



Case No. : CRL.A(J)/12/2023

VERSUS

Advocate for the Respondent : P P of AP

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY
HON'BLE MR. JUSTICE KARDAK ETE

Date of judgment : 06.08.2024

JUDGMENT & ORDER (ORAL)

(A.D.COUDHURY,J)

1. Heard Ms. O Binggep, learned Legal Aid Counsel for the appellant. Also heard Mr. T Ete, learned Addl. PP, Arunachal Pradesh and Mr. T Tayeng, learned counsel for the private respondent.
2. The present appeal is filed under Section 374 (2) of the Code of Criminal Procedure, 1973 assailing the Judgment and Order dated 31.10.2022 passed by the learned District & Sessions Judge cum Special Judge (POCSO), East Siang district in PSG SC (POCSO) case No. 01/2021 whereby, the accused/appellant is convicted under Section 376 of IPC read with Section 4/6 of the POCSO Act and sentenced him to undergo imprisonment for a period of 20 years with a fine of Rs. 1.00 Lakh for offences under Section 4/6 of the POCSO Act. The accused/appellant preferred the present appeal from the jail and accordingly, Ms. O Binggep was appointed as the Legal Aid Counsel.
3. The prosecution case as unfolded from the materials available on record is to the effect that on 05.08.2020 in between 1300 hrs to 1400 hrs, the accused appellant had taken away the victim a 9 years old minor near to a river on his bicycle, showed her porn video clips and raped her. Accordingly, PSG PS case No. 127/2020 under Section 376 IPC read with Section 4 of POCSO Act was registered and investigation was initiated.
4. Upon completion of the investigation, the investigating officer had submitted charge-sheet under Section 376 IPC read with Section 4/6 of POCSO Act on 28.01.2021 against the accused/appellant namely Samlon Lego.
5. Based on the charge sheet submitted by the Investigating Officer, charges were framed against the accused/appellant under Section 376 IPC read with Section 4/6 of POCSO Act. The charges were read out and explained to the accused/ appellant but the accused had pleaded not guilty and claimed to be tried. Hence, the matter went up to trial.

6. In order to bring home the charges, the prosecution had examined as many as 12 witnesses who were cross examined by the defence. The statement of the accused/appellant was recorded under Section 313 Cr.P.C. The defence also adduced evidence of appellant as DW-1 and he was also cross-examined by the prosecution. After conclusion of the trial, the learned trial court convicted the accused as recorded hereinabove.
7. As the appeal was preferred from the jail, Ms. O. Binggep, Legal Aid Counsel was appointed to represent the accused/appellant. The Legal Aid Counsel, after going through the record and evidence, in her usual fairness submits that the victim's evidence remained firmed during the trial and her evidence was also corroborated by the evidence of PW-5, the Doctor. Therefore, in view of the settled proposition of law, she does not find any material for acquittal of the appellant inasmuch as the said witness cannot be said to be not trustworthy or not relevant.
8. The learned Additional Public Prosecutor has also argued in the same line. Referring to the evidence of PW-2 (victim), he submits that the victim remained consistent while recording her evidence before the learned trial court. The learned Additional Public Prosecutor further submits that the evidence of PW-4 and PW-5 also corroborated the testimony of the victim and therefore, the prosecution has been able to prove beyond any reasonable doubt that it is the accused who had committed the offence upon the minor victim.
9. We have considered the submissions advanced by the learned counsel for both the sides and have a carefully gone through the materials available on record.
10. Before dealing with the arguments advanced by the learned counsel for the parties, let us first appreciate the depositions of the prosecution witnesses.
 - I. **PW1, Shri Makrin Ngukir** is the father of the victim and the informant of the case. According to him, the victim disclosed before him that on 05.08.2020 at the day time, accused took the victim to near Sibya Korong in a bicycle and has forcefully committed sexual

intercourse with her there. According to this witness, the victim disclosed to him that the accused had showed her some porn videos in his mobile phone. After getting such information, he lodged the FIR. He also deposed that his daughter was aged about 9 years and her date of birth is 05.01.2011.

During cross-examination, nothing material was extracted from this witness nor his statement was challenged to be incorrect.

