

IN THE COURT OF ADDITIONAL SESSIONS JUDGE
Mekhliganj, Coochbehar

Present : Shri Rajesh Kumar Singh ,
Additional Sessions Judge,
Mekhliganj, Coochbehar

S.T. No : 05(01)2015

S.C. No.: 01 of 2015

Date of delivery of Judgment:- 27th day of September, 2019.

(In reference to the G.R Case No. 136/14, arising out of Haldibari
P.S. Case No. 69/14, dated 21.03.2014 under Section- 417/376 of
I.P.C.)

S t a t e

Vs.

Bun PradhanAccused Person

Sri Subal Chandra Paul.....Ld. PP for the State of W.B.

Sri Bibek Bitan RoyLd. Advocate for the accused.

Charge under Section- 376/419 of IPC.

J U D G E M E N T

The genesis of the prosecution case in a nutshell is that one Minu Khatun has lodged a written complaint on 21.03.2014 stating inter alia that she had a love affairs with the accused Bun Pradhan, S/o Manik Pradhan of Dewanganj, under territorial jurisdiction of Haldibari PS, Dist. Cooch-Behar and out of that relationship the accused used to make physical relationship with her on the assurance of marriage. Thereafter, on 26/02/14 at about 4.00 pm Minu Khatun asked the accused Bun Pradhan to marry her but the accused refused to marry her and then said Minu Khatun to get justice lodged the complaint against the accused Bun Pradhan.

Accordingly, Haldibari P.S. registered a case vide No. 69 of dated 21.03.2014 against the above named accused person under section 417/376 of I.P.C. and started investigation, which culminated

into submission of charge sheet against the accused person under Section 417/376 of I.P.C.

Ld. Chief Judicial Magistrate, Mekhliganj after complying with the provision of section 207 Cr.P.C committed the case to this Court of Sessions for trial.

On pursuant to the charge sheet as well as the materials on record the Ld. Court framed the charge against the present accused person under section 376/419 of I.P.C. The charges were read over and explained to the accused and after understanding the same, the accused person abjured his guilt and claim to be tried.

Defence case as I find from the trend of cross examination and examination of accused person under section 313 Cr.P.C is that of absolute denial and of false implication.

The prosecution to bring home the charges against the accused person, has adduced as many as eight oral witnesses as follows :-

- P.W.1 - Hari Barman
- P.W.2 - Ripan Basunia
- P.W 3 - Minu Khatun (the Defacto Complainant)
- P.W 4 - Shefali Khatun
- P.W 5 - Dulal Md.
- P.W 6 - Mustakur Rahaman
- P.W. 7- Tapan Roy Basunia
- P.W. 8- Iyabul Mahammad
- P.W. 9- Ratna Roy
- P.W.-10 Anawar Hossain
- P.W.-11 Anup Kr. Pal
- P.W.-12-SI Subhash Ch.Roy (the IO of the case)

EXHIBITS

Documents admitted in evidence in favour of the prosecution are marked as **Exhibit- 1** (the written FIR), **Exhibit-1/1** (the signature of P.W. 3 on written complaint), **Exhibit-2** (the signature of PW-3 on medical examination report), **Exhibit-2/1** (the medical examination report), **Exhibit-2/2** (the signature of PW-11 on the medical examination report), **Exhibit-3 collectively** (the signatures of P.W. 3 on statement recorded u/s 164Cr.P.C), **Exhibit-4 as a whole** (the formal FIR), **Exhibit-5 and Exhibit-5/1** (the rough sketch map and index of the PO respectively) and **Exhibit-6 and Exhibit-7** (the statements of the witnesses namely Ratna Roy and Anawar Hossain respectively).

Points for consideration

The sole point to be determined in the present case is whether the prosecution has able to prove the charge under sections 376/419 of Indian Penal Code against the accused beyond reasonable doubt ?

Decisions with reasons

It is settled principles of law that the prosecution is under obligation to substantiate their case by producing cogent and adequate evidence before the Court beyond any shadow of doubt. The witnesses are the ears and eyes of justice and for that we should listen them to unveil the truth and come to a conclusion of the case.

The prosecution has produced as many as twelve oral witnesses and documentary evidence before this Court. Now, let us see what they have seen and stated before this Court in connection with the allegations levelled against the accused person.

The prosecution has alleged that the accused has on several

times sexually inter coursed the victim on promise of marriage.

To prove the above allegations against the accused persons, the prosecution has produced above witnesses. In spite of having several opportunities, the prosecution could not produce other witnesses.

