

Reserved on 4.3.2020..

Delivered on 3.9.2020.

Court No. -53

Case :- JAIL APPEAL No. - 343 of 2018

Appellant :- Jonny @ Anuj Kumar.

Respondent :- State of U.P..

Counsel for Appellant :- From Jail,Deepak Rana..

Counsel for Respondent :- A.G.A..

Hon'ble Suresh Kumar Gupta,J.

1. This Jail Appeal has been arisen out of judgment dated 30.11.2015 passed by learned Additional Sessions Judge/Fast Track Court No. 2, Ghaziabad in Sessions Trial No. 1064 of 2013 in case crime no. 275 of 2013 in which the accused/appellant was convicted under Section 376, 342, 506 I.P.C. Appellant has been convicted and sentenced under section 376 I.P.C. for 10 years rigorous imprisonment alongwith fine of Rs. 20,000/- and in default of payment of fine two years additional imprisonment, under section 342 I.P.C. for six months imprisonment alongwith fine of Rs. 500/- and in default of payment of fine fifteen days additional imprisonment and under section 506 I.P.C. for 2 years rigorous imprisonment alongwith fine of Rs. 1000/- and in default of payment of fine, one month additional imprisonment. All the sentences shall run concurrently.

2. Brief facts of this case are as follows:-

As per allegations in the F.I.R. victim with her mother

came to home of maternal grand mother (Nani) at Hussainpur Muradnagar, Ghaziabad for harvesting of the wheat crops before few days from the date of occurrence. On 17.4.2013 at about 10:30 a.m. when victim was alone in her house of Nani, accused/appellant, Jonny @ Anuj Kumar, who lives in the neighborhood house, came and told that you have been called by his mother to come home. The victim/girl reached the house, where only accused/appellant was present and he forcefully hold the victim in the room and committed rape upon her. The victim kept screaming, but he did not listen to victim and carried out the incident by placing a gun on her temple. The appellant carried out this incident about 30 minutes and threatened that if she told anyone he would kill him. When the mother of the victim returned from the agricultural land the victim narrated the entire incident to her mother, then her mother lodged the F.I.R. in P.S.-Muradnagar, District- Ghaziabad on 17.4.2013 at 4:30 p.m.

3. After lodging the F.I.R. under Section 376, 506 I.P.C. Investigation of this case entrusted to S.I. Surendra Singh, on the pointing out of the complainant, Rajbiri, mother of the victim, the Investigating Officer, Surendra Singh, S.I. (P.W.-7) prepared the site plan as Ex. Ka-7 and on the place of occurrence in presence of the witnesses Madan Pal and Smt. Vidhya the Investigating Officer, Surendra Singh (P.W.-7) has recovered sari with blood stain and spermatozoa and prepared Fard recovery of Sari as Ex. Ka-8 and after that the victim was brought for medical examination at District Combined Hospital Sanjay Nagar, Ghaziabad. During the course of investigation supurdaginama of victim was prepared and victim was given into the custody of her mother. The Investigating Officer recorded the statements of the victim and other witnesses. The statement under Section 164 Cr.P.C. of the victim was also

recorded before the Magistrate. After completing the formalities of investigation, the Investigating Officer filed the charge-sheet against the appellant under Sections 376, 342 and 504 I.P.C. as Ex. Ka- 12 and the same was submitted on 2.5.2013. After submitting the charge-sheet the case was committed by the learned C.J.M. To the learned trial court and learned trial court framed the charge under Section 376, 342 and 506 I.P.C. against the appellant/accused. The charge was read over to the accused/appellant and the appellant denied the charges levelled against him and claimed to be tried.

4. In support of the prosecution case, prosecution has examined 8 witnesses i.e. P.W.-1 Smt. Rajbiri, who is complainant of the present case and mother of the victim, has supported the written report. P.W.-2, Anjali victim of this case has proved her statement recorded under Section 164 Cr.P.C. as Ex. Ka-1. P.W.-3, Dr. Rajvala, who examined the victim and has proved the medical examination report as Ex. Ka-2 and proved the reference slip for the pathology report as Ex. Ka-3. P.W.-4, Mukesh Dabas, who proved the chik report and G.D. Entry No. 44 time 16:30 on 17.4.2013 as Ex. Ka- 4. P.W.-5, Jai Prakash, who is scribe of the written report has proved the report as Ex. Ka-6. P.W.-6 Dr. Ajai Agrawal, who proved the age certificate of the victim on the basis of the X-ray report as Ex. Ka-5. P.W. 7, Investigating Officer, Surendra Singh has proved the site plan as Ex. Ka-7, Fard recovery of Sari as Ex. Ka-8 and supurdaginama of victim (minor girl) to her mother as Ex. Ka-9 and supurdaginama of statement of victim (minor girl) under Section 164 Cr.P.C. as Ex. Ka-10 and pathological examination report of Forensic Science Laboratory as Ex. Ka-11 and charge-sheet as Ex. Ka-12. P.W.-8, Suresh Kumar, who is Assistant Clerk of Rukmani Modi Mahila Inter College Modinagar, Ghaziabad, proved the authority letter of his Principal as Ex. Ka-13 and proved the

