

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3119 of 2017

Arising Out of PS. Case No.-55 Year-2015 Thana- PIRO District- Bhojpur

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Gulli Sah S/o Ganesh sah, R/o Village-Bambhawar, P.S.-Piro, District-Bhojpur at Ara.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Ravindra Kumar, Advocate

For the Respondent/s : Mr.Sri Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 10-02-2021

The sole appellant-Gulli Sah has questioned the correctness of his conviction in POCSO Case No.03 of 2015 arising out of Piro P.S.Case No.55 of 2015. The appellant, abovenamed, was charged for offences under Sections 341,376 and 504 I.P.C. as well as under Section 4 and under Section 6 of the POCSO Act. The appellant was found guilty for offences under Sections 341 and 376 I.P.C. and 4 of POCSO Act and by a necessary implication, has been acquitted of the charges under Section 504 I.P.C. and 6 of POCSO Act, by the impugned judgment dated 18.08.2017.

2. The learned Trial Judge (A.D.J.-I, Bhjojpur Ara) awarded 10 years rigorous imprisonment and fine of Rs. 25,000/- for offence under Section 376 I.P.C. and 10 years rigorous imprisonment and a fine of Rs.10,000/- for offence under Section



4 of the POCSO Act. The sentences would run concurrently. In default of payment of fine, one year imprisonment has been ordered. The fine amount is to be paid to the victim, vide impugned order of sentence dated 23.08.2017.

3. The prosecution case, as disclosed in the fardbeyan of the victim girl, aged about 13 years, is that at about 8.00 P.M. on 10.02.2015 she had gone to the house of Bindeshwar Sah where marriage ceremony was going on. At about 12.00 night while she alongwith her friend Nisha Kumari (P.W.4) was returning to her house, she slipped in a drain and was cleaning her legs at the available Hand Pump and Nisha proceeded forward. At the same time, the appellant came, forcefully took her towards the west side of village and finding a lonely place, tied her hands with rope and after opening her garments, ravished her and thereafter the appellant fled away. Anyhow the victim got herself rid off the ropes and came to her house, disclosed about the incident to her Brother and Bhabhi. The parents were at Amarpur orchard at that time, hence they were informed. On their return in the morning of 11.02.2015 at 7.00 A.M., they went to complain at the house of the appellant. The appellant and co-accused-Shravan Sah, who had been acquitted of the charge under Sections 323,341 and 504 I.P.C.



by the same judgment, allegedly abused and Shravan Sah assaulted with Khanti to her father.

4. The fardbeyan was recorded at 2.00 P.M. on 11.02.2015 and on the basis thereof, the aforesaid police station case was registered. On the same day at about 8.10 P.M., the victim was medically examined vide report at Ext.3. On the very next day on 12.02.2015, the FIR was received by the learned Special Judge and statement of the victim under Section 164 Cr.P.C. was recorded. A copy of the fardbeyan is Ext.2 and a copy of the statement of the victim under Section 164 Cr.P.C. is as Ext.1. After investigation, the police submitted chargesheet vide Ext.4.

5. During trial. The prosecution examined altogether eight witnesses. P.W.1 the victim girl has consistently supported, in material particular, the charge against appellant. P.W.2-Kasturi Devi, the mother of the victim, who has also put her L.T.I. on the fardbeyan, has deposed that on getting information, she returned back to the village. She also protested the act of the accused appellant. Co-accused-Shravan Sah committed assault against her. Thereafter she alongwith the victim and her son Mantu Pasi-P.W.7 went to the police station where the victim gave her statement to the police and put her L.T.I. This witness also put her L.T.I.



alongwith her son- Mantu Pasi-P.W.7 on the fardbeyan. P.W.3-Punam Kumari is Investigating Officer of the case. She has supported the initial part of investigation done by her. P.W.5-Nisha Kumari has been declared hostile by the prosecution as she resiled from her statement before the police. P.W. 4-Dr. Pushpa had medically examined the victim. P.W.6- Ajay Kumar Pasi and P.W.7- Mantu Pasi have supported the prosecution case as hearsay witness of the occurrence. Mantu further deposed that the fardbeyan of the victim was recorded in his presence. He had put his L.T.I. on the fardbeyan. The seizure list was prepared and this witness put his L.T.I. thereon. P.W.8-Kumari Anchal is the second Investigating Officer, who completed the investigation after transfer of P.W.3-Punam Kumari.

