

Court No. - 13

Case :- CRIMINAL APPEAL No. - 507 of 1994

Appellant :- Nabi Ahmad

Respondent :- State of U.P.

Counsel for Appellant :- Raza Zaheer,Bhavna Pandey,S.B. Verma,Wasim Ahmad

Counsel for Respondent :- Government Advocate

Hon'ble Karunesh Singh Pawar,J.

1. This criminal appeal has been preferred against the judgment and order dated 31.10.1994 passed by VIth Additional Sessions Judge, Sitapur in Sessions Trial No.377 of 1993 State vs. Nabi Ahmad (Crime No.46 of 1993 under section 376 I.P.C., P.S. Khairabad, district Sitapur), whereby the appellant has been convicted and sentenced to ten years rigorous imprisonment and a fine of Rs.2000/-, with default provision, under section 376(2)(f) I.P.C.

2. Heard Mr. Shafatullah Khan, Advocate holding brief of learned counsel for the appellant and Mr. Alok Tiwari, learned Additional Government Advocate.

3.The prosecution case as per first information report is that a written report was given by the complainant Idris that on 9.3.1993, his daughter Kumari Asmin aged about seven years has gone to give food to him in Jungal Koorekhana.

While she was returning home at about 4.00p.m., he heard scream of his daughter. On hearing alarm, the complainant, Naeem and Hafeez ran and saw that the daughter of the complainant was being raped by Nabi Ahmad. His daughter was screaming and shivering. On being challenged, the accused Nabi Ahmad left his daughter and ran away towards west. He along with his accomplice chased him but could not succeed. The first information report was lodged on the basis of the written report.

4. The victim was examined on the same day by Dr. Anil Kumari, EMO who found injuries, bleeding on the private part of the victim Km. Asmin. Relevant part of the medico-legal report is extracted below :

"Examination of Private Parts- thigh and private parts stained with blood swelling. Oedema on both labia and vulva present. Hymen torn in semi circular form at 4 O' clock to 7 O' clock position Hymen admit 1 finger with difficulty, bleeds on touch. Vaginal dressing and packing done. Pt admitted for observation Vaginal Smear prepared and send to pathological examination. Advised for X-ray elbow. Knee, Wrist (Pisiform bone to be marked). Final Report after the above investigation."

Thereafter, a supplementary medical report of the victim was prepared on 13.3.1993 wherein no evidence of spermatozoa was seen and X-ray was conducted wherein it was found that no epiphysial center was formed with long bone shaft and pisiform bone did not appear. The doctor has opined that the girl was less than 12 years old. She has

vaginal laceration and tear which is stitched and possibility of rape cannot be excluded as injury is caused by elongated blunt object which can be penis also. The report dated 13.3.1993 is extracted below :

"Vaginal smear report shows no evidence of spermatozoa seen. X-ray report and plate No.175 dated 11.3.92 shows no epiphysial center is formed with long bone shaft. Pisiform bone not appeared.

Conclusion- The girl is less than 12 years old.

The girl has vaginal laceration and tear which is stitched so possibility of rape cannot be excluded as injury is caused by elongated blunt object which can be penis also."

Ext. Ka.3 is the X-ray report in which no epiphyseal centre was found and pisiform bone was also not found. The underwear of the victim was recovered by the investigating officer which is Ext.Ka.2 on which spot of blood and semen was found present. The investigating officer recorded statement of the prosecution witnesses and prepared the site plan, and after completing formalities, submitted charge sheet against the accused. The trial court took cognizance and since the matter was triable by Sessions, committal order was passed on 4.8.1993. Consequently, on 10.9.1993, charge was framed by Second Additional Sessions Judge, Sitapur.

5. The prosecution to prove its case has produced seven witnesses, i.e. P.W.1 Naeem who is the eye-witness, P.W.2

Idris who is the complainant and father of the victim and the eye-witness, P.W.3 Dr. R.K. Srivastava, in whose presence X-ray of the victim was conducted, P.W.4 Kumari Asmin, victim who has supported the prosecution case, P.W.5 Dr. Anil Kumari, who conducted medico legal examination of the victim on the same day when the matter was reported, P.W. 6 S.I. Avdhesh Kumar Misra is the investigating officer who recorded statement of the prosecution witnesses and sent the victim for medical examination and P.W.7 is Head Moharrir Ram Kumar Verma who prepared chik first information report on the basis of written report.

6. P.W. 1 Naeem, in his examination in chief, has stated that while he was returning at about 4.00p.m. from Machhrehta crossing along with Hafeez, on reaching near Bucharkhana, from the north side of Bucharkhana, he along with Hafeez heard screaming sound. The father of the victim also came on hearing the sound. All the three persons saw that Nabi Ahmad was committing rape upon the victim. The victim was seven years old and was screaming, and became unconscious. They chased the accused who ran away towards west side. Blood was oozing from the thighs of the victim. She was taken by them to home and father of the

victim went to lodge the first information report. In his cross, Naeem stated that at the place of occurrence, he and Hafeez reached and behind them, Idris, father of the victim also reached there. He denied the suggestion that the accused has not committed the offence and he is giving false testimony due to his relationship.

