

SUPREME COURT OF INDIA

Rajinder @ Raju

Vs.

State of H.P.

Crl.A.No.670 of 2003

(V.S.Sirpurkar and R.M. Lodha JJ.)

07.07.2009

JUDGEMENT

R.M. LODHA, J.

1. Rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely assault - it is often destructive of the whole personality of the victim. The murderer destroys the physical body of his victim. Rapist degrades the very soul of the helpless female. [State of Punjab vs. Gurmit Singh and Others¹]

2. First, a brief reference to the prosecution case. The prosecutrix (name with-held by us), a young girl about 18 years of age, was staying with her parents in village Kothi, district Bilaspur, (H.P.). The accused, Rajinder@Raju, resident of village Duhak, district Bilaspur, had taken contract for laying G.I. Pipelines in

village Kothi near the residence of the prosecutrix. In that connection, he used to store his material in the house of prosecutrix' parents. On January 16, 1996, prosecutrix had some throat pain. When the accused came to the house of the prosecutrix and came to know that the prosecutrix has been suffering from throat pain, he suggested to the mother of the prosecutrix that his cousin at Ghumarwin was a doctor and if permitted, he could show the prosecutrix to his cousin. The mother of the prosecutrix agreed. The accused took the prosecutrix on his scooter at about 3.00 P.M. Instead of taking the prosecutrix to Ghumarwin, he took her to Jablu stating that he had to collect the rent from his tenants. From Jablu, the accused took prosecutrix to Berthin. The accused reached Berthin at about 8.00 - 8.30 P.M. alongwith the prosecutrix. At Berthin, the accused bought some sweets and told the prosecutrix that he would take her to his house as it was dark. The accused instead of taking her to his house, took the scooter to some kachha road and made her to get down from the scooter. After spreading his pattu on the ground and gagging the prosecutrix mouth made her lie down; untied her salwar and committed the sexual intercourse with her forcibly. The accused then left her leaving behind his pattu and torch. After the accused had left, the prosecutrix saw some light from a house down the road. She walked upto that house and told the lady, Smt. Bimla Devi, (PW-2) residing there, of the incident. The prosecutrix stayed overnight in the house of PW-2. PW-2 told the whole incident to her husband (PW-3). In the morning PW-3 called villagers; the statement of prosecutrix was recorded by one of the villagers viz., Roop Singh (PW-4). The FIR was then registered at the Ghumarwin Police Station. The prosecutrix and the accused were got medically examined. The Investigating Officer took the apparel of the prosecutrix in his possession and the same was sent for chemical analysis alongwith vaginal slide and underwear of the accused. During the investigation, it also transpired that the prosecutrix belonged to Scheduled Caste. After completion of the investigation, a charge-sheet was filed against the accused under Sections 366 and 376 IPC and Section 3(XII) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

3. The Sessions Judge, Bilaspur, framed a charge against the accused for the aforesaid offences. The prosecution examined the prosecutrix (PW-1), Smt. Bimla devi (PW-2), Suram Singh (PW- 3), Roop Singh (PW-4), Smt. Sheela Devi (PW-5), Prem Singh (PW- 6), Dr.S.C. Kaushal (PW-7), Police Officials (PWs 8 to 12) and Dr. Savita Mehta (PW-13).

4. The Statement of the accused under Section 313 Cr.P.C. was recorded. He denied his involvement in the crime and set up the defence that the case against him has been engineered at the behest of PW-2, PW-3 and PW-6. He also stated in his statement under Section 313 Cr.P.C. that mother of the prosecutrix (PW-5) had taken timber worth Rs. 5,000/- and when he demanded payment of due amount, PW-5 demanded Rs. 50,000/- from him and said that after payment of the aforesaid amount only she would finish the case against him.

