

GAHC030001582021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.A./6/2021

Lalrokima
Dawrpui Aizawl

VERSUS

State of Mizoram and Anr.
Aizawl

Advocate for the Petitioner : Mr Zochhuana

Advocate for the Respondent : Mrs. Linda L Fambawl

Linked Case : I.A.(Crl.)/6/2021

Lalrokima
Dawrpui Aizawl

VERSUS

State of Mizoram
Aizawl

Advocate for the Petitioner : Mr Zochhuana
Advocate for the Respondent :

Date : 04-10-2023

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
JUDGMENT

Heard Mr. R. Lalnunpuia, learned counsel for the appellant and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for the respondent No. 1 and Mr. Samuel Vanlalhriata Chhangte, learned counsel for the respondent No. 2.

[2.] This is an appeal filed by the appellant against the Judgment & Order dated 07.12.2020 passed by the learned Addl. District & Sessions Judge, Aizawl in S.C No. 129/2018 whereby, the appellant was convicted under Section 376(1) of the Indian Penal Code (IPC). The appeal is directed against the order of conviction dated 08.12.2020 passed by the same Court sentencing the appellant on his conviction under Section 376(1) IPC to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs. 10,000/- with a default clause.

[3.] The case of the prosecution in brief is that an FIR was received by the Officer-in-Charge, Aizawl Police Station from the complainant Sh. Johny Zoliansanga on 19.07.2018 stating that at around 11 AM – 12 PM on that day, her daughter aged 19 years who was alone at home in their residence at Dawrpui Jail Veng was raped by the appellant. As such, he requested that necessary legal action be taken against the appellant. Aizawl PS Case No. 152/2018 dated 19.07.2018 under Section 349(1) IPC was therefore registered

and the case investigated into. Upon finding a prima facie case under Section 376(1) IPC against the appellant, the investigating authority filed the charge sheet.

[4.] Charge was framed against the appellant on 05.11.2018 under Section 376(1) IPC and to which, the appellant pleaded not guilty and claimed to be tried. During trial, the prosecution examined as many as 8 prosecution witnesses while 3 witnesses were examined by the appellant in his defense. The appellant was also examined under Section 313 CrPC and that the statements of both the victim as well as the appellant were also recorded under Section 164 CrPC. Upon conclusion of the trial, the learned Trial Court vide the impugned Judgment & Order and the order of sentence convicted and sentenced the appellant in the manner as already stated herein above.

[5.] Mr. R. Lalnunpuia, learned counsel for the appellant submits that from the evidence of the prosecutrix, it can be seen that there are contradictions in her statements during her examination-in-chief on one hand and during her cross-examination on the other hand. He submits that from the evidence on record, it can be seen that it is not a case of rape but a case of consensual sex between the appellant and the prosecutrix. He submits that there were no eyewitnesses to the alleged crime and the evidence of the prosecutrix being inconsistent is

also not trustworthy. The appellant is therefore not guilty of the alleged crime and even in the worst-case scenario under the given facts and circumstances, there can be two views i.e., one in favor of the appellant and the other against him. In such a situation, the established principle of law is that the one which is in favour of the accused should prevail. In this connection, the learned counsel has relied upon the case of *State of Uttar Pradesh -Vs- Ram Veer Singh & Ors. (Criminal Appeal No. 448 of 2001, Judgment dated 05.09.2007)*. He thus submits that the impugned Judgment & Order of conviction and the order of sentence may be set aside and the appellant set at liberty.

[6.] Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor appearing for the State on the other hand submits that the evidence of the prosecutrix as PW-2 is cogent, consistent and trustworthy. She submits that in her examination-in-chief, she stated that the appellant came to her house on 19.07.2018 saying that he had come to collect the medical records of the step-mother of the prosecutrix. He then taking advantage of the situation forcefully committed rape upon the prosecutrix. The prosecutrix soon after the incident informed her father over telephone and upon his arrival, the FIR was lodged. She submits that the father of the prosecutrix who is also the complainant was examined as PW-1 and that his version clearly corroborates the statements made by the prosecutrix. Similarly, the version of PW-6 & 7 who are independent witnesses

also corroborates the statements made by the prosecutrix. She therefore submits that there is no impediment in acting upon the evidence of the prosecutrix alone if the Court is satisfied that the evidence given by the prosecutrix is cogent and trustworthy. She submits that even if the Court for some reason is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence which may lend assurance to her testimony, short of corroboration required in case of an accomplice. She submits that the prosecutrix of a sex offence cannot be put at par with an accomplice and she is in fact a victim of the crime. She therefore submits that the prosecution has been able to prove the case against the appellant beyond reasonable doubt and therefore, the impugned Judgment & Order of conviction and the order of sentence may not be interfered with. In support of her submission, she relies upon the case of *Ganesan -Vs- State Represented by its Inspector of Police, (2020) 10 SCC 573*.

