
MANGAL TUDU Vs STATE OF ORISSA

JCRLA No.73 of 2016

Court: ORISSA HIGH COURT

Date of Decision: May 1, 2018

Acts Referred:

Indian Penal Code, 1860 " Section 376(2)(i)#Protection of Children from Sexual Offences Act, 2012 " Section 4#Indian Evidence Act, 1872 " Section 134#Code of Criminal Procedure, 1973 " Section 161, 164

Hon'ble Judges: Dr.D.P.CHOUDHURY

Bench: Single Bench

Advocate: Anup Kumar Jena, B.B.Mohapatra, Savitri Ratho

Final Decision: Dismissed

Judgement

Dr.D.P.Choudhury, J.

1. This Jail Criminal Appeal is filed by the appellant from Jail assailing the judgment of conviction and sentence passed under Section 376(2)(i) of the

Indian Penal Code (hereinafter called as "I.P.C." and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (in short "the

POCSO Act") by the learned Sessions-cum-Special Judge, Mayurbhanj, Baripada in G.R. Case No.246 of 2013/T.C. No.48 of 2013 sentencing him to

undergo R.I. for ten years and to pay fine of Rs.10,000/- (Rupees Ten Thousand) and in default of payment of fine, further R.I. for a period of six

months more on each count for the offence under Section 376(2)(i) of IPC and Section 4 of the POCSO Act.

2. The unfolded story of the case of the prosecution is that on 18.2.2013 at about 8.00 pm, while the daughter of the informant had gone to forest to

bring wood, the appellant caught hold her and forcibly ravished her against her consent. When she did not return, the informant went to search her

daughter and found her inside the jungle and she informed that she has been raped by the appellant. Thereafter, the informant brought his daughter

and got her treated at the hospital. Then, he came to the police station and lodged FIR. Police registered the case and started investigation. During

investigation, police received the medical examination report of the victim and the appellant, examined the witnesses including the victim girl, seized the

wearing apparels of the victim and the appellant and sent the same for chemical examination. During investigation, police also recorded the statement

of the victim under Section 161 Cr.P.C. During investigation, police visited the spot, made inquest over the dead body of the deceased persons and

sent the same for post-mortem examination, examined the witnesses, seized the weapon of offence and wearing apparels of the deceased and after

completion of the investigation, submitted charge sheet.

3. The plea of the appellant is quite denial of the charges levelled against him.

4. The prosecution, in order to bring the charge against the appellant, has examined as many as 11 witnesses and has defence examined none.

Learned Trial Court, after scrutinizing the evidence of the prosecution witnesses, found the appellant guilty and passed the judgment of conviction and

sentence, as above. Not only this but also the learned Trial Court recommended the case to the District Legal Services Authority, Mayurbhanj,

Baripada for grant of compensation under the Odisha Victim Compensation Scheme, 2012.

5. Mr.A.K.Jena, learned counsel for the appellant submitted that the learned Trial Court has committed error by not reading the evidence of the doctor

(P.W.7) who examined the victim girl and found no superficial deep injury on the external part of her body or breast. According to him, the appellant

has been foisted in this case as he being a labour, demanded the wages from the father of the victim.

6. Mr.Jena, learned counsel for the appellant further submitted that the victim girl is not a minor but a major girl according to the FIR for which the

offence under the POCSO Act will not be attracted. Apart from this, the chemical examination report of the wearing apparels of the victim and the

appellant have not indicated matching of blood group. Also the vaginal swab of the victim does not disclose about presence of any semen. According

to him, the learned Trial Court has not discussed all these features in his judgment for which the same is bad in law. Hence, he prays to set aside the

judgment of conviction and sentence passed by the learned trial Court.

7. Miss.S.Ratho, learned Additional Government Advocate submitted that the statement of the prosecutrix is enough to prove the occurrence and rape

committed upon her by the present appellant. She also drew the attention of the Court to the evidence of the doctor who has examined the victim and

the appellant. According to her, there was ample bleeding injury on the vagina of the victim suggesting forcible sexual intercourse and the doctor, who

examined the appellant also suggested that the appellant had conducted the sexual intercourse in recent past.

8. Miss.Ratho, learned Additional Government Advocate further submitted that the evidence of the informant and other witnesses clearly established

the occurrence and the culpability of the present petitioner. Not only this but also the evidence of the doctor coupled with the Headmaster in-charge

amply prove that the date of birth of the victim is 4.3.1999 and less than 18 years. She supported the judgment of conviction and sentence passed

against the appellant. Adding to this, she also submitted that the quantum of compensation should also be passed for its payment to the victim under

the Odisha Victim Compensation Scheme, 2012.