5. The Sessions Judge, Bilaspur on consideration of the evidence on record, acquitted the accused

of the charge under Section 3(XII) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 but convicted the accused under Sections 366 and 376 IPC. The accused was sentenced to rigorous

imprisonment for seven years and to pay a fine of Rs. 10,000/- with default stipulation for the graver offence under section 376 IPC only.

6. The accused challenged his conviction and sentence before the High Court of Himachal Pradesh. The learned Single Judge dismissed the appeal preferred by the accused. Hence the present appeal by special leave.

7. Mr. Ashok Mehta, the learned Counsel for the accused did not dispute before us that the accused had sexual intercourse with the prosecutrix at the time and place of occurrence. The thrust of his contention was that the accused did not commit the alleged act forcibly; rather such act was committed by the accused with the consent and free will of the prosecutrix. The aforesaid contention was argued before the High Court as well and the following circumstances were pressed into service viz., that the prosecutrix at the relevant time was 18 years of age and thus capable of consenting to the act of sex; that the absence of injury/injuries on the person of the prosecutrix is suggestive of her consent which is further fortified by the fact that the act of sex is said to have been done after the accused had laid the pattu on the ground and that the prosecutrix accompanied the accused voluntarily from the very beginning; and that the aspect of the accused having threatened

the prosecutrix at the point of dagger is palpably false as this does not find mention in the FIR.

8. Since the act of sexual intercourse by the accused on the prosecutrix is admitted, we do not deem it necessary to consider the medical evidence at great length. Suffice it to say that Dr. Savita (PW-13) examined the prosecutrix on January 18, 1996. At that time her clothes were found soiled with blood. PW-13

opined that sexual intercourse was committed with the prosecutrix within 48 hours of her examination. She also conducted the vaginal test to ascertain the presence of spermatozoa. According to PW-13, the prosecutrix was not habitual to sexual intercourse and, in her opinion, the prosecutrix was sexually assaulted for the first time before she examined her. She was not in a position to opine whether the sexual act was with consent of the prosecutrix or it was committed forcibly. In the circumstances, it admits of no doubt that the accused had sexual intercourse with the prosecutrix on the date and place of occurrence. The core area of debate is whether such act was committed with the consent of the prosecutrix or not.

9. The prosecutrix in her deposition has been categorical, clear and unequivocal that the accused committed forcible sexual intercourse with her. She testified:

"While going, the accused stopped the scooter at a lonely place on the road and thereafter he dragged me by holding me from my arm at some distance from the road and gagged my mouth and after placing 'pattu' on the ground, he untied my salwar and committed the sexual intercourse with me. I had felt a pain in my private part and the blood started oozing."

10. It is true that in her cross examination she stated that the accused had threatened her with a dagger before Jablu when she refused to go with him and this aspect was neither stated in her statement under Section 161 Cr.P.C. nor in the FIR but does this contradiction make her evidence unreliable. We do not think so. The trial court as well as High Court has accepted her evidence. We find no justifiable reason to take a different view.

11. The circumstances which have been pointed out by the learned counsel neither individually nor collectively lead to any plausible inference that the sexual intercourse with the prosecutrix by the accused was done with her tacit consent.

12. The learned counsel for the appellant relied upon few decisions of this Court, namely, (1) Pratap Misra and Ors. vs. State of Orissa², (2) Sadashiv Ramrao Hadbe vs. State of Maharashtra and Anr.³, (3) Narayan alias Naran vs. State of Rajasthan⁴ and (4) Radhu vs. State of Madhya Pradesh⁵.

13. That the accused is not bound by his pleading and that it is open to him to prove his defence even from the admissions made by the prosecution witness or the circumstances proved in the case admits of no doubt. However, so far as decision in the case of Pratap Misra is concerned, this Court on consideration of the evidence let therein held that the appellants had sexual intercourse with the prosecutrix with her tacit consent and the connivance of her husband. This Court held

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(1977) 3 SCC 41

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(2006) 10 SCC 92

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(2007) 6 SCC 465

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(2007) 12 SCC 57

that there was no material at all to prove the allegation of rape. Even the medical evidence therein did not support the prosecution case. We are afraid the decision of this Court in Pratap Misra turned

on its own facts and is of no help to the appellant herein.