II. **PW2, the victim** is the star witness of the prosecution. She deposed during her examination-in-chief that she knows the accused person, who is her maternal uncle. She further deposed that on the date of incident she went to the house of her friend and when she found her friend absent, she went to the house of her another friend and on the way, she saw the accused with his bicycle. She also deposed that the accused asked her to go with him for a ride and accordingly the accused took her in his bicycle towards Sibya Korong. She further deposed that on reaching the stream, she wanted to take bath with clothes on but the accused asked her to take bath naked as there was no one to see her. She further deposed that thereafter the accused took her towards the bushes near jungle and had sexual intercourse and also showed her dirty videos on his mobile. She further deposed that, thereafter, the accused dropped her and she informed the incident to her parents. Her father informed the police and she was taken to the hospital for medical examination and she was also taken to Magistrate where she recorded her statement. She proved her statement recorded by the Magistrate under Section 164 of Cr.P.C. as P Ext. 5 and proved her signature to be P. Ext. 5(a)(b).

During cross-examination, PW2 deposed that she does not know the exact date of the incident. She also deposed during the cross-examination that police recorded her statement. During cross examination, she affirmed that the accused had penetrated his penis

into her vagina. During cross, she denied the suggestion of the defence that her mother tutored her.

III. **PW3 Smti. Miti Ngukir** is the mother of the victim, who deposed in her examination-in-chief that she knows the accused person, who is her clanbrother in relation. She deposed that on the date of incident, she went to the paddy field along with her husband, PW1. She further deposed that PW2 disclosed her about the incident that accused took her daughter (PW-2) to Sibya Korong and had committed sexual intercourse with her. She affirmed that the FIR was lodged by her husband (PW1) and that police had seized the birth certificate of the victim. This witness was not cross examined by the defence.

IV. **PW4 Shri Nong Mitkong** is a fellow villager and an independent witness. He deposed that he knows the accused person and that he saw the accused taking the victim towards Sibya bridge side in his bicycle. However, he is unaware about the incident that had happened in the jungle.

During the cross-examination, he re-affirmed that he had not seen the incident of rape and he had only seen the accused and victim going towards Sibya River.

V. **PW5 Dr. Aun Eko**, a doctor at District Hospital Pasighat conducted medical examination on the victim being brought before her by the Police at District Hospital, Pasighat. On examination of the victim, she found congestion (redness) on right side of labia majora and that Hymen had fresh partial tear at 9 o'clock position. She further opined, during her examination in chief that such injury was consistent with recent sexual intercourse/ assault on the victim, which means that there was a sexual assault into the vagina of the victim. She proved the P.Exh. 8 (medical examination report) and her signature in such report as P.Exh-8(b).

During cross-examination, she affirmed that though the redness of

labia majora can be caused due to an allergy or itching or scratching with fingers, but it is not necessary that there should be congestion.

VI. **PW6 Shri Temda Darin** was a constable driver in the police department. He deposed that he do not know anything about the case and he had only put his signature on the seizure memo of seizure of a mobile handset of the accused.

During his cross-examination, he deposed that he does not know what material was seized in the case.

VII. **PW7 Shri Okiram Lego** in brother of the accused. He is also the seizure witness of the mobile handset belonging to the accused. He deposed that he has not seen the seized mobile handset though he has put his signature in the seizure memo. However, on re-examination, he deposed that he took the zimma of the mobile handset and the said mobile handset belonged to the accused.

VIII. **PW8 SI O. Tari**, is the Investigating Officer of the case. He received the written FIR on 05.08.2020 from the PW-1 to the effect that in between 1300 hrs to 1400, the accused had taken the victim to Sibya river on his bicycle where he shown her porn videos and raped her. He further deposed that during the course of investigation, he had visited the place of occurrence, drawn rough sketch map, took photographs of place of occurrence, examined the victim and other witnesses and also produced the victim before the Magistrate and the statement of the victim under Section 164 Cr.P.C. was recorded. He collected the medical report, seized birth certificate of the victim and also seized the mobile phone of the accused, but nothing was found on the seized phone. He further deposed that after the investigation, he submitted charge sheet under Section 376 IPC read with Section 4 of the POCSO Act. He proved all the exhibits that he had exhibited during the trial. During his cross-examination, he re-affirmed that the FIR was lodged

by the father of the victim. He admitted that he did not send the seized mobile of the accused to FSL for examination for expert report but he denied the suggestion that he did not seized the mobile handset of the accused. He further admitted that he did not put his signature in the zimmanama. However, he affirmed that the zimmanama was prepared by him.

