HIGH COURT OF TRIPURA
AGARTALA

Crl.A(J) No.67/2017

Sri Pramanik Dey, S/O. Sri Jagadish Dey, resident of Barabil, P.O.- Singhicharra, P.S.- Khowai, District-Khowai Tripura.

.... Convict-Appellant(s).

Versus

The State of Tripura, Represented by its Secretary-cum-Commissioner to the Department of Home, Government of Tripura, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura.

---- Respondent(s).

For Appellant(s)	:	Mr. Debesh Chandra Roy, Advocate.
For Respondent(s)	:	Mr. A. Roy Barman, Addl. P.P.

HON'BLE THE CHIEF JUSTICE MR. SANJAY KAROL

Date of hearing and judgment : **29th March, 2019**.

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER(ORAL)

The present accused-appellant stands convicted for having committed an offence punishable under Section 363 of Indian Penal Code (*hereinafter referred to as IPC*) and Section 4 of the Protection of Children from Sexual Offences Act, 2012 (*hereinafter referred to as POCSO Act*). In relation to an offence under IPC, he stands directed to undergo rigorous imprisonment for a period of 1(one) year and pay fine of ₹1,000/- (rupees one thousand) and in default thereof, simple imprisonment for a period of 1(one) month; and in relation to an offence under POCSO Act, he stands directed to undergo rigorous imprisonment

for a period of 7(seven) years and pay fine of ₹1,000/- (rupees one thousand) and in default thereof, simple imprisonment for a period of 1(one) month.

2. Briefly stated, it is the case of the prosecution that on 28.12.2013, the accused-appellant, forcibly took away the prosecutrix in a vehicle and made her spend the night in the house of his relative. The following day, she was taken to the forest where she was subjected to sexual assault. Finding his daughter not to return home from her private tuition, Sri Badal Das Choudhury (PW-6), father of the prosecutrix, lodged a report with the police. Soon the police traced them and custody of the daughter was handed over to her father and the accused arrested. The investigation was conducted by Inspector Narayan Chakraborty (PW-17) and S.I. Palash Datta (PW-18). Prosecutrix was got medically examined, so also the accused. *Prima facie* finding the accused to have committed the crime, prosecution presented the charge-sheet in the Court for trial. Significantly, prosecution arrayed friends of the accused as accomplice.

3. Accused Priyatosh Dey, Mitan Dey and Sajal Dey were charged for having committed an offence punishable under Section 366A read with Section 34 of IPC. Independently, accused Pramanik Dey (appellant herein) was charged for having committed an offence punishable under Section 366A and 376(1) of IPC, as also under Section 4 of the POCSO Act.

4. To establish the said charge, prosecution examined as many as 18(eighteen) witnesses. Statement of the accused-appellant under Section 313 Cr.P.C. is also recorded, in which he took the defence that *Rinku pressurized me to elope with her. OP of her own left her house. I am innocent. I did not commit rape upon her. I do not like to adduce evidence in my defence*.

5. Only accused Pramanik Dey stands convicted in relation to both the offences, i.e. under Section 363 of IPC and Section 4 of POCSO Act; and the other accused stand acquitted in relation to which State has not preferred any appeal.

6. This Court is thus called upon to examine correctness of the findings returned and the judgment passed by the learned trial Court with respect to conviction of the present appellant, Sri Pramanik Dey in case No. S.T.(T-1) 16 of 2014, titled as *The State of Tripura vs. Sri Pramanik Dey & others* arising out of FIR No.176/13 dated 30.12.2013 registered at Police Station Khowai under Sections 366(A)/376(2)(i)/342/109/34 IPC.

