

# SUPREME COURT OF INDIA

Dilip

Vs.

State of M.P.

CrI.A.Nos.858-59 of 2000

(R.C. Lahoti and Ashok Bhan JJ.)

09.10.2001

## JUDGMENT

### **R.C. Lahoti, J.**

1. Mohan and Dilip, the two accused-appellants have been held guilty of an offence punishable under Section 376(2)(g) of Indian Penal Code and sentenced to rigorous imprisonment for 10 years and a fine of Rs. 2000/- each by Sessions Judge, Bilaspur of Madhya Pradesh. Their appeal has been dismissed by the High Court maintaining the conviction as also the sentence. This is an appeal by special leave.

2. The prosecutrix who was aged about 16 years on 5.3.1996, the date of the incident, had lost her parents and therefore was living with her maternal uncle and aunt. On 5.3.1996 the village people were busy celebrating Holi festival. According to prosecution at about 2 p.m. the prosecutrix was alone in her house when the two accused approached her and enquired where was her maternal uncle. On being told that he had gone in the village and was not in the house, the accused Mohan lifted her and took her inside the room. The accused Dilip followed in and closed the door from inside. The two accused threw the prosecutrix on ground, lifted her frock, removed her underwear and forcibly committed sexual intercourse with her. When the accused Mohan was committing rape, accused Dilip was keeping her mouth shut. Thereafter, accused Dilip raped the prosecutrix and at that time the accused Mohan kept her mouth shut. The two accused left the prosecutrix in a semi-conscious state. On re-gaining her senses the prosecutrix took water and went to her maternal aunt PW3 and narrated her the incident. Her maternal uncle was away from the village and returned the next day. On 6.3.1996, at about 4 p.m., the prosecutrix accompanied by her maternal uncle went to the police station situated at a distance of about 3 kilometres and lodged FIR of the incident whereupon an offence under Sections 376/34 IPC was registered and investigation commenced.

3. On 7.3.1996 at 6.30 p.m. the prosecutrix was examined by Dr. (Mrs.) Jitpure. No marks of violence were found on any part of the body of the prosecutrix including her private parts. Her hymen was torn. Vagina admitted one finger easily. There were no tears present in the

vagina. Dr. Jitpure opined that no definite opinion could be given about any recent sexual intercourse having taken place with the prosecutrix which could, if at all, be confirmed by chemical examination of vaginal smear slide which was prepared, sealed and handed over to the constable accompanying the prosecutrix. According to Dr. Jitpure, the prosecutrix appeared to be carrying pregnancy of about 6 weeks and for confirmation thereof she was referred to senior gynaecologist. During cross-examination, Dr. Jitpure stated that the hymen of the prosecutrix was old torn, may be of 6 to 7 months before. In her opinion the prosecutrix was used to sexual intercourse.

4. Dr. R.S.L. Tripathi, senior gynaecologist examined the prosecutrix on 23.4.1996. The medico-legal report prepared by Dr. Jitpure was shown to Dr. Tripathi. Dr. Tripathi found that vagina of the prosecutrix admitted two fingers easily; she was used to sexual intercourse but she was not carrying any pregnancy. No definite opinion could be given whether any rape was committed on her.

5. Dr. S. Chatterjee, PW6 performed radiological examination of the prosecutrix for the purpose of ascertaining her age. In his opinion the prosecutrix was aged 16 years. During cross-examination he stated that there could be a variation of two years on either side in the age of prosecutrix as opined by him.

6. The two accused appellants were arrested on 8.3.1996. They were examined by Dr. Habib PW4. Both were found to be potent and capable of performing sexual intercourse. However, no marks of injury were found on the person of any of the two accused. The clothes worn by the two accused-appellants were also examined by Dr. Habib. However, nothing incriminating was found thereon. The two accused-appellants were aged around 26-27 years at the time of the incident.

7. The Assistant Chemical Examiner of Forensic Science Laboratory found presence of seminal stains and sperm on the underwear of prosecutrix as also on the underwear seized from accused Dilip. However the stains so available were not enough for examination by serologist. Nothing incriminating was found on any other seized article including slide of vaginal smear of prosecutrix.

8. The prosecution case rests solely on the testimony of prosecutrix. The prosecution has tried to seek corroboration from the testimony of PW3, the maternal aunt of the prosecutrix to whom the prosecutrix narrated the incident soon after commission of rape on her. The medical evidence does not lend any positive corroboration to the testimony of the prosecutrix.

