



IN THE COURT OF SPECIAL JUDGE :::::::::::::::::::::::::::::: BAKSA AT MUSHALPUR

Present : Shri C. Das, AJS.
Judge, Special Court,
Baksa, Mushalpur

JUDGMENT IN SPECIAL POCSO CASE NO.25/18

U/S 376/ 417 IPC., R/W Section 4 of POCSO Act.

STATE

versus-

Sri Bichitra Bijay Das

.... Accused

Appearance :

For the State : Mr. R. Chetry, Public Prosecutor, Baksa

For the accused : Mr. D. Das, Sr. Advocate, Mr. G.D. Choudhury, U. Barman,
Ms, T. Kalita, Advocates

Date of evidence : 20/8/16, 30/8/16, 9/9/16, 20/9/16, 30/9/16, 3/12/16
19/1/17, 22/8/17, 21/9/17

Date of argument : 20/8/18, 4/9/18

Date of judgment : 4/9/18

JUDGMENT

1. The case of the prosecution briefly, is that on 24/1/15, the prosecutrix/ victim girl lodged the FIR before Officer-in-charge of Salbari police station, alleging inter-alias that the accused has committed sexual intercourse repeatedly with her for long period by inducing her with promise of marriage. But subsequently, with the conspiracy of others, the accused cheated her by marrying another girl secretly.

2. The police accordingly, registered the Salbari PS. Case No.05/15 on the basis of Ananda-Bazar OP GDE No.369, dated 24/1/15 and started its investigation. During the investigation, the I/O visited the place of occurrence,

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recorded the statement of witnesses and sent the prosecutrix for medical examination and recording her statement u/s 164 of Code of Criminal Procedure (in short; the CrPC). At the end of the investigation, the I/O having found prima-facie case well established, filed the charge-sheet against the accused to face trial in the court.

3. Accordingly, when the accused turned up in the court in response to issue of process against him. He was furnished with the relevant copy of the case immediately. After hearing the both sides and on perusal of material on record, the charge u/s 376/417 IPC., r/w section 4 of POCSO Act was framed against the accused. The charge so framed, was read over and explained to the accused who pleaded not guilty and claimed to be tried.

4. The prosecution in the course of trial, examined as many as, 12(twelve) witnesses including the I/O and M/O to support its case. The accused in his statement recorded u/s 313 CrPC., denied all accusations, appeared against him in the evidence. But the accused declined to adduce any evidence in his defence. The argument of the parties was heard at length.

5. **POINTS FOR DETERMINATION :**

- i] Whether on or about 6/7 years back, at village- Sonaphuli under Salbari police station, committed rape on the victim / prosecutrix, a minor girl ;
- ii] Whether on the same date and place as above, the accused with the promise of marriage, cheated the victim/ prosecutrix and committed rape on her ;
- iii] Whether on the same date and place as above, the accused committed penetrative sexual assault on the victim/ prosecutrix ;

DECISION AND REASON THEREFORE :

6. At the outset of the argument of the case, learned Public Prosecutor submitted that the prosecution altogether examined 12 witnesses to bring home the charge against the accused and from their evidence, it is crystal clear that the accused under the pretext of false marriage, committed rape on the victim girl who was a minor girl at the time of the occurrence. He submitted that since the victim girl was a minor, her consent is not material for the case inasmuch as, taking advantage of tender age of the victim, the accused played with her body for long

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period and subsequently, he married another girl, without considering the life of the victim girl and therefore, the accused is liable for offence of cheating. Further, he submitted that since the victim was a child in the eye of law, the accused is found to have committed the penetrative sexual intercourse with her and therefore, the accused is liable to be punished under the provisions of POCSO Act.

Learned Public Prosecutor relied the decision of Hon'ble Supreme Court in **AIR 1996 SC 1393 State of Punjab vs. Gurmit Singh & ors** that *the court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge leveled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. 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.*

7. In another case of Hon'ble Supreme Court passed in **Criminal Appeal No.1114 of 2011 Mukesh vs. State of Chhattishgarh**, it was held that *the sole testimony of the witness is sufficient to establish the commission of rape even in the absence of corroborative evidence. Reliance has been placed on the decision of this court in the case of Mohd. Iqbal vs. State of Jharkhand which stated as under :- There is no prohibition in law to convict the accused of*

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