

RESERVED ON 14.12.2023

DELIVERED ON 18.12.2023

A.F.R.

Court No. - 13

Case :- CRIMINAL APPEAL No. - 887 of 2015

Appellant :- Nankey @ Ladain

Respondent :- State of U.P.

Counsel for Appellant :- Syed Mohammad Nasir,Ajeet Kumar
Mishra,Kailash Nath Mishra,Ravi Kant Pandey

Counsel for Respondent :- Govt. Advocate,Pawan Kumar Mishra

Hon'ble Karunesh Singh Pawar,J.

1. This criminal appeal arises out of judgment and order dated 18.6.2015, passed by Addl. Sessions Judge, Room No.1, Gonda, in S.T.No.8 of 2013 arising out of crime No.106 of 2013 State versus Nankey alias Ladain whereby the appellant has been convicted and sentenced to undergo rigorous imprisonment for fourteen years R.I. under section 376 I.P.C. and a fine of Rs.25000/- with default provision and under section 3/4 Protection of Children from Sexual Offences Act, 2012 for fourteen years R.I. and a fine of Rs.25,000/-, with default provision.

2. Prosecution case as per written report is that on 20.5.2013 at about 7.30 p.m., the daughter of the informant aged about 8 years was going to boring. On the way, Nanke alias Laden son of Swami Nath Chaubey dragged her towards the corner of the pond and raped her. When she raised alarm, villagers ran and then the accused ran away.

3.On the basis of the written report, chick first information report was registered. Statement of the victim under section 164 CrPC was recorded where she

supported the prosecution case. The victim on the very next day, i.e. on 21.5.2013 was medically examined by Dr. Karuna Gupta, P.W.4 of District Women Hospital, Gonda who has given the following report :

"History - पीड़िता के घर वालों ने बताया कि 20.5.13 को सायं 7.30 बजे पीड़िता के विरुद्ध लैंगिक हमला हुआ है।

सामान्य परीक्षण- पीड़िता सामान्य कद काठी की थी। वजन 20 किग्रा0, ऊँचाई 123 सेमी0, दाँत नहीं देखे गये थे। प्राइवेट पार्टों पर कोई बाहरी चोट नहीं थी। दोनों स्तन विकासशील अवस्था में नहीं थे, कौंध के बाल दिखाई नहीं दे रहे थे। Public Hair मौजूद नहीं थे।

आन्तरिक परीक्षण - कोई रक्तस्राव नहीं था। हाईमन ताजा फटा हुआ था लालिमा मौजूद थी। Semilunar abrasion present inner side of labia minora including the fourchette योनि की सतह पर ब्लड स्लाट मौजूद था।

जाँघ पर कोई चोट नहीं थी। प्राइवेट पार्ट पर कोई चोट के निशान नहीं थे। योनिस्त्राव लेकर दो स्लाईड तैयार की गयीं उसे पैथालोजिस्ट जिला महिला चिकित्सालय गोण्डा को जीवित एवं मृत शुकाणु की जाँच हेतु भेजा गया।"

In the aforesaid report, the doctor opined that hymen was freshly torn, redness was present and semilunar abrasion was also present inside of labia minora including the fourchette, small bits of blood clots (blackish material) were present over public surface. The medico legal report is Ext.Ka.3.

Supplementary report was also given by the doctor, which is Ext. Ka.4.

4.Ext.Ka.7 is the report of the Radiologist. Ext. Ka.8 is the dentist opinion, in which, the dental age was assessed to be 9-11 years. Ext.Ka-11 is the specimen of vaginal smear slides sent in a closed envelope for determination of presence of spermatozoa. This was sent by the pathologist, District Women Hospital, Gonda. Forensic report is at page 10, in which no spermatozoa was found.

5.After completing investigation and recording the statement of witnesses, charge sheet was filed by the investigating officer. Case was committed to the court of Sessions who framed charges on 31.10.2013 under sections 376 I.P.C. and 3/4 of Protection of Children from Sexual Offences Act, 2012. Charges were read over to the accused who denied them and claimed to be tried.

