

Neyaz Ahmad Vs. State of Bihar

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Court : Patna

Decided On : Feb-05-1999

Judge : B.P. Singh and P.K. Sarkar, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) , 1974 - Sections 164

Appeal No. : Criminal Appeal No. 255 of 1994

Appellant : Neyaz Ahmad

Respondent : State of Bihar

Advocate for Def. : Prasad Gupta, A.P.P.

Advocate for Pet/Ap. : Binod Shankar Tiwary and Vinay Kirti Singh, Advs.

Disposition : Appeal dismissed

Judgement :

1. The sole appellant Neyaz Ahmad has been sentenced to undergo 10 years rigorous imprisonment under Section 376 of the Indian Penal Code by the 5th Additional Sessions Judge, Siwan in Sessions Trial No. 164 of 1993 by his judgment and order dated 11th April, 1994. The victim in this case was a minor girl aged about 9 years who is said to have been raped by the appellant on 19-10-92 inside his Ata Chakki at about 12.30 p.m. at village Daraila which falls within the

jurisdiction of Guthani Police Station which was at a distance of 1 kilometers from the village of occurrence. Several witnesses have been examined to prove the prosecution case including the victim, minor Sangita, who was examined as PW 2. The mother of the victim Prem Kumari PW 3, the grandmother of the victim Malti Devi PW 4, grandfather of the victim Brij Kishore Kalwar PW 5 and the father of the victim Nathuni Prasad Kalwar PW 7 have supported the prosecution case and have corroborated the testimony of the victim girl inasmuch as the victim girl had reported the incident to them as soon as they met. Apart from this, the prosecution has also relied upon the statement of the victim recorded by Judicial Magistrate under Section 164, Cr. P. C. on 12-11-92 which fully corroborates the version set out in the first information report. Surprisingly the doctor who examined the victim girl and the Investigating Officer who conducted the investigation were not examined as prosecution witnesses but the Court summoned them as Court witnesses and they have been examined as CWA and CWB, respectively. The Court had also summoned as a Court witness the Judicial Magistrate who recorded the statement of the victim girl under Section 164, Cr. P. C. and he has deposed as CWC. There are two formal witnesses -- PW 1 who proved the formal F.I.R. drawn up in the case and PW 6 Ishwar Singh, a Constable who produced the material exhibits before the Court.

2. The occurrence giving rise to this appeal is said to have taken place on 19-10-92 at village Daraila. The case of the prosecution is that at about 12.30 p.m. the victim, minor Sangita, was playing with her younger brother aged about one year near her house. The Ata Chakki belonging to the father of the appellant is located just behind the house of the victim. While playing with her, her younger brother went towards the Ata Chakki of the appellant and Sangita followed him. The appellant who was alone in his Ata Chakki caught hold of Sangita and committed rape on her. After the incident Sangita came to her house and reported the matter to the members of the family who were present there including her mother PW 3 and her grandmother PW 4. Since the father of the victim girl as well as her grandfather were not at home at that time, they waited for them to arrive. The father of Sangita, who is also the informant in this case, Nathuni Pjasad Kalwar, PW 7, came home about 3 p.m. when the incident was reported to him. As a result of the injuries caused on the private parts of the minor girl her pant and frock were

stained with blood. The informant took her to the Police Station and also carried with him the blood-soaked pant and frock of the victim girl and lodged a report at the Police Station. It appears from the F.I.R. that the first information was lodged at 18.15 hours on the date of occurrence.

3. In the report lodged before the Officer-in-Charge of Guthani Police Station it was stated by the informant that when he reached home on that day at about 3 p.m. his minor daughter Sangita Kumari aged about 9 years, reported to him crying that at about 12.30 p.m. she was playing with her younger brother Santosh just behind their shop. While playing Santosh went to the Ata Chakki shop of the appellant who is son of Samsuddin Ahmad. To bring her brother back Sangita went inside the Ata Chakki but the appellant caught hold of her and removed her pant. When Sangita tried to raise an alarm he pressed her mouth with his hands and fell her on the ground and thereafter committed the rape. When Sangita started writhing in pain and blood started coming out of her private parts, the appellant wiped the blood with her pant and sent her back threatening that she should not say anything to anyone. The informant was told by Sangita that at that time there was no one else in the Ata Chakki and finding her alone the appellant had committed rape. She also told him that she came home crying and reported the matter to her mother and others. The informant has then stated that he was submitting a written report and was also producing the bloodstained pant and frock of his daughter. There was some delay in reporting the matter because no male member of the family was present in his house when the incident was reported.