9. DISCUSSIONS

It is reported in the case of Rameshwar *vs* The State of Rajasthan; AIR (39) 1952 SC 54 where Their Lordships, at paragraph 19, have observed

in the following manner:

"The tender years of the child, coupled with other circumstances appearing in the case, such, for example, as its demeanour, unlikelihood

of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of

prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule

of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

With due regard to the aforesaid decision, it is clear that a woman who has been raped is not an accomplice and in every case, corroboration to the

statement of the victim is not necessary but the rule of prudence must be present in the mind.

10. The Constitution Bench of the Hon'ble Supreme Court in the case of State of Bihar *vs* Basavan Singh; AIR 1958 SC 500 where Their

Lordships, at paragraph-9, have observed in the following manner:

"The rule is that such evidence is admissible in law; but it has long been a rule of practice, which has virtually become equivalent to a rule

of law, that the judge must warn the jury of the danger of convicting a prisoner on the un-corroborated testimony of an accomplice. In Rameshwar's

case In 1952 SCR 377 at p.385 : (AIR 1952 SC 54 at p.57) (B), it was pointed out:

"The only clarification necessary for purposes of this country is where this class of offence is sometimes tried by a judge without the aid of a jury.

In these cases, it is necessary that the Judge should give some indication in his judgment that he has had this rule of caution in mind and should

proceed to give reasons for considering it unnecessary to require corroboration on the facts of the particular case before him and show why he

considers it safe to convict without corroboration in that particular case."

With due respect to the above decision, it is made clear that there can be conviction in case of rape, if it is found to rely on the statement of the victim

solely. On the other hand, such statement must be clear, cogent and above the reproach.

11. Similarly, in the case of Sheikh Zakir *vs* State of Bihar; AIR 1983 SC 911, where Their Lordships, at paragraph-9, have observed in the

following manner:

Ã¢â¬Å¸9.....Even though a victim of rape cannot be treated as an accomplice, on account of a long line of judicial decision rendered in our country over

a number of years, the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration. (Vide

Rameshwar v. The State of Rajasthan, 1952 SCR 377: (AIR 1952 SC 54) : Gurucharan Singh v. State of Haryana; (1973) 2 SCR 197 : (AIR 1972 SC

2661) and Kishan Lal v. State of Haryana; (1980) 3 SCR 305 : (AIR 1980 SC 1252)). It is accepted by the Indian courts that the rule of corroboration

in such cases ought to be as enunciated by Lord Reading C.J. in King v. Baskerville; (1916) 2 KB 658.....Ã¢â¬Å¸

12. It is reported in the case of Bharwada Bhoginbhai Hirjibhai Ã¢â¬V- State of Gujarat; AIR 1983 SC 753 where Their Lordships, at paragraph-9,

have observed in the following manner:

Ã¢â¬Å¸9.In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to

injury. Why should the evidence of the girl or the women who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with

lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated societyÃ¢â¬Å¸. (Emphasis

supplied)Ã¢â¬ With due regard to the aforesaid decisions, it appears that the corroboration to the statement of the victim cannot be taken as a rule for

adding insult to injury of the victim.

13. It is reported in the case of Aman Kumar and another Ã¢â¬V- State of Haryana; AIR 2004 SC 1497, where Their Lordships, at paragraph-5, have

observed in the following manner:

Ã¢â¬Å¸5.It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no

rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In

the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court

of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would

lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would sufficeÃ¢â¬Å¸.

With due respect to the aforesaid decision, it appears that the trend in scrutinizing the case of rape actually developed because it is settled in law that

the prosecutrix stands at a higher pedestal than an injured witness because she not only got injury on her body but also in her mind. Any assurance to

her testimony is sufficient to prove the case of the prosecution.

14. The aforesaid decisions are clear to develop the law in case of rape. It is also settled in law that under Section 134 of the Evidence Act, the

conviction can lie basing on the sole statement of the single witness, if his/her evidence is clear, cogent and above the reproach. It is settled in law that

the Courts should support grain from chaff and the evidence should be weighed but not to be counted.

15. Keeping in mind all these principles, let the case of the prosecution be judged.

16. P.W.2 is the victim girl who is 15 years old and from her statement, it clearly reveals that after coming from school, she changed her dress and

went with her sister to forest to bring tooth pick. While the victim was going to forest, the appellant dragged her but her sister went away by crying.

