(2021) 01 PAT CK 0024

Patna High Court

Case No: Criminal Appeal (Sj) No. 2891 Of 2017

Sipahi Sah		APPELLANT
	Vs	
State Of Bihar		RESPONDENT

Date of Decision: Jan. 5, 2021

Acts Referred:

- Indian Penal Code, 1860 - Section 375, 376, 376(2)(h)
- Protection Of Children From Sexual Offences Act, 2012 - Section 4, 5(m), 6
- Code Of Criminal Procedure, 1973 - Section 164
- Evidence Act, 1872 - Section 145

Hon'ble Judges: Birendra Kumar, J

Bench: Single Bench

Advocate: Arvind Kumar Singh, Brij Kishor Mishra, Sujit Kumar Singh

Final Decision: Dismissed

Judgement

1. The sole appellant Sipahi Sah faced trial before the learned Special Judge under the Protection of Children from Sexual Offences Act, 2012, at

Bettiah the District Headquarter of West Champaran, in connection with Bairiya P.S. Case No.185 of 2015 corresponding to S.G.R. No.62 of 2015

for offences under Section 376 of the Indian Penal Code as well as under Sections 4 and 6 of the POCSO Act.

2. By the impugned judgment dated 17.08.2017 the learned trial Judge found the appellant guilty under each of the aforesaid heads and by order dated

21.08.2017 sentenced the appellant to undergo rigorous imprisonment for ten years and to pay a fine of Rs.25,000/- (Twenty five thousand) for each

of the aforesaid offences and the sentences were ordered to run concurrently. In default of payment of fine three months simple imprisonment was

ordered for each of the aforesaid offence. The fine amount was directed to be paid to the victim.

3. The prosecution case as disclosed in the fardbeyan of the victim girl, aged about ten years, recorded at her house on 07.07.2019 at 11:15 AM by

Sub-Inspector, Sanjay Kumar, in presence of her mother, is that on the same day i.e., 07.07.2015 at about 7:00 AM the victim had gone to answer the

call of nature near the Tower by the side of cold storage. The appellant, aged about 45 years, came and caught her and thrashed her on the ground,

opened her lower garments and ravished her and thereafter fled away. The informant came to her house and narrated the incident to her mother. The

mother of the victim along with victim went to the house of the appellant. The wife of the appellant started weeping and bowed down on the feet of

her mother praying for excuse. In the meantime, the police came and the fardbeyan was recorded. Fardbeyan is available on the record as Exhibit-3.

It is worth to be noted here that PW 7 the Investigating Officer in para-21 of his deposition stated that the Officer-in-Charge of the police station

heard rumour that in village Santghat a female child has been ravished. Then the police reached the village and recorded the fardbeyan of the victim.

4. After investigation the police submitted charge sheet against the appellant. Before examining the evidence on the record it would be apt to note the

contention of learned counsel for the parties for and against the impugned judgment.

5. Mr. Arvind Kumar Singh, learned counsel for the appellant, contends that the impugned judgment and sentences are not sustainable in law for the

serious infirmities in the prosecution case. Learned counsel would submit that the victim appears to be a tutored witness as her statement does not find

corroboration from the medical evidence inasmuch as the doctor did not find any recent sign of rape as on physical observation there was no injury on

the private parts or any other parts of the body of the victim nor the pathological examination revealed any spermatozoa on examination of the vaginal

swab. Learned counsel contends that medical examination was done on the date of occurrence itself which would be evident from the medical report

at Exhibit-2 as well as evidence of the doctor i.e., PW 6. Learned counsel next contended that there is material contradiction in between the statement

of the victim girl recorded under Section 164 Cr.P.C. vide Exhibit-A and her statement as PW 1 and the learned trial Judge has ignored both the

aforesaid infirmities in the prosecution evidence.

6. To contra, Mr. Sujeet Kumar Singh, learned Additional Public Prosecutor for the State, contends that the occurrence took place on 07.07.2015 at

7:00 AM. The fardbeyan was recorded on the same day at 11:15 AM and the statement of the victim was recorded before the Magistrate on

09.07.2015. The victim was medically examined on the date of occurrence itself at 2:00 PM. The victim is all along consistent on the allegation against

the appellant. Learned counsel contends that the law is well settled that a victim of rape need not require corroboration unless there is sufficient

material to doubt the veracity of the victim. Learned counsel has referred in details to the statement under Section 164 Cr.P.C. of the victim and her

statement in Court for his submission that the victim is consistent in her statement and is as such a trustworthy witness. Her deposition is wholly

reliable against the appellant. Learned counsel next contends that doctor is not an expert of rape; rather the â€œwordâ€ rape is defined under Section

375 of the Indian Penal Code. The Medical report does not suggest as to what medical test was adopted for coming to the conclusion that there was

no recent sign of sexual assault. Other material available on the record especially the statement of the victim girl recorded under Section 164 Cr.P.C.

would suggest that the conduct of the doctor was not fair; rather hostile to the victim. The testimony of the victim is consistently corroborated by other

prosecution witnesses who have stated that soon after the occurrence victim disclosed about the occurrence to them and one of the witnesses stated

that he had seen the appellant fleeing from the place of occurrence just after the occurrence.