6.P.W.1 Mohammad Saeed in his chief has repeated the prosecution story. In the written report, he is not an eye-witness. In the cross examination, he remained firm on his testimony in the examination in chief. He denied the suggestion that he is having any enmity with the accused appellant and has lodged a false case. He has further denied the suggestion that no rape has been committed upon his daughter and he is giving a false testimony.

P.W.2 Rehana Khatun is sister in law of P.W.1. She also supported the prosecution version. She has stated that the victim was eight years old at the time of offence. She was the first person to whom the incident was told by the victim while she was weeping. She along with the victim, Mohd. Saeed P.W.1, and Mohammad Jameel went to the police station and gave a written report on the basis of which, the first information report has been registered. She is also not an eye-witness. She also denied the suggestion that no incident has been committed and she has given a false affidavit as she is related to P.W.1.

P.W.3 is the victim. She has stated in her examination in chief that the incident took place one year ago. She went to give wrench to her father P.W.1 in a sugarcane field alone. On the way, the accused met her and asked her to stop. When she did not stop, he gagged her mouth and dragged her to pond. He was trying to open

the dress of the victim which was not opening, hence tore it apart and committed rape upon her. From her vagina, blood was oozing. She started crying. The accused offered her Rs.500 and sleeper, and threatened that if she cries, he will kill her. Upon her alarm, the villagers came and then the appellant fled away. She further stated that she told the incident to her parents.

She was medically examined. She gave statement under section 161 CrPC and affirmed it in the court and identified her signatures and thumb impression. In her cross, she stood firm on her testimony and again reiterated that she was raped by the appellant. She denied any enmity with the appellant. She also denied that she has given a false testimony to implicate the appellant.

P.W.4 Dr. Karuna Gupta who conducted medical examination of the victim on the very next day has opined that hymen was freshly torn, redness was present and simular abrasion was also present inside of labia minora including the fourchette, small bits of blood clots (blackish material) were present over public surface. No injury was seen over thighs and private part.

In her cross, she has stated that the hymen was freshly torn. It could happen upon falling and getting injured also. She could not give any definite opinion about rape. She has further stated that in the pathological report, no live or dead spermatozoa was found. he further stated that she has not given any specific opinion in regard to sexual assault, in the supplementary report.

P.W.5 Constable Moharrir Prabhat Kumar Yadav is a formal witness. He proved Ext.Ka.5 which is chick report and also Ext.Ka.6 which is copy of the G.D.

report.

P.W.6 Dr. R.C. Verma, Radiologist, district Hospital, Gonda who has conducted X-ray of the right wrist and elbow of the victim has prepared the X-ray report.

P.W.7 Dr. S.R. Gaur, Dentist, District Hospital, Gonda who examined teeth of the victim has opined age of the victim as 9-11 years.

P.W.8 Hari Shankar Mishra is retired Inspector who has stated that on the same day, he arrested the accused, took the victim for medical examination and produced the victim before the Magistrate for her statement under section 164 CrPC and after completing investigation and taking statement, he has filed the charge sheet. He also recovered clothes of the victim which were worn by her at the time of the incident. In her cross, he stated that on the date of the incident, he inspected the place of occurrence.

P.W.9 Dr. Anil Kumar singh, Pathologist, district Hospital, Gonda who has examined vaginal smear slide did not find any live or dead spermatozoa.

D.W.1 Deenanath Chaurasia who is only defence witness in his cross has stated that at the time of the incident, he was not present at the place of occurrence. On that day, he was in his Sasural.

7. I have heard learned counsel for the appellant and learned Additional Government Advocate as also perused the record.

8. P.W.1 and P.W.2, though are not an eye-witness, however, they have supported the prosecution case. P.W.3 is the star witness and the victim of occurrence who is barely 9-11 years of age according to medical examination and 8 years according to P.W.1 and P.W.2. The victim in her testimony has clearly stated that she was raped by the accused. Even after detailed cross-examination, she remained firm and reiterated that she was raped by the accused. She has denied any enmity

with the accused and false implication to the accused. Testimony of the victim in her examination in chief as well as in the cross examination, read with her statement under section 164 CrPC is intact. She has clearly stated before the Court that she knows the meaning of rape.