The **P.W 3, Anjuma Bibi**, the complainant, stated on oath before this Court that the incident occurred about two years ago. She met with the accused Bun Pradhan at his mobile phone shop situated at Baterdanga when she went to recharge her mobile phone in that shop and since then a love affairs developed in between her and the accused Bun Pradhan and during that period said Bun Pradhan on assurance to marry her, had sexual intercourse with her and after lapse of some days when she asked said Bun Pradhan to marry her, Bun Pradhan refused to do so and as a result she lodged the complaint with P.S against Bun Pradhan. She proved her signature on written complaint, formal FIR, medical report, and 164 Cr.PC statement and identified the accused.

In **cross-examination** the witness stated that there was 40/50 shops in Beterdanga and the house of the accused was situated at a distance of one kilometer away from her house and that she had mentioned in the FIR about the love affairs between her and the accused person and that they never exchanged any love letter during the time of their love affairs even though she had read up to class-VII and that she could not say the exact date on which the accused had sexual intercourse with her. But the accused used to visit her house and the sexual intercourse took place in the room of her house and she told the police that the sexual intercourse took place in her house. At the time of sexual intercourse she opened her wearing apparel and during that time she did not cry. She did not mention in her FIR about the particular room where first sexual intercourse took place. The accused told her about one year ago that he loved her and would marry her and she stated about the said fact before the Ld. Magistrate. She had lodged the FIR as she wanted to marry the accused Bun Pradhan. Lastly

she denied all the suggestions put to her by the Ld. Defence Counsel.

P.W 1, Hari Barman, the neighbour of the victim had stated that he knows Minu Khatun. But he does not know against whom she had filed this case and he also does not hear anything about the alleged incident. The witness also stated before this Court that one day police came near his house and asked him whether the accused raped the victim Minu Khatun and at that time he replied that he did not know anything about the incident.

The cross-examination of the witness is declined by the defence.

P.W.4, Shefali Khatun, the mother of the victim had stated that there was a love affairs between her daughter and the accused and that she settled the marriage of her daughter with another boy but at that time she came to know that about the said love affairs and that about one year prior to the occurrence the accused Bun Pradhan used to come to their house. During the cross-examination the witness had stated that she went to PS and narrated about the incident to the police and lastly the witness had denied the suggestions put to her.

P.W 2, Ripan Basunia, the neighbour of the victim had stated that he knows Minu Khatun. The witness also stated before this Court that one day police came near his house and asked him whether he knew anything about the alleged incident and he replied them that he did not know anything about the incident.

The cross-examination of the witness is declined by the defence.

P.W 5, Dulal Mahammad had stated that he knows Minu Khatun as she is his distant relative and he heard that said Minu Khatun had filed a case against Bun Pradhan. However, the witness also stated before this Court that he does not know anything about

the incident.

The cross-examination of the witness is declined by the defence.

P.W 6, Mostakur Rahaman had stated that he knows Minu Khatun and he heard that said Minu Khatun had filed a case against Bun Pradhan. However, the witness also stated before this Court that he could not say about the incident.

The cross-examination of the witness is declined by the defence.

P.W 7, Tapan Roy Basunia had stated that he does not knows Minu Khatun personally but he knows her mother and when the police had come to his house, he heard for the first time from the police that Bun Pradhan raped the victim.

During the cross-examination, the witness denied the suggestion put to him.

P.W 8, Iyabul Mahammad, had stated that Minu Khatun is his own sister in law and he heard that said Minu Khatun had filed a case against Bun Pradhan. However, the witness also stated before this Court that he does not know anything about the alleged incident.

The cross-examination of the witness is declined by the defence.

P.W 9, Ratna Roy, had stated that she knows Minu Khatun as she used to reside near her father's house and she also knows the accused Bun Pradhan as he is also co-villager of her father. The witness knows nothing about the incident. This witness is declared hostile by the prosecution.

In cross examination the witness stated that she has good relation with the accused as well as with Minu Khatun as both of them are residents of her father's village.

P.W 10, Anwar Hossain, had stated that he knows Minu Khatun as his co-villager and he also knows the accused as his friend. The witness knows nothing about the incident. This witness is declared hostile by the prosecution.

In cross examination the witness stated that he mostly used to stay in Bhutan in connection with his work and he used to come to his village during festival only.

P.W. 11, Dr. Anup Kr. Pal, had stated that on 22/03/14 he examined the victim girl on his official capacity as MO of Jalpaiguri Sadar Hospital and after examination he prepared the medical report(Exbt.2/1) and put his signature(Exbt.2/2) on the same.

In cross-examination he had stated that the incident occurred 3 months ago from the date of medical examination of the victim girl. The witness had also stated that during medical examination the victim girl was physically and mentally fit and he did not find any identification mark and injury on the body of the VG and the VG had stated that she had love affairs with one Bun Pradhan and about three months ago said Bun Pradhan tried to sexual intercourse with her and then he denied to marry her.