7. It is a settled principle of law that the first Court of appeal is required to examine the evidence *in extensio* for ascertaining as to whether the reasoning adopted and conclusion arrived at by the trial Court, emanates from the record based on correct and complete appreciation of material placed by the parties. It is equally settled principle of law that the accused, unless so proven otherwise, is presumed to be innocent. It is

equally settled principle of law that burden to establish the guilt of the accused is upon the prosecution, which, under all circumstances, must be established beyond reasonable doubt. It is equally settled principle of law that in a case involving crime against women, and more so of sexual assault, statement of the prosecutrix is to be considered as that of any other witness and not an accomplice to the crime. It is equally settled principle of law that conviction can be based on the sole testimony of the prosecutrix without corroboration, if otherwise the Court is satisfied and convinced with regard to the veracity of her deposition.

8. In crux, in the instant case, it is the case of the prosecution that on 28.12.2013, at about 1500-1530 hours, while the prosecutrix had gone to attend her private tuition, at a place known as Singicherra, the accused kidnapped her; and with an intent of having illicit intercourse took her away to different places; made her spend the night away from her parents; and ultimately ravished her in the forest. According to the prosecution, at that time, prosecutrix was a minor.

9. Through the testimony of Sri Badal Das Choudhury (PW-6) and Smt. Rina Das Choudhury (PW-7), parents of the prosecutrix, it has come on record that finding the prosecutrix not to have returned home, after attending her private tuition, they searched for her and only when they failed to locate her, lodged the report at the police station. The F.I.R. in relation to the crime

was registered on 30.12.2013 at Police Station Khowai. The delay of 2(two) days in registration of the F.I.R. stands fully explained not only by these witnesses but also by the Police Officers (PW-17 & PW-18) inasmuch as the victim was first searched at different places including the house of the sister of the accused and only thereafter formal F.I.R. was registered.

10. It has come on record through the testimony of Dr. Maitu Debbarma (PW-5), medical officer, who examined the prosecutrix, that at the time of occurrence of the incident, prosecutrix was minor. She was below 18 years of age. Even before this Court, the issue of age is not raised, more, and rightly so, in view of the defence taken by the accused emanating from the cross-examination of the witness (PW-8, the prosecutrix).

11. Learned Additional Public Prosecutor rightly invites attention of this Court to the decision rendered by the Apex Court in ***Rameshwar S/O Kalyan Singh vs. The State of Rajasthan, AIR 1952 SC 54***, laying down four principles to be kept in mind requiring corroboration of statement of the victim. Significantly, even in the said decision, the Apex Court clarified that there cannot be any hard and fast rule with regard thereto, for the main test is whether statement made by the prosecutrix was made as early, as can reasonably be expected, in the circumstances of the case and before that there was opportunity for tutoring or concoction or not. The relevant portion of the judgment reads as under:

"19. There is a class of cases which considers that though corroboration should ordinarily be required in the case of a grown up woman it is unnecessary in the case of a child of tender years. *Bishram. v. Emperor*, A.I.R.(31) 1944 Nag. 363, is typical of that point of view. On the other hand, the Privy Council has said in *Mohamed Sugal Esa v. The King*, A.I.R. (33) 1946 P.C. 3 at p.5, that as a matter of prudence a conviction should not ordinarily be based on the uncorroborated evidence of a child witness. In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the judge. In a jury case he must tell the jury of it and in a non-jury case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself, is satisfied that it is safe to do so. The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and injury cases, must find place in the charge, before a conviction without corroboration can be sustained. 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.

20. I turn next to the nature and extent of the corroboration required when it is not considered safe to dispense with it. Here, again, the rules are lucidly expounded by Lord Reading in *Baskerville's* case, (1916) 2 K.B. 658, at pages 664 to 669. It would be impossible, indeed it would be dangerous, to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances

of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear.

21. First, it is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice, should in itself be sufficient to sustain conviction. As Lord Reading says:

> "Indeed, if it were required that the accomplice should be confirmed in every detail of the crime, his evidence would not be essential to the case, it would be merely confirmatory of other and independent testimony."

All that is required is that there must be

> "some additional evidence rendering it probable that the story of the accomplice (or complainant) is true and that it is reasonably safe to act upon it."