9. In a case where testimony which is worthy of credence and even after detailed cross-examination, the victim remained firm, law is well settled that even on the basis of testimony of the victim in the case of rape, if it is of sterling quality and unimpeachable, the accused can be convicted. Supreme Court in **Mohd. Ali alias Guddu versus State of U.P.** (2015) 7 SCC 272 has made the following observations :

"Be it noted, there can be no iota of doubt that on the basis of the sole testimony of the prosecutrix, if it is unimpeachable and beyond reproach, a conviction can be based. In the case at hand, the learned Trial Judge as well as the High Court have persuaded themselves away with this principle without appreciating the acceptability and reliability of the testimony of the witness. In fact, it would not be appropriate to say that whatever the analysis in the impugned judgment, it would only indicate an impropriety of approach. The prosecutrix has deposed that she was taken from one place to the other and remained at various houses for almost two months. The only explanation given by her is that she was threatened by the accused persons. It is not in her testimony that she was confined to one place. In fact, it has been borne out from the material on record that she had traveled from place to place and she was ravished a number of times. Under these circumstances, the medical evidence gains significance, for the examining doctor has categorically deposed that there are no injuries on the private parts. The delay in FIR, the non-examination of the witnesses, the testimony of the prosecutrix, the associated circumstances and the medical evidence, leave a mark of doubt to treat the testimony of the prosecutrix as so natural and truthful to inspire confidence. It can be stated with certitude that the evidence of the prosecutrix is not of such quality which can be placed reliance upon."

(Emphasised)

10. In the case in hand, the testimony of the victim is corroborated by P.W.1 and P.W.2 and also by the medico legal examination report, Ext. Ka.3 where fresh injury was found on the hymen, redness was present and simular abrasion was also present inside of labia minora including the fourchette, small bits of blood clots (blackish material) were present over pubic

surface. Thus, the testimony of the victim has been corroborated by the medical evidence as also by the evidence of P.W.4 Dr. Karuna Gupta.

11. There is ample corroboration by way of medical evidence to support the testimony of the victim, coupled with the fact that in the statement of the accused under section 313 CrPC, all the incriminating circumstances have been put to the accused and virtually, no defence has been taken by him and the only defence taken by the accused that he has been falsely implicated due to enmity has been denied by the prosecution witnesses 1, 2 and 3.

12. Thus, in view of the above discussion, the judgment of conviction is liable to be and is hereby affirmed.

13. Keeping in view overall facts and circumstances of the case, the fact that the incident is of 2013, according to report dated 27.11.2023 of the Superintendent, District Jail, Gonda, the appellant has already incarcerated for more about 10 years, the law laid down by the Supreme Court in **Bavo alias Manubhai Ambalal Thakore** versus **State of Gujarat** AIR 2012 SC 979, whereby the Supreme Court keeping in view the age of the victim and the accused as also the oldness of the incident, the sentence of life imprisonment was modified to rigorous imprisonment for 10 years which the accused has already undergone, the sentence of 14 years awarded by the trial court separately for the offences under sections 376 I.P.C. and 3/4 Protection of Children from Sexual Offences Act is liable to be reduced to the period already undergone by the accused. The accused appellant be released from jail forthwith.

14. Ordered accordingly.

However, the total fine of Rs.50,000/- levied by the trial

court under sections 376 I.P.C. and 3/4 Protection of Children from Sexual Offences Act is maintained and sentence in default of fine is also maintained. The amount of fine of Rs.50,000/- to be deposited by the appellant within six months of his release shall be paid to the victim of occurrence under Section 357 CrPC within the next fifteen days.

15. With the above modification of sentence, the appeal stands disposed of.

16. The Registry is directed to send back the record of the trial court, if received, immediately along with a copy of the present order.

(Karunesh Singh Pawar, J)

Order Date :- 18.12.2023

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