

(2006) 11 JH CK 0037
Jharkhand High Court
Case No: None

Mohd. Khalil @ Kalil

APPELLANT

Vs

State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision: Nov. 10, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 375, 376

Citation: (2007) 1 JCR 12 : (2007) 5 RCR(Criminal) 545

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

The instant appeal is directed against the judgment of conviction dated 9.12.1999 and corresponding sentence passed by the VIIth Additional Judicial Commissioner, Ranchi, whereby appellant was convicted for the offence u/s 376, IPC and sentenced to undergo R.I. for a period of 10 years.

2. Stated briefly, the case of the prosecution, as per the FIR lodged by one Amanullah (PW 3) on 19.11.1997. is that in the afternoon of 16.11.1997, informant's minor daughter aged about 3 and 1 /2 years came home complaining of bleeding from her private part. The informant's wife found the panty of the girl soaked with the blood. On query, the girl stated that "Khalil Dada" had threshed his penis into her vagina, due to which she had suffered bleeding. The informant and his wife took the girl to the house of Khalil Dada "accused", but found the door closed. They went to the tailoring shop of the accused where on being accosted, the accused tried to explain that the girl had fallen on a pot and had sustained injury, but in presence of the accused, the girl had reiterated that he (accused) had threshed his penis into her private part. The informant narrated the incident to the members of his locality, but finding no response from them, he lodged the first information report at the police

station on 19.11.1997 on the basis of which, the instant case was registered.

Accused had preferred to be tried, refusing to plead guilty to the charge for the offence u/s 376, IPC.

3. At the trial, seven witnesses were examined by the prosecution including the informant (PW 3), the victim girl (PW 2), informant's wife (PW 1), witness to the seizure of the blood soaked panty of the victim girl (PW 5), Senior Scientist of the F.S.L. (PW 4), the doctor (PW 6) who had medically examined the victim girl and the investigating officer (PW 7).

4. Learned trial Court had recorded its findings of guilt against the accused placing reliance upon the testimony of the victim girl and finding support thereto from the evidence of her parents and the evidence of PW 4 coupled with the report of the forensic examination of the seized panty of the victim girl.

5. Assailing the impugned judgment of conviction and sentence, learned Counsel for the appellant argues that the findings of guilt against the appellant, as recorded by the trial Court, is misconceived and is highly erroneous as because, the learned trial Court has failed to appreciate the evidences on record in proper perspective. Learned Counsel adds further that the allegation of rape, as propounded by the prosecution, has been totally contradicted by the medical evidence of the doctor (PW 6) who has not found any sign of rape whatsoever, nor was there any sign of violence either externally or internally on the body of the victim girl. It is further submitted that the appellant has already undergone imprisonment for about 9 years as under trial prisoner since the date of his arrest. It is further submitted that the learned trial Court has erred also in placing reliance upon the testimony of a minor girl who is merely aged 3 and 1/2 years including the fact that the medical evidence does not support her statement.

6. Learned Counsel for the State, on the other hand, while controverting the arguments advanced on behalf of the appellant, submits that from the deposition of the victim girl (PW 2) as recorded by the trial Court, it appears that the trial Court had satisfied itself that the witness was intelligent enough to understand the question and answer the same and thereafter proceeded to record her statement and furthermore, statements of the victim girl finds adequate corroboration by her parents (PW 1 and PW 3) and also from the evidence of PW 4 and that of the investigating officer (PW 7). Learned Counsel explains the reason why the doctor did not find any external mark of violence on the private part of the victim part as because the girl was examined almost more than three days after the alleged date of occurrence. It is further submitted that considering the evidence of the victim girl and that of her parents (PW 1 and PW 3) that the blood was found oozing out from the private part of the victim girl, it is apparent that the victim girl was sexually violated and force was applied on her private part which had caused bleeding and even if there is no emission of semen, attempt of penetration of the private part of

the victim girl is sufficient to constitute offence of rape.

7. On going through the evidence of the informant (PW 3) and that of his wife (PW 3). I find that both of them have consistently stated that in the afternoon of 16.11.1997, their 3 and 1/2 years old daughter (PW 2) came home crying and stated that she is bleeding from her vagina. The mother (PW 3) verified her statement and found that there was indeed bleeding and undergarments of the girl was found soaked in blood. Both of them have deposed that the girl had narrated that when she had gone to the accused "Khalil Dada" for playing, the accused took her inside the room and thrust his penis into her vagina, which had caused bleeding to her. Both the witnesses have however reiterated that they had accosted the accused at shop and confronted him with the statement of the girl in his presence and the girl had repeated the same narration claiming that the accused had thrust his penis into her vagina.