22. Secondly, the independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime. This does not mean that the corroboration as to identity must extend to all the circumstances necessary to identify the accused with the offence. Again, all that is necessary is that there should be independent evidence which will make it reasonably safe to believe the witness's story that the accused was the one, or among those, who committed the offence. The reason for this part of the rule is that:

> "a man who has been guilty of a crime himself will always be able to relate the facts of the case, and if the confirmation be only on the truth of that history, without identifying the persons, that is really no corroboration at all...It would not at all tend to show that the party accused participated in it."

23. Thirdly, the corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would

not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

24. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise,

> "many crimes which are usually committed between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice."

25. Next, I turn to another aspect of the case. The learned High Court Judges have used Mt. Purni's statement to her mother as corroboration of her statement. The question arises, can the previous statement of an accomplice, or a complainant, be accepted as corroboration?

26. That the evidence is legally admissible as evidence of conduct is indisputable because of Illustration (j) to section 8 of the Evidence Act which is in these terms:

> "The question is, whether A was ravished. The facts that, shortly after the alleged rape, she made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant."

But that is not the whole problem, for we are concerned here not only with its legal admissibility and relevancy as to conduct but as to its admissibility for a particular purpose, namely corroboration. The answer to that is to be found in section 157 of the Evidence Act which lays down the law for India.

27. Section 157 states that:

> "In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."
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> The section makes no exceptions, therefore, provided the condition prescribed, that is to say, "at or about the time etc.," are fulfilled there can be no doubt that such a statement is legally admissible in India *as corroboration*. The weight to be attached to it is, of course, another matter and it may be that in some cases the evidentiary value of two statements emanating from the same tainted source may not be high, but in view of section 118 its legal admissibility *as corroboration* cannot be questioned. To state this is, however, no more than to emphasise that there is no rule of thumb in these cases. When corroborative evidence is produced, it also has to be weighed and in a given case, as with other evidence, even though it is legally admissible for the purpose on hand its weight may be nil. On the other hand, seeing that corroboration is not essential to a conviction, conduct of this kind may be more than enough in itself to justify acceptance of the complainant's story. It all depends on the facts of the case."

12. Both the medical evidence, i.e. the statement of Dr. Arindam Debbarma (PW-16) and the medical examination report of the victim girl (Exhibit-8), clearly exhibit that prosecutrix was subjected to sexual assault. It is true that no mark of injury was found on her body, but then it is equally true that the doctor on examination, found tear marks on the private parts and the hymen of the prosecutrix also ruptured. The doctor positively opined evidence of sexual intercourse being there. Now, significantly on this aspect also, there is not much of cross-examination by the accused.

13. This now takes the Court to the other ocular evidence on record. Let us examine as to what really the prosecutrix has to state about the entire incident. Can it be said that her statement inspires confidence? Can it be said that the witness is not tutored? Can it be said that the witness is worthy of credence? Can it be said that her statement, even remotely, is doubtful or uninspiring in confidence? Having minutely examined the same, this Court is of the considered view that the witness, in her deposition is absolutely clear and consistent with regard to the nature of the events which took place unfailingly and convincingly, she narrates the events which took place.

14. At this juncture, one notices that prior to her deposition in Court during trial, which was on 21.08.2015, she had got her statement recorded under Section 164 Cr.P.C. before the Magistrate, which is marked as Exhibit-4. The said statement was recorded on 31.12.2013 and stands proven on record not only by her but also by the concerned Magistrate (PW-4). Both the statements, i.e. her deposition during trial and previous statement before the Magistrate are clear and consistent without any blemish, contradiction, discrepancy or improvement.