[7.] I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record. In order to find out as to whether the conviction and sentence of the appellant is sustainable or not, let us examine the evidences led during the trial.

[8.] PW-1 is the complainant and father of the prosecutrix. In his examination-

in-chief, he stated that on 19.07.2018 at around 11:59 AM, his daughter i.e., the prosecutrix contacted him through mobile phone and she was crying as she was talking to him. She asked him to come home immediately and when he reached their house, she informed him that she was raped by the appellant. PW-1 further deposed that the appellant is their relative and in one occasion, he even threatened his own mother with a knife. On the day of the incident, his wife was hospitalized at Civil Hospital, Aizawl and she was attended by the appellant. The appellant went to his house on the pretext of using the bathroom and he was aware of the fact that the prosecutrix was alone in the house. Taking advantage, he committed rape upon his daughter. In his cross-examination, PW-1 stated that it was a fact that his daughter did not fall in love with the appellant and that he did not know what really happened between them and what he knew was what was told to him by his daughter. He further stated that it was a fact that his daughter did not tell him whether she cried aloud when the appellant tried to rape her.

[9.] PW-2 is the prosecutrix and in her examination-in-chief she stated that she knows the appellant who is present in Court that day and that he is her step-mother's first cousin. On 18.07.2018, she had gone to pay electricity bill where she suddenly fell sick and got numb. The people around held her and called her father. She was taken to Grace Hospital and she was found to have deficiency in

calcium. The next day while she was resting at home and was alone, somebody knocked the door. Although she did not open the door at first, since there was persistent knock on the door, she opened the same. The appellant appeared at the door and told her that her step-mother was in the hospital and he had come to collect her records and he wanted to use the toilet. He also asked her about the other day as he was aware that she was sick. He then went to the toilet and she was doing the dishes. The appellant then asked her whether she used to often stay home alone and to which she replied in the affirmative. He then said that he should bring his girlfriend sometime as the house was free. As they were having conversation, the appellant asked her what she would do if somebody with ill-intention came to the house and to which she replied that she did not know. He then touched her ears and suddenly grabbed her neck and pull her inside the room and pushed her down on the mattress. He put his left arms on her neck and she could not breathe. With his other hand, the appellant pulled down her half pant and underwear and committed raped upon her. She tried to scream but she was scared as she knew that the appellant indulged in taking drugs (No.4) and had even threatened his own mother with a knife when she did not give him money. The appellant thereafter dressed himself up and ran away. The prosecutrix stated that her neighbours heard her cry and the girl who lived above their house and an old lady who was also her neighbour came

to see her. As her phone was not working, she called her father from a lady's phone who lived below their house and she narrated about the incident to his father. His father immediately came home and submitted the FIR in Aizawl Police Station. Thereafter, they went for medical examination at Civil Hospital and later, the Magistrate took her statements.

[10.] In her cross-examination, the prosecutrix stated that it was a fact that she cried aloud when the appellant was trying to have sex with her but no one heard her voice. It was a fact that at the time of incident, some persons were also there in the upper floor of the house and also in the floor below but they did not hear her voice. She reiterated the fact that the sound of her cry was heard by the old woman who was their neighbor and the young maid in the upper floor. She also stated that it was a fact that she wore black T-shirt and orange half pant and the appellant undressed all her clothes but there was no torn in her dress. She also stated that she had a bad relationship with her mother-in-law but it was not true that she falsely implicate the appellant who was the relative of her step-mother because she had a bad relationship with her step-mother. She further deposed that the adjacent house to the building where they were staying was very close and it will be about 3 feet away and that people were also staying in that building.