4. The Officer-in-Charge of the Guthani Police Station, one Suresh Prasad, drew up the formal First Information Report and also directed that the minor girl should be taken for medical examination to Sadar Hospital, Siwan. The clothes were handed over by the informant to the Officer-in-Charge under seizure memo, Ext. C-3. Thereafter the investigation was handed over to Rajeshwar Singh, A.S.I. who investigated the case and ultimately filed charge-sheet. The Investigating Officer has stated that he recorded the statements of the witnesses present there. Thereafter at 19.50 hours he proceeded to the place of occurrence for inspection. He thereafter took other steps and ultimately submitted charge-sheet. It is, however, noteworthy that the bloodstained clothes handed over to the

Investigating Officer were never sent for chemical examination despite the fact, as admitted by the Investigating Officer, CWB, that he had been instructed by the Sub-Divisional Police Officer as well as the Superintendent of Police to send the clothes for chemical examination to the Forensic Science Laboratory.

5. It appears from the testimony of Dr. Smita Gupta who was posted as Civil Assistant Surgeon in Sadar Hospital, Siwan on the relevant date, that she examined the minor Sangita Kumari in the night of 19th October, 1992 and again confirmed the same in the morning of 20th October, 1992 at 9 a.m. She found no mark of violence on any part of the body but on examination of the genitals she found bruising of labia, hymen is torn and lacerated and perineal tear of about 2 cm. She also noticed slight oozing of blood from tears. The microscopic examination of the vaginal swab did not disclose the existence of dead or alive spermatozoa but pus-cells and leucocytes were seen. The X-ray report disclosed epiphysis of lower end of radius and ulna not fused and epiphysis of the iliac crest did not appear.

In her opinion, the injuries caused disclosed that rape had been committed. She deposed by reference to a carbon copy of the medical report but stated that original had been sent to the concerned Police Station. She denied the suggestion that all these injuries could be caused if a female fell on hard substance which sinks into her vagina. She said that would not cause bruising of labia even though it may result in perineal tear.

6. There is nothing in the cross-examination of this witness which may raise any suspicion about truthfulness of her deposition. It is not even suggested that she had any reason to give a false report or to falsely implicate the appellant. Moreover, she is an independent witness and an expert, and her evidence is entitled to great weight: in the absence of any surrounding suspicious circumstances which may impeach her credibility. We are also satisfied that the injuries found by her on the private parts of the minor girl are almost conclusive in establishing that the minor girl was victim of rape.

7. The victim girl has been examined as PW 2. We found that the learned Judge had put questions to the witness to make an assessment of her capacity to depose

and only after being satisfied that she was in a position to depose, oath was administered to her and she deposed before the trial Court. In her deposition she stated that at about 12 noon she was playing with her younger brother Santosh near the jamun tree. Santosh ran towards the machine of the appellant and she also followed him inside the Ata Chakki of the appellant. There was no one else in the shop except the appellant. She enquired from the appellant, as to whether her brother was there. But the appellant caught hold of her and took off her pant. She thereafter described the manner in which the appellant committed rape on her. She started bleeding and when she tried to raise an alarm the appellant pressed her mouth with his hand. The appellant also wiped the blood with her pant and threatened her that the mentioned the matter to anyone at home she would be killed. She stalled weeping and went to her house and reported the matter to her mother. Her father was not at home and therefore when her father returned, her mother reported the matter to him. She then went to the Police Station with her father and her statement was also recorded there. She was also taken to the doctor for medical examination and her statement was also recorded before a Magistrate. This witness was cross-examined at length about the shops located in the locality. It is an admitted case that the Ata Chakki of the appellant is adjacent to the house of the victim. From her deposition it was sought to be made out that the Ata Chakki of the appellant as well as the house of the victim girl are located on the road and there are many other shops in the locality.

She further stated that when her father returned from the market, her mother reported the entire matter to him and thereafter her father took her to the Police Station. At the Police Station her father stated the facts which had been told by her mother. While her father was talking to the Police Officer she was also with him and her father told the Police Officer that she was his daughter. She did not have any talk with the Investigating Officer at that time. She had then gone to Siwan for medical examination and had to stay there for a day. On the following day she had left for her village home and reached her village home in the evening. She stated that the place of occurrence was shown by her to her father and it was her father who had shown the place of occurrence to the Investigating Officer. At the time of occurrence the Ata Chakki was not in operation. She denied the suggestion that she had fallen on a peg while tying a goat resulting in the injuries found on her.