P.W.2 Idris, father of the victim and the informant also supported the prosecution case. He stated that the victim came to give him food and from him, she went away around 3.00p.m.. She is seven years old. While he reached near Kurakhana and Bucharkhana, he heard a cry and ahead to him, Naeem and Hafeez were also going. It was around 4.00 O'Clock in the evening. They saw that the appellant was committing rape upon the victim. The victim was crying. Then they exhorted and the accused ran towards the west after leaving the victim. The victim almost got unconscious. He took up the victim. Bleeding was oozing from her private part. Blood came on her underwear. She was taken to home. The underwear was taken by the police and fard was prepared, which is Ext.Ka2. In the cross, again he supported the prosecution version and submitted that first Naeem and Hafeez reached on the spot and then he came. He also denied the suggestion that no rape was

committed by the accused and the accused was falsely implicated.

P.W.3 Dr. R.K.Srivastava in whose presence X-ray of the victim was conducted. He found that there is no fusion of the epiphycial centre. The peciform bone was not in existence.

P.W.4 Kumari Asmin is the victim who stated that Nabi Ahmad resides in the neighbourhood. While she was returning after giving food to her father, then near Koorakhana, the accused Nabi Ahmad met her and caught hold her and laid her on the ground. She became unconscious. Nabi Ahmad has taken out her underwear and made her naked. The accused committed rape upon her. . The Court found that the witness is hardly 6 1/2 years of age and she started weeping. Therefore, next date was fixed. On the next date, i.e. on 3.8.1994, she has clearly stated that after opening her underwear, she was raped by the appellant.

P.W.5 Dr. Anil Kumari, Medical Officer has conducted medico legal examination of the victim. She opined that the girl was less than 12 years of age. The private part of the victim was torn which was stitched and such kind of injury

can come from some blunt object which can be private part of a male and therefore, possibility of rape cannot be denied. After conducting internal examination, she found that thigh and private part of the victim were blood stained and there was swelling in labia and vulva. Hymen was also torn in 4 O' Clock and 7 O' Clock position and by touching the blood was oozing from it. She could not give any definite opinion about rape and if the girl falls on a thorn (elongated blunt object), then such kind of injury may also come.

P.W.6 S.I. Avdhesh Kumar Misra, investigating officer who recorded the statement of the prosecution witnesses sent the victim for medical examination. He inspected the site of occurrence and prepared site plan in his handwriting. After completing formalities, he submitted charge sheet against the accused Nabi Ahmad which is Ext. Ka-7.

P.W.7 Head Moharrir Ram Kumar Verma has prepared the chik first information report on the basis of written report. He also prepared the fard of the underwear which is Ext. Ka-2.

Statement of the accused under section 313 CrPC was recorded, in which case of the accused was of denial and

false implication due to enmity.

7. Learned counsel for the appellant submits that the appellant has been falsely implicated. P.W.2 Idris who is the complainant is not an eye-witness. It is submitted that P.W.5 Dr. Anil Kumari has not given any definite opinion about rape and according to her, the injury caused can also come if the girl falls on a thorn. He further submits that there was no external injury having been found by the doctor on the person of the deceased and as such there is no question of use of force by the accused appellant to corroborate the allegation of rape.

8. Learned A.G.A. while opposing the argument of the appellant's counsel and supporting the prosecution case has submitted that the prosecution has successfully proved its case beyond reasonable doubt. There is ample corroborative evidence against the appellant, coupled with the testimony of the victim and the testimony of P.W.1 and P.W.2 who are the eye-witnesses. The testimony of the victim, though she is 6 1/2 years old child, is intact even in her cross-examination, which has been corroborated by the injury report and also by the statement of P.W.1 and P.W.2. It is not a case of false implication. The Offence committed

by the accused is of heinous nature, for which the accused has rightly been convicted.

As regards quantum of punishment is concerned, considering the age of the accused who was of 22 years of age at the time of incident, a lenient view has been taken and minimum sentence of ten years has been awarded instead of life imprisonment and a very meagre fine of Rs.2000/- has been imposed.

9. Having heard parties' counsel and after perusal of the record as well as the evidence on record, I find that P.W.1 Naeem is an independent witness and P.W.2 Idris is the father of the victim. Both have witnessed the incident and supported the prosecution case. The testimony of the victim is intact. She though is a child of 6 1/2 years of age, still on two dates, she appeared before the trial court and gave her statement. She has clearly stated that the accused has committed rape upon her. This testimony of the victim is intact and does not suffer from any infirmity and is also of sterling quality. On the basis of such quality of evidence of the victim alone, the accused appellant may have been convicted. However, there is ample corroborative evidence available on record in this case in the form of the testimony

of P.W.1 and P.W.2 who are eye-witnesses and their testimony is also intact and they have supported the prosecution case and witnessed committing rape.

