

AD. 11.
September 6, 2021.
MNS.

C.R.A. No. 486 of 2016

(Via Video Conference)

Phurba Tamang
Vs.
State of West Bengal and others

Mr. Uday Sankar Chattopadhyay,
Mr. Santanu Maji,
Ms. Snigdha Saha,
Mr. Pranay Basak,
Mr. Subhayu Das,
Mr. Sankar Majumdar

...for the appellant.

Mr. Saswata Gopal Mukherjee,
Mr. Sandip Chakraborty,
Mr. Ashoke Das

...for the State.

At the outset, it is contended by learned counsel for the appellant that a Rule was issued by a co-ordinate Bench, asking the accused/appellant to show cause as to why he should not be convicted under Section 376 of the Indian Penal Code. Regarding such Rule, learned counsel contends that, apart from the evidence of the victim girl, there is no corroborative evidence to prove the allegation of rape. That apart, the medical report, which was given on examination of the victim girl on the very next date after the alleged offence, contradicts the allegation made within the purview of Section 376 of the Indian Penal Code.

It is further submitted by learned counsel for the appellant that the depositions of the victim girl and her mother do not corroborate each other, in so far as the alleged commission of rape is concerned.

In this context, learned counsel fairly submits that there exists a judicial proposition to the effect that a person can be convicted only on the evidence of the victim alone, but such proposition is not unqualified.

Learned counsel cites **Ghurey Lal Vs. State of Uttar Pradesh reported at (2008) 10 SCC 450** in support of the proposition that the accused is presumed innocent until proven guilty. The accused possessed this presumption when he was before the trial court. The trial court's acquittal bolsters the presumption that he is innocent. In the instant case, learned counsel for the appellant submits that trial court acquitted the appellant on the charge under Section 376 of the Indian Penal Code and, as such, the presumption of innocence is bolstered in the present case as well. The prosecution failed to rebut the same by cogent evidence.

Placing further reliance on the said judgment, learned counsel argues that the appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so, thereby restricting such provision for overruling only to rarest of rare cases.

Further, if two reasonable views can be reached, one that leads to acquittal and the other to conviction, the High Courts/appellate courts must rule in favour of the accused.

By placing specific reliance on the medical report dated December 1, 2011 (Exhibit-6), learned counsel contends that the report clearly shows that there could not be any scope of commission of any offence under Section 376 of the Indian Penal Code and/or any iota of indication to corroborate the allegation of the PW1 and PW2

regarding the victim girl having jumped out of a moving car while being allegedly kidnapped.

Particular reliance is placed on the second finding of the medical practitioner, who issued such report, which says that there were no external injuries detected. That apart, the report also goes on to show that no internal or external injuries were detected on the private parts of the victim lady and that her hymen was not ruptured.

The vaginal swab taken by the Doctor also subsequently showed that no spermatozoa were detected in the vaginal swab report. Such report dated December 2, 2011 has been referred to in Exhibit-6 itself.

Learned counsel, thus, contends that there is not an iota of evidence either to prove any ingredient under Section 376 or in support of commission of any offence under Section 366 of the Indian Penal Code by the accused.

Learned counsel appearing for the State highlights Exhibit- 6 itself in so far as the same categorically records that the victim girl specifically alleged sexual assault before the Doctor on the date of the report, that is, on December 1, 2011, regarding the alleged incident of the very previous date, that is, November 30, 2011. The specific time of commission of the offence was also stated before the Doctor.

Learned counsel for the State goes on to place reliance on the statements made by the victim girl as PW2 in her deposition, as well as her statement under Section 164 of the Code of Criminal Procedure, as corroborated by the evidence of her mother, PW1, that the prosecution witnesses were consistent throughout regarding the allegation of rape. As such, since the credibility of either PW1 or PW2

on such score could not be demolished or even shaken, there is no reason why the governing principle, that the victim's evidence is sufficient to convict a person under Section 376 of the Indian Penal Code, should not be made applicable in the present case as well.

As regards the charge under Section 366 of the Indian Penal Code, learned counsel places reliance on another medical report, which was given about fifteen days after the alleged offence, indicating that there were certain old scars on the ankle joint of the victim, which were in the process of healing.

It is argued that such evidence is sufficient to corroborate the allegation of kidnapping.

Upon hearing learned counsel for both sides, as well as going through the deposition and other materials on record, it stares in the face that the medical report given by the Doctor, which was exhibited as Exhibit- 6 by the prosecution itself, which was issued on the very next date after the alleged date of commission of the offence, in no uncertain terms, indicates that there was no internal or external injury detected on the private parts of the victim, nor was her hymen ruptured.