8. The testimony of PW 2 victim girl substantially states the same version as has been stated in the F.I.R. A few minor discrepancies here and there will not lead us to discard the testimony of the victim girl. It is well, settled that the testimony of a victim in cases of sexual offence 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. 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 victim of sexual assault stands almost at par with the evidence of an injured witness and to an extent is even more reliable. The corroborative evidence is not an imperative component of judicial credence in every case of rape. The old theory of treating prosecutrix as an accomplice has now been given a go by, and it is now considered improper and undesirable to test her evidence with a certain amount of suspicion treating her as if she were an accomplice.

9. In the instant case, apart from the fact that the testimony of the victim girl appear to be truthful and reliable, even if there was any need for corroboration, the same is fully corroborated by the other evidence on record. PW 3 Prem Kumari is the mother of the victim. She was the in person to hear the victim girl reporting the incident. We have read her deposition carefully and we find no reason to disbelieve her. Narration of events by the victim girl before her were substantially the same as deposed to by her at the trial. She also stated that since her husband was not at home when the incident was reported to her, she reported the matter to him as soon as he returned.

This witness was also cross-examined at length with a view to establish some sort of enmity between the two families, that of the victim girl for that of the appellant. It was taken from her in cross-examination that the Ala Chakki of the appellant is adjacent north of the tea shop of the victim's father and that when the Ala Chakki is operated it causes a vibration and causes inconvenience to the members of the

family of the victim girl. She candidly stated that her father-in-law had talked to the appellant's family in this connection and had requested them to slightly shift Use machine so that it may not cause any vibration but they had not heeded to their request. It was also stated by this witness that the father of the appellant was a shrewd person and lent money to the villagers after keeping ornaments by way of security. She had also kept some ornaments with the father of the appellant by way of security, but despite the fact that she had repaid the loan the ornaments had not been returned. Since the father of the appellant was adamant, the family members of the victim girl kept quiet and did not raise this dispute thereafter. The ornaments had been kept by way of security four years ago and within a year the entire amount had been repaid. Such cross-examination was perhaps with a view to plead the case that the appellant had been falsely implicated on account of enmity between the parties. PW 3 also deposed that after her husband had left for the Police Station her father-in-law, PW 5, returned home and he also followed her husband to the Police Station. Her husband returned at about 8 p.m. but her father-in-law returned next day along with Sangita, the victim girl, since they had gone to Siwan. The Investigating Officer had come to the village on the following day and had recorded her statement as well as the statement of others. She denied the suggestion that no such occurrence had taken place and that on account of enmity a false case has been reported against the appellant. She also denied the suggestion that Sangita had fallen on a peg resulting in injuries to her private parts.

9A. Malti Devi PW 4 is the grandmother of the victim girl Sangita. Her deposition is to the same effect as that of PW 3 Prem Kumari. She has further stated that the pant of Sangita was soaked with blood. She further stated that after Sangita, reported the matter to her daughter-in-law PW 3, her daughter-in-law started weeping. She tried to console her daughter-in-law. The people of the mohalla were not informed because it was a matter relating to the family's honour.

10. We find no reason to disbelieve Prem Kumari PW 3 and Malti Devi PW 4 who were present in the house when the victim girl was weeping and reported the incident to them. A mere reading of their depositions convinced us that they are natural and truthful witnesses. The fact that soon after the occurrence the victim

Sangita reported the matter to her mother and grandmother provides a strong corroborative evidence supporting the prosecution.

11. Shri Brij Kishore Kalwar PW 5 is the grandfather of the victim girl. He returned home at about 3-3.30 p.m. and was told by his wife about the rape committed by the appellant on his grand daughter. He questioned his wife as to where Sangita was and was told that his son Nathuni, the informant, had taken Sangita to the Police Station. He also followed them to the Police Station. According to this witness, by the time he reached the Police Station his son had already lodged a case. This witness had accompanied Sangita to Siwan where she was medically examined by the lady doctor. They stayed overnight at Siwan and returned only on the following evening. He stated that Police Constable had taken the necessary papers from the Police Station and they had accompanied him to Siwan where Sangita had been sent for medical examination. He had been orally asked by the Police Officer to accompany the girl.