11. From the aforesaid, it is clear that the prosecution case was based on direct evidence of the victim and corroborative evidence of PW-1, PW-3, PW-4 and PW-5. To bring home the charges, the prosecution side had examined PW-4 who saw the accused and the victim going towards Sibya Korong in the bicycle of the accused. Beyond then, the prosecution side had examined the Doctor (PW-5) who conducted the medical examination of the victim. The prosecution had also examined the investigating officer (PW-8).

12. By now it is well settled that the evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is also equally well settled that conviction can be made on the basis of the sole testimony of the prosecutrix. However, when a conviction is based on sole testimony of the prosecutrix, the Court are to be extremely careful in examining the testimony. (Ref: **Manakchand @ Moni Vs State of Haryana** reported in **2023 SCC Online SC 1397**).

13. Section 118 of the Evidence Act, 1872 provides that all persons shall be competent to testify unless the court considers that they are prevented from understanding the question put to them, or from giving rational answer to those question by tender years, extreme old age or decease whether, of the body or mind or any other cause of the same kind. It is by now well settled that instead of discrediting a child witness, the court should take the witness into the account, interrogate him or her in order to find some short of corroboration. It is equally well settled that the evidence offered by a child must be carefully considered and it cannot be disregarded only for the reason that due to childing's tender age, they are susceptible of getting tutor.

14. Now in the case in hand, the birth certificate (P-Exhibit-3(b)) was not even

challenged by the defence and the age of victim was also not challenged. Therefore, the birth certificate issued by Registrar of Birth and Death, Namsing East Siang District exhibited by prosecution remain uncontroverted and thus, the prosecution established that the date of birth of the victim was 05.01.2011 and she was aged 09 years on the date of the alleged incident. The PW-2 victim remain firmed all throughout including during her statement recorded under section 161 of the Cr.P.C by the investigating officer and recorded under Section 164 of Cr.P.c before the Magistrate and her deposition during the trial. The defence neither could shake her testimony nor could bring any material contradiction to dent her testimony. The learned Trial Judge, before beginning of her examination had put her certain questions to ascertain whether she shall be competent to testify and having satisfied with her mental state and competency accepted the victim's testimony.

15. After careful and meticulous scrutiny of the testimony of the victim, this Court is also of the opinion that the testimony of the victim is trust worthy, starling in nature and there is nothing to doubt her competency to testify and to disbelieve her.

16. In the case in hand, not only the prosecutrix's testimony is trustworthy but also there are corroborative evidence in the form of PW-1, PW-3, PW-4 and PW-5. The victim statement that she informed the incident to her parents (PW-1 and PW-3) immediately after the incident, not only remain firmed but the same was also corroborated by the evidence of PW-1 and unchallenged evidence of PW-3. The statement of the PW-1 that she was taken by the accused in his bicycle to Sibya Korong was also affirmed by the corroborative evidence of PW-4, whose evidence also remain unshaken inasmuch as such witness was an independent witness. The statement of the victim that the accused had forcefully penetrative sex with her was also corroborated by the unshaken evidence of PW-5 (Doctor) and through the medical report (P. Exhibit-8) affirming fresh torned hymen and injured labia minora.

17. From the reasons recorded hereinabove, there is no hesitation in our mind to place implicit reliance on the testimony of the victim but the additional evidence led by the prosecution also lands assurance to the testimony of the victim. After appreciating the testimony of the prosecutrix, in the background of the entire case, as recorded

hereinabove, this court is having no hesitation in the mind that it is the accused who committed sexual assault/penetrative sexual assault upon the victim.

18. For the reasons recorded hereinabove, we do not find any infirmity in the Judgment and Order dated 31.10.2022 passed by the learned District & Sessions Judge cum Special Judge (POCSO), East Siang district in PSG SC (POCSO) case No. 01/2021 whereby, the accused/appellant is convicted under Section 376 of IPC read with Section 4/6 of the POCSO Act and sentenced him to undergo imprisonment for a period of 20 years with a fine of Rs. 1.00 Lakh for offences under Section 4/6 of the POCSO Act. Accordingly, the appeal stands dismissed being devoid of any merit. Registry to return the case record.

J U D G E

J U D G E

Comparing Assistant