

**IN THE HIGH COURT OF JUDICATURE AT PATNA  
CRIMINAL APPEAL (SJ) No.2831 of 2019**

Arising Out of PS. Case No.-560 Year-2017 Thana- KATIHAR District- Katihar

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AHTESHAM KHAN @ ATESHAM KHAN @ AHTESHAM S/o Wasim Khan Resident of Village- Bhaghwa Bari, Katihar, P.S.- Katihar, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr.Vikramdeo Singh, Advocate  
: Mr.Nafisuzzoha, Advocate  
For the State : Mr.Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR  
C.A.V. JUDGMENT**

**Date : 06-04-2021**

The sole appellant, above named, faced trial before learned Additional Sessions Judge-I-cum-Special Judge under POCSO Act at Katihar in connection with Katihar Town P.S.Case No.560 of 2017 corresponding to G.R.No.3536 of 2017 and C.I.S.No. 843 of 2017. The learned Trial Judge found the appellant guilty for offence under Section 376 I.P.C. as well as under Section 4 of the POCSO Act by the impugned judgment dated 27.05.2019. Ten years rigorous imprisonment besides fine of Rs.50,000/- was awarded vide impugned order dated 30.05.2019. In default of payment of fine, one month imprisonment was ordered for offence under Section 376 I.P.C. However, no separate sentence was passed for offence under Section 4 of the POCSO Act. On deposit of the fine Rs. 40,000/- was ordered to be given to the victim.



2. The prosecution case, as disclosed in the written report of Mr. Kishore Sah (P.W.6), the father of the victim girl, is that on 04.08.2017 (Friday) at about 11.30 A.M., he had telephonically called the appellant, a T.V. Mechanic, to his house in Mohalla-Vivekanand Colony, P.S.-Town, Town & District-Katihar for mending the Television. The informant left for the market as he was in business of vegetables. Only the victim girl, aged about 14 years, was there in the house. The victim was a student of Shyama Sanskrit Middle School in Class-VI. The appellant, taking advantage of the loneliness of the victim in the house, ravished her. The victim disclosed about the occurrence to the informant and on 08.08.2017 at 9.00 A.M., the appellant again came to the house of the informant where the people caught and assaulted to the appellant and handed over to the police.

The FIR of the occurrence was lodged on 08.08.2017. After investigation, the police submitted chargesheet and the appellant was put on trial.

The prosecution examined altogether eight witnesses to prove the charges against the appellant and the defence produced three witnesses, mainly to substantiate that this is a case of false implication as appellant had money due with the informant, some



for mending the Television and the rest which was advanced as loan to the informant.

3. Mr. Vikramdeo Singh, learned counsel for the appellant contends that prosecutrix is not corroborated by medical evidence vide medical report at Ext.1 and evidence of Dr.Kanak Ranjan P.W.5 and rest of the witnesses namely, P.W.1, Pramila Devi, the mother of the victim, P.W.2 Murari Chaudhary, P.W.3 Kishore Kumar, P.W.4 Kishan Pal, P.W.6 Kihore Shah, the father of the victim, are hearsay witnesses. P.W.7 is the prosecutrix herself and P.W.8 Nityanand Pandey is Investigating Officer of the case, who has simply supported the investigation done by him. Learned counsel for the appellant next contends that there is delay of four days in reporting the matter to the police, hence chances of deliberations and concoctions cannot be ruled out. Moreover, appellant is in jail since 08.08.2017.

4. To contra, learned counsel for the respondent contends that plurality of the witness is not the requirement of law and conviction is permissible even on sole testimony of the prosecutrix. For minor discrepancies a victim of rape cannot be looked upon with suspicion. The victim is consistent in her statement before the police, before the Magistrate under Section 164 Cr.P.C. and before the trial court. The medical report does not



suggest that the opinion was conclusive that no rape was committed. Moreover, the Doctor is an expert of physical observation noticed on examination and not an expert to say whether rape was committed or not. The acts to constitute rape are well defined in Section 375 I.P.C. Other witnesses have corroborated the prosecutrix as hearsay witnesses of the occurrence and the learned Trial Judge has considered the evidences, in details, while recording the judgment of conviction. Learned counsel further submits that a minor delay of four days in reporting the matter to the police is immaterial. The offence was committed against a girl, whose family belongs to rural area would be more conscious to save prestige from social humiliation than to choose and bring the perpetrator of the crime, under clutches of Law.