It was suggested to this witness that Dudhnath was a friend of AS1 Rameshwar Prasad. This witness denied any knowledge about the relationship between the two and he further denied the suggestion that Dudhnath and ASI Rameshwar Prasad used to visit his shop and take tea.

12. PW 7 Nathuni Prasad is the informant and father of the victim girl. He has stated the manner in which the matter was reported to him by his wife when he returned home from Mairwa on the date of occurrence at about 3.00 p.m. He has also stated that he took his daughter to the Police Station and gave a written report at the Police Station. He also stated that his statement as well as that of the victim girl was recorded at the Police Station and he had produced the bloodstained clothes before the Police Officer. He identified the material exhibits M-1 and M-2, which were before the Court, as the clothes handed over by him to the Police Officer. He also proved the seizure report under which the clothes had been seized.

The informant deposed that he reached the Police Station at about 3.30 p.m. and report was written by the Daroga at the Police Station. He was 'accompanied by his daughter Sangita and one Dudhnath and later Rajiv Manjhi also had come and

thereafter his father also reached the Police Station at about 4.30-5.00 p.m. The Investigating Officer had accompanied him to the village where he had shown him the place of occurrence. He denied the suggestion that he had ever threatened the father of the said Shamsuddin that he will get him falsely implicated in any case, on account of the fact that Ata Chakki machine was causing great inconvenience to the members of his family. He denied the suggestion that Sangita had fallen on a peg which caused the injuries found on her person.

13. CWC is the Judicial Magistrate who had recorded the statement of Sangita under Section 164, Cr. PC on 12th November, 1992. He has stated that he had first satisfied himself that the said Sangita was in a position to make a correct statement and only after complying with all the requisite formalities had he recorded her statement. He proved the statement recorded by him which was marked Ext. C-4. We have also read the statement made by Sangita Kumari under Section 164, Cr. PC and we find that the version given by her is substantially the same as deposed to by her at the trial.

14. We are satisfied that the testimony of the victim girl Sangita, PW 2, is truthful and we have no reason to doubt her testimony. She was a minor girl aged about 9 years and therefore could not entertain any motive to falsely implicate the appellant for any reason whatsoever. Soon after the occurrence she reported the matter to her mother and grandmother. She was taken to the Police Station by her father when he returned at about 3 p.m., and made statement before the Investigating Officer as well. She disclosed the same version in her statement under Section 164, Cr. PC on 12-11-92. Her evidence is fully corroborated by the testimony of Dr. Smita Gupta, lady doctor who examined her on the date of occurrence itself. The evidence of PW 3 Prem Kumari, PW 4 Malti Devi, PW 5 Brij Kishore Kalwar and PW 7 Nathuni Prasad Kalwar is of corroborative nature and strongly corroborates the testimony of the victim girl.

15. It was submitted before us by counsel for the appellant that there is no injury on the person of the victim. According to him, if a sexual assault was committed on the victim girl she would have resisted the offender and in that process she would have received some injuries on other parts of the body. Such injuries caused while

resisting the offender is commonly described as defence injuries. Much importance cannot be given to the absence of defence injuries, because it is not an invariable rule that in the absence of defence injuries the prosecution must necessarily fail to establish its case. Such a plea is often raised to prove that no occurrence at all took place, and at times the plea is raised to suggest consent on the part of the victim. So far as consent is concerned, in the instant case this is wholly irrelevant because the girl was hardly 9 years old. In fact, she has not even deposed to the effect that she resisted the appellant. She no doubt tried to cry for help but the appellant pressed her mouth and she could therefore not even attract the attention of persons who were in the shops nearby. She was inside the shop of the appellant and therefore taking advantage of the situation, the sexual assault was committed upon her.