P.W. 12, SI Subhash Ch. Roy, stated that he had investigated this case on being endorsed by the IC Haldibari. He proved the rough sketch and the index of the PO (Exbt.5 and Exbt.5/1 respectively) drawn by him and formal FIR (Exbt.4 as a whole) duly filled by the I/C of the PS. He had sent the accused for medical examination at Hospital and also sent the VG for recording her statement u/s 164 Cr.PC before the Magistrate. He had examined the witnesses and recorded their statement and after completion of investigation submitted charges sheet against the accused.

In cross-examination he denied that he has done a perfunctory investigation, and had not visited the P.O and had

tutored the victim before recording of her statement by the Ld. Magistrate.

After closing of evidence, the accused was examined under section 313 of Criminal Procedure code. He has pleaded his innocence during examination and refused to place any witness on his side.

Submission of Parties

Learned Additional Public Prosecutor in charge left the decision of the case on the wisdom of the court.

Per contra the learned defence counsel has categorically submitted that the prosecution has failed to prove the case and there is no evidence at all to believe the accused guilty beyond reasonable doubt. Learned defence counsel has invited the attention of the Court to go through the evidence of the prosecution witnesses and the contradiction in between the written complaint and substantive piece of evidence of Prosecution witnesses. Learned defence counsel has further submitted that there is no ingredient of section 376 of the Indian penal code or its attempt in this case. He invited the attention of the Court to go through the evidence of the victim women itself. Ld. counsel draws the attention of this court towards the contradiction in between the written complaint, 164 Cr.PC statement of the victim and her statement to the doctor. Ld. Counsel submitted that prosecution requires to prove the guilt of the accused beyond reasonable doubt, but in this case prosecution is miserably failed to bring the accused home. Accordingly, Ld. Lawyer prays for acquittal of the accused.

OBSERVATIONS

Prosecution case in a nutshell is that one Minu Khatun has lodged a written complaint on 21.03.2014 stating inter alia that she

had a love affairs with the accused Bun Pradhan, S/o Manik Pradhan of Dewanganj, under territorial jurisdiction of Haldibari PS, Dist. Cooch-Bihar and out of that relationship the accused used to make physical relationship with her on the assurance of marriage. Thereafter, on 26/02/14 at about 4.00 pm Minu Khatun asked the accused Bun Pradhan to marry her but the accused refused to marry her and then said Minu Khatun to get justice lodged the complaint against the accused Bun Pradhan.

In the case of **Gurmit Singh -versus- state of Punjab reported in (2000) 5 Supreme Court Cases 30,** the Hon'ble Supreme Court has been pleased to make the following weighty observations in respect of evidence of a victim of sexual assault:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? 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 levelled 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 at 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.

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."

In the case of **Rajinder @ Raju -versus- State of H.P in Criminal Appeal No.670 of 2003, the Hon'ble Supreme Court** has further reiterated the rule on appreciation of evidence of the prosecutrix in a case of sexual assault in the context of Indian society and culture on 07.07.2009. Paragraph 21 of the said judgment is reproduced below:

" In the context of Indian Culture, a woman victim of sexual aggression would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating

experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix.

It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent.”

In the light of the afore stated judgments of the Hon'ble Supreme Court of India, it is clear that in a case of sexual assault against the women, the Court should not ask for corroboration of the testimony of victim girl and it is quite unexpected that the victim girl has stated falsely in the Court to implicate a false person unless the prosecution case is highly improbable and the Court while appreciating the evidence of 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 levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. On application of the principle of appreciation of evidence of the prosecutrix.

In **Radhu v State of M.P (2008) 2 SCC (Cri) 207 Hon'ble Supreme Court** observed- It is now well settled that a finding of guilt in a case of rape can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally

be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent, the act will still be a "rape", if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of doctor that there were no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forarms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The Court should, at same time bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

The whole jurisprudence of Criminal Justice Administration of our country is based upon " Let ninety nine of guilt acquitted, but an innocent should not be punished". It is not enough for the prosecution to prove the guilt of the accused, but the prosecution requires to prove it beyond reasonable shadow of any doubt.

In Bharwada v State of Gujrat, 1983 SCC (Cri) 728, Hon'ble Supreme Court held that in false cases of rape, she may have been induced to do in consideration of economic rewards, by a person interested in placing the accused in a compromising or embarrassing position, on account of personal or political vendetta. She may do so to win the sympathy of others.

In Hemraj v State of Haryana, (2014) 1 SCC (Cri) 820, the Hon'ble Supreme Court disbelieved the statement of the prosecutrix and observed as under : " In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible, if it inspires total confidence, it can be relied upon even sans corroboration. The Court may, however, if it is hesitant to place

implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice.

Again, in **State of Maharashtra v Chandraprakash Kewalchand Jain (1990) 1 SCC 550 (Cri) 210, Supreme Court** held having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the Court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The Court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it.