Even the vagina swab taken from the victim girl demonstrated that there were no spermatozoa. It was the further observation of the Doctor, whose credibility has not been shaken at any point of time, that there were also no external injuries detected on the body of the victim on the date immediately after the alleged date of offence.

Learned counsel for the State argues that the said report was confined to the limited scope of the allegation of rape and, as such, should not be taken as sacrosanct as far as the mention of external

injuries is concerned, since it was beyond the scope of the medical examination to see as to whether there were external injuries on the body of the victim due to jumping out of a running car.

However, such submission cannot be accepted in view of two distinct components being there in the said report. While point no. 1 of the report specifically says that there were no internal or external injuries detected on the private parts of the victim girl, point no. 2 further added that there were no external injuries detected. There is no reason to infer that the Doctor unnecessarily repeated the expression “external injuries” twice to cover the same examination. Such clear-cut distinction between two different issues, that is, external or internal injuries regarding private parts and external injuries in general not being detected, unerringly indicates that there were no external injuries on the person of the victim on the date immediately after the alleged date of offence, which clearly falsifies the allegation of sexual assault. Such factum also vitiates the evidence of PW1 and PW2 as regards the victim girl having jumped out of a running car, which was moving uphill.

A medical report issued fifteen days after the alleged date of offence could not be relied on to show beyond reasonable doubt that the old scars on the ankle joints of the victim were due to jumping out of a running car. Rather, it is clearly revealed from a conjoint reading of the medical reports, one which was issued immediately after the date of the incident and another which was authored fifteen days thereafter, leaves no scope of doubt as to there being no external injuries to corroborate the consistent allegation of PW1 and PW2

regarding jumping out of a car, which was allegedly the mode of recovery of the victim girl.

Rather, the chain of events, as borne out by the records and the evidence, clearly leaves gaping chinks in the link of the incriminating offence sought to be established against the accused by the prosecution.

All the material evidence on record, taken together, it cannot be found at all to have been proved beyond reasonable doubt that the victim girl was taken through a congested area and subsequently she suffered from sexual assault, either under Section 376 of the Indian Penal Code or otherwise, since her oral examination has been clearly contradicted by documents relied on by prosecution itself, that is, Exhibit-6, the medical report dated December 1, 2011, as supplemented on December 2, 2011.

As such, although it is well-settled that, even in the absence of corroborative evidence, a victim girl's statement/deposition can be sufficient, by itself, to convict an accused under Section 376 of the Indian Penal Code, in view of patent contradiction of such statement in the instant case by Exhibit-6, the relevance of the presumption of correctness of the victim's statement is rendered academic. At the stage of trial, the court below is to look into all the materials on record and ascertain the credibility of the prosecution case beyond all reasonable doubt, at least in criminal cases.

In the present case, however, the chain of events sought to be established by the prosecution is not credible to establish the commission of any offence either under Section 366 or under Section 376 of the Indian Penal Code.

As such, although the accused has already spent several valuable years of his life behind the bars, this Court finds that the Rule issued against the accused with regard to Section 376 of the Indian Penal Code and/or the decision arrived at by the trial court in the impugned judgment under Section 366 of the Indian Penal Code have not been substantiated at all, let alone beyond reasonable doubt.

As such, the Rule, bearing CRR 3202 of 2016, is discharged in view of any absence of substantiation of the allegations raised therein, upon treating the same to be on the day's list.

The appeal, bearing CRA 486 of 2016, is also allowed, thereby setting aside the impugned conviction and sentence awarded against the appellant by the court of first instance.

The appellant will be at liberty to take appropriate steps before the competent forum for compensation for the undue harassment caused to the accused at the behest of the victim and her family as well as against the prosecuting authorities.

If such a legal action is taken, the adjudicating authority shall decide the same on its own merits in accordance with law, without being unduly influenced by any of the observations made in this judgment. The accused/appellant shall immediately be released from prison, unless he is wanted in any other case.

The office shall communicate this order at the earliest to the Correctional Home authorities. The Superintendent of the concerned Correctional Home shall act on the written communication of the learned advocate for either of the parties, accompanied by a server copy of this order, without insisting upon prior production of a certified copy thereof.

This direction is peremptory and mandatory in nature and the Superintendent of the Correctional Home shall run the risk of committing contempt of court in the event she/he insists upon a certified copy, despite communication by the learned advocate appearing for either of the parties, along with a server copy of this order, instead of acting on such communication.

(Sabyasachi Bhattacharyya, J.)