occurrence and that the culprits were her co-villagers. The occurrence took place in the night of Saturday and she had already left her school. The Police Station was situated at the distance of about 2 miles. On the point of occurrence, she narrated that when she was caught hold by Bholo Singh, he was alone there but soon joined by Litta Munda and others. Her mouth was gagged by them when she tried to raise alarm. They lifted and took her towards Sarna where she was laid on the rocky ground. She resisted by thrashing her hands and legs. All her clothes were removed from her body but she could not use her teeth and nails while raising resistance. She further explained that all the four had committed rape twice on her. She was in her sense in the first round of her gang rape but there was no second round of rape. It took about an hour in the entire occurrence. She had no experience of sex prior to the said occurrence and consequently she had pain in her limbs and there was scratch on her back. Her clothes and panty were blood stained and she was wearing sari at that time. She denied the suggestion that she falsely implicated the Appellants because they had caught hold her while she was in compromising position with Chhotu Nayak and Mantu Nayak.

9. P.W. 5 Mangri Devi is the mother of the victim. She narrated that the occurrence took place some 2-1/2 years ago. It was Saturday night when her daughter Anita was caught hold by four boys while she was going to answer call of nature. Her mouth was gagged by Balram. When she raised alarm, all the four namely Bholo Singh @ Balram. Singh, Pedra @ Ratan Singh, Shambhu Pradhan and Litta Munda lifted her towards Sarna where they committed rape on her. In the morning when her daughter was not in a position to move, she enquired about the reason. After long persuasion, she narrated on Wednesday that

the said boys had committed rape on her and had also extended threat that their parents would be killed in case she would disclose the occurrence. In the night of Wednesday when her husband returned back, the occurrence was narrated to him on Thursday. In the cross-examination, she admitted that her husband had gone out about a few days prior to the occurrence. She further testified that her house was surrounded by the houses of several people and that her daughter had proceeded in the night after informing her that she was going to answer call of nature but returned back after about an hour and at that time she was awaking. The door was opened and her daughter retired to bed with her grandmother. On the subsequent day, she remained on the bed, asleep for the whole day but she did not disclose the cause that the occurrence took place in the night of Saturday. She narrated the occurrence to her on Wednesday. However, no medicine was administered to her for her complain. She narrated the occurrence to her husband on Thursday though she apprised the matter to her mother-in-law on Wednesday itself. She further admitted that chaukidar was there in her village. The case was instituted on Friday at the Police Station.

10. P.W. 6 Manichand Baraik was tendered for cross-examination.

11. P.W. 7 Dr. Shakuntala Pandey had examined the victim Anita Kumari on 24.1.1998 while she was posted at Sadar Hospital, Gumla as Lady Medical Officer and found the following:

Height 5''

Weight 45 Kg.

Teeth 14/14

Auxiliary hair and pubic hair present

Breast developed.

Physic ally and Mentally normal.

Marks of violence was not found on any part of her body.

Last menstrual period was communicated to be 15 days back. On her veginal examination, hymen was found ruptured and her vegina admitted two fingers freely with the observation- habitual in sex. No injury on the private part could be found. Even no spermatozoa was found on the examination of her veginal swab. Her age was determined 15/16 years on the X''rays examination and no sign of recent sexual intercourse was also found on her body. The lady Doctor proved the injury report marked Ext. 2. In the cross-examination, the witness deposed that the girl was physically well built and her age could be assessed plus minus 2 years of the age which was determined. No ossification test could be held for determination of her age as there was no provision of such test at

Gumla Hospital.

12. P.W. 8 Shiril Tirkey was the formal witness, who proved the formal F.I.R. in the pen and signature of Surendra Prasad, the then Officer-in-Charge of Jaldega Police Station which was marked Ext. 3. The witness admitted that the F.I.R. was not drawn in his presence.

All the accused/Appellants were examined after the prosecution evidence was closed and their statements were separately recorded u/s 313 of the Code of Criminal Procedure wherein each of them was confronted with the incriminating materials appeared on the record in course of trial to which they denied their guilt and declined to adduce anything, yet as many as four witnesses were produced on their behalf.