[11.] PW-3 in her examination-in-chief deposed that the appellant was her mother's first cousin. On 19.07.2018, while she was in the shop of her mother, her step-father came to the shop and informed that the appellant had raped the prosecutrix inside their house. On that day, her mother was hospitalized at Civil Hospital and when she went to attend her mother in the hospital, she called the prosecutrix over phone and asked her how the appellant had raped her but she hesitated to narrate the same over phone. Later, when she met her, she found her crying and she told her that the appellant came to their house at around 11 – 12 noon while she was alone and forcefully raped her. In her cross-examination, she stated that she does not know whether the appellant and the prosecutrix were in love but the prosecutrix once told her that the appellant was a handsome man. She further stated that the prosecutrix is a person who can make false accusation to other persons. She treated her like her own sister but the prosecutrix did not reciprocate likewise. After the incident, her parents are now living separately.

[12.] PW-4 is the Doctor, who examined the prosecutrix. She stated that on 19.08.2018 at around 2 pm, the prosecutrix was produced by the police for medical examination and her examination revealed that her hymen was ruptured (old). There was no sign of infection and vaginal smear was also sent for laboratory test. Ext. P-4 and Ext. P-4(b) was her examination report and her

signature respectively. In her cross examination, PW-4 stated that there was no complaint on the health status of the prosecutrix at the time of medical examination. There was also no injury mark which may have been caused by the appellant while committing the offence. There was no fresh sign of injury on the private parts of the victim during the medical examination which was conducted 2 hours after the alleged incident. She also stated that there was absence of semen either in the private parts of the prosecutrix or in other parts of her body and that if there was forcible penetration, some signs of injury will appear in the private parts of the prosecutrix.

[13.] PW-5 is the medical doctor who examined the appellant and she stated that she examined the appellant for the purpose of fitness for custody and allegations on commission of rape. The appellant during such examination did not change his clothes or had a bath/wash. She has no finding on whether the appellant committed rape or not and he was found to be fit for remand/detention in judicial custody.

[14.] PW-6 in her examination-in-chief stated that although she could not remember the exact date, she heard sounds of crying of her neighbor and she therefore proceed to the neighbor's house occupied by the prosecutrix and her father. At that time, the prosecutrix came out to the residence of Mr.

Vanlalhmuaka (father of PW-7) for using telephone. She waited for a moment and when she returned, she asked her about the incident and to which she was told that the appellant had raped her.

[15.] PW-7 in his examination-in-chief stated that he cannot remember the date exactly but when he was at home, he heard sounds of crying of the prosecutrix who occupied the upper floor of their building. The prosecutrix came to their residence and asked his mother for using her telephone. After that she went back to her residence and he followed her for enquiring about the incident. When he asked her what happened, she told him that she was raped by the appellant. In his cross-examination, PW-7 stated that he did not know whether the appellant was in the residence of the prosecutrix on that day and he did not see the appellant. He heard the crying sound of the prosecutrix before she entered their house and he did not hear her crying before that.

[16.] PW-8 is the case I/O who stated that during his investigation, he examined the complainant, the victim and the available witnesses. He also arrested the appellant and recorded his statements admitting his guilt. Medical examination of the prosecutrix and the appellant was taken and after evaluating the statements of the witnesses, finding a prima facie case, he submitted the charge sheet. In his cross-examination, PW-8 stated that the residence of PW-6

was nearest and adjacent to the place of occurrence. He stated that it was a fact that there was no fresh injury as per medical examination of the victim and that he admitted that there is no torn clothes due to the incident.

[17.] DW-1 in her examination-in-chief stated that she knows the appellant who appeared before Court and that he was the younger brother of her close friend Smt. Lalmalsawmi. She also knew the prosecutrix as she was her close neighbour. That on the day of the alleged incident, she was available near the rented house of the prosecutrix and all sounds and incident can be heard from where she was. However, she did not hear anything except some chatting sound from the place of occurrence. Even after the alleged incident, she met the prosecutrix near their main door and she did not find any sign of rape from her appearance.

[18.] DW-2 in her examination-in-chief stated that on the date of the incident, she was at home and having visitors. It was in the forenoon that the prosecutrix came to her house and asked her to allow her to use her mobile phone. She took the phone out for a moment and she could hear her calling her father and she used her mobile for not more than 10 minutes. When the prosecutrix came asking for her phone, she did not notice anything unusual on

the face and in the person of the prosecutrix. She did not hear any unwelcome sounds which may have occurred due to the incident of rape that day and that they were having some guest/visitors. She came to know about the alleged incident only in the evening. In her cross examination, she stated that it was a fact that her son Lalhriatzuala (PW-7) told her that he had gone to the rented house of the prosecutrix and that she did not know when he had gone there.