7. The prosecution examined altogether seven witnesses. PW 1 the victim girl deposed that about eight months ago in the morning at 7:00 AM she had

gone to attend the call of nature. The appellant was hiding there in a Kharol. The appellant came and caught her and pressed her mouth and thereafter

opened her clothes and ravished her. The victim came to her house and disclosed everything to her mother. The mother took her to the police and her

statement was recorded. The fardbeyan was read-over to her and thereafter she put her LTI on that. In the cross-examination she stated that on the

date of occurrence itself she was examined by the doctor but she does not know what the doctor has written in the report. If the doctor says that no

case of rape was found that is a false report. She admitted that she has no enmity with the doctor. Her attention was drawn to her statement under

Section 164 Cr.P.C. which does not reveal any material contradiction. She had stated before the Magistrate that the appellant had ravished her. The

witness clearly stated in para-19 that the appellant thrashed her on the dry leaves (Khar) and opened her clothes and ravished her after pressing on

her mouth.

8. I do not find any merit in the submission of learned counsel for the appellant that the appellant is not reliable only for the reason that at one place in

her statement under Section 164 Cr.P.C. she stated that her nephew had told her that appellant ravished her. The witness was not confronted with

this statement at the time of her deposition in Court. Hence, legally the earlier statement cannot be looked into as required by Section 145 of the

Evidence Act. Moreover, the statement cannot be looked into in peace meal manner and a complete reading of the statement of the victim under

Section 164 Cr.P.C. would reveal that she had supported the allegation of rape against the appellant before the Magistrate also. Thus, this Court finds

that there is no material contradiction or exaggeration to disbelieve the testimony of the victim, especially when she finds corroboration from evidence

of PW 2 Anwar Dewan who has supported that the victim disclosed everything, what the appellant had done with her, in his presence and when this

witness reached at the place of occurrence he found the appellant fleeing. PW 3 Aaysa Khatoon has been declared hostile by the prosecution for the

reason that she had supported the prosecution case before the police. PW 4 Samphul Khatoon is mother of the victim girl and she has corroborated

that the victim disclosed about the occurrence to her and she got the matter reported to the police. PW 5 Abbas Dewan is a witness on the seizure list

whereby the seizure of the apparels of the victim at the time of occurrence was made by the police. PW 6 Dr. Manju Jaiswal has deposed that on

07.07.2015 at about 2:00 PM she has examined the victim and found a case of old tag of ruptured hymen present. There was no any external or

internal injury on her private parts. According to pathological examination there was no spermatozoa found on vaginal swab examination. According to

above physical and pathological finding there was no recent sign of sexual assault. PW 7 Deepak Kumar Singh is the Investigating Officer of this

case. The witness besides supporting the investigation done by him deposed that the prosecution witnesses had supported the prosecution case during

investigation. The witness admitted that he had not sent the clothes of the victim for forensic examination.

9. The defence also produced two witnesses. DW 1 Sabitri Devi deposed that she had heard that a quarrel had taken place between the two families

for picking up mangoes from the orchard. DW 2 Angad Sah has deposed that for dispute arising out of plucking the mangoes the present case was

lodged.

10. From the records it is evident that the defence has put forward three stories as reason for false implication. First as suggested to PW 1 in para-21

that the appellant is a neighbour and there is dispute between the parties for house property that is why false case has been lodged. The victim

categorically stated that the appellant is not her neighbour; rather he is resident of a different place. PW 4 the mother of the victim got a different

suggestion from the defence in paragraphs 6 and 10 of her cross-examination that the appellant is in a business of sale of fruits and vegetables and for

payment of dues of the vegetables and fruits a quarrel had taken place and false case was lodged. The defence witnesses stated that for picking up

mangoes from the orchard the false case was lodged.

It does not inspire confidence that for aforesaid uncertain and unproved pleas of the defence, the victim would make a false statement knowing well

that the statement is not only against the accused rather a self-humiliating statement against the honour of the victim as well.

