

SUPREME COURT OF INDIA

Radhu

Vs.

State of Madhya Pradesh

(R. V. Raveendran and B. Sudershan Reddy JJ.)

14.09.2007

JUDGMENT

RAVEENDRAN, J.

In this appeal by special leave by the accused, the judgment of the High Court of Madhya Pradesh dated 12.9.2003 in Criminal Appeal No. 270 of 1993, affirming the judgment dated 25.5.1993 in Sessions Trial No.127/1991 passed by the II Additional Sessions Judge, Khargone, convicting and sentencing the accused under sections 376, 323 and 342/34, is under challenge.

2. In brief the prosecution case is as follows : On 28.1.1991 at about 8 p.m., prosecutrix Sumanbai, went to a shop for purchasing some groceries.

On her way to the shop, Gyarsibai, a relative, invited her to come inside her house. When she entered Gyarsibai's house, her son Radhu who was in the room came out, dragged her inside the room and confined her in the room during the entire night. During the night, he sexually assaulted her by inserting his penis in her vagina twice. When she cried, Radhu gagged her mouth with a piece of cloth. Radhu freed her only the next day (Tuesday) morning. She went back to her house and told her mother Lalithabai (PW-4) about the incident. As her father Mangilal (PW-7) had gone out of town, her mother sent Dinesh to inform him about the incident. When her father returned on 30.1.1991, she along with her father went from their village Umarkhali to Barud where they met their relative Ram Lal and his wife and Gulabbai (PW-5) and she told Ramlal about the incident. Thereafter, they also accompanied her and her father to the Barud Police Station where her oral report was recorded by the officer in charge of the Police Station (PW9) as a First Information Report (Ex.P5).

3. Sumanbai was sent to Dr. Vandana (PW-8), a lady surgeon in the Main Hospital, Khargone for examination. She examined her and recorded her findings as per Ex. P8. She also advised x-ray to decide her age. On 1.2.1991 an x-ray was taken by Dr. Khan (PW-1) who gave a report (Ex.P-1) opining that Sumanbai was aged between 13 to 14 years. The Investigating Officer (PW-9) took up investigation and prepared a site plan P-10. Radhu was arrested on 19.2.1991 and sent to Khargone Hospital for medical examination. Dr. Sanjay Kumar Bhat (PW-2), examined him and opined that Radhu was aged about 19 years and capable of sexual intercourse. His mother Gyarsibai was also arrested. Radhu was charged to stand trial for offences under sections 342/34, 376 and 323 IPC. His mother was charged under section 342/34 and 376/34 IPC. Eleven witnesses were examined.

After appreciating the evidence, the trial court by judgment dated 25.5.1993 found the accused 1 and 2 guilty and sentenced them to seven years imprisonment with fine of Rs.500 and in default to a

further period of six months RI under, section 376 and 376/109 IPC respectively. They were also sentenced to six months RI under section 342/34 IPC. In addition, Radhu was sentenced to six months RI under section 323 IPC. All sentences were to run concurrently.

4. Feeling aggrieved the two accused filed an appeal before the High Court. During the pendency of the appeal Gyarsibai died. The High Court by judgment dated 12.9.2003 dismissed the appeal, affirming the conviction and sentence of the first accused Radhu. In this appeal, challenging the said decision, the learned counsel for the appellant urged the following contentions:

(i) The accused were falsely implicated by Sumanbai at the instance of her father who was indebted to Radhu's father Nathu, to avoid repayment of the debt.

(ii) The medical evidence showed that there was no injury on the private parts of Sumanbai and that the rupture of hymen was old. The Doctor (PW- 8) also stated that she could not express any opinion as to whether a rape had been committed or not.

(iii) The discrepancies in the evidence, absence of corroboration, the close relationship (the prosecutrix described Radhu as her maternal uncle, as Radhu's parents were Kaka and Baba of Sumanbai's mother) and the manner in which the incident is alleged to have taken place, clearly demonstrated that it was a false charge.

On the other hand, the learned counsel for the State submitted the concurrent findings recorded by the trial court and High Court were based on the evidence of the prosecutrix and that no corroboration was required when the testimony of the prosecutrix was clear and convincing. She also pointed out the prosecutrix (PW 3), her mother (PW4) and father (PW7) had denied any indebtedness to Radhu's father and there was nothing to show that the prosecutrix had falsely implicated the accused. It was submitted that this Court while exercising jurisdiction under Article 136 of the Constitution will not interfere with the findings of fact recorded by the lower courts, unless the decision appealed from, shocked the judicial conscience of the court.

5. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, wrists, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.