8. Statement of girl (PW 2) though short and concise, is specific and clear. From the memorandum of the deposition of her evidence, the learned trial Court has satisfied itself that the girl, whose age was assessed as 3 and 1 /2 years, was intelligent and capable enough to understand the questions and answer the question randomly put to her intelligibly and thereafter, the Court proceeded to record her evidence. In her cross-examination, she had stood firm and reiterated the same accusation. She has also affirmed that her undergarments was given to the police and that she was examined by the doctor (PW 6) at the hospital. She also affirms that when she returned home in her bleeding condition, she told her parents about the incident.

9. The investigating officer (PW 7) has stated that after registration of the case and recording statement of the witnesses including the victim girl, he had forwarded the victim girl for her medical examination at the hospital and later medical report from the hospital. He has also affirmed that he had seized the blood stained undergarments of the girl and forwarded the same for forensic examination to the F.S.L. and later obtained report pertaining to the forensic examination of the undergarments and after concluding his investigation, he has submitted charge sheet, recommending trial of the accused for the offence u/s 376, IPC.

PW 4 who is a Senior Scientific Officer of Regional Forensic Science Laboratory, Ranchi has introduced the Forensic Test Report in respect of the seized undergarments of the victim girl and the same was produced before the learned Court below as evidence. He has claimed to have made forensic test of the seized under garments and had detected blood over large area on that, though spermatozoa could not be detected.

10. Much emphasis has been laid by the learned Counsel for the appellant on the medical report and the evidence of the doctor (PW 6) claiming that the medical report does not corroborate the allegation of rape at all. Medical report (Ext. 4) and the evidence of the doctor shows that the victim girl was examined in the afternoon

of 19.11.1997 and the hymen was found intact without there being any mark of injury on the private part or anywhere on her body, nor was there any blood stain on her private part or her clothes. Vaginal smear, which was tested pathologically, did not reveal the presence of spermatozoa dead or alive. The doctor had assessed the age of the girl in between 3 to 4 years. In her cross-examination, the doctor has opined that if the girl aged 3 to 4 years suffers rape, her hymen cannot remain intact and the injury caused as a result of rape would remain for at least 15 days and likewise, dead spermatozoa would also continued to remain for about 15 days after the rape. The doctor has further opined that no rape was committed on the girl.

As noted above, medical examination of the girl was held three days after the date of the occurrence and it is in the evidence of the victim girl that during this period, she washed herself and her mother had also wiped off the blood stains soon after detection of the blood from her private part. She has also stated that on being taken to a local doctor, she was given medical treatment by way of ointment for external application and also was treated with medicine including the injection for three days.

As claimed by the learned Counsel for the appellant that the evidence of the doctor and the medical report suggest the possibility of not finding any sign of rape if examination of the victim was done three days after the alleged date of occurrence. The evidence of the victim girl read with that of her parents clearly show that the girl had suffered bleeding from her vagina and the girl had explained the cause for the same accusing the present appellant for having sexually molested her. The fact that the girl was found bleeding from her vagina, is affirmed by her mother who had found the undergarment of his daughter soaked with the blood. On re-examining of the victim girl and that of her parents, I find no such material, which could suggest that their testimonies are unreliable. Rather, I find that the evidences of these witnesses inspire confidence and are capable of placing reliance.

11. It is true that the victim girl was hardly 3 and 1/2 years of age on the date when her evidence was recorded at the trial as being child witness, implicit reliance on her testimony cannot be placed unless the same is corroborated in material particular. In the instant case, testimony of the victim girl finds corroboration from the evidences of her parents and there is no reason why statement of the victim girl should not be accepted and relied upon. She has categorically stated and reiterated the same, both in her examination-in-chief as well as in her cross-examination that the accused has forced his penis into her vagina resulting in the bleeding. The medical evidence to the effect that the hymen of the girl was not found ruptured, nor was there any injury found in and around the vagina area, suggests no reason to disbelieve the statement of the victim girl. The girl's consistent statement that the accused had thrust his penis into her vagina indicates that there was some penetration or though, sexual intercourse could not be completed and there was no emission of any semen, as per definition of rape u/s 375, IPC, penetration itself is

sufficient to constitute sexual intercourse, necessary to the ingredients of offence of rape.

12. From the impugned order of the judgment of conviction and sentence, I find that the trial Court has rightly relied upon the testimony of the victim girl, finding support thereby from the testimonies of her parents and also other evidences on record and findings of guilt against the accused is based on adequate reasons and, therefore, conviction and sentence of the appellant for the offence u/s 376, IPC does not call for any interference.

13. In the result, I find no merit in this appeal, which is accordingly dismissed. The judgment of conviction and sentence as passed by the trial Court is hereby affirmed. Appeal dismissed.