

SUPREME COURT OF INDIA

Md. Kalam

Vs.

State of Bihar

Crl.A.No.239 of 2002

(Dr. Arijit Pasayat and P.P. Naolekar JJ.)

13.06.2008

JUDGEMENT

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 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.

2. Background facts in a nutshell are as follows:

“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 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. 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 aforementioned. The appeal before the High Court did not bring any result.

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.

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.”

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.

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.*¹ 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*². 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 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.

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.

¹(1998 (7) SCC 177) ²(AIR 1952 SC 54)