

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (S.J.) No. 246 of 2012

[Against the judgment of conviction dated 08.02.2012 and order of sentence dated 09.02.2021 passed by learned Additional Judicial Commissioner-I, Khunti in Sessions Trial No.336 of 2005]

Sachindra Singh @ Sacha @ Sachchi Singh

.... Appellant

--Versus--

The State of Jharkhand

.... Respondent

For the Appellant : Ms. Vani Kumari, Advocate

For the State : Mr. Pankaj Kumar Mishra, A.P.P.

PRESENT : HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

- By Court:**
1. The judgment of conviction and sentence under Section 376 of the Indian Penal Code is under challenge in the instant criminal appeal.
 2. The statement of the prosecutrix is the basis of the case which was recorded on 14.05.2005. As per the statement of the prosecutrix in the F.I.R., she was aged 15 years and was living in the house of her maternal grandfather. About seven months ago when she had gone for grazing her cattle, the appellant committed rape with her. She was threatened with life from not disclosing this matter to her family members. The appellant continued to sexually assault her several times. As a result, she became pregnant. She narrated this to her mother and father.
 3. Karra P.S. Case No.14/2005 was registered under Section 376 of the Indian Penal Code against the appellant. The police, on investigation, found the case true and submitted charge sheet and on cognizance, the accused was put on trial.
 4. Altogether eight witnesses have been examined including the prosecutrix and the Doctor. After the prosecution evidence, the statement of the accused was recorded under Section 313 of the Cr.P.C. The defence is of innocence and false implication due to past enmity.
 5. The judgment of conviction and sentence is assailed on the ground that there is inordinate delay of seven months in institution of FIR without any plausible reason for the said delay. There is no direct eye witness excepting prosecutrix, and as per her own version, the incidence was consensual. Only when she became pregnant, the FIR was lodged. There is no document in support of the proof of age of the prosecutrix. The Doctor has opined the age

to be 14-16 years. It is argued that as far as medical determination of age is concerned, there can be an error margin of two years which should be interpreted in favour of accused. In any case, the appellant was more than 16 years of the age at the time of incidence.

6. Learned A.P.P. has defended the impugned judgment of conviction and order of sentence.

7. Before entering into appreciation of evidence, it shall be desirable to state the law while appreciating the evidence of the prosecutrix in a rape case. It is settled position of law that in cases of sexual assault the evidence of prosecutrix is to be treated that of an injured witness, so much that no corroboration is necessary. Where the sexual intercourse is established, there is a presumption of absence of consent under Section 114 A of the Evidence Act. This presumption is a presumption of fact, and is restricted in its application compared to the presumption is under Sections 113A and 113B of the Evidence Act (Refer to **Rajoo & Others Vs State of M.P., (2008)15 SCC 133**). It has been held in **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384**

“8. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged..... The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable.”

8. In the present case there is undoubtedly a delay of 7 months in lodging of the FIR. PW 2 to 6, who are close relatives of the victim, have deposed that only about 15 days before institution of the FIR, victim had informed them

about the incidence of rape. No plausible explanation for the said delay has been given by the prosecutrix, except that she was threatened with life from disclosing the incidence to her family member. This explanation does not inspire confidence, because there is no corroboration regarding the threat extended by the accused to the Appellant. During investigation or trial, there is no material to suggest that any physical threat or harm was done to the prosecutrix or any of her family members. Unexplained delay in lodging FIR is viewed with suspicion, on the other hand, a prompt FIR makes it more dependable. A delay in lodging the FIR by days or even weeks is understandable particularly in rape cases, but when it stretches to months, it needs a credible explanation. In the absence of any convincing reason, and the case being filed only at an advanced stage of pregnancy, logically drives one to the inference that physical relationship was a consensual affair that continued for days and months without any protest or demur on the part of the victim of girl.

9. Matter for consideration is whether consent of the victim negated the crime. Consent of a minor girl is immaterial in a rape case. At the relevant time i.e., in the year 2005 when the alleged offence of rape is said to have been committed, the age of consent was sixteen years and above. It was only vide an amendment made in the year 2013 that this has been increased to eighteen years. As per the definition of rape under sixth clause of Section 375 of the IPC prior to Amendment of 2013 Act, sexual intercourse with or without her consent, when she was under sixteen years of age constituted rape.

10. Prosecutrix as per the FIR was aged 15 years at the time of the registration of the FIR on 05.02.2005. At the time of her deposition on 19.04.2006 her age has been stated to be 15 years. Doctor (PW-8) who examined the victim, has assessed the age of victim to be 14-16 years as per the opinion of the radiologist. Report of the radiologist has been marked as Ext-2/1. There is no contrary evidence to show that victim was more than 16 years at the time of the said incidence. Victim was a consenting party and the sexual relationship continued for months resulting in her pregnancy, but the consent of the minor victim cannot be a ground to absolve the accused of his guilt.

Under the circumstance, in view of the uncontroverted evidence of the prosecutrix regarding the sexual intercourse, I find and hold that the

prosecution has proved its charge under Section 376 of the IPC against the accused, beyond the shadow of all reasonable and probable doubt. Judgment of conviction passed by the trial Court, is accordingly, affirmed.

On the point of sentence, considering the consensual nature of physical relationship which continued for several months ultimately, resulting in pregnancy of the victim, this Court is of the view that there exists special and adequate reasons for awarding sentence less than minimum prescribed sentence in this case. A sentence of R.I. of four years and fine of Rs.5,000/- shall meet the ends of justice. In the event of default in payment of fine, S.I. of three months shall meet the ends of justice. Victim shall be entitled to compensation as per the victim compensation scheme.

Bail of the Appellant stands cancelled, and the appellant is directed to surrender before the learned Court within two weeks of the order.

With this modification of sentence, Appeal stands dismissed.

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated, 21st February, 2024
NAFR/Anit