Krishan Lal

Vs

State of Haryana

Special Leave Petition (Criminal) No. 2599 of 1979

(V. R. Krishna Iyer, E. S. Venkataramiah JJ)

01.04.1980

ORDER

KRISHNA IYER, J. –

1. A rapist - if the concurrent findings of the courts below were correct - has chosen to seek special leave to challenge his crime and punishment, and his counsel has attacked the verdict of culpability as wholly unfounded. Indeed, it is redundant, and absent exceptional circumstances, out of bounds, for this Court, exercising its jurisdiction under Article 136, to launch upon an exploration and reappreciation of the evidence, its strengths and weaknesses with a view to sit in judgment over the holdings of the High Court in affirmance of those of the trial Court.

2. Briefly, we will touch upon one or two circumstances without claiming to be exhaustive in any manner. One Shashi Bala of Ambala was sleeping, with her mother and other children, outside her house in hot July (1975). This petitioner in the company of another (acquitted accused), carried her away under intimidation to a neighbouring godown belonging to one Tilak Raj (another acquitted accused) and in that secluded venue committed rape of the young woman. After subjecting her to these bestial acts of lust, Shashi Bala, who by then was nearly unconscious, was put back in her cot from where she had been removed. In the morning, the mother of the victim found blood on the daughter's salwar and thereupon she complainingly narrated the criminal assault of the previous night. On the return of the father, PW 7, who has been away, the victim went, in his company, to the police station, lodged a report which was followed by investigation and charge-sheet. The court, after a trial convicted the present petitioner but, on grounds of benefit of doubt, acquitted the rest. Medical evidence showed that the raped girl was below 16 years of age. We are not too happy about the acquittal but since the State has not chosen to come up in appeal against the acquittal, we do not probe the matter further.

3. Counsel for the petitioner persistently urged that the evidence of the prosectrix, without substantial corroboration was inadequate to rest a conviction under Section 376, IPC. He relied on observations of this Court in Gurcharan Singh v. State of Haryana (AIR 1972 SC 2661 : (1972) 2 SCC 749 : 1972 SCC (Cri) 793) for the proposition that although a prosecutrix is not an accomplice, her evidence as a rule of prudence, is viewed by courts unfavourably unless reinforced by corroboration "so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated". It is true that old English cases, followed in British-Indian courts had led to a tendency on the part of judge-made law that the advisability of corroboration should be present to the mind of the Judge "except where the circumstances make it safe to dispense with it". Case-law, even in those days, had clearly spelt out the following propositions : (Rameshwar v. State of Rajasthan, 1952 SCR 377, 386 : AIR 1952 SC 54 : 1952 Cri

LJ 547)

The tender years of child, coupled with other circumstances appearing in the case such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must in every case, be corroboration before a conviction can be allowed, to stand.

It would be impossible, indeed it would be dangerous to formulate the king of evidence which should, or would, be regarded a corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged.

Observations on probative force of circumstances are not universal laws of nature but guide-lines and good counsel.

4. We must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. What girl would foist a rape charge on a stranger unless a remarkable set of facts or clearest motives were made out ? The inherent bashfulness the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially here private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also testimony which warrants credence. More than all, it baffles belief in human nature that a girl sleeping with her mother and other children in the open will come by blood on her garments and injury in her private parts unless she has been subjected to the torture of rape. And if rape has been committed, as counsel more or less conceded, why, of all persons in the world, should the victim hunt up the petitioner and point at him the accusing finger ? To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called 'Judicial' probability. Indeed, the court loses its credibility if it rebels against realism. The law court is not an unnatural world.

5. We are not satisfied that merely because the trial Court has ultracautiously acquitted someone, the higher court must for that reason, acquit everyone. Reflecting on this case we feel convinced that a socially sensitized judge is a better statutory armour against gender outrage then long clauses of a complex section with all the protections writ into it.

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