6. Learned counsel for the appellant contends that there is material contradiction in the fardbeyan and statement recorded under Section 164 Cr.P.C. to the extent that in the fardbeyan it is stated that the victim had gone to see marriage ceremony in the house of Bindeshwar Sah whereas in her statement under Section 164 Cr.P.C. she has not named the person in whose house she had gone to Barat, though she claimed to have gone in the Barat. Second contradiction is that in the FIR she has stated that P.W.5 Nisha Kumari was also alongwith her just before



the occurrence but in her statement under Section 164 Cr. P.C. she has not stated like that. He next contends that the victim's allegation is not corroborated by medical evidence-Ext.3 or testimony of Dr. Pushpa-P.W.4.

Learned counsel for the appellant contended that seized cloths were not sent for forensic examination. The seized cloths of the victim were not sent for forensic examination, however, the Trial Court judgment reveals that the same was sent for forensic examination but FSL report was not received. Learned counsel for the appellant next contends that the conviction is not sustainable in view of the delayed report of the matter to the police and, in the meantime, chances of deliberation and concoction can not be ruled out. Learned counsel for the appellant would contend that there was previous dispute as goat of the victim's family had grazed the crop of the appellant's family and that is why false implication is there.

7. Learned counsel for the appellant has placed reliance on the case of **Santosh Prasad @ Santosh Kumar Vs. State of Bihar** , reported in **(2020) 3 SCC 443**.

8. Learned counsel for the State-respondent contends that the law is well settled that the testimony of a victim of rape is at par to that of an injured witness rather the victim of rape is more



reliable, for the reason that she not only speaks against the accused rather exposes herself for self-humiliation and social disrespect in the Indian scenario. Moreover, the law does not require corroboration and conviction is sustainable on the basis of testimony of the sole witness who is victim of rape unless the deposition of the prosecutrix suffers from material contradiction, exaggeration and improvement. The Court may seek for corroboration, if there is strong motive supported by material on the record for false implication with such charges. According to learned counsel the case in hand stands on different footing to that of **Santosh Prasad Case (Supra)** as there is no material contradiction in the deposition of the prosecutrix, she is corroborated by independent witnesses even the medical evidence does not completely go against the prosecution case. There is no evidence of any enmity or dispute between the parties, which were there in the case of **Santosh Prasad Case (Supra)**.

9. P.W.1, the victim girl deposed that the occurrence took place seven months ago (she was examined to 20.09.2016). It was 12.00 night when she alongwith Nisha Kumari was returning to her house after participating in the Barat which had come in the house of Bindeshwar Sah a co-villager. On the way, she slipped into a drain and she went to the Hand Pump to clean her legs. The



hand pump was just near her house. In the meantime, the appellant came and lifted her to a lonely place and tied her hands, opened her garments and ravished her. After committing rape, appellant fled away. She opened the ties with her tooth and went to her house and disclosed everything to her brother-Ajay Kumar Pasi-P.W.6. Thereafter the parents were informed. They came on the next morning. The family members had gone to the house of the appellant to complain where they were abused and assaulted. Thereafter she went to Piro police station where Daroga recorded her statement whatever she stated and the same was read over and she put her L.T.I. on that. Thereafter, the police carried to her for examination. The Doctor examined her. Then she gave her statement in the court (Magistrate) whatever she stated before the Magistrate was recorded and read over to her and thereafter she put her L.T.I.

