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**(2003) 11 JH CK 0017**

**In the Jharkhand High Court**

**Case No : Criminal Appeal No. 74 of 1995**

Shyama Pada Soren and Another

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

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**Date of Decision : 07-11-2003**

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 34, 376

**Citation : (2005) 3 JCR 35**

**Hon'ble Judges : Vishnudeo Narayan, J**

**Bench : Single Bench**

**Advocate : Jaya Roy and Tapas Roy, for the Appellant; C.J. Sahay, APP, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Vishnudeo Narayan, J.—This appeal at the instance of the appellants above named has been preferred against the impugned judgment and order dated 25.7.1995 passed in Sessions Trial Nos. 50 of 1992/ 29 of 1995 by -Shri D.D. Guru, Assistant Sessions Judge, Ghatshila, East Singhbhum where and whereunder appellant Shyama Pada Soren was found guilty for the offence punishable u/s 376 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 2,000/- and in default thereof to undergo rigorous imprisonment for six months and appellant Ram Chandra Hansda was found guilty for the offence punishable u/s 376/34 of the Indian Penal Code and he was convicted and sentenced to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,500/- and in default thereof to undergo rigorous imprisonment for four months.

2. The prosecution case has arisen on the basis of the first information report (Ext. 1) of PW 2 Malti Hembram, a young unmarried woman aged about 22 to 25 years old, the informant and the alleged victim of ravishment of this case lodged before Chakulia Police Station on 11.8.1991 at 20.15 hours regarding the occurrence which is said to have taken place at 1.00 hour, on 9.8.1991 (i.e. in

the night between 8th and 9th of August, 1991) in her rented room at village Chakulia, District East Singhbhum.

3. The prosecution case, in brief, is that the informant is employed as Nurse in the Primary Health Centre, Bhagmara and she was residing in a room on rent in the house of Shipal Soren at village Dighi, PS Chakulia, District East Singhbhum in which his uncle PW 1 Naren Manjhi was also residing with his family. It is alleged that in the night of the occurrence she was sleeping in her room and his uncle Naren Manjhi along with her family members were sleeping in front of the said room and door of her room was open in the night due to scorching summer. It is also alleged that two persons entered into her room and one of them sat by the side of her head and intimidated her to be done to death by dagger if she raise alarms and the other sat by the side of her leg and he caught her legs and lifted them. It is alleged that the informant was protesting and resisting and he asked her to keep mum failing which she will be assaulted by dagger, and he forcibly ravished her. It is further alleged that his uncle Naren Manjhi awoke and he flashed a torch and she identified Shyama Pada Soren as her ravisher and her uncle caught him and she also raised alarms. The prosecution case further is that appellant Ram Chandra Hansda pursued her uncle and intimidating him at the point of dagger and got appellant Shyama Pada Soren released and they fled away from there. It is further alleged that she did not earlier lodge the first information report regarding the occurrence due to shame. It is alleged that she has filed this case on the persuasion of her family members so that the incident may not recur. It is also stated that her uncle and her aunt are the witnesses of her ravishment.

4. The appellant have pleaded not guilty to the charge levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case at the instance of Shipal Soren @ Shipal Master and Gora Murmu in this got up case.

5. The prosecution has, in all, examined four witnesses to substantiate its case PW 2 Malti Hembram is the informant of this case and said to be the victim of ravishment in this case. PW 1 Naren Manjhi, who has so been examined as PW 1 (a) on recall, has turned hostile and he does not at all support the prosecution case. PW 3 Dr. Renu Kumari has examined the informant on 12.8.1991 at 10.30 hours and her report per her pen is Ext. 2 in this case. PW 4 Bindeshwar Singh is the IO of this case and he has proved the first information report (Ext. 1) and requisition (Ext. 3) for the medical examination of the informant. No oral and documentary evidence has been brought on the record on behalf of the defence.

6. Relying upon the testimony of PW 2, the informant read with the evidence of the medical witness, the learned Court below came to the finding of the guilt of the appellants and found them guilty and convicted and sentenced them as stated above.

