

(2016) 03 GAU CK 0078
In the Gauhati High Court
Case No : Crl. A. No. 39 of 2015 (J)

Sh. Nor Bahadur Pradhan

APPELLANT

Vs

State of Mizoram & Anr.

RESPONDENT

Date of Decision : 09-03-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376(2)(f), 377

Citation : (2016) CriLJ 2704

Hon'ble Judges : Mr. Michael Zothankhuma, J.

Bench : Single Bench

Advocate : Mr. Joseph Lalchhanhima Renthlei (Amicus Curiae), for the Appellant; Mrs. Linda L. Fambawl, Addl. PP, Mizoram, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Michael Zothankhuma, J.— Heard Mr. Joseph Lalchhanhima Renthlei, learned Amicus Curiae for the appellant and Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor for the respondents.

2. This appeal is an appeal from jail submitted by the appellant Sh. Nor Bahadur Pradhan against the judgment and order dated 21.11.2012 passed by the learned Addl. Sessions Judge-IV, Aizawl in Criminal Trial No. 1681/2011, by which the appellant has been convicted under Section 376(2)(f)/377 IPC and sentenced to undergo R.I for a term of 10 years and to pay a fine of Rs. 10,000/- (Rupees ten thousand), ID RI for three months under Section 376(2)(f) IPC. The appellant had been sentenced to undergo R.I for three years and to pay a fine of Rs. 4000/- (Rupees four thousand), i.d R.I for one month under Section 377 IPC. The sentences are to run concurrently.

3. The prosecution story in brief is as follows:-

The prosecution story of the case in brief is that on 27.7.2011 one Lalthanpari D/o Ram Babu(L) of Lungsir, Mamit lodged a written FIR at Mamit Police Station to the effect that since the year 2009, her husband Pradhan used to have sexual as

well as carnal intercourse with her daughter "Z", 9 years. It was also mentioned that her daughter was threatened of being killed if she makes any disclosure and that after killing her he will go back to his country. Accordingly, Mami P.S. Case No. 22/2011 dated 27.7.2011 u/s 376(2)(f)/377/506 IPC was registered. SI/Deepak Pathak was endorsed to take up investigation. Upon completion of investigation, having found prima facie case u/s 376(2)(f)/377/506 IPC against Nor Bahadur Pradhan, the investigating Officer laid charge sheet against him. The case was then committed for trial.

4. The Amicus Curiae submits that as per the evidence of the victim girl, the first incident of rape occurred when the victim girl was seven years old. However, the FIR had been filed on 27.07.2011, when the victim girl was nine years old.

5. The petitioners' counsel submits that due to the delay in filing the FIR after two years, the entire proceedings in the Trial Court has been vitiated as no satisfactory explanation has been given by the complainant with regard to the late filing of the FIR. In support of his argument the learned Amicus Curiae has placed reliance on the judgment of the Supreme Court in the case of *Rajesh Patel v. State of Jharkhand* (Criminal Trial No. 1149/2008) and the judgment of the Madhya Pradesh High Court in the case of *Sunder Singh v. State of Madhya Pradesh* (CR.R. No. 607/2013). The Amicus Curiae submits that the inordinate delay of two years in filing the FIR makes the prosecution case improbable and the same should not have been accepted by the Trial Court, as it is fatal to the prosecution case.

6. The Amicus Curiae also submits that as per the evidence of the complainant (PW1), the complainant was told by the victim that she had been raped by the appellant. The complainant confronted her husband and she reported the matter to the Village Council, who however did not believe her. Thereafter, the complainant and the appellant lived separately for about a year and started living together again later as the appellant had asked for forgiveness. The complainant has also stated that she had seen the appellant having anal sex with the victim. The complainant scolded her husband and also assaulted the victim as to why she did not shout. The complainant stated that the victim told the complainant that the accused threatened the victim with fear of death if she reported the matter to anybody. The Amicus Curiae submits that the entire sequence of events is flawed and does not indicate that any anal sex occurred as the victim girl has not corroborated the same.

7. The Amicus Curiae submits that though the complainant had stated in her evidence that she had seen the appellant having anal sex with the victim, the evidence of the victim girl does not indicate that the appellant had anal sex with the victim girl. In support of his submission that the complainant was not a reliable witness, the Apex Court has relied upon the case of *Rai Sandeep v. State* (NCT of Delhi) reported in 2012 8 SCC 21, which at para-22 states as follows:-

"22. In our considered opinion, the "sterling witness" should be of a very high

quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, 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. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a "sterling witness" whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged."