10. On careful scrutiny of the fardbeyan, statement recorded under Section 164 Cr.P.C. and deposition of this witness, there does not appear any material contradiction. If she has not named Bindeshwar Sah in the statement under Section 164 Cr.P.C. that is immaterial because she had stated that she had gone to see marriage ceremony in the village on the said night and there is no evidence that any other marriage was there in the village.



Claim of the defence is that there was dispute between the parties for grazing the crops of the appellant by the goat of the family of the prosecution. P.W.1, in para-14, denied that she has any goat. Likewise, her mother-P.W.2 clearly stated that she does not keep goat rather she keeps cow. There is no other evidence to substantiate that there was dispute between two families for the aforesaid reason. Moreover it does not appeal to the judicial conscience that for such trivial dispute, the victim would make such a false allegation against the appellant which would not only be self humiliation rather it would amount to a stigma against her in the society wherein she lives.

11. On medical examination of the victim, P.W.4-Dr. Pushpa recorded that the hymen was not intact. Slight bleeding was noticed from the private parts, however, no other injury was seen on private part or other parts nor the vaginal swab depicted any spermatozoa dead or alive. On radiological examination, age of the victim was between 13 to 16 years. P.W. 4 has not mentioned in the medical report at Ext.-3, however, for the first time in the court, she stated that the blood was coming due to the fact that the victim was undergoing menstrual period. The victim girl in her deposition in para-13 clearly stated that till date of the occurrence she had never come to menstrual period. Thus the



clinical finding of the Doctor does not lead to the only conclusion that no sexual assault was committed against the victim. A Doctor is not an expert to say whether rape was committed or not rather terms is defined under Section 375 of the I.P.C. and the Explanation thereof clearly says that non-resistance by the victim at the time of penetration would not make her a consenting party.

12. The victim is corroborated by trustworthy evidence of other prosecution witnesses as stated above. Thus the prosecution case as discussed above clearly shows a different factual position than that which was available in **Santosh Prasad Case (Supra)**. In **Santosh Prasad case**, the Hon'ble Supreme Court had noticed material contradictions in the deposition of the prosecutrix. There was not corroboration from any independent witness or even the medical evidence. Variation in the prosecutrix version about giving complaint was there. She was not found to be a "sterling witness" there was delay in lodging the FIR in that case besides enmity arising out of the land dispute between the parties. In the present case, there is no infirmity as noticed in **Santosh Prasad Case (Supra)** aforesaid.

13. The delay of few hours in lodging of the first information report, in this case, finds explanation from the evidence of the Investigating Officer-P.W.3. The Investigating



Officer says that she was summoned from Mahila Police Station, Ara to Piro Police Station. She got this information for recording statement of the victim at 12.15 P.M. After making entry in the station diary she proceeded and reached village-Bambhawar (village of victim) at 2.00 P.M. and recorded fardbeyan of the victim. Therefore, the delay in lodging of the FIR is well explained in this case. Evidently no female police officer was there at Piro Police Station, hence P.W.3 was called on from a distant place.

14. 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."

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.

In **State of Himanchal 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.

15. Thus it is evident that the victim of rape of this case is wholly reliable witness as there is no material contradiction in her testimony and she is consistent throughout to prove the charges against the appellant. In the aforesaid circumstances, there is no need for corroboration of her evidence nor the law so requires. However, for her trustworthiness there is corroboration by other prosecution witnesses who are wholly reliable. The medical evidence as discussed above does not totally goes against the prosecution case. For the laches of the Forensic Science Laboratory in not sending the report on the bloodstains, the trustworthy evidence of the victim cannot be brushed aside.



16. Therefore, in my view, the judgment of conviction requires no interference. Likewise minimum punishment prescribed under the law has been awarded by the learned Trial Judge. Hence, the sentence also does not require any interference.

17. Accordingly, this appeal stands dismissed. The appellant is already serving out the sentence.

(Birendra Kumar, J)

Nitesh/-

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