Of course, in case of sexual assault, the court need not to find out corroboration and the accused can be convicted on the sole testimony of the victim if the court finds the version of the victim truthful and reliable.

In the case in hand, the victim has complained of sexual intercourse with her by the accused on promise of marriage, but in medical reports (Ext2/1) there is no reflection of any injury either on the body or the private parts of the victim. Even the examining doctor found her hymen intact. The prosecutrix has complained that the accused sexually inter coursed her several times on promise of marriage, but her such statement has not been corroborated with her statement before the examining doctor to whom she disclosed that the accused tried to commit sexual intercourse with her. The doctor (PW-11) did not find any scratch or injury on her body or private parts. The doctor did not find any foreign particle in her private parts. It is quite possible that a person will not get scratch or injury mark on her body in the event of consensual sexual intercourse. But, the prosecutrix version is not intact, she had stated before the magistrate who recorded her 164 Cr.PC Statement that the accused had committed sexual intercourse with her for several times. But it quite impossible to believe that even after several sexual intercourse, the hymen of a women will remain intact. The PW-11 the examining doctor found the hymen of the

victim intact. The medical report (Ext-2/1) did not corroborate the version of the victim. The victim failed to say as on which date the accused firstly inter coursed her. She did not mentioned in her written complaint as in which room particularly the offence was committed. She had given a general statement that she was sexually inter coursed by the accused on several times, but she could not say any particular date as on which there was sexual intercourse between her and the accused. The victim has stated that fifteen days prior to the lodging of the complaint she noticed that the accused is avoiding her. She had stated to the doctor that three months prior to her medical examination, the accused inter coursed her. In her examination in chief she stated that one year prior to the lodging of the complaint, the accused had married another lady. She had stated that since last two years they had love affairs and during this period the accused had inter coursed with her several times. They never exchanged love letter to each other. She did not write in her FIR that the accused asked her over phone; Who are You ?, I did not not know you ?. She had stated this for the first time in court on the date of her examination in chief. The witness stated in her cross examination that one year ago the accused told her that he loves her and would marry her, where as in her examination in chief she had stated that the accused had inter coursed her several times in last two years. It means at the time of their first consensual sexual intercourse there was no promise. The victim admitted that she filed the criminal case against the accused as he refused to marry her.

The medical report suggest no injury either on the private or any other part of the victim. The hymen was intact. The Court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it.

The PW-2, PW-3, PW-5, PW-6, PW-7, PW-8 uttered nothing about the incident. PW-9 and PW-10 turned hostile and did not support the case of the prosecution. PW-4, who is the mother of the victim has stated that the accused used to come at her house but

she also uttered nothing about the sexual intercourse in between the accused and the victim.

The whole case of the prosecution is based upon the sole testimony of the prosecutrix. Its a fact that the court cannot seek the corroboration in the rape cases as its happens in private place and in privacy, but the evidence of the prosecutrix must inspire the confidence of the court. The medical report does not support the version of the prosecutrix.

PW- 8 is the I.O of this case who had submitted charge sheet after investigation. He proved the relevant documents. The statement of the victim lady under section 164 Cr.PC has not been proved by the prosecution as per provision of law. Though there is no denial of 164 Cr.PC statement by the victim, but this court cannot held the accused guilty on sole basis of 164 Cr.PC statement specially when the other evidence on the record does not support the case of the prosecution. It is a well settled rule of practice, prudence and caution that it is not safe to rely on 164 Cr.PC statement unless and until there are other evidence on the record to support the case of the prosecution. Section 419 IPC is also not attracted in this case as this court did not find any ingredients of impersonation by the accused.

It appears that there was love affairs in between the accused and the victim and when the accused refused to marry her she filed a criminal case against him to compel him to marry her.

The presumption under section 114A of the Evidence Act cannot come to play its role unless and until the sexual intercourse is being proved.

The oral testimony of the victim on oath gives an inference that any reliance on the statement of the victim may be dangerous and fatal for justice. Evidence of the prosecutrix is most vital but in this case her statement does not inspires total confidence of this

Court and it cannot be relied upon.

Therefore, I am of the opinion that prosecution has miserably failed to prove its case beyond reasonable doubt and as such, the accused deserves an order of acquittal from this case.

Hence, it is

ORDERED

that the accused, namely Bun Pradhan is found not guilty on the charge under section 376/419 of the Indian Penal Code and he is acquitted under Section 235 (1) of Criminal Procedure Code.

Seized alamats, if any, be destroyed after statutory period of appeal.

Accused Bun Pradhan be set at liberty, but he will be continue with his existing bail bond for further six month in terms of Section 437A of Cr. P. C.

Dictated & Corrected by me

A.S.J, Mekhliganj

Additional Sessions Judge,
Mekhliganj, Coochbehar.