

GAHC010202102021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : CRL.A(J)/49/2021

DAOMA BORO
BAKSA, ASSAM.

VERSUS

THE STATE OF ASSAM
REP. BY PP, ASSAM.

Advocate for the Appellant : Mr. B. Sarma, Amicus Curiae.
Advocate for the Respondent : Ms. S.Jahan, Addl. P.P., Assam.
Date of Hearing & Judgment : **31/07/2023**

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
HONOURABLE MRS. JUSTICE MARLI VANKUNG

JUDGMENT & ORDER (ORAL)

(*M.Zothankhuma,J*)

Heard Ms. B. Sarma, the learned Amicus Curiae and Ms. S. Jahan, the learned Additional P.P., Assam.

2. This appeal has been filed against the impugned judgment dated 23.09.2021 passed by the learned Special Judge, (POCSO), Baska, Mushalpur in Special

(POCSO) Case No. 2/2020, by which the appellant has been convicted under Section 4(2) of the POCSO Act, 2012 and sentenced to suffer a rigorous imprisonment for a period of 20 years and to pay a fine of Rs. 50,000/-, in default to suffer simple imprisonment for 8 months.

3. The prosecution case, in brief, is that an FIR dated 22.10.2019 was submitted by Prosecution Witness-1 (PW-1), who is the father of the victim girl. The FIR states that at around 2 PM on 21.10.2019, the appellant had taken the minor daughter (6 years) of PW-1 to his farm and raped her. PW-1 also states that his daughter informed him of the same on returning home. In pursuance to the FIR, Tamulpur U.D.S. P.S. Case No. 499/2019 under Section 376 IPC read with Section 4 of the POCSO Act was registered. After completion of the investigation, the Investigating Officer (PW-5) submitted a chargesheet, on finding a prima facie case under Section 376 IPC and Section 4 of the POCSO Act against the appellant. Charge was framed against the appellant under Section 4 of the POCSO Act, 2012 by the learned Trial Court, to which he pleaded not guilty and claimed to be tried.

4. The learned Trial Court examined five prosecution witnesses and after examining the appellant under Section 313 Cr.P.C., came to a finding that the appellant was guilty of the offence under Section 4(2) of the POCSO Act. The appellant was accordingly convicted under Section 4(2) of the POCSO Act and sentenced accordingly.

5. The learned counsel for the appellant submits that the investigation was very shoddy, inasmuch as the mother of the victim girl was not made a prosecution witness and was not examined by the prosecution. Further, though PW-1 had stated in his evidence that the panty of the victim girl was wet with blood, the said panty had not been seized by the police. No garments of the victim girl or the appellant were seized, to prove that any blood or spermatozoa was present in the

garments of the above two persons, which could have proven the guilt of the appellant. She also submits that the explanation given by the appellant during his examination under Section 313 Cr.P.C. has not been considered by the learned Trial Court, prior to making a finding as to whether the appellant was guilty of the offence.

6. Ms. S. Jahan, the learned Additional P.P. submits that there is no contradiction in the evidence of the victim (PW-2) vis-a-vis her statements given under Section 161 Cr.P.C. and 164 Cr.P.C. She submits that though the police had not seized the panty of the victim or the clothes of the appellant, to enable the FSL to examine whether any blood or spermatozoa was present in the garments of both the persons, the same does not take away the fact that the appellant had raped the victim, as had been proved by the evidence of the PW-2 and the doctor (PW-4), who examined the victim. She also submits that the evidence of PW-2 has been corroborated by her father, PW-1. She thus submits that the impugned judgment should not be interfered with.

7. We have heard the learned counsels for the parties.

8. The evidence of PW-2 (victim) is to the effect that while she was playing with her friends in the field, the appellant drove away her friends and held her back. Thereafter the appellant pushed the victim to the banks of the pond and opened her panty. He inserted his private parts into the private parts of the victim, which made the victim cry. Blood came out from her private parts and she felt pain. The appellant thereafter give her potatoes. She ran back home and reported the incident to her father. PW-2 further states that her father took her to the doctor, where she was given medicines.

9. Though the father (PW-1) in his cross-examination had stated that the panty of her daughter was wet with blood, the same has not been stated in his statement

under Section 161 Cr.P.C. The Investigating Officer (PW-5) also confirmed the fact that PW-1 had not stated to him that the victim's panty was wet with blood.