16. The existence of defence injuries on the person of the victim may go to support the case of the prosecution, if the other evidence on record points to the truthfulness of the prosecution case. However, in its absence, the prosecution may still be able to establish by cogent evidence on record, that the offence was committed. The absence of defence injuries has to be considered out in the facts and circumstances of the case, and no invariable rule can be laid down. It may be that the victim may offer resistance and in that process some injuries may be caused to her. It may also be that the victim may be so shocked that she may not be able to offer resistance. The circumstances under which the offence is committed is also relevant and in many cases the victim may be under such imminent threat to her life that she may not be able to resist, and in any event, finds resistance futile. The victim may be over awed by the physical strength of the offender and thus unable to resist him. She may not even have the moral courage at times to resist the onslaught of the offender. All these factors have to be taken into account while considering the plea of absence of defence injuries on the person of the victim. In the case of a minor, such as the victim in the instant case, who was hardly nine years old, it cannot be said that she was in a position of equal strength so as to resist the appellant who was a grown-up young person. She may have been so shocked that she could not offer any resistance and was perhaps unaware as to what was going to follow. As observed by the Supreme Court in the case of *Balwant Singh v. State of Punjab* AIR 1987 SC 1080 : 1987

Cri LJ 971 it cannot be said that whenever resistance is offered, there must be some injury on the body of the victim. In that case it was found that the appellants were four in number and the prosecutrix was a girl 19-20 years of age and therefore, she was not expected to offer such resistance as would cause injuries to her body. In the instant case as well we find that the victim girl was aged about nine years, and having regard to the facts and circumstances of the case, the absence of such defence injuries on her person, other than on her private parts, is not such a circumstance as would lead us to discard her testimony. It is not as if there are no injuries on the person of the victim. The doctor has found injuries caused to her private parts and on the basis of the injuries so caused, the lady doctor had no hesitation in finding that the victim had been subjected to sexual assault. Looking into the injuries as found by the doctor, we also have no doubt that the victim had been subjected to sexual assault and in circumstances in which she was placed, defence injuries may not have been caused. We are also satisfied that the injuries are not such as would have been self-inflicted only with a view to falsely implicate the appellant, nor were, such injuries possible by a fall on a peg, as suggested by the defence.

17. It was then submitted that in her examination-in-chief PW 2 Sangita had stated that her statement was recorded at the Police Station, but later in her cross-examination she has stated that she had no talk with the Police Officer at the Police Station. We do not attach much importance to this so-called discrepancy, because the latter statement was made in the context of her father's talk with the Police Officer. There is no contradiction in her testimony and all that she wanted to convey was that after her statement was recorded she had no discussion with the Police Officer. Another inconsistency pointed out by the appellant was that at one place the victim girl stated that her brother, about one year old, had himself walked into the shop of the appellant while at another place she has stated that he was taken away by the appellant. This slight discrepancy is not of much significance and does not touch the core of the prosecution case.

18. It was then submitted that the place of occurrence is surrounded by a number of shops and there are two employees employed by the appellant for working in his Ata Chakki. None of them has come forward to depose in favour of the

prosecution. The statement of the victim is clear that on the date of occurrence the Ata Chakki was not working and the appellant was alone in his Ata Chakki. Moreover, the offence was committed within the four walls of Ata Chakki and the victim was prevented from raising an alarm. In these circumstances the persons who may have been nearby may not have come to know about the occurrence which took place inside the Ata Chakki of the appellant. It was also submitted that the victim girl has stated that she was in the Ata Chakki for about one hour and it is not disputed that her house is situated adjacent to the Ata Chakki. We do not give much importance to this statement of the victim because she was not wearing a watch and was only making a rough guess as to the period for which she was detained in the Ata Chakki. Moreover, from a village girl aged about nine years, it would be unreasonable to expect an exact assessment of the time taken for commission of the offence.

19. It was then submitted that the bloodstained clothes which are said to have been handed over to the Officer-in-charge at the Police Station by the informant were not sent for chemical examination and therefore, the corroboration which such evidence could offer was absent. We have noticed this with some amount of distress that the Investigating Officer of this case has not conducted the investigation fairly, and the investigation of the case was done in a most perfunctory manner. The I.O. CW B has admitted in course of this deposition that he had been directed by the Sub Divisional Police Officer as well as by the Superintendent of Police to send the clothes for chemical examination. He was also aware of the fact that such material exhibits should be sent to the Forensic Science Laboratory for chemical examination. Despite this, he did not send the blood-stained clothes for chemical examination, and to our mind this was a gross dereliction of duty on his part. He not only failed to perform his legal obligations to conduct an efficient investigation of the case, but he also is guilty of defying the orders of his superior officers. Apparently he was inclined towards the appellant who appears to be a well to do person. We must therefore record our displeasure against the Investigating Officer and observe that he was not fair in conducting the investigation, and did so in a perfunctory manner to help the defence, and this too in defiance of the orders of his superior officers. We, therefore, direct the Director General of Police to look into the matter and, if necessary, to conduct an enquiry,

including a departmental proceeding, and take appropriate action against the Investigating Officer. We are compelled to do so because we can take judicial notice of the fact that in large number of cases Investigating Officers have deliberately withheld material exhibits and have failed to send them for chemical examination. In several cases we have noticed that even the blood-stained weapon of offence has not been sent to the Forensic Science Laboratory for chemical examination. The conduct of such Investigating Officers must be characterised as 'dishonest' and cannot be countenanced in a State where the crime graph is soaring to dizzy heights.