Thereafter, the appellant committed rape on her. Due to rape, she sustained bleeding injury on her private part and she could not able to walk. She

started to crawl to come to house but her parents reached there and took her to Morada hospital by means of auto rickshaw. She stated to have been

examined by the Magistrate vide Ext.4. Her statement recorded under Section 164 of the Code also corroborates her testimony. She has been grilled

during cross-examination. It is revealed from her cross-examination that at the time of occurrence, she was reading in Class-IX but got her puberty

while she was reading in Class-V. She stated to have protested by assaulting the appellant when he committed rape on her. But as the appellant over

powered on her, she could not protest more. In cross-examination, it is further clear that the present appellant was working with her parents for which

it is quite possible that he knew her prior to the occurrence. She clearly denied in paragraph-16 of her cross-examination that she had got any love

affair with the appellant, she is aged about 18 years and made cohabitation with the appellant voluntarily. There is nothing found from her

crossexamination that she has got any consent to have sex with the appellant nor she is major at the time of occurrence. Rather the evidence is clear

and cogent to show that while she went with her sister to the forest, the appellant dragged her and finally inside the forest, committed rape on her

against her consent.

17. The statement of P.W.8, who happens to be the sister of the victim girl shows that on the very day of occurrence, she had accompanied her sister

to the forest where the appellant dragged the victim. Therefore, she returned to home and informed the parents. Then, they went to the forest and

found the victim was in bleeding condition. It is only found from the cross-examination that she is also a student of U.P.Shcool. At paragraph-3 in her

cross-examination, she stated that her father has told her about the incident of that day. At the same time, she denied to have no knowledge of the

occurrence. There is no discrepancy in her testimony as her father only reminded her to depose but not that she testified about the occurrence being

tutored by her father. Be that as it may, her evidence is clear and cogent to lend corroboration to the evidence of P.W.2 to the effect that while they

have gone to the forest, the appellant dragged the victim inside the forest and she has informed about this fact to the parents.

18. P.W.1, who is the father of the victim girl, has stated that on the day of occurrence at about 5.00 pm, he came to know from his youngest

daughter (P.W.8) that the appellant has forcibly took the victim and then they went to search for her daughter and found her to have sustained

bleeding injury. He came to know about the occurrence from P.W.2. He proved the FIR vide Ext.1. He stated to have been examined by the police

under Section 161 of the Code. He proved the statement vide Ext.2. In cross-examination, he was grilled to find out the age of the victim girl.

According to him, he had three sons and two daughters and after birth of three sons, victim was born. He guessed the age of third son as 24 years on

the date of giving deposition, i.e, 27.01.2014. Six years after the birth of his third son, the female was born. So, definitely the victim is less than

eighteen years and he admitted in paragraph-6 of his cross-examination that he wrongly mentioned in the FIR that the victim's age is about 18 years.

Of course, he could not say the date of birth of his daughter. A rustic witness is not supposed to tell the exact date of birth and the age can only be

assimilated from him by guess. There is no fruitful cross-examination to overturn the case of the prosecution. Nothing is found from the cross-

examination that he has filed a false case against the appellant. Rather his evidence amply finds corroboration from the evidence of P.W.8 that he

came to know about the occurrence from P.Ws.2 and 8.

19. P.W.3 is the mother of the victim girl. She is a post-occurrence witness and only came to know about the occurrence from P.Ws.2 and 8. There is

nothing found from her evidence to shake her testimony. She also could not tell about the date of birth of the victim girl because she is a tribal woman.

20. It is true that P.Ws.1, 3 and 8 are all related to the victim girl but their evidence cannot be brushed aside because of their relationship. This opinion

is reinforced by the decision of the Hon'ble Supreme Court in the cases of Dalip Singh & Anr. v. State of Punjab; AIR 1953 SC 364, Mangal Singh and

others & Anr. v. State of Madhya Bharat; AIR 1957 SC 199; Vadivelu Thevar & Anr. v. State of Madras; AIR 1957 SC 614, Natthu and others & Anr. v. State

of Uttar Pradesh; AIR 1977 SC 2096 and Bikau Pandey & Anr. v. State of Bihar; (2003) 12 SCC 616. With due regard to the aforesaid decisions, the

evidence of the close relation should be scrutinized with caution but cannot be discredited. Keeping in mind the aforesaid decisions, the evidence of

P.Ws.1, 3 and 8 are found reliable and after close scrutiny, they amply corroborate the evidence of the victim.

21. The evidence of the doctor (P.W.7), who examined the victim girl shows that the victim was complaining of pain in lower abdomen and in genitalia

and was bleeding from vaginum, but there was no superficial deep injury on her breast, back front of abdomen and buttock of the body. He has given

the following opinion:

II. There is no remarkable injury on her body but the cause of bleeding per vaginum could not be established for complained of pain in genitalia which

was possible after anaesthesia (low spinal). The victim was attended by anaesthesiologist Dr.P.K.Panda in the O.T. for anaesthesia. After

anaesthesia, the vaginal canal was inspected and clots removed and fresh bleeding is marked from a lacerated injury on the posterior fornix of 4 cm X

2 cm X 1 cm and $\frac{1}{2}$ cm. That was stitched and hemostasis is maintained. A small tear is marked at posterior commissure of introitus at 6-7- O

clock position of recent origin. The hymen is admitting one finger (index finger) easily and two fingers (index and middle) tightly. The orifice is

irregular and thickened. The blood group is A positive. One unit of blood transfused after repair of wound in the ward. Her haemoglobin concentration

report was 6.2 gram percent. Her vaginal swab, dry and wet are collected. Her VDRL test has been advised.

