

(2015) 12 TP CK 0010
In the Tripura High Court
Case No : Criminal Appeal(J) No. 21 of 2013

Sajal Chakraborty

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 10-12-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 376(2)(f), 498A

Citation : (2015) 12 TP CK 0010

Hon'ble Judges : Deepak Gupta, C.J. and Utpalendu Bikas Saha, J.

Bench : Division Bench

Advocate : M.K. Roy, Advocate, for the Appellant; A. Ghosh, P.P., for the Respondent

Final Decision : Dismissed

Judgement

Deepak Gupta, C.J.

1. This appeal is directed against the judgment dated 11.02.2011 delivered by the learned Sessions Judge, West Tripura, Agartala in case No. ST 53 of 2008 whereby he held the accused guilty of having committed an offence punishable under Section 376(2)(f) of the IPC and sentenced him to suffer rigorous imprisonment for 10(ten) years and to pay fine of Rs. 2000/- and in default of payment of fine to suffer further simple imprisonment for two months.

2. This is a heart-rending case where the appellant has been convicted of having raped his minor daughter aged 9(nine) years.

3. The prosecution story briefly stated is that a complaint was lodged by the wife of the appellant who is the mother of the victim on 16.08.2007. In this complaint she alleged that after she returned from a neighbour's house after attending a wedding on 07.05.2007 at about mid night she had seen her husband committing rape on their minor daughter in the dwelling hut. She again saw her husband raping their daughter a few days later in the jungle. According to her

she did not make a complaint immediately since she was ashamed about the incident and she was threatened by the husband. To avoid public scandal and public disgrace she did not report the matter.

4. On the basis of this complaint investigation was started and after investigation was completed, the police filed charge sheet and charge against the appellant was framed on 18.08.2008 alleging that he had raped his nine year old daughter and thus committed an offence under Section 376(2)(f) of the IPC. After trial the accused was convicted and sentenced as aforesaid. Hence, this appeal.

5. The main grounds raised by Mr. M.K. Roy, learned counsel for the appellant are that the husband has been falsely implicated in a false case at the behest of the wife. In this behalf he submits that the relation between the wife and the husband were inimical and the wife on 16.08.2007 had filed two complaints; one alleging that her daughter had been raped and one alleging that the husband had committed cruelty against her in terms of Section 498A IPC. It is also contended that the FIR is highly belated because the occurrence took place in May and the FIR was lodged in August and there is no explanation for the delay. He has also urged that in the FIR under Section 498A IPC the wife had stated that she was living away from her husband for 8/9 months and this would mean that at the time of the alleged occurrence i.e. in 2008 the wife was not living in the house of the husband. He lastly contended that there is some contradiction and whereas in one version it is stated that the wife came back after attending a marriage in the neighbour's house. According to the daughter in another version it is stated that there was a kirtan.

6. There is no manner of doubt that the relations between husband and wife were strained even before this occurrence. There is evidence on record to show that even prior to this alleged occurrence many complaints had been filed by the wife against her husband. This fact is proved by the prosecution witnesses who are the members of the Gram Panchayat. We are also in agreement with the learned counsel that the statement of the wife cannot be taken at its face value. In fact, the learned trial Court has also not placed much reliance on the statement of the complainant-wife. The main issue is whether the statement of this nine year old girl should be accepted or not?

7. A child witness can be tutored and the law is well settled that the statement of a child witness should be scrutinized with great care and caution. At the same time, this Court is of the firm view that children by their inherent nature are honest. Children do not tell lies and unless it is shown that the child was tutored it would be difficult not to rely upon her version. The FIR was lodged on 16th August, 2007 and a statement of the child was recorded before the Magistrate who has been examined as Court Witness on 18.08.2007. In that statement also the minor victim complained that she had been raped by her father. The minor victim was examined in Court and it would be worthwhile to make reference in detail to her statement. After satisfying himself that the witness was able to give rational answers but without administering oath, the Court recorded the

statement of the 9(nine) year old girl in Court (who was by then 10(ten) years old) in Court. Her statement reads as follows:

