

Madhya Pradesh High Court

Nanni Bai vs The State Of Madhya Pradesh on 13 May, 2022

Author: Rajeev Kumar Dubey

1
IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAJEEV KUMAR
ON THE 13th OF MAY, 2022

CRIMINAL REVISION No. 39 of 2021

Between: -

1. NANNI BAI W/O BIHARI AHIRWAR, AGED ABOUT 60 YEARS, OCCUPATION: HOUSE WIFE
2. BIHARI S/O PHULE AHIRWAR, AGED ABOUT 62 YEARS, OCCUPATION: AGRICULTURIST, BOTH R/O VILLAGE BILOKI, PS KESHLI DISTT. SAGAR (MADHYA PRADESH)

(BY SHRI ASHISH KUMAR KURMI, ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH, THR PS KESHLI, DISTT. SAGAR (MADHYA PRADESH)
2. VICTIM A D/O NOT KNOWN NOT MENTION (MADHYA PRADESH)

(BY SHRI RAVINDRA RAJPUT, PANEL LAWYER FOR
RESPONDENT NO.1/STATE
NONE FOR THE RESPONDENT NO.2/COMPLAINANT,
SERVED)

This revision coming on for admission this
following:

ORDER

Heard.

2. This criminal revision has been filed under Section 397/401 of the Code of Criminal Procedure against the order dated 11/12/2020 passed by Signature Not Verified SAN learned Additional Sessions Judge, Deori, District Sagar in Sessions Trial Digitally signed by MONIKA CHOURASIA Date: 2022.05.17 16:04:27 IST No.62/2020 whereby learned Additional Sessions Judge framed charge against the applicants/accused namely Nanni Bai and Bihari for the offence punishable under Sections 376(2)(n) read with Section 114 of the IPC, 376(3) read with Section 114 of the IPC, Section 17 read with Sections 6 and Section 17 read with Section 5j/6 of the Protection of Children

from Sexual Offences Act, 2012 (hereinafter referred as "the POCSO Act") and Section 11 of the Child Marriage Prohibition Act, 2006.

3. Brief facts of the case which are relevant for the disposal of this criminal revision are that on 6/12/2019 prosecutrix, who was a minor, aged about 15 years, lodged a report at PS Kesali, Distt. Sagar saying that She had one brother and two sisters. About one and a half years ago after the death of her father, her mother co-accused Parvati Bai married with co-accused Har Prasad Ahirwar, and thereafter, started living in the village Gourjhamar along with Harprasad. She along with her siblings also lived with them. In the summer of 2019, in the month of Jyeshtha, her mother Parvati and stepfather Harprasad got her married to co-accused Aman against her will. After her marriage for the first time, she stayed at Aman Ahirwar's house located in the village of Bileki for 8 days. During that period, Aman Ahirwar used to rape her every day. Eight days later, her stepfather Harprasad took her with him to village Chandpur Pathariya and after staying some time in village Chandpur Pathariya, she went to village Khairana, where her maternal uncle Harlal was residing, she went there along with her mother Parwati and stayed there. Fifteen days later, after Rakshabandhan, her brothers-in-law (Jeth) Puran, Rahul and Ajay came to take her back, so her mother Parwati sent her with them. They took her to Aman's Signature Not Verified SAN house located in the village Bileki. At that time, she stayed at Aman's house for Digitally signed by MONIKA CHOURASIA about 4 months. This time also Aman raped her every night, due to which she Date: 2022.05.17 16:04:27 IST fell ill and her brother Neeraj took her from Aman's house to village Khairana at his maternal uncle Harlal's house. On such report, police registered Crime no.321/2019 at PS Kesali, Distt. Sagar for the offences punishable under Sections 376 of the IPC and Sections 5,6, 16 & 17 of the POCSO Act and Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006 and investigated the matter. During the investigation, police got the prosecutrix medically examined and recorded her case diary statement. Police also recorded the case diary statements of her maternal aunt Kallo, maternal uncle Harlal, her brother Neeraj, Munnalal Ahirwar, Mandhat and Dwarka Ahirwar and after the investigation, police filed charge sheet against applicants Nanni Bai and Bihari (Parents of the Aman) and co-accused persons namely Aman, Harprasad and Parwati Bai before the Court of Sessions. On that charge sheet, S.T. No.62/2020 was registered. During the trial of the case, learned Additional Sessions Judge, District Sagar vide order dated 11/12/2020 framed charge against the applicants/accused Nanni Bai and Bihari for the offence punishable under Sections 376(2)(n) read with Section 114 of the IPC, 376(3) read with Section 114 of the IPC, Section 17 read with Sections 6 and Section 17 read with Section 5j/6 of the Protection of Children from Sexual Offences Act, 2012 and Section 11 of the Child Marriage Prohibition Act, 2006 and also framed charges against co-accused Aman, for the offences punishable under Sections 376(2)(n), 376(3)(n) of the IPC and Section 5l/6,5(n)/6 of the POCSO Act and Section 9 of the Prohibition of Child Marriage Act and against co-accused Parwati and Harprasad for the offences punishable under Sections 17 read with Section 6 and Section 17 read with Section 5j/6 of the POCSO Act and Section Signature Not Verified SAN 376(3) read with Section 114 and Section 376(2)(n) read with Section 114 of the Digitally signed by MONIKA CHOURASIA Date: 2022.05.17 16:04:27 IST IPC and also Section 11 of the Prohibition of Child Marriage Act. Being aggrieved from that order, applicants filed this Criminal Revision.

