

and one younger daughter 15 years old . On that day at 3:00 O' clock in day time, his neighbour Janeya @ Jane Sinku having the opportunity that his daughter was alone reached to his house and raped his elder daughter. His younger daughter came to rescue, he criminally intimidated her on the point of sword and also threatened her not to disclose in regard to the occurrence to anyone. When he reached to his house, his younger daughter told in regard to the occurrence to him. His younger daughter also told that the accused had also threatened her not to file any case or disclose to the police, otherwise the whole family would be eliminated. Earlier also the accused Janeya Sinke @ Jane had also committed the same occurrence. In regard to the same the Panchayat was held in the village. On this written information the case crime No. 27 of 2008 with the Police Station Jagannathpur was registered under Section 376 of I.P.C. against Janeya @ Jane Sinku on 22.03.2008 at 14 hours. The Investigating Officer after having concluded the investigation filed charge-sheet against the accused for the offence under Section 376 of I.P.C. to the court of Magistrate concerned who committed the case for trial to the court of Sessions.

3. The trial court framed charge against the accused for the offence under Section 376 of I.P.C. The accused was read over and explained the charge who denied the same and claimed to be tried.

4. On behalf of prosecution to prove the charge against the accused in oral evidence examined P.W.1 Konka Sinku, P.W.2

, P.W.3 , P.W.4 , P.W.5 , P.W.6 ,

P.W.7 Dr. Meena Kalundia, P.W.8 Pashupati Choudhary,
Investigating Officer.

5. On behalf of prosecution in documentary evidence filed Ext.1 (Entire written report), Ext. 1/1 (Signature of P.W.5 Budhram Sinku (Munda) in written report, marked 'X' for identification xerox copy of public document, Ext.2 (report of the radiologist), Ext. 3 (Medical report), Ext. 1/2 (Endorsement in written report), Ext. 4 (formal F.I.R.), Ext. 3/1 (requisition for medical report)

6. The statement of the accused under Section 313 of Cr.P.C. was recorded in which he denied the incriminating circumstances in the evidence against him and told that on account of old enmity he has been falsely implicated in this case. His father has filed the case on the issue of Khalihan but the same was decided on the basis of compromise.

7. On behalf of the accused no evidence was adduced.

8. The learned trial court after having heard the learned Counsel for the prosecution and also on behalf of the accused passed the impugned Judgment of conviction on 03.03.2011 holding guilty of appellant/convict Janeya Sinke @ Jane for the offence under Section 376 of I.P.C. and sentenced vide order dated 05.03.2011 inflicting sentence of 07 years and a fine of Rs.5,000/- and in default of payment of fine, simple imprisonment of three months was to be undergone.

9. Aggrieved from the impugned Judgment of conviction and sentence, this Cr. Appeal is preferred on behalf of the appellant on the ground that the impugned order of conviction and sentence passed by the court-below is bad in the eye of law. The court-below had not appreciated the evidence on record in a proper perspective. The court-below did not consider the enmity on the land dispute between the accused and the informant. In medical evidence there was no violence on the body or private part of victim which belied the testimony of prosecution witnesses. In view of the submissions, prayed to allow the appeal and set aside the impugned Judgment of conviction and sentence and to acquit him.

10. I have heard the learned Counsel for the appellant and the learned A.P.P. on behalf of the State and perused the material on record.

11. For disposal of this Cr. Appeal, the following point of determination is being framed:

Whether the impugned Judgment of conviction and sentence is sustainable in the eye of law ?

12. To decide the aforesaid issue, I avert to the prosecution evidence which is being reproduced here-in-below:

12.1 **P.W.1** in his Examination-in-chief stated that the occurrence was of 20th March, 2008. At that time, he had gone to Jagannathpur market at 12 O'clock of day time. At his house were his dumb daughter 22 years old and younger daughter 15 years old. He came back after shopping at 3:30 to his house, his younger daughter told that in a

room of the house which has door of Tin in which the straw was filled, her elder sister who was dumb was seen flat there and the accused Janeya Sinke @ Jane had raped her. The accused Janeya Sinke @ Jane also told her that if she raised alarm, he would finish the whole family of her. After this occurrence he went to the village Munda; but could not meet him. On next day in the morning village Munda called him and he gave the written information which was in writing of his son . On the same, he, Budh Ram Munda and his son both put their signature. This **written information** was in hand writing of his son . He identified the signature of his son and also of Budh Ram Munda and himself also which was marked as **Ext.1**.