13. D.W. 1 Madhu Barai, D.W. 2 Raj Kshore Sahu were consistent that Anita Kumari daughter of Lodha Baraik were known to them and they had come to learn that she had illicit relation with Chhota Nayak and Motu Nayak and that she was apprehended by Bholo @ Balram Singh, Litta Munda, Ratan Singh @ Pedra and Shambhu Pradhan in the company of Chhota Nayak and Motu Nayak in me night on 10.1.1998 at about 8 p.m. Anita was taken to her mother and both boys were allowed to go. No panchayati was held in this connection. Chhota Nayak and Motu Nayak were not interrogated by any of the witnesses and that the mukhia and the sarpanch of the village were not apprised by such incident. D.W. 3 Charan Singh deposed that the name of the sister Balram was Bimla Devi, who had constructed Indira Awash from the money granted by Jaldega block. The witness testified that Sukra Baraik and Maha Nayak obtained Rs. 2000/- from Bimla Devi on the plea that they were instrumental in obtaining sanction for the construction of her Indira Awash. When Balram Singh and Ratan Singh came to learn about such incident; they went to the village pramukh and the local leader Chatur Baraik where they made complaint and got Rs. 2,000/-returned to Bimla much prior to the alleged occurrence and for such reason Sukra Baraik and Lodha Baraik were nursing grudge against the accused.

14. D.W. 4 Lal Mohan Singh has also corroborated the statement of D.W. 3 and further deposed that on account of the anguish against the accused persons Sukra Baraik and Lodha Baraik got a false case instituted.

15. Learned Senior counsel Mr. P.C. Tripathy appearing for the Appellants assailed the judgment impugned on the ground that the learned trial Court failed to take into consideration that the date of alleged occurrence was 10.1.1998 but the case was instituted at the Police Station after 13 days on 23.1.1998 without plausible explanation of such inordinate delay and the prosecutrix admitted in her testimony that the case was instituted after due deliberation and consultation by his father with others and the defence witnesses were consistent that on account of previous enmity the instant false case was instituted against the Appellants. There was no eye-witness of the alleged occurrence except the uncorroborated testimony of the prosecutrix, who alleged that she was gang

raped by the Appellants but such allegation could not be substantiated in the medical evidence. In the opinion of the lady Doctor P.W. 7 (Dr. Shakuntala Pandey) no injury was found on the person of the prosecutrix on any part of her body including in her private part and that her age was determined to be 15-16 years.

16. Learned Sr. Counsel further submitted mat though the prosecution case was that the prosecutrix was minor about 15-16 years of her age and she was gang raped by four elderly boys but neither any injury was found on her private part in the medical evidence nor blood stained clothes were produced before the police so as to corroborate the allegation. As a matter of fact, the girl was found in compromising position with two boys of the village and all were caught hold by these Appellants. The matter was complained to her mother by the Appellants and out of anguish, they were falsely implicated in the instant case. This fact was corroborated by D.W. 3 and D.W. 4. No investigation was made in this regard and that the defence was highly prejudiced for non- examination of the I.O. There was no evidence on the record as to the place of occurrence and that the prosecution failed to produce the objective finding of the Investigating Officer on the record. The Appellants have been denied of the opportunity to cross-examine the I.O. It would be relevant to mention, that the prosecutrix was consistent that the place of occurrence where she was forcibly laid was rocky and she admitted that she had sustained minor scratch injuries on her back as a consequence of gang rape on her but such injury could not be found by the lady Doctor, who examined her and therefore, it could be safely submitted that the prosecution failed to prove the case beyond the shadow of all reasonable doubts, as such, the judgment of conviction and order of sentence recorded against the Appellants may be set aside.

