

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1429 of 2020

Arising Out of PS. Case No.-16 Year-2004 Thana- AAJAM NAGAR District- Katihar

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Matiur Rahman, S/o Md. Khalil Ansari, Resident of Village- Barhmmain
Beoggaon, P.S.- Azam Nagar, Distt- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Sagir Ahmad, Advocate.

Mr. Suresh Prasad Sah @ Baranwal, Advocate.

For the Respondent/s : Mr. Bipin Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date : 12-01-2021

The sole appellant Matiur Rahman has questioned the correctness of his conviction by judgment dated 27.02.2020 and order of sentence dated 03.03.2020 passed by learned Additional District Judge cum Special Court, Katihar in Sessions Trial No. 548 of 2004 arising out of Ajam Nagar P.S. Case No. 16 of 2004.

2. By the judgment under challenge, the appellant was found guilty for the offences under Sections 450 and 376 of the Indian Penal Code and has been ordered to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 10,000/- for the offence under Section 450 IPC and to undergo rigorous



imprisonment for seven years and to pay a fine of Rs. 40,000/- for offence under Section 376 IPC. The amount of fine would go to the victim and the sentences have been ordered to run concurrently. In default of payment of fine, rigorous imprisonment of one year has been awarded.

3. The prosecution case as disclosed in the written report, dated 26.02.2004 of PW-6 Md. Qurban Ansari, is that the informant was away, from his home in village-Brahmain, P.S.-Ajam Nagar, District-Katihar, in connection with his livelihood. On 23.02.2004 at about eleven in the night, his daughter aged about 15 years was in the house. The appellant, all of a sudden, entered into the house and ravished her at the point of pistol and dagger. The victim became unconscious. When the people of nearby came there, the victim narrated the incident. The written report is as exhibit-1 on the record.

4. During trial, the prosecution examined altogether six witnesses. PW-1 Lomhar Khatoon and PW-3 Sabera Khatoon, about whom the victim stated in her deposition that they are her neighbours and they were also sleeping along with her in the night of occurrence and they were expelled from the house by the appellant before committing the rape, have turned hostile. Likewise PW-2 Rukhsana Khatoon who had stated



before the police that she heard about the occurrence, also turned hostile during trial. PW-4 Kaibul Nisha and PW-6 Md. Qurban Ansari are parents of the victim girl and they have supported what the victim had narrated to them.

5. PW-5 the victim girl who was examined on 22.08.2008 deposed that the occurrence took place about four years ago. It was night at eleven. The victim was sleeping in her house. The two girls of the neighbour hood Lomhar Khatoon and Sabera Khatoon were also sleeping along with her. The parents had gone to brick kiln where they were labour. At the time of occurrence, the appellant came along with pistol and dagger in his hand and threatened to kill her. The appellant asked both the girls to go away and thereafter forcefully ravished to the victim girl. Next day, the parents came to whom she narrated the incident. The parents took her to the local Mukhiya and thereafter to the police station where the case was lodged.

6. In the cross-examination, the victim stated that the parents had reached home at about 10:00 am following the night of occurrence. When the parents had come, she was unconscious and she could gain consciousness at 2 PM only. She further stated that she had not sustained any injury on any



part of her body during the occurrence. The witness denied her knowledge about any enmity between the local Mukhiya and the appellant. In the cross-examination, PW-4 also stated that she reached at home on the following day after hearing about the occurrence and when she reached, the victim was unconscious and she could gain consciousness at 2 PM. Thereafter, she went to Md. Naimul, the local Mukhiya. PW-6 also deposed that he reached home at about 10 am in the next morning and the victim narrated about the incident to her mother from whom this witness got the knowledge. There is nothing in the cross-examination of these prosecution witnesses, especially the victim girl and her parents to disbelieve their testimony.

7. Mr. Sagir Ahmad, learned counsel for the appellant would submit that there is delay of three days in reporting the matter to the police and in the meantime the prosecution contacted the local Mukhiya with whom the appellant had enmity, as such chances of deliberation and concoction cannot be ruled out. The prosecution has not examined the said Mukhiya as a witness. The testimony of the victim is not corroborated by PW-1 to PW-3 nor any other independent witness has supported the victim. The investigating officer or the doctor, who allegedly examined the victim, were



not produced as prosecution witnesses. Due to the aforesaid serious infirmities and lapses on the part of the prosecution, the conviction on the sole testimony of the victim girl is not sustainable. The learned trial Judge has not properly considered the aforesaid infirmities in the prosecution evidence.

8. To contra, Mr. Shyam Kumar Singh, learned Additional Public Prosecutor for the State would contend that the law is well settled that in a case of rape, there is no need for corroboration of the testimony of the victim unless the same suffers from material contradictions or inherent improbabilities. If the victim is consistent in her testimony, the law does not require that there must be some corroboration for apparent reason that a victim of rape would never speak anything false against the appellant which would not only affect the appellant rather would be looked upon as humiliating self statement against herself.