admit card of the victim as Ex. Ka-14 and proved photocopy of the stroll register as Ex. Ka-15.

5. After examination of these witnesses, statement of the accused -appellant was recorded under section 313 Cr.P.C. Accused/ appellant denied all the charges levelled against him and stated that due to enmity, all the witnesses had given false statements against him and further stated that before the alleged occurrence father of the appellant had lend Rs. 50,000/- to the mother of the victim Rajbiri and when father of the appellant demanded the money then an altercation with abuses arose between the father of the appellant and mother of the victim and therefore, due to this altercation false case was registered by the mother of the victim. In defence the appellant examined D.W.-1 Brajpal and D.W.-2 Balesh.

6. After appreciating and considering the rival contentions of the parties and scrutinizing the evidence, the learned Trial Court held the accused guilty and convicted him for the charged offences as aforesaid.

7. I have heard Sri Deepak Rana, learned counsel for the appellant and Sri Jai Prakash Tripathi, learned AGA for the State.

8. Sri Deepak Rana, learned counsel for the appellant, opened his arguments by submitting that the impugned judgment dated 30.11.2015 is based on conjectures and surmises and the same is against the facts and settled proposition of law and that the learned Trial Court has ignored and omitted the material evidence and has disregarded the cogent evidence in favour of the appellant.

9. Learned counsel for the appellant further contended that the learned Trial Court had erred in holding the appellant guilty for

the charged offences and the judgment rendered by the learned Trial Court is perverse; that the evidence which had surfaced during the course of the trial was not properly appreciated and a proper appreciation of the facts and circumstances would have definitely resulted in the acquittal of appellant for the charged offences; that the testimony of the prosecutrix is totally unreliable as well as there are material contradictions and concealment's in her testimony recorded under Section 164 Cr.P.C and in her deposition before court; that the evidence of a child witness has to be evaluated more carefully with greater circumspection and the same can only be relied upon if there are no embellishment or improvement therein; that there are severe contradictions and inconsistencies in the testimonies of other material witnesses; that the case of the prosecution is neither supported by medical evidence nor by scientific evidence; that the solitary testimony of the victim in a case of rape is sufficient to convict the accused subject to condition that the same inspires confidence of the Court, but in instant case, the sole testimony of the victim fails to inspire confidence and is unworthy of acceptance.

10. Mr. Jai Prakash Tripathi, learned A.G.A. for State, on the other hand, strongly refuted the submissions made by the counsel for the Appellant and submitted that the learned Trial Court after proper appreciation of the evidence adduced by the prosecution, has rightly convicted the appellant for the charged offences and the appeal filed by the appellant-accused is liable to be dismissed.

11. Learned AGA for the State further submitted that the learned Trial Court has appreciated the testimony of the prosecutrix in its right perspective and relying on the well-settled proposition of law that the sole testimony of the victim of a sexual offence is sufficient to base conviction of the accused. She further submitted

that the version of the victim recorded under Section 164 of the Cr.P.C and the testimony of the prosecutrix before court was consistent, and unimpeachable. She further submitted that in such cases of heinous crimes, normal discrepancies are bound to occur in the deposition of a child witness, due to normal errors of observation, namely, error of memory, due to mental disposition at the time of the incident. To substantiate her arguments learned AGA for State relied upon the case of *State of Punjab v. Gurmit Singh and Others reported in (1996) 2 SCC 384*; *State (Govt. of NCT of Delhi) v. Pankaj Chaudhary reported in AIR 2018 SC 5412*.

12. Learned AGA for the State further added that the testimony of the victim is corroborated with the medical evidence (i.e. MLC of the prosecutrix), as hymen of the victim was not intact, which is sufficient to credit the version of the prosecutrix that she was sexually assaulted. She further submitted that the absence of major external injuries on body of the prosecutrix on the date of her medical examination would not necessarily mean that she had not been sexually assaulted or she had not resisted during the time of assault.