5. The prosecution evidence discloses that the alleged act of rape took place on 04.08.2017 whereas on 08.08.2017, the appellant was apprehended by the villagers, brought to the house of the informant and was assaulted thereat and thereafter handed over to the police. P.Ws. 2, 3 and 4 are witnesses on the occurrence dated 08.08.2017.

6. P.W.2 Murari Chaudhary deposed that he heard hue and cry at the house of the informant. Thereafter he reached there.



The girl was weeping and the people there informed that the appellant had ravished the victim girl. The police came and took the appellant to the police station.

P.W.3. Kishore Kumar deposed that he heard alarm and when came out the people were saying that the victim was ravished by the accused. Likewise P.W.4 Kishan Pal has deposed about what he saw on 08.08.2017 when the appellant was being assaulted on allegation of commission of rape.

P.W.1 Pramila is the mother of the victim. P.W.6 Kishore Sah is father of the victim. Both have stated that the victim disclosed to them that she was ravished by the appellant. These witnesses disclose the age of the victim as 14 years.

Thus the prosecution case is mainly based on testimony of the prosecutrix P.W.7.

7. It is well settled by a catena of judicial pronouncements that while appreciating the evidence of the victim of sexual assault, it should be treated on a par with the evidence of an injured witness. The reason is simple that 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. When



in face of these factors, the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. In normal course, the Indian Women has tendency to conceal such offence even before her family members much less before public or before the police. Therefore, testimony of the prosecutrix to some extent, stands on higher pedestal than that of an injured witness.

Corroboration is not an imperative component of judicial credence in every case of rape. Refusal to act on the testimony of the victim of sexual assault, in absence of corroboration as a rule, is adding insults to the injury. If the Doctor, who examined the victim, does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. If totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have strong motive to falsely implicate the person charged, the Court should ordinarily have no hesitation in accepting her evidence as no self-respecting women would come forward to make a self-humiliating statement in casual manner.

The Court ought to be mindful that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the



process. Rape is not merely a physical assault, it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a greater responsibility and must deal with such cases with utmost sensitivity. The broader probabilities of the case should be examined and not the minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, should come in the way to otherwise reliable prosecution case. Reference may be made to **State of Punjab Vs. Gurmit Singh and Ors**, reported in (1996)2 SCC 384 and **Motilal Vs. State of M.P.**, reported in (2008)11SCC 20.

At the same time in **Raju & Ors Vs. State of Madhya Pradesh**, reported in (2008) 15 SCC 133, the Hon'ble Supreme Court cautioned by saying that no doubt, rape causes the greater distress and humiliation to the victim, but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. Therefore, the accused must also be protected against the possibility of false implication. The Court should carefully see that the prosecutrix is consistent in her statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately



before the court. The prosecutrix should be in a position to withstand the cross examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the person involved, as well as the sequence of it. If other witnesses are there, there must be consistent match with the version of every other witnesses. If the testimony of the prosecutrix withstands the aforesaid test, she would be treated as a “sterling witness” and no corroboration is needed to base the conviction on the sole testimony of the prosecutrix. Reference may be made to **Rai Sandeep @ Deepu Vs. State (NCT of Delhi)**, reported in **(2012)8 SCC 21**.

8. P.W.7 the prosecutrix deposed that the appellant came to her house, asked to open the door. At that time, mother had gone to bring fodder for the Goat and father had gone to sell vegetables in the market. The appellant came inside dragged her inside the room, thereafter tied her mouth with Dupatta and ravished her. The appellant threatened her not to disclose about the act of the appellant to anyone otherwise father of the victim would be shot at in the market itself. Therefore, the victim could not disclose about the occurrence to her parents rather disclosed to her father a day after the occurrence. She further disclosed that her





statement was recorded in the Mahila Police Station as well as before the Magistrate. She was medically examined by the Doctor. She identified the appellant in court. In the cross examination, she stated that appellant used to come to her house as and when required to mend the Television. This time also father had telephoned him for mending the television. He had come to mend the television but ravished her. She stated that she could not remember the date of occurrence but that was a Friday. During the incident, she stated that, she had sustained injuries and had got treatment before a Doctor. There is nothing in the cross examination to say that she has improved her version or is inconsistent with her previous statement in the matter of manner of occurrence, place of occurrence or time of occurrence or in any other material particular.