9. The law is well settled by a catena of decision that the testimony of victim of rape stands on a par with an injured witness and there is no need for corroboration of the same if the testimony of the victim is found to be consistent and unshakable. Unless there is material contradiction or exaggeration in her evidence, the Court should be reluctant to



seek for corroboration.

10. In the case of **State of Punjab V. Gurmit Singh** reported in (1996) 2 SCC 384, the Hon'ble Supreme Court while dealing with the appreciation of evidence of a case of rape observed as follows:

“The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for



corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult is to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self inflicted, is considered to be a good witness in the



sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration not with standing. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime



strikes the judicial mind as probable.”

11. In Ranjit Hazarika V. The State of Assam reported in **(1998) 8 SCC 635**, the victim was aged about 14 years and her testimony was corroborated by other evidences. The evidence of the prosecutrix corroborated by other evidences was found trustworthy, even though the doctor had opined that there was no sign of rape. The Hon'ble Supreme Court held that on the facts corroboration of testimony of prosecutrix by medical evidence was not essential.

12. In State of Himachal Pradesh V. Manga Singh reported in **(2019) 16 SCC 759**, the victim was aged about nine years and she had levelled allegations of rape against her cousin. The medical opinion was not supporting the factum of rape, however, the victim was found consistent and corroborated by other evidences. The Hon'ble Supreme Court dismissed the appeal against conviction.

13. The victim of the present case is consistent in her testimony. There is no material contradiction or infirmity in her statement to doubt the veracity of the statement and to go for corroboration. Moreover, the victim is corroborated by other prosecution witnesses who stated that she disclosed about the occurrence to them soon after gaining the consciousness.

14. In the case of Munna Vs. State of Madhya



Pradesh reported in **(2014) 10 SCC 254**, the Hon'ble Supreme Court observed that while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of the prosecutrix in view of the statutory presumption under Section 114A of the Evidence Act unless the statement has inherent infirmities, creating doubt about its veracity.

15. In the case of **Tulsidas Kanolkar V. The State of Goa** reported in **AIR 2004 SC 978**, the Hon'ble Supreme Court while considering the issue of delay in lodging the FIR held:

“.....In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging the first information report cannot be used as a ritualistic formula for discarding prosecution case and rebutting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment or



exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand, satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case.

16. It does not inspire confidence that for aforesaid uncertain and unproved plea of the defence that the local Mukhiya had enmity with the appellant, hence the Mukhiya had set up the victim against the appellant. A victim of rape would not make such statement in public which would not only go against the accused only rather would be self humiliating statement against the dignity of the victim as well.

17. As the factual scenario of this case reveals the victim was alone in her house at the time of occurrence. When the illiterate parents who were labour at a distant brick kiln, returned home next day, to the best of their wisdom, complained to the local Mukhiya about the occurrence and thereafter reported the matter to the police. The parents of the victim of rape would naturally think twice over disclosure of such incident to the public which would be humiliating for the victim also. Therefore, in my view, the delay of three days in reporting the matter to the police is satisfactorily explained in



absence of any material to suggest that the Mukhiya and the appellant were on inimical term and the Mukhiya took undue advantage of the situation. Only for the reason that PW-1 to PW-3 turned hostile the testimony of the victim cannot be doubted. The local Mukhiya was not a material witness of the occurrence, hence his non-examination is not fatal for the prosecution case.

18. Likewise non-examination of the Investigating Officer or the Doctor has not caused any prejudice to the appellant. Even at the time of argument nothing was brought to the notice of the Court as to under what manner the defence of the appellant has prejudiced due to non-examination of the Investigating Officer. However, learned counsel for the appellant had contended that non-examination of the doctor has seriously prejudiced the appellant inasmuch as the doctor who examined the victim on 27.02.2004 did not find any spermatozoa in the vaginal swab rather the doctor was of the opinion that the hymen of the victim was old ruptured and the victim was a habitual sex user.

19. The original medical report is attached with the case diary available on the record and for incidental purpose the Court had gone through that. Even if the opinion of the doctor is



taken at its face value, it would not be treated as evidence that no rape was committed. A doctor is not an expert of whether rape was committed or not. Rape is defined in Section 375 of the Indian Penal Code which contains different acts including slightest penetration of the penis into the vagina to constitute the offence of rape. In this case, the victim consistently stated that she was raped by the appellant and she was not cross-examined about the nature of rape committed. Hence her otherwise trustworthy evidence cannot be doubted for non-examination of the doctor. Moreover, this Court has already held that the law does not require that victim of rape must be corroborated by medical evidence or other evidence unless her testimony suffers from inherent infirmities or contradictions.

20. Thus, this Court has no hesitation to concur with the finding of the learned Trial Judge that the appellant committed house trespass and rape on the victim. As such the judgment of conviction passed against the appellant is hereby affirmed. This Court does not find any reason to interfere with the order of sentence as the learned trial Judge has awarded the minimum sentence prescribed under the law for the offence of rape and both the sentences awarded have been ordered to run concurrently.



21. Therefore, this appeal stands dismissed as devoid of merit.

Birendra Kumar, J)

Mantreshwar/-

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