

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1534 of 2018**

In

CRIMINAL APPEAL (DB) No.282 of 2018

Arising Out of PS. Case No.-306 Year-2015 Thana- MALSALAMI District- Patna

Birju Thakur, S/o Shankar Thakur @ Shiv Shankar Thakur, resident of mohalla Sahadra, Ramdhani Road (Near Devi Mandir), P.S. Malsalami, Patna City, District Patna

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

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

Mr. Rohit Raj, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT**

Date : 08-02-2021

The sole appellant herein Birju Thakur faced trial before the learned Additional Sessions Judge-I-cum-Special Judge under POCSO Act, Patna in connection with Malsalami P.S. Case No. 306 of 2015 corresponding to Special Case No. 161 of 2015.

2. By the impugned judgment dated 23.01.2018, the appellant was found guilty for offences under Section 376 of the Indian Penal Code and under Section 4 of the Protection of Children from Sexual Offences Act, 2012. By order dated 29.01.2018, the learned Trial Judge awarded ten years rigorous imprisonment and a fine of rupees ten thousand for the offence under Section 4 of the Protection of Children from Sexual Offences Act, 2012. Six months simple imprisonment was



ordered in case of default of payment of fine. No separate sentence was awarded for offence under Section 376 of the Indian Penal Code.

3. The learned Trial Judge transmitted a copy of the judgment to the Bihar State Legal Services Authority for deciding appropriate compensation for the victim under Scheme, 2014.

4. The prosecution case as disclosed in the written report (Ext. 1) of P.W. 1 Manju Devi is that on 17.12.2015, at about 05:00 p.m., her daughter aged about 12 years had gone to the house of the appellant, to bring cake of cow dung, in Mohalla Sahadra Ramdhani Road, P.S. Malsalami, District Patna. In a room, where cake was there at the roof of the house, the appellant took her in his clutches and forcefully ravished her. The victim came to her house and narrated everything to her mother, who is informant of this case.

5. On the basis of written report aforesaid, Malsalami P.S. Case No. 306 of 2015 was registered on the same day, at about 07:30 p.m., for offence under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (Ext. 5).

6. The FIR was sent to the Court on the very next day i.e. 18.12.2015 and the request was made to the Court



below for recording statement of the victim under Section 164 Cr.P.C. The learned Sessions Judge authorized a female Magistrate for the purpose and statement of the victim was recorded on 19.12.2015, a copy is at Ext-2. The victim was medically examined on 18.12.2015 and the Doctor submitted medical report on 27.12.2015. A copy of the medical report is Ext. 7. Ext. 6 is seizure list disclosing that undergarments of the victim was seized by the police which was containing stains of the offence. After investigation, the police submitted charge-sheet and the learned Trial Judge framed charges under Section 376 of the Indian Penal Code and Section 4 of the Protection of Children from Sexual Offenses Act, 2012.

7. The prosecution examined altogether seven witnesses and the defence produced two witnesses.

8. Mr. Sandeep Kumar, learned counsel for the appellant submits that the testimony of the victim-girl (P.W. 5) is not corroborated by the medical evidence of P.W. 7. Other prosecution witnesses of the occurrence are hearsay witnesses. Hence, the uncorroborated testimony of the victim should not have been relied upon in the facts and circumstances of this case because the prosecution had failed to prove the case against the appellant beyond reasonable doubt.

Next submission is that P.W. 1, the informant of



this case has admitted that from the date of lodging of the first information report till examination of the victim under Section 164 Cr.P.C., the victim and the informant were all along at the police station, hence, chances of deliberation and concoction cannot be ruled out.

Learned counsel next contends that the appellant is first offender and no further complaint was ever received. Hence, the learned Court below should have awarded minimum sentence under the law. However, disproportionate sentence has been passed by the learned Trial Judge.

9. Mr. Ajay Mishra, learned counsel for the State contends that the law is well settled that the testimony of the victim is treated on par with that of an injured witness and she cannot be disbelieved only for the reason that her testimony is not corroborated by medical evidence, especially, when the medical evidence is itself shaky one. Learned counsel further contends that victim is corroborated by other evidences. She is consistent through out and there is no motive for false implication by making such allegation which would be taken as a social stigma against the victim also.

10. P.W. 1 Manju Devi is informant of this case. She has deposed in Court what she had stated before the police in the first information report. She is specific that the victim



returned weeping and disclosed that the appellant had ravished her. Thereafter, the informant went to the house of the appellant to complain but the family members asked to do whatever the informant wants. Then the matter was reported to the police. The cross-examination of the witness reveals that the appellant is a neighbour. At the time of occurrence, the father of the appellant was cutting fodder for the animals on the ground floor. She stated that till statement of the victim was recorded under Section 164 Cr.P.C. she along with the victim was at the police station. No reason, nor any suggestion from the defence is there, as to why the victim was at the police station. Might be due to fear of the appellant or for any other reason not brought on the record.