13. Based on these submissions counsel for the State urged that this Court may not interfere with the well-reasoned order passed by the learned Trial Court convicting the Appellant for the alleged offence.

14. I have heard the learned counsel for the parties and carefully examined the impugned judgment and the material available on record as well.

15. It is a settled principle of law that in cases involving sexual assault/rape, it is generally difficult to find any corroborative

witnesses, except the victim herself and therefore, the evidence of the victim is sufficient for conviction unless there exist compelling reasons for seeking corroboration. Thus, a conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The Apex Court has time and again held that the sole testimony of the prosecutrix is sufficient to hold the accused guilty if it inspires confidence and the same principles have been reiterated in ***Vijay v. State of Madhya Pradesh reported in (2010) 8 SCC 191***. Relevant paragraph of the judgment reads as under:

"14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

16. ***In Gagan Bihari Samal v. State of Orissa reported as (1991) 3 SCC 562***, The Hon'ble Supreme Court of India whilst observing that corroboration is not the sine qua non for conviction in a rape case, held as follows :

"6. In cases of rape, generally it is difficult to find any corroborative witnesses except the victim of the rape. It has been observed by this Court in Bharwada Bhoginbhai Hirjibhai v. State of Gujarat [(1983) 3 SCC 217 : 1983 SCC (Cri) 728 : AIR 1983 SC 753] as follows:

"Corroboration is not the sine qua non for a conviction in a rape case. 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 woman 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 society.

A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members,

relatives, friends, and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built-in assurance that the charge is genuine rather than fabricated."

The above observation has been made by this Court relying on the earlier observations made by this Court in **Rameshwar v. State of Rajasthan [1952 SCR 377, 386 : AIR 1952 SC 54 : 1952 Cri LJ 547]** with regard to corroboration of girl's testimony and version. Vivian Bose, J., who spoke for the Court observed as follows: (SCR p. 386)

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

17. Further, it is also a well settled principle of law that the testimony of child witness can be relied upon along with other circumstances and corroborative evidence to convict the accused. Undoubtedly, the settled proposition of law that the evidence of child witness is required to be scrutinised and appreciated with great caution. In this regard, reference can be made to the dicta of the Apex Court in the case of **Yogesh Singh v. Mahabeer Singh and others reported in AIR 2016 SC 5160**, wherein the Apex Court has held that:

"22. It is well settled that the evidence of a child witness must

find adequate corroboration, before it is relied upon as the rule of corroboration is of practical wisdom than of law. (See Prakash v. State of M.P. [Prakash v. State of M.P., (1992) 4 SCC 225 : 1992 SCC (Cri) 853] , Baby Kandayanathil v. State of Kerala [Baby Kandayanathil v. State of Kerala, 1993 Supp (3) SCC 667 : 1993 SCC (Cri) 1084] , Raja Ram Yadav v. State of Bihar [Raja Ram Yadav v. State of Bihar, (1996) 9 SCC 287 : 1996 SCC (Cri) 1004] , Dattu Ramrao Sakhare v. State of Maharashtra [Dattu Ramrao Sakhare v. State of Maharashtra, (1997) 5 SCC 341 : 1997 SCC (Cri) 685] , State of U.P. v. Ashok Dixit [State of U.P. v. Ashok Dixit, (2000) 3 SCC 70 : 2000 SCC (Cri) 579] and Suryanarayana v. State of Karnataka [Suryanarayana v. State of Karnataka, (2001) 9 SCC 129 : 2002 SCC (Cri) 413] .) 23. However, it is not the law that if a witness is a child, his evidence shall be rejected, even if it is found reliable. The law is that evidence of a child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. (Vide Panchhi v. State of U.P. [Panchhi v. State of U.P., (1998) 7 SCC 177 : 1998 SCC (Cri) 1561])”Appreciation of testimony of the Victim 'T'

18. In view of the settled law, we shall now examine whether the evidence adduced by the prosecution, particularly the testimony of the victim, is trustworthy, credible and can be relied upon. From the perusal of the record, it transpires that the prosecutrix has deposed on same lines and there are no material contradictions in her testimonies. English Translation of the initial statement under Section 164 Cr.P.C. (Ex. Ka-1) made by the victim P.W.-2, Anjali, Victim of this Case before the Magistrate on 22.4.2013 is reproduced hereinbelow:-

“ I reside at the address mentioned above.

