

IN THE COURT OF SESSIONS JUDGE BAKSA AT MUSHALPUR

Present : Shri C. Das,
Sessions Judge,
Baksa, Mushalpur

(Committed on 5/12/12 by learned Chief Judicial Magistrate, Nalbari, presently,
Mushalpur in GR Case No.278/11(B))

JUDGMENT IN SESSIONS CASE NO.76/2018(OLD NO.119/12)

u/s 376 of IPC.

State

versus-

Sri Bimal Das

.... Accused

Appearance :

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

For the accused : Mr. A. C. Azad, Advocate

Date of evidence : 10/4/13, 17/5/13, 18/6/13, 6/2/17

Date of argument : 8/10/18, 1/11/18

Date of judgment : 14/11/18

JUDGMENT

1. The case of the prosecution briefly, is that on 23/8/2011, the complainant Smti. Niru Biswas lodged the FIR before the In-charge of Nagrijuli police post, alleging inter-alia that on 21/8/2011 in the evening while she along with the victim girl were sitting at the courtyard, she went inside her house. After sometimes, when she came out, she could not find the victim at her courtyard. On next day, at about 5 am., her son and other relatives came out in search of the missing girl. After long search, at Bimala nagar, the victim girl along with the

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accused were both recovered from an abandoned house, situated at a betel-nut garden. Ni inquiry, the victim girl disclosed that the accused forcibly confined her in that house and committed rape on her. Accordingly, both of them were produced before the local police station.

2. The police after receipt of the said FIR from the complainant, registered Nagrijuli OP GDE No.346 Dated 23/8/2011 and forwarded the same to Officer-in-charge of Tamulpur Police station for registering a case. Accordingly, the Officer-in-charge of Tamulpur police station registered the Tamulpur PS Case No.149/11 and started the process of the investigation. During the investigation, the I/O visited the place of occurrence, recorded the statement of the witnesses including the victim and sent her for medical examination. The victim also, sent for recording her statement u/s 164 CrPC., while he arrested the accused. At the end of the investigation, the I/O submitted the charge-sheet against the accused to stand trial in the court.

3. The accused when appeared after service of summons from the court, he was immediately, furnished with the copy of the case in the light of section 207 CrPC. The learned Chief Judicial Magistrate, having found the offence is exclusively triable by the court of sessions, committed the case to this court for its trial. Accordingly, a separate sessions case was registered and was taken up for trial of the accused.

4. After hearing of both sides and on perusing the materials on record, the charge u/s 376 IPC., 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.

5. The prosecution during the trial, examined as many as, 7(seven) witnesses including the M.O to support its case. In the statement recorded u/s 313 CrPC., the accused denied all accusations so appeared against him in the evidence. The accused however, declined to adduce any evidence in his defence. The argument of the parties was heard at length.

POINT FOR DETERMINATION :

6. Whether on 21/8/11 at night, the accused committed rape on the victim girl ;

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DECISION AND REASON THEREFORE :

7. Learned Public Prosecutor initiated the argument and submitted that there is sufficient evidence on record particularly, the evidence of the victim clearly proved that the accused committed sexual intercourse with her against her will and there it is established that the prosecution has able to bring home the charge against the accused. He submitted that in cases of sexual offence, the evidence of the victim without having her virtue, is sufficient enough to convict the accused. Therefore, the accused is liable to be punished as per provisions of law.

8. Per contra, learned counsel for the accused submitted that the evidence on record clearly indicates that there was love affairs existed between the victim girl with the accused prior to the occurrence. Hence, the victim went with the accused and stayed in an abandoned house with her consent for two days without raising any alarm to anybody. PW1 disclosed some circumstances in the case which is highly improbable in nature. Therefore, the victim was a consenting party to the entire occurrence and as such her evidence is not reliable be accept as true version. Under such circumstances, the accused cannot be held guilty for the offence of rape, he maintained. Further, seen the written argument submitted by learned counsel for the accused, reiterating the above facts more elaborately.

9. After hearing the above argument from both the sides, it is necessary to go through the evidence of the prosecution witnesses to know the real truth. It is correct to say that the sole evidence of the victim is sufficient to convict the accused in sexual offence without seeking for corroboration if her evidence is found wholly reliable. Even if the corroboration in such cases is not the rule of law. In **State of Himachal Pradesh vs. Sanjay Kumar @ Sunny, reported in 20160 SC 992**, it was held that Indian Penal Code. 1860- Section -376- Testimony of a victim in cases of sexual offences is vital and unless there are compelling reasons which necessitated looking for corroboration of a statement, court should find no difficulty to act on testimony of victim of a sexual assault alone to convict accused – Seeking corroboration to a statement before relying upon the same as a rule, in such cases, would literally amount to adding insult to injury-Deposition of prosecutrix has to be taken as a whole-victim of rape is not an accomplice and her evidence can be acted upon without corroboration-she stands at a higher pedestal than an injured witness does- if court finds it difficult to accept her version, it may seek corroboration from some evidence which lends assurance to her version- to

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