11. P.W. 2 Yogendra Kumar Pandit is father of the victim-girl. He has supported the allegation of rape as a hearsay witness from his brother Ravindra Pandit.

12. P.W. 3 is Ravindra Pandit. This witness has also supported the prosecution case as a hearsay witness. The witness denied that there was any dispute between the two family for some ornaments.

13. P.W. 4 Mamta Devi has been declared hostile by the prosecution. She had supported the prosecution case as hearsay evidence before the police.



14. P.W. 5 the victim-girl deposed that on 17.12.2015 in the evening, she had gone to bring cake of cow dung from the house of the appellant. When she was about to return after taking the cow dung, the appellant caught her and thrashed her on the ground and ravished her. She disclosed about the occurrence to her mother. She has given her statement under Section 164 Cr.P.C. before the Magistrate. She was medically examined by the Doctor. In the cross-examination, she clearly stated that what she had stated in her statement before the police was the same which she stated before the Magistrate. There is nothing in the cross-examination of this witness to suggest that she has improved her version, exaggerated in material particular or there is anything to make false allegation against the appellant. Rather the victim appears to be a consistent witness in the matter of allegation against the appellant without any bias or motive against the appellant and, as such, is a wholly reliable witness.

15. P.W. 6 Parvati Kumari is the Investigating Officer of the case. She has supported the investigation done by her.

16. P.W. 7 Dr. Pavita Rai is the Doctor who had occasion to examine the victim on 18.12.2015 itself. During clinical examination of the victim, the Doctor found hymen



ruptured, though old. No external trauma on private parts or other parts of body was found and no spermatozoa was found in the vaginal swab.

Final opinion was inconclusive. There was no evidence of physical assault clinically. No sign of injury over any part of body including private parts. The probable radiological age of the victim was approximately 14 years.

17. It is worth to be noticed that the victim disclosed her age as 12 years on the date of her examination on 19.12.2015 (Ext. 2) and the learned Trial Judge also assessed her age as 12 years. She has not been confronted that she is making wrong statement of her age. The mother of the victim, who is a competent witness to say on the age of the victim, has also stated that the victim was of 12 years. P.W. 1 was also not confronted regarding the age of the victim. The Magistrate, who recorded the statement of the victim, under Section 164 Cr.P.C., assessed the age of the victim as 11 years whereas the victim had disclosed her age as 12 years. Thus, available evidence shows that the victim was below 15 years of age on the date of occurrence.

18. The defence witnesses D.W. 1 Shiva Narayan Chaudahry and D.W. 2 Kishori Lal have denied that any such occurrence took place as alleged by the prosecution. According



to D.W. 1, for dispute of an ear-ring (*Jhumaka*) between the parties, the case was lodged. According to D.W. 2 for dispute arising out of business of milk between the parties, the false case has been lodged.

19. For the aforesaid uncertain and unproved plea it does not inspire confidence that the victim would make a false statement knowing well that the statement would not go only against the accused, rather would amount to a self humiliating statement against the honour and social dignity of the victim.

20. 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 victim 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 notwithstanding. 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.

21. In the case of **Munna Vs. State of Madhya Pradesh** reported in **(2014) 10 SCC 254**, the Hon’ble Supreme Court held that the testimony of prosecutrix is on a par with an injured witness and can be acted upon without corroboration. Paragraph 11 of the judgment is being reproduced below:

*“11. Thus, while absence of injuries or
absence of raising alarm or delay in*



FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon.”

22. Promptness in reporting the matter to the police, and completion of all the material exercise at the earliest, as noticed above, gives an assurance to the correctness of the prosecution allegation. Only for the reason that till before medical examination or statement under Section 164 Cr.P.C., the victim and the informant were at the police station it cannot be inferred any foul play, especially, when the prosecution case is consistent from the very beginning pointing the accusation against the appellant without any deviation, exaggeration or manipulation.

23. On careful consideration of the prosecution evidence briefly noted above, it is evident that the victim has consistently supported the charge against the appellant. There is no material contradiction or shifting or exaggeration in the statement of the victim. The victim finds corroboration from



other witnesses, who claims to knew about the occurrence, soon after the occurrence; if the Doctor was of no definite opinion it could not have concluded that there was no sign of recent rape as there was no physical injury. The definition of the word “rape” under Section 375 of the Indian Penal Code itself explains that non-resistance by the victim during the perpetration of the crime would not amount to consent of the victim. Therefore, in my considered view, the conviction against the appellant is sustainable on the trustworthy evidence of the victim. In the result, this appeal against conviction stands dismissed.

24. Since the offence proved is squarely covered under Section 376(2)(i) of the Indian Penal Code and minimum punishment prescribed thereunder is ten years. The learned Trial Judge has awarded ten years rigorous imprisonment i.e. minimum punishment prescribed under the law. Hence, the sentence awarded requires no interference.

25. Accordingly, this appeal is dismissed as devoid of any merit. Appellant is already serving out the sentence.

(Birendra Kumar, J)

Kundan/-

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