15. In Court, she states that on 28.12.2013, at about 3 p.m. while she was proceeding towards the house of her private tutor at Puranbazar, accused Pramanik Dey “restrained” her and forcibly took her in a vehicle (Van) towards Kamalpur. From Kamalpur, she was taken to Paijabari and made to stay in the

house of sister of Pramanik Dey. At that time, friends of the accused were also present. She spent the night in the house of the sister of the accused, but the following morning, at about 7-8 a.m., accused brought her to the jungle where he detained her whole day and night. In the forest, she was subjected to sexual assault. Following morning, her father and other persons of the locality came with the police searching for her in the house of the sister of the accused. From the forest, she was recovered by certain persons who brought her to the house of the sister of the accused, from where she was taken back to her house. With the lodging of the report, she was got medically examined and her statement recorded in Court. Now, significantly, in the cross-examination part of her testimony, she is emphatic that in the vehicle, accused threatened her. This she explains the reason as to why she did not disclose anything to the occupants of the vehicle. She denies having any love affair with accused Pramanik Dey or having asked the accused to marry her.

16. This Court finds her version to have been corroborated by her parents (PW-6 & PW-7). This was immediately after she was recovered by the police.

17. Mr. A. Roy Barman, learned Additional Public Prosecutor, rightly invites attention of this Court to the decision rendered by the Apex Court in ***Radhakrishna Nagesh vs. State of Andhra Pradesh, (2013) 11 SCC 688,*** opining that while appreciating the evidence of the prosecutrix, the court must keep

in mind that in the context of the values prevailing in the country, particularly in rural India, it would be unusual for a woman to come up with a false story of being a victim of sexual assault so as to implicate an innocent person.

18. In the instant case, one finds the parties to hail from the remotest corner of the State of Tripura. In the context of Indian culture, a woman-victim of sexual aggression, would rather suffer silently than falsely implicate someone, for a statement of rape is extremely humiliating experience for a woman and unless she is a victim of sexual assault, she would ordinarily not blame anyone for the alleged crime.

19. In ***Yedla Srinivasa Rao vs. State of A.P.***, ***(2006) 11 SCC 615***, the Apex Court held as under:

> "15. In this connection reference may be made to the amendment made in the Indian Evidence Act. Section 114 A was introduced and the presumption has been raised as to the absence of consent in certain prosecutions for rape. Section 114-A reads as under:
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> > "114 A- Presumption as to the absence of consent in certain prosecutions for rape.- In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the court that she did not consent, the Court shall presume that she did not consent."

20. In the instant case, there is nothing on record to establish previous friendship between the accused and the prosecutrix. In view of the defence taken by the accused in his statement under Section 313 Cr.P.C., under the provisions of the Evidence Act, it was his duty to furnish some reasonable explanation of the stand taken by him. Why would the prosecutrix elope with the accused? They are not from the same village or the families known to each other or the victim and the accused having studied in the same school or having similar background or met in the past. What would a poor girl hailing from a remote area do when she is threatened and intimidated and forcibly taken away in a vehicle? All these cumulatively leads to the unflinching conclusion of the prosecution having established its case, beyond reasonable doubt, and the accused having committed the offence for which he stands convicted. Statement of the prosecution corroborated by her parents and medical evidence fully establishes such charge.

21. At this stage, attention of the Court is invited to an application seeking compounding of the offence filed before the trial Court. The Court is of the considered view that keeping in view the nature of the offence, it rightly stood not considered favourably.

22. For all the aforesaid reasons, this Court finds no reason to interfere with the judgment passed by the trial Court. The Court has fully and correctly appreciated the evidence placed on record

by the parties. There is no illegality, irregularity, perversity in correct and/or complete appreciation of the material so placed on record by the parties.

23. The appeal against the impugned judgment of conviction and sentence dated 24.10.2017 in case No. S.T.(T-1) 16 of 2014, titled as *The State of Tripura vs. Sri Pramanik Dey & others* passed by the learned Additional Sessions Judge, Khowai, West Tripura stands dismissed.

Pending application(s), if any, stands disposed of.

24. Send down the lower court records forthwith.

(SANJAY KAROL), CJ

Pulak