In cross-examination this witness says that the occurrence was of 20th date and he gave the written information on 22 date. On 21 date he also went to the police station but he could not meet Bara Babu and he gave no information to other police personnel in regard to the occurrence. At the time of occurrence there were his two daughters at the house. Adjoining to the house is the house of Janeya Sinke @ Jane and also the house of . has died. Prior to this occurrence, one Panchayat was held in the village in regard to the same kind of incident caused by the accused against his elder daughter who was dumb. This occurrence took place in one of the nine room of his house.

12.2 **P.W.2** in his Examination-in-chief says that the occurrence is of 20.03.2008. He had gone to Jagannathpur market at 12 O' clock and at his house were his two sisters one was dumb. He came back to his house after 3:00 O'clock. His younger sister told him that after having washed the utensils, she went to see her elder sister and found in a room wherein the straw was filled. The Sari of his sister was up-to her waist. Janeya Sinke @ Jane was committing rape upon her. She also told that Janeya Sinke @ Jane had also criminally intimidated her and told not to disclose in regard to the occurrence to anyone, otherwise the whole family would be eliminated. Prior to this occurrence, one Panchayat was also held in regard to the same occurrence against her sister by the accused and the accused had given apology at that time. The written information was given by his father which was in his writing which was also signed by him, the village Munda Budh Ram Munda and his father as well which is Ext.1.

In cross-examination this witness says that the police did not interrogate his sister, only visited her. He got the information in regard to the occurrence from his sister .

12.3 **P.W.3** in her Examination-in-chief says that victim was her daughter who was dumb. The occurrence was of 20.03.2008. She had gone to Jagannathpur market. At the house were her two daughters. At 5:00 O'clock she came back and came to know from her younger daughter that her elder daughter was raped by Janeya Sinke @ Jane in the Kothri wherein the

straw was filled and after having raped her, the accused Janeya Sinku @ Jane has also criminally intimidated her younger daughter on the pointing of sword not to disclose in regard to the occurrence or not to raise alarm. She came to know in regard to the occurrence from her daughter .

12.4. **P.W.4** in her Examination-in-chief says that victim was her sister. She is in court today. She can neither understand nor speak. The occurrence was of 05 years ago. The victim was 20 to 23 years old. She neither can understand nor can tell by way of signs or gesture. Sometimes she laughs and other times she keeps mum.

In cross examination this witness says that 05 years ago her sister became pregnant. The child died in the womb and since then she was not mentally fit state of mind. When the occurrence took place in that room, the straw was filled. She found her elder dumb sister lying on the ground. Her cloths were up-to the waist. The accused Janeya Sinku @ Jane had been raping her. On being opposed, he criminally intimidated her on the point of sword. Thereafter he left her house after having criminally intimidated her. At 3:30 O' clock in day time her father came and she told to her father, mother and brother as well in regard to the occurrence. Her sister was medically examined.

In cross-examination this witness says that her elder sister was married in the village Nandpur, P.S. Jagannathpur, District West Singhbhum. There was some dispute on the issue of division of land between the accused and them. It is not so that she had

not told to the police officer that the victim neither could speak nor could understand. She had not been speaking for last 05 years. She had given the statement to the police that when her sister did not come back from the room, she went to see her. The room wherein the occurrence took place is one of nine room of house. Daroja Ji did not make recovery of any article or cloth from the place of occurrence.

12.5 **P.W.5** in his Examination-in-chief says that he came to know in regard to the occurrence from Konka Master in regard to commission of rape upon his daughter. He went to his house on 20.03.2008 and his younger daughter told him that her elder dumb sister was raped at 3:00 O' clock by Janeya Sinku @ Jane. The victim could not speak. The report also bears his signature. Before this occurrence, Panchayat had held in a village, wherein the accused Janeya Sinku @ Jane begged apology and he was forgiven.

In cross-examination this witness says that no paper nor in writing was of the said Panchayat. No statement of him was recorded to that effect by the Investigating Officer.

12.6. **P.W.6** in his Examination-in-chief says that he is acquainted with and his dumb daughter as well. The occurrence was of 20th date. He came to know in regard to 23rd date. had come to his house and told that his daughter had been raped by Janeya Sinku @ Jane. His younger daughter had seen the occurrence.

In cross-examination this witness says that his statement was not recorded by the police.