14. In *Sadashiv Ramrao Hadbe*, this Court while reiterating that in a rape case, the accused could be convicted on the sole testimony of prosecutrix if it is capable of inspiring the confidence in the mind of the Court, put a word of caution that the Court should be extremely careful while accepting the testimony when the entire case is improbable and unlikely to have happened. This is what has been stated:

"9. It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen."

15. It is pertinent to notice that in *Sadashiv Ramrao Hadbe*, this Court found that the prosecution evidence suffered from many contradictions and the whole incident seemed to be highly improbable. It is true that in *Sadashiv Ramrao Hadbe*, this Court observed that the absence of injuries on the body of the prosecutrix improbableise the prosecution version but the aforesaid observation has to be understood in the context of the insufficiency of evidence even to establish sexual intercourse. This is what this Court said:

"10. In the present case there were so many persons in the clinic and it is highly improbable that the appellant would have made a sexual assault on the patient who came for examination when large number of persons were present in the near vicinity. It is also highly improbable that the prosecutrix could not make any noise or get out of the room without being assaulted by the doctor as she was an able-bodied person of 20 years of age with ordinary physique."

The decision in *Sadashiav Ramrao Hadbe* does not help the accused at all.

16. In the Case of *Narayan*, it was held by this Court that the evidence of prosecutrix was full of contradictions. In the back-drop of the allegations made in the FIR that the accused committed rape with prosecutrix thrice, this Court held that absence of injuries either on her body or private parts ruled out the prosecution case of forcible sexual intercourse. Suffice it to say that the case of *Narayan* turned on its own facts. Insofar as legal position is concerned, this Court reiterated that evidence of prosecutrix can alone sustain conviction of the accused.

17. This Court in Radhu considered the matter thus:

"12. Dr. Vandana (PW 8) stated that on examination of Sumanbai, she found that her menstrual cycle had not started and pubic hair had not developed, and that her hymen was ruptured but the rupture was old. She stated that there were no injuries on her private parts and she could not give any opinion as to whether any rape had been committed. These were also recorded in the examination report (Ext. P-8). She, however, referred to an abrasion on the left elbow and a small abrasion on the arm and a contusion on the right leg of Sumanbai. She further stated that she prepared two vaginal swabs for examination and handed it over along with the petticoat of Sumanbai to the police constable, for being sent for examination. But no evidence is placed about the results of the examination of the vaginal swabs and petticoat. Thus, the medical evidence does not corroborate the case of sexual intercourse or rape.

13. We are thus left with the sole testimony of the prosecutrix and the medical evidence that Sumanbai had an abrasion on the left elbow, an abrasion on her arm and a contusion on her leg. But these marks of injuries, by themselves, are not sufficient to establish rape, wrongful confinement or hurt, if the evidence of the prosecutrix is found to be not trustworthy and there is no corroboration.

14. Lalithabai says that when Sumanbai did not return, she enquired with Gyarsibai. Sumanbai also says that she used to often visit the house of Gyarsibai. She says that Radhu's parents are kaka and baba of her mother and Radhu was her maternal uncle. The families were closely related and their relationship was cordial. In the

circumstances, the case of the prosecution that Gyarsibai would have invited Sumanbai to her house to abet her son Radhu to rape Sumanbai and that Gyarsibai was present in the small house during the entire night when the rape was committed, appears to be highly improbable in the light of the evidence and circumstances.

15. The FIR states that one Dinesh was sent by Lalithabai to fetch her husband. Lalithabai and Mangilal have stated that they did not know anyone by the name Dinesh. Sumanbai stated in her evidence that on 29-1-1991, as her father was away, her brother-in-law went to bring back her father, that the name of her brother-in-law is Ramesh, but the SHO wrongly wrote his name as "Dinesh". But none else mentioned about such a mistake. Neither Ramesh nor Dinesh was examined.