7. Assailing the impugned judgment it has been submitted by the learned

counsel for the appellants that the occurrence is said to have been taken place in the night between 8th and 9th of August, 1991 at 1.00 hour and this case has been lodged on 11.8.1991 at 20.15 hours on the 3rd day of the alleged occurrence and the prosecution has not at all explained the inordinate delay in lodging the case and the entire prosecution case is the result of afterthought, consultation and deliberation with a view to falsely implicate the appellants at the instance of Gora Murmu and Shipal Master. It has also been submitted that the prosecution case regarding the ravishment of the informant in the manner as alleged is highly improbable and equally false and there is no iota of legal evidence on the record to support the prosecution case and also to corroborate the solitary testimony of the informant and even her uncle PW 1 Naren Manjhi does not at all support the case of ravishment of the informant as alleged. It has also been contended that the medical witness has found the injury on the private part of the informant being recent whereas the informant was examined on the 4th day of the occurrence and the medical witness has clearly stated in her testimony that by word "recent" she means within 24.00 hours and in this view of the matter, the medical evidence is not at all in conformity with the manner of the prosecution case. It has also been contended that the informant was neither known nor acquainted with the appellants either by their face or name prior to the alleged occurrence and she has learnt the names of the appellants by her uncle, PW 1 Naren Manjhi and some other persons of the locality and also to have seen them in the flash of the torch of PW 1 Naren Manjhi but this part of the evidence of the informant does not stand corroborated by PW 1 Naren Manjhi and further no witness of the vicinity including her aunt has come to support the prosecution case and in this view of the matter, the solitary testimony of the informant is highly improbable and is fit to be brushed aside in the facts and circumstances of this case. It has also been submitted that the learned Court below did not properly scrutinize the evidence on the record and has erred in coming to the finding of the guilt of the appellants and viewed thus, the impugned judgment is unsustainable. Lastly, it has also been submitted in the alternative that the sentence imposed upon the appellants is very severe and appellant Shyama Pada Soren has remained in custody for a period of four years and appellant Ram Chandra Hansda has remained in custody for a period of two years and in this view of the matter, their sentence may be modified to the period already undergone.

8. Refuting the contention aforesaid it has been submitted by the learned APP that delay in the lodging the case regarding the occurrence stands explained in the first information report (Ext. 1) itself which is to the effect that out of shame, the informant did not lodge the case against the appellants immediately soon after the occurrence and the said explanation is natural and acceptable in view of the fact that the informant was a young unmarried girl. It has been submitted that the medical witness has found injuries in the introitus of the informant in course of her examination as well as external injuries on her inner part of her left thigh and the medical evidence thus supports the prosecution case of the

ravishment of the informant and furthermore, the informant in her evidence on oath has substantiated the prosecution case in material particulars and her evidence has ring of truth therein and thus, there is no illegality in the impugned judgment.

9. PW 2 Malti Hembram is a young unmarried woman aged about 22 to 25 years and she has deposed very specifically in para 22 of her evidence that prior to the occurrence she had never any sexual intercourse with any man. At the time of the occurrence, she was working as a Nurse in Primary Health Centre at Bhagmara and she was residing in a room on rent at Dighi in the house of Shipal Master @ Shipal Soren and after the occurrence she has left her abode there. It, therefore, appears that the informant was a nubile virgin. She has deposed that in the night of the occurrence she was ravished by appellant Shyama Pada Soren with active help of appellant Ram Chandra Hansda, who was armed with dagger sitting by the side of her head intimidating her to be done to death by dagger if she raise alarms. She has also deposed that at the time of ravishment she was resisting and appellant Ram Chandra Hansda has stuffed her mouth as a result of which she had to keep mum and she has felt pain in her introitus in course of ravishment. She has further deposed that at the time of the occurrence she was sleeping in a room, the door of which was open due to scorching heat and both the appellants had entered into her room and appellant Ram Chandra Hansda sat by the side of her head and appellant Shyama Pada Soren sat by the side of her legs and lifted her legs and ravished her. Her evidence is further to the effect that there had been discharge of semen of appellant Shyama Pada Soren in course of ravishment, which has stained her petticoat and maxi and when the appellants were fleeing away after satisfying their lust she had raised alarms and his uncle and aunt awoke and had flashed the torch and had caught appellant Shyama Pada Soren but appellant Ram Chandra Hansda pushed her uncle and got appellant Shyama Pada Soren released from his custody and both the appellants fled away from there. She has also deposed that she did not go to the police station immediately soon after the occurrence due to shame. The delay, if any, in lodging the first information report stands fully explained by PW 2, the informant which stands strongly supported by the circumstantial evidence on the record. She was living alone in a rented room. Her alleged uncle did not take any initiative in lodging the first information report regarding the occurrence in question as he did not go-with her to the police station and only when her brother came, the informant had gone to the police station in his company for lodging this case. Moreover, the sense of shame coupled with the fear on account of threats in course of her ravishment given by co-accused Ram Chandra Hansda must have deterred her from immediately reporting the occurrence at the police station. Therefore, the delay in lodging the first information report stands explained and it does not at all discredit the prosecution case. She has deposed that there was no bleeding in course of her ravishment from her introitus and after the occurrence she had taken bath and has washed her petticoat and maxi. She has also deposed to have learnt the names of both the appellants from his

uncle on query. It is pertinent to mention here that PW 1, the informant has no animus to depose falsely as well as to falsely implicate both the appellants in this case. There is no material on the record to give an inkling of her fact that both the appellants have been roped in this case at the instance of Shipal Soren and Gora Murmu. There is nothing on the record to show that the aforesaid two persons had any animus against the appellants to falsely get them implicated in this case by the informant. There is also nothing on the record to show that there is any relationship between Shipal Soren as well as Gora Murmu with the informant that she will act as a tool in their hands to falsely implicate the appellants. PW 3 Dr. Renu Kumari has deposed to have examined the informant on 12.8.1991 at 10.30 hours on the requisition of the police at Ghatshila Hospital. She has deposed to have found on examination of the vulva and vagina of the informant that hymen revealed recent laceration and there are also two scratch marks found in her inner part of her left thigh. The medical witness has also deposed that she did not find any seminal stains and foreign hair on her private parts. The medical witness has opined that the informant is aged about 22 to 25 years. Ext. 2 is the medical report per pen of PW 3 regarding the examination of the informant and this medical report corroborates the testimony. It is true that the medical witness has not opined regarding the rape having been committed on the person of the informant in Ext. 2 as well as in her evidence on oath. However, the existence of laceration definitely leads to the inference about the sexual inter-course with the informant by the appellants in the facts and circumstances of this case in nubile virgin the hymen as a result of complete sexual inter-course is usually lacerated, having one or more radiate tears, the edge of which are red, swollen and painful and bleed on touching, if examined within a day or two after the act.