9. P.W.5 Dr. Kanak Ranjan had medically examined the victim on 09.08.2017 at 5.20 P.M. The Doctor assessed her age in between 16 to 17 years on the basis of ossification and other testes applied. Finding regarding sexual assault is as follows:

*“ No marks of injuries were present on her body. There was redness around the vaginal opening. Hymen was not torn. Vagina was not loose. Vaginal swab report was given by Dr. R.Suman. On*



*Microscopic Examination, no spermatozoa was found.*

*From the above finding, I can say only attempt for sexual intercourse might have been done.”*

While being cross examined the witness deposed that there may be attempt to rape, it may not be also. There may be other reasons of redness on vaginal opening.

10. Modi's Medical Jurisprudence and Toxicology, 24<sup>th</sup> Edition in Chapter-XXXI, opines that there is a distinction between vulva penetration and vaginal penetration; and, vulval penetration, with or without violence, is as much rape as vaginal penetration. It is not necessary that hymen be ruptured in every case. The statute merely requires medical evidence of penetration, this may occur and the hymen may remain intact.

11. Absence of spermatozoa, on the date of examination of the victim, after five days of the occurrence, is obvious in absence of specific evidence that the victim had not taken bath for five days. For the same reason, the victim cannot be disbelieved that she had bled during the incident, for the Doctor has not found any sign of bleeding.

12. In view of the aforesaid Medical Jurisprudence, it cannot be said that only for non-rupture of the hymen, it can be



assumed that rape was not committed. The finding, of “redness around the vaginal opening”, suggests a case of vulval penetration to constitute the offence of rape, which is consistent with the claim of the prosecutrix that she was ravished. There is nothing on the record to specify the nature of penetration meted to the victim. Therefore, it cannot be argued that the testimony of the prosecutrix is totally inconsistent with the medical evidence.

13. P.W.1 Pramila Devi and P.W.6 Kishore Sah, who are parents of the victim, have disclosed age of the victim as 14 years on their personal estimation. The Doctor assessed her age between 16 to 17 years on medical examination.

The Investigation Officer P.W.8 collected certificate from the school where the victim was studying and the same is available on the record as Ext.5. As per Ext.5, the victim was born on 02.09.2007. The genuineness of the certificate is not disputed in this case. Therefore, there is evidence of exact age of the victim which shows that she was a minor. In that view of the matter, even if there is some suggestion that the appellant was called at the house of the victim by the victim herself could not make any difference as the victim was of the age making her incapable of giving valid consent.



14. The delay in lodging of the FIR is well explained and the prosecutrix herself stated that due to fear, she did not disclose about the occurrence to her parents till a day after the occurrence. Thereafter, several other reasons including apparent chances of social stigma might have prevented the parents of the victim or the victim to report the matter immediately to the police. In **Mukesh Vs The State of Chhattisgarh**, reported in (2014)10 SCC 327, the prosecutrix was wholly reliable, hence delay in lodging the FIR was not taken as fatal to the prosecution case.

15. On scrutiny of the prosecution evidence referred above, it is evident that the prosecutrix has consistently supported the occurrence from initial report to the police, her statement before the Magistrate under Section 164 Cr.P.C. and thereafter before the Trial Judge as P.W.7. There is no material contradiction or exaggeration in her testimony and she has fully stood the test of cross examination. There is nothing on the record to substantiate that the victim had strong motive to make an allegation which was not only against the appellant rather a self-inflicting statement against honour and dignity of the victim herself. As noticed above, the victim is not totally inconsistent with the medical report or other prosecution witnesses. Therefore, there is no reason to disbelieve or discard the trustworthy testimony of the victim.



16. Since the learned Trial Judge has awarded minimum punishment prescribed under the law, the same requires no interference. In the result, the impugned judgment and order are affirmed and this appeal stands dismissed as devoid of any merit.

**(Birendra Kumar, J)**

Nitesh/-

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