"***** At present, I have been residing in a Child Home. Today, I have been brought before this Court by one Aunty of that Child Home. Before that, I used to reside in our house along with my parents and my younger brother Suman Chakraborty. I cannot say the name of place where I used to reside along with my parents and my younger brother. My mother Smti. Mina Chakraborty and my younger brother Suman now have been residing in an Ashram. I cannot say where that Ashram is situated. I went to Child Home to prosecute my studies. Shri Sajal Chakraborty is my father. My father Sajal Chakraborty is present today before the Court and identified the accused in the dock. Before going to the Child Home for prosecuting studies, one day, at night, my father accused Sajal tried to insert his penis in my vagina in absence of my mother who went to attend "Kirtan" (religious function). Out of the said action of my father, I got pain in my vagina. On the following day, my father took me in nearby jungle at about noon. In that jungle, my father again tried to insert his penis in my vagina after lying me down on the ground and before that my father also put off my pant. Out of that, I got pain in my vagina and blood started coming out from my vagina. Thereafter, I returned to our home and I informed the said fact to my mother. My mother inquired the said fact to my father and for that, my mother was assaulted by my father. I am unable to say for how long back, my father committed the said incident with me. My mother informed the said fact to some villagers. I was taken to Medical Officer of IGM Hospital, Agartala and treated therein. I was also examined by Police Officer and Police Officer took me in Court. I gave statement in Court on being produced by the Police Officer. I gave my signatures in the statement recorded in the Court. On being shown the statement of the witness recorded u/s. 164 Cr. P.C., the witness identified her signatures therein. On identification, signature of the witness are marked Exhibit-2 series.

At present, I am reading in Class-I. The name of my school is Bidyasagar Ucchatara Balika Vidyalaya.

After the said incident, I along with my mother and brother went to our maternal uncle's house, and resided therein. I was taken to Child Home from my maternal Uncle's house to prosecute my studies. Thereafter, I did not go to our home where my father resides.

Cross-examination:--

My mother visits me in my Child Home after about 3/4 days. My mother reported the said incident to P.S on the next day. Thereafter, I was taken to Hospital.

My grandfather (father's father), grandmother (father's mother) and one uncle (father's brother) used to reside along with us in the house of my father.

I have got two aunt (father's sister). My aunts were not living along with us in my father's house. At first, when I along with my mother left our house, at that

time my younger brother was in that house along with my grandparents and subsequently, my mother took my younger brother from that house. My father is a carpenter by profession.

My parents used to do quarrel regularly.

It is not a fact that accused did not try to insert his penis in my vagina in absence of my mother on any night.

It is not a fact that the accused did not take me in jungle on any occasion.

It is not a fact that the accused did not try to insert his penis in my vagina in jungle after lying me down in ground and also putting off my pant.

It is not a fact that being tutored by my mother, I have deposed today against the accused.

It is not a fact that my father is totally innocent and he used to love me very much.***"

8. The whole issue is whether the statement should be relied upon or not? The child has given very clear answers. She appears to be intelligent. Even in cross-examination she has clearly stated what she knows and what she does not know. Another thing which is clear from her examination is that soon after the FIR was lodged this victim was shifted to a children home. In a children home the mother would have no opportunity to tutor this witness. The minor girl was in the children home for almost 10(ten) years. Nothing has been brought out to indicate that the mother had been regularly visiting her and tutored her. She has also clearly stated that she was brought by one aunty to the Court room. The statement of this witness leaves no manner of doubt that she has suffered sexual abuse at the hands of her father. The only question is whether we should believe this statement or not. We are clearly of the view that this statement by itself inspires confidence and requires no corroboration whatsoever. The statement of this child has a ring of truth to it and we cannot brush aside this statement.

9. True it is that there is delay in filing of the FIR and also there are contradictions in the statement of the mother but to us the most important aspect is whether child is telling the truth or not. Much emphasis was laid by the learned counsel for the appellant on the fact that in the medical evidence no injury was found on the person of the victim. It was also urged that her cloths were not sent for forensic examination. In our view since the FIR was lodged more than 3(three) months after the occurrence there could have been no injuries on the person of the minor victim and there was no point in sending her cloths for forensic examination after three months.

