

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.586 of 2021

Arising Out of PS. Case No.-338 Year-2017 Thana- KRITYANAND NAGAR District-
Purnia

=====

Md Mansur @ Mansur Alam Son Of Late Md. Mohiuddin Resident Of
Village- Hasaili Khutti, Nagar Tola, P.S.- Sir Nagar, District- Purnea.

... .. Appellant

Versus

The State Of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr.Arun, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 28-04-2023

Heard learned counsel for the appellant and learned A.P.P.

for the State.

2. The present criminal appeal has been preferred against the judgment of conviction dated 22.07.2021 and order of sentence dated 29.07.2021 passed by Sri Sulekha Jha, Additional District and Sessions Judge-VI-cum-Special Judge (POCSO Act), Purnea in Special Case No. 55/2017 arising out of K. Nagar (Sri Nagar) P.S. case No. 338/2017 whereby and whereunder the appellant has been convicted for offences punishable under Section 376 of the Indian Penal Code, 1860 (hereinafter IPC) and section 6 of POCSO Act and sentenced to undergo rigorous imprisonment for 14 years under section 6 of the POCSO Act and to pay a fine of



Rs. 25,000/- and in default of payment of fine, to undergo further simple imprisonment for a period of 3 months.

3. The prosecution case as per the written application of the informant, who is mother of the victim, is that on 29.06.2017 at 11:00 am., the informant's daughter aged 11 years was playing in Madarsa, in the meantime, the appellant came there and enticed her by giving twenty rupees. Thereafter, the appellant took her to the jute field situated behind the Madarsa by pressing her mouth and committed rape upon her. When the informant went to Madarsa in search of the victim, she heard the cry coming from behind the Madarsa whereafter the informant followed her voice and saw that the appellant was fleeing after leaving her daughter. The victim narrated the entire occurrence whereafter the informant went to the police station and submitted written application.

4. On the basis of written application of the informant, K. Nagar (Sri Nagar) P.S. case No. 338 of 2017 was registered under section 376 of IPC and section 4 of POCSO Act and investigation was taken up. After completion of investigation, charge-sheet was submitted against the appellant under section 376 of IPC and section 4 of POCSO Act. Cognizance was taken by the Jurisdictional Magistrate and thereafter, the case was committed to



the Court of Sessions. Charges were framed against the appellant to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether seven witnesses, namely, P.W. 1 Panful Khatun (informant), P.W. 2 Kanur, P.W.3 Md. Ziyabuul Haq, P.W. 4 Dr. Punam Prabha, P.W.5 Noorsed Ali, P.W. 6 Rakesh Prasad and P.W. 7 Ataur Rahman. The prosecution has also produced exhibits as Ext. 1 (medical report), Ext. 2 (endorsement of F.I.R. by Mithilesh Kumar, Ext. 2/1 (endorsement of FIR by Pankaj Kumar), Ext. 3 charge-sheet). The defence has produced four witnesses to prove his innocence i.e. D.W. 1 Md. Mokim, D.W. 2 Abdul Gaffur, D.W. 3 Md. Lasgar Ali and D.W. 4 Saddam Hussain. However, no documentary evidence has been adduced by the defence. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellant in the manner stated hereinbefore.

6. Learned counsel for the appellant has submitted that the judgment of conviction suffers from several infirmities that have been overlooked by the learned trial Court and therefore, the impugned judgment is not sustainable in the eyes of law. It has been contended that the informant is not an eye witness to the alleged occurrence and her presence at the alleged place of occurrence becomes doubtful when seen in light of the deposition



of the P.W. 3. It has been specifically pointed out that P.W. 3, in his deposition, has nowhere stated about presence of the informant at the alleged place of occurrence. Moreover, the P.W. 1, who is the informant of this case, has made several improvements in her deposition in relation to the manner of occurrence. Thus, it has been contended that there are severe discrepancies in the testimony of the witnesses which have been overlooked by the learned trial Court and accordingly, gross error and illegality has been committed in holding the appellant guilty. There is absence of sufficient material to sustain the conviction of the appellant and the finding of the learned trial Court, bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction and order of sentence are fit to be set aside.

7. Learned APP for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Furthermore, it has been contended that the statements of the P.W. 1 (i.e. informant) made in the deposition before the learned trial Court are mere elaborations in the previous



statement and the same cannot be considered to be material improvements. Moreover, F.I.R. is not an encyclopedia and the law does not mandate that the written report of the informant should contain microscopic details about the occurrence. It has been further contended that manner of occurrence as described by the informant in the F.I.R. has been corroborated by the testimony of P.W. 2 and P.W. 3, thus adding more credence and value. The learned A.P.P. has further submitted that in cases involving commission of sexual offences, conviction can be done on the sole testimony of the victim. Nonetheless, in the present case, the testimony of the victim regarding the manner of occurrence has been corroborated by the medical evidence and also by the testimony of other prosecution witnesses. It has been further contended that P.W. 1 and P.W. 3 are eye witnesses to the occurrence and there is absence of any discrepancy in their testimony. Accordingly, guilt of the appellant has been satisfactorily proved from the evidence adduced during the course of trial and there is no infirmity in the impugned judgment of conviction and order of sentence of the learned trial Court.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination



of the entire material available on the record, the following issues arise for consideration in the present appeal:

(I) Whether the manner of occurrence, as described by the prosecution, is corroborated by the medical evidence?