These tears heal within five or six days, and after eight to ten days become shrunken and look like small granular tags of tissues. Here in this case, the information was examined on the 4th day of the occurrence i.e. within 86.00 hours of the occurrence and thus, the medical witness has rightly found laceration in the introitus of the informant. The medical witness in her cross-examination has however deposed that by word "recently" she means 24.00 hours and not beyond that. In the facts and circumstances of this case, this part of the evidence of the medical witness has no relevancy and the appellants cannot have the benefit in respect thereof. Therefore, the medical evidence on the record corroborates the evidence of PW 2, the informant in material particulars regarding her ravishment. PW 1 Naren Manjhi, the uncle of the informant has turned hostile and he does not support the prosecution case and his wife Bogi Manjhi has also not taken oath in this case for the reasons best known to the prosecution. However, the solitary testimony of the informant has ring of truth and I see no reason to discard her evidence. In the case of *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujarat*, the Apex Court has observed that if the evidence of the victim does not suffer from any basic infirmity, and the probabilities factors does not render it unworthy of credence, as a general rule,

corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming. It has further been observed that this rule is subject to the qualification that corroboration may be insisted upon when a woman having attained majority is found in a comprising position and there is a likelihood of her having levelled such an accusation on account of the instinct of self preservation, or when the probabilities factor is found to be out of tune. On principle the testimony of a victim of sexual assault stands on par with the testimony of an injured witness and just like the testimony of the injured witness, that of the victim of sex offence is entitled to great weight. But unlike the case of physical assault, corroboration in the form of eye-witness account of an independent witness cannot be expected in sex offences, having regard to the very nature of the offence. It can well be stated that very rarely will a girl or a woman in the condition of our country make false allegation of sexual assault, A girl or a woman, specially unmarried, in tradition bound non- permissive society of ours would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred and she would be conscious of the danger of being ostracized by the society or being looked down upon by the society including by her own family members, relatives, friends, and neighbours and in such a situation she would have, to brave the whole world. She would also face the risk of losing the love and respect of her own husband, near relatives and of her matrimonial home and happiness being shattered and if she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. The natural inclination would be to avoid giving publicity to the incident lest the family name and honour is brought into controversy. It has been observed in the case of State of Maharashtra Vs. Chandraprakash Kewalchand Jain, that to insist on corroboration except in the rarest of rare case is to equate a woman who is a victim of the lust of another with an accomplice to crime and thereby insult womanhood and it would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutor is available and the Court must also realize that ordinarily a woman more so a young girl, will not stake her reputation by levelling a false charge concerning-her chastity. Here in this case, the medical witness has found injury in her introitus and scratches on the inner side of her thigh, which corroborate the testimony of the informant as deposed by her regarding her ravishment by the appellants. I have already stated above that there is ring of truth in the testimony of the informant and there is no reason for her to falsely implicate the appellants in this case as she has definitely no animus against them I, therefore, believe the testimony of the informant though it is uncorroborated by any other witness or her alleged uncle, PW 1 Naren Manjhi. The learned Court below has properly considered the evidence on the record and has rightly come

to the finding of the guilt of the appellants and I see no infirmity in the impugned judgment requiring an interference therein.

10. The only question that now remains to be considered is as regards the sentence imposed upon the appellants. The appellants have behaved in a shockingly indecent manner. They have entered into the room of the informant in the dead night armed with dagger with deliberate intention to ravish the informant even knowing the fact that her alleged uncle and aunt are sleeping in front of the room of the informant. The act of the appellants are desperate in the facts and circumstances of this case. The evidence on the record further shows that the informant has been ravished by appellant Shyama Pada Soren with the active assistance of appellant Ram Chandra Hansda, who was armed with a dagger intimidating her not to raise alarms in course of her ravishment, failing which she shall be done to death and he has also stuffed her mouth in that occurrence. Therefore, both the appellants have actively participated in the ravishment of the informant. Therefore, in the facts and circumstances of this case, there is no room for sympathy or pity for the appellants and punishment must be in such cases exemplary. Therefore, I see no substance in the contention made by the learned counsel for the appellants in the facts and circumstances of this case.

11. There is no merit in this appeal and it fails. The impugned judgment of the learned Court below is hereby affirmed. The appeal is hereby dismissed. The bail bonds of both the appellants are cancelled and they are directed to surrender before the Court below to serve out the sentence. The learned Court below is also directed to take all necessary steps in accordance with law to apprehend both the appellants for serving out the sentence.