16. The evidence of the prosecutrix when read as a whole, is full of discrepancies and does not inspire confidence. The gaps in the evidence, the several discrepancies in the evidence and other circumstances make it highly improbable that such an incident ever took place. The learned counsel for the respondent submitted that the defence had failed to prove that Mangilal, father of the prosecutrix was indebted to Radhu's father Nathu and consequently, defence of false implication of

the accused should be rejected. Attention was invited to the denial by the mother and father of the prosecutrix of the suggestion made on behalf of the defence that Sumanbai's father Mangilal was indebted to Radhu's father Nathu and because Nathu was demanding money they had made the false charge of rape to avoid repayment. The fact that the defence had failed to prove the indebtedness of Mangilal or any motive for false implication does not have much relevance as the prosecution miserably failed to prove the charges. We are satisfied that the evidence does not warrant a finding of guilt at all, and the trial court and the High Court erred in returning a finding of guilt."

18. Again in the case of Radhu, the evidence of prosecutrix was found full of discrepancies and not worthy of credence. The medical evidence also did not corroborate the case of sexual intercourse or rape. In Radhu this Court reiterated the legal position thus:

"6. 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."

It has, thus, been held in Radhu that absence of injuries on the private parts of the victim cannot be construed as evidence of consent.

19. In State of Rajasthan vs. N.K. 6, this Court held thus:

"19. For the offence of rape as defined in Section 375 of the Indian Penal Code, the sexual intercourse should have been against the will of the woman or without her consent. Consent is immaterial in certain circumstances covered by clauses thirdly to sixthly, the last one being when the woman is under 16 years of age. Based on these provisions, an argument is usually advanced on behalf of the accused charged with rape that the absence of proof of want of consent where the prosecutrix is not under 16 years of age takes the assault out of the purview of Section 375 of the Indian Penal Code. Certainly consent is no defence if the victim has been proved to be under 16 years of age. If she be of 16 years of age or above, her consent cannot be presumed; an inference as to consent can be drawn if only based on evidence or probabilities of the case.

The victim of rape stating on oath that she was forcibly subjected to sexual intercourse or that the act was done without her consent, has to be believed and accepted like any other testimony unless there is material available to draw an inference as to her consent or else the testimony of prosecutrix is such as would be inherently improbable."

20. This Court, in the case of Gurmit Singh¹, made the following weighty observations in respect of evidence of a victim of sexual assault:

"The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respecting woman would come forward in a court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are

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(2000) 5 SCC 30

factors which the courts should not overlook. The testimony of the victim in such cases 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. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion? 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 a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a

requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even

if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

21. In the context of Indian Culture, a woman - victim of sexual aggression - would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent. Insofar as the present case is concerned, the circumstances referred to and pointed out by the learned counsel are neither sufficient nor do they justify discarding the evidence of the prosecutrix. There is nothing on record that creates any doubt/disbelief or a suspicion about the evidence of the prosecutrix. In a case, such as this, where the prosecutrix was misrepresented by the accused that he would show her to his cousin (a doctor) as she was suffering from some throat pain and she accompanied him but the accused took her to other places and when it became dark, took her to a lonely place and committed sexual intercourse, the prosecutrix was not expected to put any resistance lest her life would have been in danger. In the facts and circumstances, the absence of injuries on the person of the prosecutrix does not lead to an inference that she consented for sexual intercourse with the accused. The young girl became victim of lust of the accused who was more than double her age and yielded to sexual intercourse against her will.

22. In all, we find that the judgment of the High Court affirming the judgement of the trial court convicting the accused under Sections 366 and 376 IPC does not suffer from any legal flaw. The sentence awarded to the appellant does not call for any interference by this Court. The appeal having no merit must fail and is dismissed. The appellant will surrender to his bail bond and will be taken into custody to serve out the sentence as awarded.