Not only this, Dr. Anil Kumari, P.W.5 who conducted medico-legal examination of the victim has proved Ext. Ka-4 and Ext. Ka-5. She has also found bleeding on the private part of the victim. Hymen was found torn in semi circular form at 4 O' Clock to 7 O' Clock position. There was bleeding found on the hymen on being touched from finger. Vaginal laceration and tear was found on the private part of the victim which was stitched and there is possibility of rape. She clearly opined that the injury was caused by blunt object which can be of penis also. The Doctor has concluded that as per ossification test, the girl was less than 12 years old.

The ocular evidence of P.W.1, P.W.2 and P.W.4 is not only intact but is also corroborated by medical evidence of P.W.5 Dr. Anil Kumari which is enough for convicting the accused appellant. Similarly, Medical evidence duly corroborates the ocular evidence, adduced by the prosecution with regard to commission of rape with the victim. In this case, there is ample evidence in the form of

evidence of P.W.1 and P.W.2 and the medical evidence of Doctor Anil Kumari and therefore, I do not find any infirmity in the order impugned.

10. So far as quantum of sentence is concerned, learned A.G.A. has rightly submitted that minimum possible sentence has been awarded considering the age of the appellant who was 22 years of age at that time. There is no infirmity in the order impugned.

11.As regards the contention of the learned counsel for the appellant that in the medical examination, the doctor did not find any external injury on the person of the victim and therefore, there is no question of forcible rape upon the victim of occurrence.

12.The Supreme Court in State of **M.P. versus Preetam** 2018(3) SCC 1679 (SC) held that absence of injury on person of victim of rape does not lead to inference that accused did not commit forcible sexual intercourse and even in absence of external injury, oral testimony of prosecutrix that she was subjected to rape cannot be ignored. Paragraph 9 of the judgment in Preetam's case is extracted below :

" (9) It is fairly well-settled that in the absence of external injury on the person of the prosecutrix, it cannot be concluded that the incident had

taken place with the consent of the prosecutrix. It depends upon the facts and circumstances of each case. In B.C. Deva alias Dyava versus State of Karnataka (2007) 12 SCC 122, this Court has held that absence of injury on the person of the victim of rape does not lead to an inference that the accused did not commit forcible sexual intercourse. It was further held that even in the absence of external injury, the oral testimony of the prosecutrix that she was subjected to rape, cannot be ignored.'

In **State of Karnataka** versus **Raju** 2007(59) ACC 780 (SC), the Supreme Court held that when a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. Para 29 (relevant portion) is extracted below :

"29. the physical scar may heal-up but the mental scar will always remain. When a women is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. The judicial response to human rights can not be blunted by legal jugglery."

The Supreme Court in **State of M.P.** versus **Bala alias Bala Ram** 2005(53) ACC 740 (SC) held that rape is a heinous crime which is against the society and against the human dignity, which reduces a man to an animal. The Supreme Court further held that the court has to consider the plight of the victim and the social stigma that may follow the victim to grave and particularly ruins to the prospects of normal life of the victim. Para 28 (relevant portion) of the judgment in Bala's case is reproduced as under :

"28. rape is a heinous crime which is against the society and against the human dignity, which reduces a man to an animal. Such an

offence once it is proved, lightly is itself an affront to the society. For reduction of the sentence, the reasons must be relevant to exercise the discretion by the court. The age of the offenders by itself is not the adequate reason. Long pendency of trial also can not be adequate reason. Under the guise of reform theory the court can not forget their duty to the society and to the victim as well. The court has to consider the plight of the victim and the social stigma that may follow the victim to grave and particularly ruins to the prospects of normal life of the victim."

13.In the case in hand, evidence of the prosecutrix is supported by medical evidence and also by evidence of eye witness P.W.1 Naeem and P.W.2 Idris, father of the victim who both saw the accused appellant of committing rape and after alarm being raised, the accused ran away from the site of occurrence. The prosecutrix has fully corroborated the prosecution case. She in her examination in chief as also in her cross has in unambiguous terms stated that the accused Nabi Ahmad has committed rape on her. She fully supported the prosecution case. Merely on the basis that there was no external injury on the person of the victim does not lead to inference that the accused appellant did not commit forcible sexual intercourse as held by the Supreme Court in Preetam's case (supra).

14.Keeping in view the aforesaid judgments of Supreme Court and the peculiar facts and circumstances of the case, gravity of the offence, tender age of the victim and matured age of the accused, I do not find any infirmity or illegality in the impugned judgment. The criminal appeal lacks merit

and deserves to be dismissed.

15.Accordingly, the appeal is dismissed. The judgment and order dated 31.10.1994 (supra) is confirmed. The accused appellant shall serve out the sentence as awarded by the trial court.

16.Let a copy of this judgment be sent to the trial court along with lower court record. A copy of the judgment be also sent to the concerned Superintendent, Jail.

Order Date :- 11.10.2023

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