10. On considering the above contradiction with regard to the victim's panty being red with blood, which finds place in the evidence of PW-1, but is not reflected in his statement under section 161 Cr.P.C., we are of the view that the said contradiction, which has been proved, does not go to the core of the prosecution case and as such, cannot be a reason to disregard the prosecution case. The reason being that the evidence that the victim girl had been raped by the appellant and she was crying, besides the evidence that she had been complaining of pain is proved and not contradicted. Further the evidence of the doctor (PW-4) who examined the victim girl clearly shows that the victim had been raped. The examination of the victim girl by PW-4 shows that the hymen was torn at 6 O'clock with bleeding. There was also a tear at the posterior wall of the vagina with bleeding. There was also blood stains in the undergarments of the appellant. The opinion of the doctor, as given during his examination in the Trial Court is as follows :-

“There is evidence of recent (less than 48 hours) of penetration.

(a) Vulva : Hyperemic.

(b) Hymen : Tear at 6 o'clock with bleeding.

(c) Vagina : Tear at posterior wall with bleeding.”

11. The evidence of the PW-3, who is the neighbour of PW-1, is to the effect that he was informed about the occurrence of the incident of rape by PW-1 and that he saw the victim who was in a bad condition, when she was brought for treatment from Kumarikata to Rabi Boro Civil Hospital at Mushalpur.

12. The evidence of the Investigating Officer(PW-5) is to the effect that he was posted as I/C of Kumarikata O.P. under Tamalpur P.S. on the day when the FIR was filed. As he was entrusted with the investigation, the statements of the informant, victim and other witnesses were taken. The victim was also sent for medical examination initially to Tamulpur P.H. but later on to Rabi Boro Civil Hospital, Mushalpur. The victim's statement was recorded under Section 164 Cr.P.C. The PW-5 also states that the appellant was apprehended while he was trying to flee and he was sent to judicial custody on 23.10.2019. On completion of investigation, charge-sheet against the appellant was submitted u/s 376 IPC read with Section 4 of the POCSO Act. He also exhibited the FIR, the sketch map of the place of occurrence, the charge-sheet etc.

13. The appellant in his examination under Section 313 Cr.P.C. has denied raping the victim, stating that when the victim came to his farm, he asked her to leave as she could get hurt by a hoe or other things lying around. She then left crying. He also states that he gave her potatoes and sent her back.

14. On a plain reading of the evidence of the victim girl vis-a-vis her statement made under Sections 161 CR.P.C. and 164 Cr.P.C., we do not find any contradiction in the above testimony and statements of the victim and as such, we are of the view that the testimony of the victim girl inspires confidence and can be acted upon.

15. In the case **of Rai Sandeep Vs. State (NCT of Delhi)** reported in **2012 (8) SCC 21** which pertains to gang rape, in which charge u/s 376 (2) (g) of the I.P.C. had been framed against the accused, the Apex Court has held that a "sterling witness" should be of a very high quality and calibre whose version should be unassailable. The Court should be in a position to accept it at its face value without any hesitation. The status of the witness would be immaterial and what

would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the 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. It should be natural and consistent with the case of the prosecution qua the accused. Though the Supreme Court has observed the requirement expected of a "sterling witness" in a case involving Section 376 (2) (g) of the I.P.C., we are of the view that the said observation would also be applicable to the facts of this case.

16. The evidence of the doctor, as reflected in the foregoing paragraph clearly corroborates the evidence given by PW-1 and PW-2 that the victim girl had been raped by the appellant.

17. In the case of **Narender Kumar Vs. State (NCT of Delhi)** reported in **(2012) 7 SCC 171**, the Apex Court has held that once the statement of the prosecutrix inspires confidence and is accepted by the Court, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required, unless there are compelling reasons, which necessitate the Court to corroborate her statement. It further held that corroboration of the testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law, but a guidance of prudence. It is also held that minor contradictions or insignificant discrepancies should not be a ground for throwing up an otherwise reliable prosecution case.

18. As we have held that the testimony of the victim girl inspires confidence and the same has been corroborated by the evidence of PW-1 and PW-4, we do not find any infirmity with the learned Trial Court convicting the appellant u/s 4 of the POCSO Act, 2012. In that view of the matter, the appeal fails and is accordingly dismissed.

19. In appreciation of the services of Ms. B. Sarma, the learned Amicus Curiae, the fee payable to her shall be paid by the Assam State Legal Service Authority.
20. Sent back the LCR.

JUDGE

JUDGE

Comparing Assistant