17. On the other hand, Mr. Hatim, the learned A.P.P. strongly controverted the statement made on behalf of the Appellants and submitted that the prosecution case was well proved by the prosecutrix whose testimony was consistent which proved the guilt of the Appellants. The prosecutrix was admittedly a minor girl, who was forcibly lifted by four boys and carried to a lonely place where all her garments were removed and was subjected to gang rape. The prosecutrix has given a vivid description of the occurrence consistently and also corroborated her earlier statement made before the police in the F.I.R. Her conduct appeared to be natural when she hesitated in conveying the occurrence to her mother and she explained that she did not convey to her mother as she was scared of the threatening extended to her by the Appellants that her parents and brother would be killed in case she would convey the occurrence to any one. Admittedly, her father was not present in the house as he had gone to in his relation. The occurrence was communicated to him by the mother of the prosecutrix soon after his arrival and her father P.W. 1 Lodha Baraik also enquired from his daughter and having been satisfied with the narration of his daughter Anita, case was instituted on 23rd January, 1998 with the consultation of his brothers which appeared to be a natural conduct. It was not the case that the F.I.R. was lodged after due deliberation and consultation with the other interested and partisan witnesses, the learned A.P.P. added. Admittedly, no injury was

found on the private part of the body of the prosecutrix in the medical examination but for that reason the entire prosecution case cannot be thrown away. The prosecutrix was consistent that she had already washed her private parts and also her clothes after the occurrence and that she was examined after 13 days of the alleged occurrence on 24.1.1998 and therefore, no recent Injury could be found on any part of her body. In the given facts and circumstances of the case, the prosecution case could be proved beyond doubt, therefore, judgment of conviction of the Appellants and order of sentence recorded against them by the trial Court did not call for interference.

18. Having regard to the facts and circumstances of the case, argument advanced on behalf of the Appellants as well as the State-Respondent, I find that the Appellants have been convicted u/s 376(2)(g) of the Indian Penal Code for committing gang rape on the prosecutrix P.W. 4 Anita Kumari when she came out on 10.1.1998 at about 8 p.m. to answer the call of nature. She was consistent that she was lifted by all of them and taken to a lonely place near Sarna at the distance of 500 yards from the village. Her mouth was gagged when she tried to raise alarm and all the Appellants committed gang rape one after another with specific attribution as to who committed first and who was the last in the commission of such offence. I find from the statement of the prosecutrix that she has consistently given minutes of details of the occurrence and the complicity of the Appellants therein. I find substance in the argument of the learned A.P.P. for the State-Respondent that her conduct was natural when she could convey the occurrence to her mother after a few days on query and explained that she was threatened that her parents and brother would be killed in case she would convey the occurrence to else. The matter was communicated to her father no sooner did he arrive in the house after 11 days who also enquired from his daughter Anita and having been satisfied with her narration he consulted other witnesses and only then F.I.R. was lodged on 23.1.1998 on the statement of Anita at the Police Station. She was sent to Hospital for medical examination after 13 days of occurrence. No injury could be found either on her private part or any other part of her body due to efflux of time and that she had not complained of profuse bleeding to her mother. She had washed her body and clothes and in that manner the prosecution could be able to explain the absence of any injury on her person.

19. I find that four witnesses were produced and examined on behalf of the defence and out of them D.W. 1 and D.W. 2 have testified the false implication of the Appellants by giving an incident that they had apprehended the prosecutrix in the night of 10.1.1998 with two boys of the village in compromising position and all the three were taken to the mother of the prosecutrix, which caused anguish to the girl and led to the false implication of the Appellants. The other two witnesses viz. D.W. 3 and D.W. 4 have given altogether a different story of enmity that on account of certain disputes between one of the relations of the prosecutrix and the near relation of one of the Appellants on the issue of obtaining Rs. 2000/- for getting the loan sanctioned towards Indira Awash Yojna, all the four Appellants were implicated. Such explanations by giving two different causes by different sets of defence witnesses does not inspire confidence at all and the learned senior

counsel Mr. P.C. Tripathy failed to produce any convincing material in support of the claim of the Appellants of their false implication. I find and observe that the testimony of the prosecutrix Anita is consistent, free from embellishment and trustworthy which needs no corroboration and in the light of her statement, Appellants cannot claim of being prejudiced for non-examination of the Investigating Officer in the trial Court 20. I find that the judgment of conviction and order of sentence recorded against each of the Appellants herein are well discussed which need no interference. This appeal is devoid of merit as such, it is dismissed.