4. Learned counsel for the applicants submitted that there is no iota of evidence on record to show that the applicants were involved in the crime. Their names are neither mentioned in the FIR nor in the case diary statement of the prosecutrix. Even in the FIR lodged by the prosecutrix and her case diary statement, it is not mentioned that the applicants were involved in the crime. Furthermore, their names are also not mentioned in the case diary statements of maternal uncle of the prosecutrix Harlal and brother Neeraj and maternal aunt Kallo. Though, in the case diary statements of Munnalal, Mandhat and Dwarka, it is mentioned that applicants Nanni Bai and Bihari solemnized marriage of their son Aman Ahirwar with the prosecutrix but they are not the eyewitnesses of that incident. From their case diary statements, it is clear that this fact came into their knowledge after the arrest of the applicants. They are the hearsay witnesses, so their statements are not admissible in evidence. There is no other evidence on record to connect the applicants with the crime. Learned trial Court without appreciating all these facts wrongly framed charges against the applicants. So, order be quashed and applicants be discharged.

5. Learned counsel for the respondent/State opposed the prayer and submitted that from the statements of Munnalal, Mandhat and Dwarka, it is apparent that the applicants were also involved in the crime. Co-accused Aman is the son of the applicants and it is alleged that the applicants solemnized the marriage of their son Aman with the prosecutrix, who was minor and after marriage, the prosecutrix lived with co-accused Aman in the house of the applicants, where Aman used to commit rape with her, so learned trial Court did Signature Not Verified SAN not commit any mistake in framing charge against the applicants, so this revision Digitally signed by MONIKA CHOURASIA Date: 2022.05.17 16:04:27 IST be dismissed.

6. This court has gone through the record and argument put forth by the learned counsels of both the parties. Merely on the basis that applicants are the parents of co-accused Aman without any legal evidence it can not be assumed that the applicants were also involved in the crime. From the perusal of the charge sheet and the case diary statements of the prosecution witnesses, it is apparent that there is no legal evidence on record to connect the applicant with the crime. Names of the applicants are not mentioned in the FIR lodged by the prosecutrix. Nothing has been mentioned against the applicants in the FIR and the case diary statement of the prosecutrix. Nothing has been stated by the prosecutrix against the applicants in her statement recorded by the Judicial Magistrate First Class under Section 164 of Cr.P.C. Names of the applicants are also not mentioned in the case diary statements of Neeraj, brother of the prosecutrix and Harlal, maternal uncle of the prosecutrix and Kallo, maternal aunt of the prosecutrix and it is not mentioned that the applicants also took part in the incident.

7. Regarding applicants, only in the case diary statements of Munnalal, Mandhat and Dwarika, it is mentioned that when the police arrested the applicants and co-accused Aman, then they came to know that the applicants in connivance with, co-accused Parvati and Harprasad got their son Aman married a minor girl (prosecutrix) due to which the police arrested them. It is also mentioned in their case diary statements that before the arrest of the applicants by the police, they had no information regarding Aman's marriage. So, from the case diary statements of Munnalal, Mandhat and Dwarka, it is apparent that they Signature Not Verified SAN have no personal knowledge of the incident. They stated in this regard only on Digitally signed by MONIKA CHOURASIA the basis of

information given to them by another person and they are the Date: 2022.05.17 16:04:27 IST hearsay witnesses. So, their statements are not admissible in evidence.

8. Though, police also recorded the confessional statements of applicants and co-accused. Regarding admissibility of a confessional statement of an accused made before the police officer in evidence, Apex Court in the case of Jaffar Hussain Dastagir v. State of Maharashtra, (1969) 2 SCC 872 has held "Under Section 25 of the Evidence Act no confession made by an accused to a police officer can be admitted in evidence against him. An exception to this is however provided by Section 26 which makes a confessional statement made before a Magistrate admissible in evidence against an accused notwithstanding the fact that he was in the custody of the police when he made the incriminating statement. Section 27 is a proviso to Section 26 and makes admissible so much of the statement of the accused which leads to the discovery of a fact deposed to by him and connected with the crime, irrespective of the question whether it is confessional or otherwise. The essential ingredient of the section is that the information given by the accused must lead to the discovery of the fact which is the direct outcome of such information. Secondly, only such portion of the information given as is distinctly connected with the said recovery is admissible against the accused. Thirdly, the discovery of the fact must relate to the commission of some offence."

9. From the aforesaid pronouncements of Apex Court, it can be gathered that a confessional statement made by the accused under Section 27 of the Evidence Act which does not relate to discovery of a fact is inadmissible in evidence. So, the confessional statements of the applicants recorded by the Signature Not Verified SAN police are also not admissible in evidence against them. There is no other Digitally signed by MONIKA CHOURASIA Date: 2022.05.17 16:04:27 IST evidence on record to connect the applicants with the crime.

10. So, from the evidence produced by the prosecution against the applicant, no offence is made out against the applicants. Hence, this petition is allowed and applicants namely Nanni Bai and Bihari are discharged from the charges framed by the learned trial Court against them for the offence punishable under Sections 376(2)(n) read with Section 114 of the IPC, 376(3) read with Section 114 of the IPC, Section 17 read with Sections 6 and Section 17 read with Section 5j/6 of the Protection of Children from Sexual Offences Act, 2012 and Section 11 of the Child Marriage Prohibition Act, 2006.

11. It is however made clear that nothing contained in this order shall affect the case of the prosecution against other accused persons. The trial Court is free to proceed with the case against the other co-accused.

(RAJEEV KUMAR DUBEY) JUDGE m/-

Signature Not Verified SAN Digitally signed by MONIKA CHOURASIA Date: 2022.05.17 16:04:27 IST