[19.] DW-3 in his examination-in-chief stated that she and the family of the prosecutrix were next door neighbors and their house is separated by about 3 feet. On the day of the alleged incident, she was at home and she did not hear any sound or cry coming from the house of the prosecutrix and that if any such untoward incident had happened, she would have known as their house was very close by to the house of the prosecutrix. She came to know about the incident only the next day when she went to the shop of Smt. Lalhlupuii (DW-1). In her cross examination, she reiterate what she stated in her examination-in-chief.

[20.] The case of the prosecution is that the prosecutrix was raped by the appellant on 19.07.2018 while she was alone at home between 11 AM – 12 PM. The prosecutrix in her deposition before the learned Trial Court give the details as to how the appellant had come to their house and committed rape upon her.

According to her, she narrated about the incident to her father over phone as he was not available at home. Upon hearing the news, her father came back and following which, they have lodged the FIR. It is seen that the version of the prosecutrix is corroborated by the statements of PW-1, her father and importantly, by the statements of PW- 6 & 7. According to the prosecutrix in her cross-examination, the sound of her cry was heard by an old woman who was their neighbor and the young maid staying in the upper floor of the building. The old woman referred to by the prosecutrix is PW-6 who was aged about 81 years at the time of making her deposition. PW-6 stated that upon hearing the sound of crying coming from their neighbor, she proceeded to the house of the prosecutrix and noticed that the prosecutrix had gone to the residence of Mr. Vanlalhmuaaka, father of PW-7 to use the phone. She asked the prosecutrix about what had happened and to which, she was informed by her that the appellant had raped her. Similarly, PW-7 heard the sound of crying of the prosecutrix who was staying in the upper floor of the building. The prosecutrix came over and asked his mother for using her phone. It can be seen that the version of PW-6 and PW-7 corroborates with each other. The medical examination report only reveals that there is a tear of the hymen but it was an old tear. There is no sign of injury on the person of the prosecutrix. The prosecutrix in her examination-in-chief stated that when the appellant was upon

her, she tried to scream but she was very scared of him as she knew that he indulged himself in taking No. 4 drugs and that he had even threatened his own mother with a knife when she refused to give him money. This could be the explanation about there being no injury on the person of the prosecutrix. The appellant during his examination under Section 313 CrPC has also not denied having sex with the prosecutrix. According to him, it was a consensual sex and not a rape. However, the fact remains that immediately after the appellant left the house, she informed her father over phone and to their neighbors who were nearby about the fact that the appellant had committed rape upon her. In the absence of any evidence showing that there was an enmity between the prosecutrix and her family with that of the appellant, there could have been no reason on the part of the prosecutrix to level the allegation of rape upon the appellant. Moreover, such revelation would naturally invite social stigma upon her. It is also a settled law that the sole evidence of the prosecutrix is sufficient to convict the accused person if her testimony is found to be reliable and trustworthy.

[21.] The Apex Court in the case of *State of Maharashtra -Vs- Chandraprakash Kewalchand Jain, (1990) 1 SCC 550*, at paragraph No. 16 of the Judgment held as follows:-

“16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. [The Evidence Act](#) nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under [section 118](#) and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of any injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the [Evidence Act](#) similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the

circum- stances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.”

[22.] The Apex Court again in *State of Uttar Pradesh -Vs- Pappu, (2005) 3 SCC 594*, held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony.

[23.] In the case of *State of Punjab -Vs- Gurmit Singh, (1996) 2 SCC 284*, the Apex Court held that in cases involving sexual harassment, molestation, etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice.

[24.] From the above law laid down by the Apex Court as referred to herein above and from the evidence led by the prosecution in the present case, I am of the considered view that the prosecution has been able to bring home the guilt of the appellant with proof beyond all reasonable doubt. As for the case of *State of Uttar Pradesh -Vs- Ram Veer Singh & Ors.*(supra) relied upon by the learned counsel for the appellant, the same cannot be applied to the instant case as there is no possibility of having two (2) views in the present case.

[25.] Thus, upon due consideration, I do not find merit in the appeal and accordingly, the same is dismissed.

JUDGE

Comparing Assistant