12.7 Dr. Meena Kalundia in her Examination-in-chief says that on 20th March, 2008 she was posted at Sadar Hospital, Chaibasa as a Medical Officer. On that day by the order of Civil Surgeon she examined the victim and found the M/V no marks of violence found on the body or private part. Mental state- She was unable to talk. P/V- No foreign body found on private part, hymen ruptured, no bleeding and tenderness. No spermatozoa either dead or alive found and opined that sexual intercourse had taken place. The medial examination report is Ext. 3 and the radiological report is Ext.2.

This witness in her cross-examination says that as per report the victim may be habitual to sex and may not be habitual to sex.

12.8 P.W.8 Pashupati Choudhary in his Examination-in-chief says that the occurrence was of 22.03.2008. He was posted as Police Sub-Inspector at the Police Station, Jagannathpur. The investigation of Case No. 27 of 2008 was handed over to him. On the written information the endorsement was made by the Station Officer-in-charge. The formal F.I.R. was also signed by the Officer-in-charge of the Station which he identified marked Ext.4. Endorsement Ext. 1/2. He recorded the statement of informant Konka Sinku, , (Munda). The victim was not able to speak reason being she was dumb. The place of occurrence was a room of 9' x 6' in which

the door was of Tin. No window was there. The straw was also filled thereon. He also recorded the statement of and . The Station Officer-in-charge has sent the report for examination of the victim.

In cross-examination this witness says that at the time of investigation he did not record the statement of victim reason being she was dumb and could not tell even by gesture or signs. No other evidence was found from the place of occurrence in regard to commission of rape. He did not take the cloth of victim in his custody. He is not aware whether before the commission of the rape any occurrence was caused in regard to rape in which the Panchayat was held. He is not aware whether the victim was married or not. He cannot say that the witness had stated that the victim was not able to speak and even to understand the question put to her. He was not told by that she was sitting with the victim in the same room and at 3:00 O'clock victim went to the room. When she did not come, she went to visit her.

13. In order to decide the legality and propriety of the impugned Judgment of conviction and to decide the aforesaid point of determination I **avert to analyze/scrutinize the evidence on record.**

14. From the evidence adduced on behalf of the prosecution, **the eye-witness of the occurrence is P.W.4 . She is the star witness 15 years old and stated that on 20.03.2008 on Thursday her parents and brother had gone for marketing to**

Jagannathpur. At the house she and her elder dumb sister was there. She and her elder sister both were in a room. Around 3:00 O' clock her elder sister left the room and when she did not come back, she came out of the room to see her and found in a room wherein the straw was filled. Her elder sister was lying on the ground. Her cloths were up-to her waist and Janeya Sinku @ Jane was committing rape upon her. On being opposed by her, the accused Janeya Sinku @ Jane threatened her on the point of sword also stated that if she disclosed to anyone, the whole family would be eliminated.

This witness also stated that she told in regard to the occurrence to her father, her mother and brother as well. This witness also stated that prior to this occurrence earlier Panchayat was held in regard to rape being committed by Janeya Sinku @ Jane upon her elder sister wherein he confessed his guilt and the Panchayat gave him pardon.

15. The evidence of this eye-witness inspires trust even though she is related witness, yet her presence at the place of occurrence is not doubted.

15.1 The Hon'ble Apex Court held in *Ravishwar Manjhi & Ors. vrs. State of Jharkhand AIR 2009 SC 1262:*

"Para 24. Out of seven eye-witnesses, P.W. 7 was not believed by the courts below. P.Ws. 4 and 5 were not present exactly at the place of occurrence. They are said to have witnessed only a part of the occurrence. All other eye-witnesses were related to the deceased. However, we do not hesitate to add that only on that ground their evidences should not be disbelieved. Furthermore, there was no enmity between the parties. Only a case under Section 107 of the Code of Criminal Procedure was pending against them. Even in respect thereof, no documentary evidence was brought on record to

show as to when the said proceeding was initiated and at whose instance. The prosecution witnesses merely supported the prosecution case that a death had taken place and two witnesses suffered grievous injuries but it was absolutely necessary in the facts and circumstances of this case to show that the accused were the aggressors. It was for that reason the genesis of the prosecution case must be held to have grave significance."

16. **P.W.1** is the **informant**. In his Examination-in- chief **he corroborated the contents of the F.I.R. and proved the same as Ext.1** and he stated that on the date of occurrence he, his wife and son all had gone to Jagganathpur market. At the house his two daughters were there. **When he came back from the market, his younger daughter told that the accused-Janeya Sinku @ Jane had raped her elder dumb daughter. Coming to know in regard to the same from his daughter, he also went to house of the village Munda who could not meet him and next day he called him to his house.** He also stated that prior to this occurrence, the accused had also committed rape upon his dumb daughter. The matter was placed before the Panchayat wherein he was given pardon.