10. Learned counsel for the appellant has placed reliance on the judgment of the Apex Court in Yerumalla Latchaiah Vrs. State of A.P: (2006) 9 SCC 713 and urges that since there is no injury on the victim rape can be inferred. The facts of this case are totally different. In the case before the Apex Court the victim was

examined immediately after the occurrence whereas in the present case victim was examined more than three months later. Therefore, this judgment has no applicability.

11. We may now look at the other corroborative evidence. P.W-1, Smt. Laxmi Sarkar is holding the post of Pradhan of Tulakona Gram Panchayat. According to her there was various disputes between the husband and the wife which could not be settled. She has further stated as follows:

"**** About one year back 4/5 days of the last meeting, informant Mina told me that her husband accused Sajal committed rape on her minor girl (daughter) victim (name withheld) in their dwelling hut about 4/5 days back. The informant reported the said fact to me verbally in my house and at that time, she was also accompanied by her minor daughter victim (name withheld). After hearing the said incident, I asked victim (name withheld) as to whether she was raped by her father Sajal. But in reply, victim (name withheld) remained silent. I also asked accused Sajal regarding the allegation made against him by his wife for committing rape on his minor daughter, but in reply the accused denied the said allegation. Lastly, I advised informant Mina Chakraborty to take shelter of law for getting justice as we failed to settle the said dispute in between them.****"

12. P.W-2, Asit Sharma who is a co-villagers has also made the following statement.

"About one year back, one day, at about 11 a.m., informant Mina went to my home and told me that the accused committed rape on her minor daughter "x"(name withheld) in his house about 3/4 days back."

This witness also states that there was a meeting in which the Pradhan, P.W. -1 was also present and then the minor victim had told them she was raped by her father.

13. P.W. 8, Bimal Acharjee, is another neighbour of the parties and his statement is as follows:

"****Around 2 years back victim (name withheld) and her mother went to my house early in the morning. The mother of victim (name withheld) informed me that in the previous night the father of victim (name withheld) removed her undergarments and raped her. I enquired into victim (name withheld). Victim (name withheld) also told the same thing that in the previous night in their house her father raped her at night removing her under-garment. I advised them to take up the matter with the local Panchayat. I was informed that the Panchayat Pradhan was informed but the father of victim (name withheld) was not ready to abide by the adjudication of the Panchayat.****"

14. Learned counsel has also placed reliance on the judgment of the Apex Court in Surjan and Others Vs. State of M.P., . The facts of that case are totally different. In that case the prosecutrix who was a major was repeatedly raped by six persons and there was delay of 10 days in lodging the FIR. In this case the

victim is a minor and delay by the mother is on account of the fact that she did not want to raise a scandal about her daughter.

15. The last authority relied upon State of Haryana Vs. Ram Singh, has no relevance to the facts of the case.

16. It is indeed shocking that even the Pradhan of the Panchayat before whom such a serious allegation was made did not herself make a complaint to the police. The Pradhan of the Panchayat is a public representative, if the parties are very poor or illiterate or even assuming that the mother did not want to lodge any complaint we are clearly of the view that the Pradhan being the head of the village should have herself lodged the complaint. The victim in this case was a nine year old girl and obviously this girl could not have herself lodged the complaint. If her mother was delaying the matter then we are clearly of the view that the Pradhan who was informed about the matter as it apparent from the statements of the Pradhan and other witnesses extracted hereinabove should have informed the police about the same immediately. This is a very serious issue. And we are clearly of the view that public representatives who do not refer such complaints to the police have no business to remain on their posts.

17. According to us the statement of the victim read with the statements of other witnesses leave no manner of doubt that this victim was subjected to the most horrible of crimes imaginable. It is indeed almost unimaginable that a human being can fall to such depths of depravity. Therefore, we are not inclined to accept the request of the learned counsel for the appellant that the sentence be reduced.

18. In view of the above discussion, we dismiss the appeal and uphold the judgment of the learned trial Court.

LCR be sent down immediately.