She said that date of incident is 17.4.2013 at 10:00 a.m. and at that time she is above 15 years and studied in Class X. The family members had gone to the agricultural field when Jonny came to my house and said to me that my mother has invited you to my house. I went with him to his house but there

was no one at his house. Accused Jonny took me to the room of his house and removed my all clothes and forcefully committed rape and said that if you inform anyone about this incident, he will kill him. I was very scared and some how came to my house and when my other came home, I informed my mother about the incident.”

19. The above statement of the victim was recorded before the Court in which she clearly stated that she was misleded by the accused/appellant Jonny and he took away her to his house and committed rape upon her by extending threat. Statement of P.W.-2 has also been corroborated by the mother of the victim P.W.-1.

20. Statement of the victim has also been corroborated by the medical evidence as stated by P.W.-3 Dr. Raj Bala. In her statement P.W.-3, Dr. Raj Bala stated that injury was present on the private part of the victim. Abrasion was present on the private part of the body of the victim in which blood was oozing out. Redness was also present.

21. On the place of occurrence blood stained sari was also recovered and the same was sent to the Forensic Science Laboratory for examination. Report of the Forensic Science Laboratory was also proved as Ex- Ka 11 in which presence of the human blood was proved. Ext Ka 11 is also strengthen the prosecution version.

22. One of the arguments raised by the learned counsel for the appellant is that there was altercation about money dispute between mother and father of the appellant and therefore false case of rape has been lodged by the P.W.-1 against the appellant but the submission made by the learned counsel for the appellant is not

acceptable, as no written agreement was produced by the appellant before the trial court.

23. Further there are catena of decisions of Hon'ble Apex Court that it is necessary for the court to have a sensitive approach when dealing with the cases of rape. It is also trite that in the case of *State of Himachal Pradesh Vs. Dharmapal, (2004) 9 SCC Page 681*, Hon'ble Apex Court held that "rape is a serious offence, as it leads to an assault on the most valuable possession of a woman i.e. character, reputation, dignity and honour."

24. In *State of Punjab Vs. Ramdev Singh 2004 (48) ACC 300* Hon'ble Apex Court held as under:-

“Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity. It degrades and humiliates the victim and where the victim is a helpless innocent child or a minor. It leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by Apex Court in Shri Bodhisattwa Gautam Vs. Miss Subhra Chakraborty, AIR 1996 SC 922 the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the

Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.”

25. In the light of the above said legal proposition it would be relevant to mention that the appellant is neighbour of victim. It is also credibly, cogently and with clinching evidence established that in absence of family member of victim, the accused/appellant fraudulently called victim to his house. On being called the victim reached to the house where appellant forcefully committed rape. In this facts and circumstances in an ordinary procedure it cannot be said to be a case of false implication.

26. In this case it is not only the evidence of PW-2 but immediately after commission of rape the prosecutrix narrated the whole incident to her mother, who produced by the prosecution as PW-1 and P.W.-1 has lodged the F.I.R. on the same day. There is no material contradiction, omission or exaggeration in the statements victim, P.W.-2 and her mother P.W.-1. It is pertinent to mention here that on the sole testimony of the prosecutrix, conviction is sustainable in the eye of law without any corroboration of medical evidence. Prosecution by cogent and credible evidence is able to prove the charge under section 376 I.P.C. against the appellant.

27. In this case it is clear that victim is minor and an adult committed rape on a girl of tender age, deterrent punishment is called for, taking a lenient view is out of question. Once a person is

convicted for the offence of rape, he should be treated with heavy hands and undeserved indulgence or liberal attitude in not awarding adequate sentence is improper.

28. On present scenario, the appellant is in jail since 18.4.2013 and during trial he remained in jail. Presently he is incarceration for more than 7 years. That appellant is very poor and not represented by counsel of his choice during trial so the contention of learned counsel to adopt a lenient view and award the custodial sentence to the appellant is fully acceptable.

29. Therefore, **Conviction of the appellant is confirmed under sections 376, 342 & 506 I.P.C. So on the point of conviction, appeal is dismissed.** On quantum of sentence this court thinks that end of justice would be met if the appellant is sentenced to imprisonment which he has already undergone. It is hereby clear that fine clause shall be unaltered. After depositing fine of Rs. 21,500/-, the victim shall entitle of Rs. 15,000/- under section 357 (2) Cr.P.C. **On the point of sentence appeal is partly allowed.**

30. On above terms, appeal is finally **disposed off.**

31. Let a copy of the judgment alongwith lower court record be transmitted to the trial court for necessary compliance.

Order Date:- 3.9.2020

Anuj Singh