17. **P.W.2** is the **brother of victim** and son of informant. **P.W.3** is the wife of informant and **mother of victim**. Both have corroborated the prosecution story and also stated that **they came to know in regard to the occurrence from the younger sister/daughter that on 20.03.2008 at 3:00 O' clock Janeya Sinku @ Jane came to her house and had raped her elder dumb sister.** On being

opposed by her, she was criminally intimidated by him on the point of sword.

18. P.W.5 is the village Munda. He also corroborated the prosecution story and told that **he came to know in regard to the occurrence from on 22.03.2008 and thereafter he also went to his house and his younger daughter also told in regard to the occurrence to him.**

19. The testimony of all these witnesses is hearsay as they came to know in regard to occurrence from P.W.4 ; but their testimony becomes admissible under Section 6 of the evidence Act as a res gestae evidence in view of the testimony of P.W.4 who is the solitary eye-witness of the occurrence.

19.1 The Hon'ble Apex Court held in *Krishan Kumar Malik vs. State of Haryana 2011 (3) SCC (Cr.) at 61:*

“Para 37. Section 6 of the Act has an exception to the general rule whereunder hearsay evidence becomes admissible. But as for bringing such hearsay evidence within the ambit of Section 6, what is required to be established is that it must be almost contemporaneous with the acts and there could not be an interval which would allow fabrication. In other words, the statements said to be admitted as forming part of res gestae must have been made contemporaneously with the act or immediately thereafter. Admittedly, the prosecutrix had met her mother Narayani and sister soon after the occurrence, thus, they could have been the best res gestae witnesses, still the prosecution did not think it proper to get their statements recorded. This shows the negligent and casual manner in which the prosecution had conducted the investigation, then the trial. This lacunae has not been explained by the prosecution. The prosecution has not tried to complete this missing link so as to prove it, beyond any shadow of doubt, that it was the appellant who had committed the said offences.”

20. The evidentiary value of this witness **P.W.4** is to be seen in the light of testimony of the Investigating Officer **P.W.8**

Pashupati Choudhary and also the testimony of Doctor **P.W.7 Dr. Meena Kalundia**. So far as the testimony of Dr. Meena Kalundia is concerned, this witness has stated that she has examined the victim on 22.03.2008 i.e. three days after the date of occurrence on the 3rd date from the date of occurrence. She found no marks of violence on the body or private part of victim. Victim was unable to speak. No foreign body was found on the private part. Hymen was ruptured. No bleeding or no tenderness was found. No spermatozoa either dead or alive was found; **but she opined that the sexual intercourse took place.**

20.1 So far as the medical evidence is concerned though from the testimony of the Doctor it appears that she has given specific opinion that the sexual intercourse had taken place. On behalf of prosecution no cross-examination was made from this witness on what basis she had opined that the sexual intercourse had taken place. Herein it would be pertinent to mention that the victim as per prosecution case was already married and deaf and dumb. Therefore, the medical examination of her was of no help in regard to corroboration of the commission of the rape reason being the same was conducted two days belated on the 3rd day from the date of occurrence. **Therefore, keeping in view the age of the victim being 42 years old and married and also taking into account that she was examined on the 3rd day from the date of occurrence if as per testimony of the P.W.7 Dr. Meena Kalundia no spermatozoa either dead or alive was found and no injury on her private part or tenderness same lose its significance in**

view of the opinion of the Doctor who had given specific opinion that the sexual intercourse had taken place.

20.2 The Hon'ble Apex Court held in *Bhajan Singh @ Harbhajan Singh & Ors. vs. State of Haryana AIR 2011 SC 2552*:

“Para 23. Thus, the position of law in such a case of contradiction between medical and ocular evidence can be crystallised to the effect that though the ocular testimony of a witness has greater evidentiary value vis-?is medical evidence, when medical evidence makes the ocular testimony improbable, that becomes a relevant factor in the process of the evaluation of evidence. However, where the medical evidence goes so far that it completely rules out all possibility of the ocular evidence being true, the ocular evidence may be disbelieved. [Vide: Abdul Sayeed (AIR 2011 SC (Cri) 964 : 2010 AIR SCW 5701) (supra)].”

21. P.W.8 Pashupati Choudhary is the Investigating Officer. He has stated that during investigation he recorded the statement of victim but she being dumb was not able to speak. Even was not able to tell by gesture. He also inspected the place of occurrence but no evidence was found in regard to commission of rape at the place of occurrence. He did not take in his custody any cloth of the victim.