9. According to the prosecutrix she was wearing bangles, two in the left hand and one in the right hand and the three bangles were broken during rape committed on her. Both the accused had pressed her breasts which were painful. Blood had oozed out from her vagina consequent upon sexual intercourse by the accused persons. The site plan shows the house, where the prosecutrix was residing, as situated on the main road of the village. According to the prosecutrix she was in the open verandah wherefrom she was physically lifted by accused

Mohan and taken inside the room. Though the prosecutrix had raised hue and cry but no one came to her rescue. She was forced to lie down on the floor. On being asked whether she offered any physical resistance to the act of the accused persons, the prosecutrix stated that because she was threatened with her life by the accused persons therefore she did not make any attempt at rescuing herself from the clutches of the accused persons. The fact stated by her in the court that the accused Dilip had thrust a piece of her saree in her mouth so as to disable her from raising any cry was not stated in the FIR and she was unable to explain this contradiction by omission. Soon after the incident, when she came out of her house, she had found many a person moving to and fro on the main road opposite her house because that was a festival day. She stated that she never had sex at any time prior to the date of the incident and it was false to suggest that she was used to sexual life. The act of the accused persons had caused swelling on her private parts and the blood which had oozed out had stained her legs and the frock which she was wearing at the time of incident. The swelling and the blood stains were shown by her to Dr. (Mrs.) Jitpure. The prosecutrix stated that her underwear which was taken off by accused Mohan was not worn again by her. It was left behind lying in the house until it was seized by the police.

10. PW3, the maternal aunt of the prosecutrix does support the prosecutrix to the extent that soon after the incident the prosecutrix had complained her of having been ravished by the two accused appellants. However, she stated that at that time the prosecutrix was wearing the underwear. The underwear was seen by her but she did not find any blood stains thereon although a few white stains were there. The frock of the prosecutrix also did not have any stains. The accused persons had gagged the mouth of the prosecutrix by inserting some cloth therein and this fact though told to her by the prosecutrix was not stated by her during her statement recorded by the police. According to her the prosecutrix had told her that the accused persons had made the prosecutrix lie on a cot whilst ravishing her.

11. According to the maternal uncle of the prosecutrix who had accompanied her to lodge the FIR, the prosecutrix was wearing the same underwear and frock which she was wearing at the time of the incident and the same were seized by the police.

12. The law is well-settled that prosecutrix in a sexual intercourse is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. In *State of H.P. v. Gian Chand*<sup>1</sup>, on a review of decisions of this Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc., if the same is found to be natural, trustworthy and worth being relied on. This court further held:-

"If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in

the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations....."

13. In *Madan Gopal Kakkad v. Naval Dubey and another*<sup>2</sup>, this Court has held (vide para 23) that lack of oral corroboration to that of a prosecutrix does not come in the way of a safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

14. The age of the prosecutrix was around 16 years, may be a little more. The fact remains that she was not just a child who would have surrendered herself to a forced sexual assault without offering any resistance whatsoever. Without going into testing truthfulness of the explanation offered by the prosecutrix that because of being over-awed by the two accused persons she was not able to resist, the fact remains that the 'probabilities factor' operates against the prosecutrix. The gang rape is alleged to have been committed at about 2 p.m., in her own house situated in a populated village by the side of the main road where people were moving on account of Holi festival. The prosecutrix did raise hue and cry to the extent she could and yet none was attracted to the place of the incident. The prosecutrix is said to have sustained injuries, also bled from her private parts staining her body as also the clothes which she was wearing. This part of the story, is not only not corroborated by the medical evidence, is rather belied thereby. The presence of blood-stains is not confirmed by forensic science laboratory or by the doctors who examined the prosecutrix. Her own maternal aunt to whom the story of sexual assault has been narrated by the prosecutrix gives a version which does not tally with the version of the prosecutrix as given in the court. The learned Counsel for the State relied on Section 114A of *Evidence Act, 1872* which provides that in a trial on a charge under Section 376(2)(g) of IPC on the prosecutrix stating that she was not a consenting party, the Court shall presume absence of consent of the woman alleged to have been raped. Suffice it to observe that we should not be misunderstood as recording a finding that the prosecutrix was a willing party to sexual intercourse by the accused persons. The court is finding it difficult to accept the truthfulness of the version of the prosecutrix that any sexual assault as alleged was committed on her in view of the fact that her narration of the incident becomes basically infirm on account of being contradicted by the statement of her own aunt and medical evidence and the report of forensic science laboratory. The defence has given suggestion in cross-examination for false implication of the accused persons which however have not gone beyond being suggestions merely. It is not necessary for us to dwell upon further to find out the probability of truth contained in the suggestions because we are not satisfied generally of the correctness of story as told by the prosecutrix. We find it difficult to hold the prosecutrix in the case as one on whose testimony an implicit reliance can be placed.

15. For the foregoing reasons the appeals are allowed. The conviction of accused appellants as recorded by the trial Court and upheld by the High Court is set aside. The accused

appellants are acquitted of the charges framed against them. They shall be set at liberty forthwith if not required to be detained in connection with any other offence.  
Appeals allowed.

<sup>1</sup>2001(6) SCC 71

<sup>2</sup>1992(3) SCC 204