8. The Amicus Curiae submits that as the complainant's evidence was not supported by the evidence given by the victim girl with regard to carnal sex, the complainant cannot be said to be a ?sterling witness? whose evidence can be accepted by the Trial Court without any corroboration. The Amicus Curiae submits that in view of the fact that the appellant had been convicted and sentenced on the basis of an unreliable witness, namely, the complainant, and as the statement of the victim girl contradicts the evidence of the complainant, the Trial Court could not have come to a finding of guilt against the appellant. The Amicus Curiae has thus prayed that the judgment and order dated 21.11.2012 passed by the Addl. Sessions Judge-IV, Aizawl in Criminal Trial No. 1681/2011 should be set aside and quashed.

9. Mrs. Linda L. Fambawl, learned Addl. Public Prosecutor submits that the appellant can be convicted even on the basis of the victim girl alone as there is nothing on record to show that the victim girl is not a reliable witness. The Addl. Public Prosecutor also submits that the appellant has only questioned the

reliability of the complainant as a witness and not the victim girl. The Addl. Public Prosecutor also submits that the appellant in his appeal petition has not denied his guilt in committing rape upon the victim girl and has only prayed for mercy and leniency to reduce his sentence. The Addl. Public Prosecutor thus submits that in view of the admission of guilt by the appellant in his appeal petition, the impugned judgment and order dated 21.11.2012 should be upheld.

10. I have heard the learned counsels for the parties. In the case of Narender Kumar v. State (NCT of Delhi) reported in (2012) 7 SCC 171, the Apex Court has held at para-20 as follows:-

"20. It is a settled legal proposition that once the statement of the prosecutrix inspires confidence and is accepted by the court as such, 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 for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. Minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case."

11. The victim girl in her evidence has stated as follows:-

"When we were in Bughmun I was 7 years. While my mother was away at Mamit for about one week I remain at home with my father and my brother Rajesh. I used to sleep in one bed with my brother Rajesh and my parents used to sleep in another bed. While my mother was away at Mamit one night the accused took me from my bed to his bed and raped me and I realised that after he committed the act he penetrated his male organ into my private part as well as on my anus and I passed feces thereafter. I did not shout I was scared of he accused since he threatened me to kill me with a dao I was having severe pain on my private part and my anus and my whole body was aching. When my mother returned from Mamit I told her about the incident who informed the matter to YMA and they summoned me and they did not believe me. They hanged me upside down and checked my private part. They also told me to tell my parents that I was checked by a doctor and the doctor did not find anything unusual. Though I was not actually taken to the doctor since I was scared of them I told this to my mother. The YMA separated my parents but after sometime my step father came back to my mother. Thereafter we shifted to Lungsir Mamit. While my mother was away in the forest to look for vegetables my step father used to come back home during day time and often raped me. I did not say anything to my mother since I was threatened of being killed by the accused. My step father used to tell me that he will save some money and that he will take me to his hometown and marry me. He did not allow me to disclose this to my mother. One time I went to Damdiai with my step father and mother and at the said place I was again raped by my step father and my mother saw it. Thereafter my mother send my step father to his work place for sawing timber

and after the accused left she started beating me with a stick and told me to disclose everything to her so I disclosed the entire incidents to my mother. My mother went back to the village and informed leaders of YMA. I was taken to a doctor at Mamit and MHIP leaders took me. The police also recorded my statements."

12. I have also perused the appeal petition submitted from jail by the appellant, an extract of which is reproduced below:-

"Your honour, I have nothing to say to justify myself on the Judgment and Order that has been passed upon me and regretfully accept my guilty. Your honour what I would like to bring to your notice is not trying to prove my innocence and make excuses but the situation I am in and the consequences of this infamous and horrible crime I have committed. The main reason I committed this crime was because I was under the influence of Alcohol. Not that, there is any ground for excuses for my misdeeds but I would never have committed such a crime in a sober mind. I feel I literally become temporarily insane since I cannot recall most of the things I did and how I behave the past. I, therefore beg the mercy of the honourable Court for leniency and earnestly beg to reduce my sentence. So that I can have a chance to look after my family."

13. I have also seen the Doctors report which states that the hymen of the victim girl has been ruptured. The appellant's appeal petition clearly shows the admission of guilt of the appellant.

14. On considering the entire matter and on perusal of the Lower Court Record, I am of the view that the appellant has not made out any grounds for setting aside the judgment and order dated 21.11.2012 passed by the Addl. Sessions Judge-IV, Aizawl in Criminal Trial No. 1681/2011 under Section 376(2)(f) IPC/377 IPC. Accordingly, the present appeal is dismissed. This Court appreciates the effort of the Amicus Curiae and his fee is fixed at Rs. 7500/- to be paid by the State Legal Service Authority, Mizoram.