21.1 There is no inconsistency found in statement of prosecution witness during trial and their statement recorded under Section 161 of Cr.P.C. by Investigating Officer. **Therefore, the testimony of this solitary witness is also corroborated with the testimony of the Investigating Officer P.W.8 Pashupati Choudhary. As such the minor contradiction being not on material fact, the same cannot be said fatal to the prosecution case.**

21.2 The Hon'ble Apex Court held in *Shivappa vs. State of Karnataka AIR 2008 SC 1860:*

“Para 19. According to PW-11, Nimbewwa, she and PW-12 Shantawa started for Kolhar Police Station to lodge the complaint at about 8 am from the village. The fact that both the ladies went to the police station cannot be doubted as in the First Information Report itself, the fact that the informant had come with her sister Shantawa was mentioned. Only because PW-23, Ramappa, the Investigating Officer, in his evidence stated that PW-11, Nimbewwa, had come alone to the Police Station is not of much significance. It may be true that according to all the prosecution witnesses, about 100 villagers assembled. Admittedly, even then nobody came forward to help them. It was not necessary for the ladies to shout for help or ask the villagers to snatch the weapons of offence from them as was suggested on behalf of the defence. If the villagers who gathered in such a large number intended to render any help, they would have done so of their own. Whether because of the village politics or otherwise, the fact remained that they had not only failed to come to help the informant family but also turned hostile to them speaks volume of their apathy. No villager even informed the Police. At least some of them could have done so. PW-11, SC 1865 Nimbewwa, in her evidence categorically stated that immediately after the occurrence, the electricity went off. The telephones were also not working. They also stated that no transport was available. It would, therefore, be too much to expect that those young ladies would walk 11 kilometers on foot in the dead of night to lodge the First Information Report. PW-21, Gurubai, made a statement that the Police came at about 8 am in the morning on the next day. Evidently, it was an inadvertent statement as in her examination in chief, she categorically stated that PW-11, Nimbewwa and PW-12, Shantavva left the village for lodging a First Information Report at 8.00 am in the morning. This cannot be a ground for disbelieving them. Minor discrepancies or some improvements also, in our opinion, would not justify rejection of the testimonies of the eye-witnesses, if they are otherwise reliable. Some discrepancies are bound to occur because of the sociological background of the witnesses as also the time gap between the date of occurrence and the date on which they give their depositions in court.”

22. The learned Counsel for the appellant also contended that there is delay in lodging the F.I.R. and the same is fatal to the prosecution case, benefit of the same should be given to the appellant-convict.

22.1 This plea raised by the learned Counsel for the appellant is not found sustainable in view of the testimony of the prosecution witnesses. The informant P.W.1 has stated that on the date of occurrence he, his wife and son all had gone to market. His two daughters one deaf and dumb i.e. victim and another younger daughter were at the house. The appellant/convict having found the opportunity reached to the house at 3:00 O' clock he committed rape upon his deaf and dumb daughter. **He came to know in regard to the occurrence from his younger daughter on the very date of occurrence. He has stated that he went to the village Munda but he was not found and on 22 date village Munda called him to his house and the F.I.R. was lodged by him which was written by his son P.W.2 and same was also signed by village Munda .**

22.2 Keeping in view the nature of the offence, the delay in lodging the F.I.R. is found explained from the prosecution witness P.W.1 and same cannot be said fatal to the prosecution case. **Indeed, in case of a rape wherein the dignity and prestige of the family is at stake, the time is also taken in deciding whether to lodge the F.I.R. or not. As such delay in lodging F.I.R. in rape case cannot be fatal to prosecution if there is cogent and trustworthy evidence.**

23. In view of the analysis of the evidence as stated here-in-above, the prosecution has been successful to prove its case beyond reasonable doubt and the impugned Judgment of conviction and

sentence passed by the court-below needs no interference. Accordingly, this Cr. Appeal deserves to be dismissed

24. This Cr. Appeal is hereby dismissed. The impugned Judgment of conviction and sentence passed by the court-below is affirmed.

25. The appellant was on bail during the pendency of this appeal, his bail bond is hereby cancelled. The Trial Court is directed to ensure compliance by sending the appellant-accused to Jail and to secure recovery of fine.

26. Let the record of the trial court be sent along with copy of the judgment.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated the 29.09.2023
P.K.S./A.F.R.