11. In the case of State of Punjab V. Gurmit Singh reported in (1996) 2 SCC 384 the Honâ€™ble Supreme Court while dealing with the appreciation

of evidence of a case of rape observed as follows:

â€œThe 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 in 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 personâ€™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.â€

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 Honâ€™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 Honâ€™ble Supreme Court dismissed the appeal against conviction.

12. The conduct of the doctor in not mentioning the physical injuries on the person of the victim in her earliest report and mentioning the same only

after direction by the Magistrate for re-examination of the victim depicts serious unfairness against the victim. In her report dated 07.07.2015 the

doctor initially stated that no external or internal injury was noticed on the private parts of the victim. However, the victim, before the Magistrate,

alleged that the concerned doctor is not fair in her case. She was threatening to the Investigating Officer, when he had carried her for medical test, by

saying that the I.O. may loose his job as there was no apparent injury on the person of the victim. The victim requested the learned Magistrate to get

her medically re-examined at his level or at the level of some other Magistrate. After recording her statement on 09.07.2015 the learned Magistrate

re-sent the victim before the same doctor and the doctor noted on the same injury report as follows:

â€œPatient again examined and found three linear old scratch about 1â€ in length on left arm and two very small scratches on forearm. Age of the

injury was more that 48 hours and the injury was caused by hard and blunt substance.â€

Evidently, the period of 48 hours corresponds to the time of occurrence and it was negligence or deliberate act of the doctor in not mentioning the

injuries aforesaid at the time of first examination. Moreover, the law does not require that there must be some injury in case rape is committed.

13. Law is well settled that the testimony of the victim of rape stands at par with an injured witness and there is no need for corroboration of the same

if the victim is found to be a sterling witness. In the present case, the victim has consistently supported the allegation of rape against the appellant and

there is no material contradiction or exaggeration in her evidence. The testimony of the prosecutrix leads to assurance as the occurrence was

immediately reported to the police. The police immediately came into action. The victim was medically examined on the same day and her statement

under Section 164 Cr.P.C. was recorded within two days. The promptness in lodging the FIR is an assurance regarding truth of informantâ€™s

version. Moreover, the victim finds corroboration from other prosecution witnesses as referred to above whose testimony are wholly reliable.

14. Thus, I find that the victim of rape is a wholly reliable witness and there is no need for corroboration of her evidence nor the law require so.

Moreover, she is corroborated by other prosecution witnesses. As such, her evidence cannot be disbelieved even if she is not corroborated by the

medical evidence. Moreover, it has been noticed above that the Medical Officer was not fair in the matter of proper reporting of the injuries found on

the victim. A doctor is not an expert of rape. Even a minor penetration would constitute the offence of rape and there is no evidence on the record as

to what extent the penetration was committed or medically found. The inaction of the Investigating Officer in not sending the seized clothes of the

victim for forensic examination is negligible in the facts and circumstances of this case as there is no evidence on the record that stains of offence,

i.e., blood or sperm, was there on the clothes of the victim. Therefore, for aforesaid lapses of the Investigating Officer, the victim cannot be

disbelieved. The learned trial Judge has elaborately discussed the evidence and has assigned reason for acceptance of the prosecution evidence.

Therefore, I do not find any reason to interfere with the trial Court judgment. Accordingly, the same is affirmed.

15. There is no need for interference with the sentences awarded for simple reason that minimum sentence prescribed under the law has been

imposed by the learned trial Court. There is no challenge on the age of the victim girl. Even the doctor before whom she was produced or the learned

Magistrate who had occasion to see her at the time of statement under Section 164 Cr.P.C. as well as the learned trial Judge are consistent with the

age of the victim disclosed by her or by her mother that she was a minor on the date of occurrence. Mother of the victim is a competent witness on

the age of the victim.

Therefore, the only trustworthy evidence available on the record is that the victim was aged about ten years on the date of occurrence. Therefore,

offence of sexual assault committed against her is covered by Section 376(2)(h) of the Indian Penal Code as well as under Section 5(m) of the

Protection of Children from Sexual Offences Act, 2012, which defines aggravated penetrating sexual assault. For both the aforesaid offences

minimum punishment of ten years imprisonment is there and the learned Court-below has awarded the minimum sentence. Though sentences were

imposed for each of the aforesaid heads, however, sentences have been directed to run concurrently. Therefore, the sentences awarded by the

learned trial Judge are hereby affirmed.

The appellant is already serving out the punishment.

16. Accordingly, the trial Court judgment is hereby affirmed and this appeal stands dismissed.