From the above noted injury in the genitalia, the possibility of forcible sexual violence is suggestive. For estimation of bone age, radiological

examination of bone has been advised. Exhibit-7 is the report and Exhibit-7/1 is my signature in it. The aforesaid opinion of the doctor clearly shows

that the victim underwent forcible sexual intercourse. In his cross-examination, he clearly stated that the above lacerated injury is possible if there is

penis or like object is inserted to the vaginal canal. So, the doctor's evidence amply corroborates the evidence of the victim that she was forcibly

raped by none other than the appellant.

22. The aforesaid view of the doctor also finds corroboration from the evidence of the doctor (P.W.6), who examined the appellant. According to him,

the blood stains on the cloth of the appellant indicate the sexual offence and the abrasion of prepuce, glans penis, reddening of glans penis suggesting

recent sexual intercourse undertaken by him. So, the aforesaid evidence clearly corroborates that she was ravished by the appellant forcibly.

23. The prosecution has examined P.W.9, who was working as Tahasildar, Moroda and as Executive Magistrate, he accompanied the OIC to the spot

and came to know from the informant that the victim was raped having sustained injury on her person. The appellant also confessed his guilt to have

committed rape on the victim. From his cross-examination, it reveals that he was deputed by the Sub-Collector to visit the spot as Executive

Magistrate along with the OIC. When the appellant confessed his guilt before P.W.9, who was Executive Magistrate by then and the police was

present, the confession cannot be taken as legal confession or voluntary one. So, the evidence of P.W.9 does not throw any light to prove the

occurrence.

24. The evidence of P.Ws.5, 10 and 11 shows that the wearing apparels of the victim and the appellant were seized and sent for chemical examination

but unfortunately, the chemical examination report does not show the blood group as the blood stain or semen were found deteriorated. Similarly, the

seized saliva and semen do not disclose to which blood group they belong to. It only appears from the chemical examination report that the wearing

apparels of the victim and the appellant have human blood but without blood grouping, it is not possible to come to a definite opinion that the blood stain

of the victim is also found with the wearing apparels of the appellant.

25. Since the unclinching evidence, as discussed above, are well available from the victim and the relatives about the occurrence of rape committed by

the present appellant, the lacuna in the report of the chemical examination will not defer the case of the prosecution. On the other hand, the links of

circumstantial evidence may be somehow deficient but the direct evidence is enough to prove the culpability.

26. Lastly, the evidence of the teacher of the school (P.W.10) shows that the date of birth of the victim as available from admission register is

4.3.1999. So, she is aged about 15 years on the date of occurrence. The prosecution has well proved that she is a child on the day of occurrence. It is

well settled in law that when a child is raped, her consent is immaterial. Apart from this, the absence of external injury on the body of the grown of girl

is not a sine qua non to deny the charge of rape. Since the injury on the private part is enough in the present case, absence in the external part of

breast or other part cannot prove the innocence of the appellant as it is clear from the evidence of P.W.2 that the appellant overpowered her.

27. In view of the aforesaid discussion, the Court is of the view that the prosecution has cogent, clear and unclenching evidence to prove the facts that

the appellant has raped the victim girl and the learned trial Court has rightly found him guilty under Section 376(2)(i) of IPC read with Section 4 of

POCSO Act.

28. So far as the sentence is concerned, learned trial Court has imposed same quantum of sentence on each count. Since it is a case of rape of a

victim girl of below 18 years and the appellant is a young boy but the injury on the private part of the victim girl is very ghastly one, no lenience can be

extended. Since the appellant has been awarded the sentence, there is no reason to take any other view. Therefore, the sentence passed by the

learned Sessions-cum-Special Judge, Mayurbhanj, Baripada in G.R. Case No.246 of 2013/T.C. No.48 of 2013 is also confirmed.

29. The learned trial Court has committed error by not mentioning the quantum of compensation to be awarded to the victim girl under the Odisha

Victim Compensation Scheme, 2012. Taking into the facts and circumstances of the case and the age of the victim girl, this Court awards

Rs.1,00,000/- (Rupees one lakh) to the victim as compensation to compensate the injury she sustained in her body and mind. The District Legal

Services Authority, Mayurbhanj, Baripada is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh) to the victim girl as compensation.

30. With the aforesaid modification, the JCRLA, being devoid of merit, stands dismissed. A copy of the judgement be sent to the District Legal

Services Authority, Mayurbhanj, Baripada for immediate action at their end. The L.C.R. be returned back forthwith.