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MD. KALAM

v.

THE STATE OF BIHAR

(Criminal Appeal No. 239 of 2002)

JUNE 13, 2008

B

[DR. ARIJIT PASAYAT AND P.P. NAOLEKAR, JJ.]

C

Penal Code, 1860 – s.376 r/w s.511 – Rape – Of minor – Evidence of the victim – Appreciation of – Allegation that Appellant took PW6, a 6 year old girl, to a lonely place and raped her – Courts below relied on evidence of PW6 and her mother to hold Appellant guilty – Conviction challenged on ground that evidence of PW6 should not have been accepted, particularly in absence of any corroboration – Held: Evidence of PW6 was cogent, credible and free from any influence – Corroboration from statement of PW6 to her mother immediately after the incident – Hence, conviction of Appellant justified – 5 years' custodial sentence would meet the ends of justice.

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PW4 lodged FIR alleging that Appellant had taken her 6 year old daughter, PW6, to a lonely place and raped her. Both Trial Court and the High Court relied on the evidence of PWs 4 and 6 to hold the Appellant guilty under s.376 r/w s.511 IPC and sentenced him to 10 years rigorous imprisonment alongwith fine of Rs.500/-.

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The conviction of Appellant is challenged before this Court on the ground that the evidence of the child rape victim i.e. PW6 should not have been accepted, particularly in the absence of any corroboration. It was further contended that the sentence imposed on the Appellant was harsh.

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The Respondent-State, on the other hand, contended that the testimony of a child witness, particularly in case of this nature, does not require corroboration if the testi-

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mony of the victim is credible and further that since PW6 had immediately after the occurrence told PW4 about the incident, her evidence is of considerable importance.

Partly allowing the appeal, the Court

HELD: The Trial Court and the High Court found the evidence of the child witness cogent, credible and having grain of truth. The High Court found that the evidence of victim was free from any influence. Therefore, the Trial Court and the High Court relied upon the evidence of the victim. Additionally, the statement made by PW6 to her mother immediately after the incident is to be treated as corroborative. Therefore, the High Court rightly held the Appellant guilty. Coming to the question of sentence, 5 years' custodial sentence, with fine as imposed by the Trial Court and maintained by the High Court, would meet the ends of justice. [Paras 5,6,7] [1161-E-H, 1162-A,B]

Rameshwar S/o Kalyan Singh v. The State of Rajasthan (AIR 1952 SC 54) –relied on.

Panchhi and Ors. v. State of U.P. (1998 (7) SCC 177) –referred to.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 239 of 2002

From the final Judgment and Order dated 5.7.2001 of the High Court of Judicature at Patna in CrI. Appeal NO. 280 of 2000

Ugra Shankar Prasad for the Appellant.

Gopal Singh and Manish Kumar for the Respondents.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a learned Single Judge of the Patna High Court dismissing the appeal filed by the appellant by which he had questioned the correctness of conviction for offence punishable

A under Section 376 read with Section 511 of the Indian Penal Code, 1860 (in short the 'IPC') and sentence of 10 years rigorous imprisonment and fine of Rs.500/- with default stipulation, as imposed by learned Additional Sessions Judge I, Katihar.

B 2. Background facts in a nutshell are as follows:

B First Information Report was lodged on 27.11.1997 by mother of the victim, aged about 6 years, alleging that the appellant had taken the victim to a lonely place and forcibly raped her on 25.11.1997. The victim suffered terrible pain. Persons
C of the locality tried to intervene in the matter and there was some delay in lodging the FIR. Investigation was undertaken and charge sheet was filed for alleged commission of offence punishable under Section 376 IPC. The victim was examined as PW-6 while her mother, the informant was examined as PW-4.
D The trial Court and the High Court relied on the evidence of PWs 4 and 6 to hold the appellant guilty of offence punishable under Section 376 read with Section 511 IPC and sentenced him as afore-noted. The appeal before the High Court did not bring any result.

E The basic challenge in this appeal appears to be that the evidence of the child witness should not have been accepted particularly in the absence of any corroboration. It has also been indicated that the sentence is harsh.

F Learned counsel for the State has urged that the testimony of a child witness particularly in case of this nature does not require corroboration if the testimony of the victim is credible. It is also pointed out that the victim had immediately after occurrence told her mother about the incident and, therefore, her evidence is of considerable importance.

G 3. Since the age of the victim was 6 years at the time of incident, the appropriate conviction would have been under Section 376(2)(f) IPC if conviction would have been for rape. Under Section 376(2)(f) the permissible sentence is life sentence with minimum of 10 years.
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4. Section 511 IPC reads as follows:

“Punishment for attempting to commit offence punishable with imprisonment for life or other imprisonment- Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one half of the imprisonment for life or, as the case may be, one half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.”

(Underlined for emphasis)

5. In *Panchhi and Ors. v. State of U.P.* (1998 (7) SCC 177) it was observed by this Court that the evidence of a child witness cannot be rejected outright but the evidence must be evaluated carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus a child witness is an easy prey to tutoring. The Court has to assess as to whether the statement of the victim before the Court is the voluntary expression of the victim and that she was not under the influence of others. The trial Court and the High Court have found the evidence of the child witness cogent, credible and had grain of truth. The High Court found that the evidence of victim was free from any influence. Therefore, the trial Court and the High Court have relied upon the evidence of the victim. Additionally, it would be appropriate to take note of the observations of this Court in *Rameshwar S/o Kalyan Singh v. The State of Rajasthan* (AIR 1952 SC 54). At para 25 it reads as follows:

“Next, I turn to another aspect of the case. The learned High Court Judges have used Mt. Purni’s statement to her mother as corroboration of her statement. The question

A arises can the previous statement of an accomplice or a complainant be accepted as corroboration?"

6. The answer was it was to be treated as corroborative.

B 7. Therefore, the High Court as noted above has rightly held the appellant guilty. Coming to the question of sentence, according to us, 5 years' custodial sentence with fine imposed by the trial Court and maintained by the High Court would meet the ends of justice.

8. The appeal is allowed to the aforesaid extent.

B.B.B.

Appeal partly allowed.