20. In this case, however, the failure of the investigating agency to get the blood-stained clothes chemically examined is not vital to the prosecution case. Such evidence could have corroborated the case of the prosecution as put forward by the victim girl, but having regard to the facts and circumstances of this case we are satisfied that on the basis of material as it is, the conviction of the appellant can be sustained.

21. The victim girl was of tender age, about nine years, at the time of occurrence. She has given a straight-forward version of the occurrence without any influence. The first information report was lodged promptly. She had immediately reported the incident to her mother and grandmother and later to her father. The medical evidence on record fully supports the prosecution case. Her testimony inspires confidence and finding her testimony to be reliable we do not need corroboration of her statement before relying upon the same. There is no reason to view her testimony with doubt, disbelief or suspicion. The other evidence on record does lend assurance to her statement, sufficient to satisfy the judicial conscience. We are also satisfied that the case has not been registered only to falsely implicate the appellant. We cannot overlook human psychology and behavioural probabilities. In a tradition bound non-permissive society as it prevails in this part of the country, any girl would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down by the society. Parents of such a victim are even more conscious of this fact and in normal course of human conduct, neither the victim girl nor her parents would like to give publicity to the

traumatic experience undergone by the victim as they would feel terribly embarrassed in disclosing the fact which would really reflect upon the honour of the family. Even if the parents of the victim girl entertained a design to falsely implicate the appellant, they would not have, for that reason alone, exposed their own unmarried daughter to social ostracization and reflection upon her chastity. There are many other ways of falsely implicating a person towards whom one is inimical. But the charge of rape against one's own daughter would be last one in the list of such designs. We are, therefore, satisfied that implicit reliance can be placed upon the testimony of Sangita PW-2 the victim of the sexual assault. A careful analysis of the statement of the victim girl has created an impression in our minds that she is reliable and truthful witness and her testimony-suffers from no infirmity or blemish whatsoever. Our judicial conscience is satisfied and we have therefore no hesitation in acting upon her testimony alone, without looking into for any corroboration, though there is ample corroboration available on record to lend further credence to the testimony of the victim girl, such as medical evidence on record and the reporting of the incident to the members of the family by the victim girl immediately after the occurrence. For the failure of the investigating agency to provide further corroborative evidence, one cannot blame the victim girl and such failure on part-of the investigating agency in a case of this nature does not in any manner reflect upon the truthfulness and veracity of the statement of the witnesses examined at the trial. At best, such corroborative evidence, which has been kept away from the Court on account of the incompetence or dishonesty of the investigating officer would have only buttressed the prosecution case. But the failure to produce such corroborative evidence would not in any manner adversely affect the outcome of the case put forward by the prosecution. The absence of spermatozoa on the vaginal swab does not falsify the version of the victim. The Supreme Court in the case of *Narayanamma v. State of Karnataka* (1994) 5 SCC 728 had in this context observed--

With regard to the vaginal smear examination conducted at a different hospital, Dr. Reeta, PW 3 has reported that no spermatozoa was seen on it, and the absence of sperms has been viewed against the version of the prosecutrix. It was never elicited from the prosecutrix as to whether the two persons who committed rape on her had reached orgasm emitting semen on her private parts. No presumption can

be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix.

We may only notice that in this case the victim girl was not cross-examined on the question as to whether the appellant had reached orgasm nor was she examined in regard to other details.

22. It was then submitted that this Court may consider the question of sentence and reduce the sentence of imprisonment imposed against the appellant. Unfortunately that is not possible, because in a case of this nature where the victim girl is aged only about nine years, the minimum sentence which has to be imposed is ten years rigorous imprisonment, and that is what the trial Court has awarded in this case.

23. We, therefore, find no merit in this appeal and the appeal is, accordingly, dismissed.

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