(II) Whether conviction of the appellant can be done on the sole testimony of the victim in the present case?

9. With reference to issue no. I, it is found that P.W. 2 (i.e. victim) has categorically deposed before the learned trial Court that she was subjected to the commission of rape by the appellant. Moreover, the P.W. 1 (i.e. the informant) and P.W. 3 have also stated in their deposition that upon hearing the sound of crying, they reached the place of occurrence and saw the appellant above the victim and upon seeing them, the appellant fled away. Furthermore, from perusal of the Ext. I, it is apparent that the following injuries were found on the body of the victim:

“ Mark of injury:- Multiple nail mark brown in colour seen on face and neck.

Hymen- intact, HVS was taken and sent to pathologist Sadar Hospital, Purnea for microscopic examination for presence of spermatozoa.

Per abdomen-abdomen soft, Per Vaginal- laceration seen on left side of posterior vaginal wall.

Report- In HVS report spermatozoa not found. X-Ray- AS per radiologist her age is between 6 years to 7 years. She has opined that there was sign of sexual assault at the time of examination. She has identified her writing and signature on the medical report which is marked as Ext. I.”



Thus, it is found that the prosecution has discharged its onus of proving the manner of occurrence beyond reasonable doubts and the manner of occurrence, as described by the prosecution, is corroborated by the medical evidence.

Accordingly, the issue no. I is decided in the affirmative.

10. With reference to issue no. II, this Court has given due consideration to the deposition of the P.W. 2 (victim). It is found that the victim in her deposition before the learned trial Court has described the manner of commission of rape by the appellant minutely and in a detailed manner. It is trite principle of criminal jurisprudence that conviction can be done on the sole testimony of a witness, provided the testimony inspires confidence of the Court. Moreover, in cases involving sexual offences, the testimony of the victim assumes prime importance and it is *per se* sufficient to hold the accused guilty. In the case of ***State of Punjab versus Gurmit Singh and others*** reported in (1996) 2 SCC 384, the Division Bench of the Hon'ble Apex Court while dealing with evidentiary value of the testimony of sexual offences, has made the following observations:

“8. ... The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, 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 to injury.”

In light of the factual matrix as discussed above, this Court is of the view that the testimony of the victim is *per se* sufficient to uphold the conviction of the appellant in the present case. Furthermore, it is found that P.W. 1 and P.W. 3, who are eye witnesses to the occurrence, have also deposed to the effect that they saw the appellant committing rape upon the victim at the place of occurrence. Thus, we are of the view that the testimony of the said witnesses has been consistent and there is no major discrepancy or ambiguity in their testimony. We also concede to the argument contention of the learned A.P.P. to hold that a few minor elaborations/variations in their statement cannot be a ground to discard and disbelief their evidence as a whole.

Accordingly, the issue no. II is decided in the affirmative.

11. In light of the factual matrix of the case and considering the decisions of the Hon'ble Apex Court as discussed above, this Court is of the view that the prosecution has adduced sufficient evidences to prove the guilt of the appellant. All the prosecution witnesses including the victim are consistent in their testimony as



regards the manner of occurrence. Furthermore, the testimony of the victim is of sterling quality and inspires the confidence of this Court. Moreover, the medical evidence also indicates commission of rape upon the victim. The P.W. 4 i.e. the Doctor has found signs/injuries of sexual assault on the body of the victim. Considering the facts and circumstances of the case, this Court has given due consideration to the decision of the Hon'ble Supreme Court passed in the case of *State of Rajasthan versus Munshi* reported in *(2007) 12 SCC 759*, wherein the conviction of the appellant for offences under section 376 of IPC was upheld on the ground that the ocular evidence stood corroborated by the medical evidence. Moreover, three Judges Bench of the Hon'ble Supreme Court in the case of *Dilip Kumar Kurmi versus State of Chhatisgarh* reported in *(2019) 16 SCC 766* upheld the conviction of the appellant for offence under section 376 IPC on the ground that ocular testimony of the P.W.1, P.W.2 and P.W.3 were corroborated by the medical report of the victim, thereby conclusively proving the commission of rape. Accordingly, we are of the view that the prosecution has discharged its onus of proving this case beyond reasonable doubts.

12. Accordingly, the judgment of conviction dated 22.07.2021 and order of sentence dated 29.07.2021 passed by Sri



Sulekha Jha, Additional District and Sessions Judge-VI-cum-Special Judge (POCSO Act), Purnea in Special Case No. 55/2017 arising out of K. Nagar (Sri Nagar) P.S. case No. 338/2017 are affirmed.

13. The appeal stands dismissed.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	AFR
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