SUPREME COURT OF INDIA

Santhosh Moolya

Vs.

State of Karnataka

Crl.A.No.479 of 2009

(P. Sathasivam and R.M. Lodha JJ.)

26.04.2010

JUDGEMENT

P. SATHASIVAM, J.

1) This appeal is filed against the final judgment and order dated 13.03.2008 passed by the High Court of Karnataka at Bangalore in Criminal Appeal No. 1498 of 2007 whereby the High Court dismissed the appeal filed by the appellants- accused affirming the conviction and sentence passed by the Additional District and Sessions Judge, Dakshina Kannada, Mangalore dated 1/3.9.2007 in S.C. No. 13 of 2005.

2) Background facts in a nutshell are as under:

On 02.06.2004, two sisters (both victims of rape), who were working in the quarry of one Subhash Jain- PW-4, after completing their work, were waiting for the bus near Sampige of Puttige Village

by the side of the road to go to their residence in Badaga Mijaru Village, Ashwathapura, Santhakatte. At about 6.00 p.m., the appellants came there in an autorickshaw which was driven by Santhosh Moolya (A-1) and stopped the auto in front of the victims asking them to get into the auto as they were also going towards Ashwathapura side. Surendra Gowda (A-2) was already sitting in the auto.

Both the sisters sat by his side. It was raining at that time.

After some time, leaving the main road, the appellant moved the auto towards a kutcha road. Both the victims asked them as to where the auto was being taken. By that time, the accused stopped the auto at a lonely place and pulled both the victims out of the auto and after covering their mouth with hands, threatened to kill them if they gave rise to any shouting. Thereafter, both the victims were made to lie on the ground and their clothes were removed. Santhosh Moolya, A-1 raped the elder sister and Surendra Gowda, A-2 raped the younger sister. While leaving the place, both the accused threatened the victims not to inform any one about the incident and also allow them to do the similar act in future failing which they would be killed. After sometime, the victims managed to get up and put on their clothes and walked towards their house and informed the incident to their mother (PW-14). On the next day, they informed the incident to one Nonayya Gowda, PW-5 a worker of the quarry, who, in turn, informed Subhash Jain (PW-4), who told them to file a complaint but they hesitate to file the complaint. On 14.07.2004, at about 4.30 p.m., Yamuna (PW-1) gave statement before the Sub-Inspector of Police, Moodbiri Police Station and that was reduced to writing by Ithappa, P.S.I. PW- 13 and registered as Crime No. 62/2004 for the offence under Sections 376 & 506 read with Section 34 of I.P.C. C.P.I. of Mulki, who is PW-16, investigated the case. PW-16 sent the victims to Medical Officer, Moodgidri for medical examination and on the same day at about 10 p.m., the police arrested both the accused persons. On the next day, i.e. on 15.07.2004, PW-16 visited the scene of offence and prepared the Panchnama (Ex. P2) and recorded the statements and sent the accused for medical examination to the Government Hospital and thereafter, they were produced before J.M.F.C. Karkala. On the same day, PW-16 seized the clothes of the victims and the Auto. On 21.08.2004, PW-16 received certificate of two victims of sexual assault. PW-16 completed the investigation and filed the charge sheet on 05.09.2004.

The III Addl. Civil Judge (Jr. Dn.) and J.M.F.C., Karkala on 07.02.2005 took cognizance of the offence punishable under Sections 376 and 506 read with 34 of I.P.C. and registered the case in C.C. No. 537 of 2004 and committed the same to the Sessions Court, Mangalore as the offence alleged against the accused are triable by the Court of Sessions. The prosecution examined 16 witnesses. The trial Judge, on 01/03.09.2007, passed an order convicting and sentencing both the accused to undergo rigorous imprisonment for a period of seven years and to pay a fine of Rs.10,000/- and, in default, to suffer rigorous imprisonment for three months for offence punishable under Section 376 of I.P.C. and further held to undergo rigorous imprisonment for three months for offence punishable under Section 506(2) I.P.C. Aggrieved by the conviction and sentence passed by the trial Court, both the accused preferred an appeal before the High Court. The learned single Judge of the High Court, by order dated 13.03.2008, dismissed the appeal affirming the conviction and sentence passed by the trial Judge. Hence, the appellants have filed this appeal by way of special leave.

3) We have heard Mr. Vijay Kumar, learned amicus curiae appearing for the appellants-accused and Mr. Sanjay R. Hegde, learned counsel appearing for the State.

4) Contentions:

Learned amicus curiae, after taking us through the materials placed by the prosecution and the decision of the trial Judge as well as of the High Court, submitted that in view of inordinate delay in lodging complaint i.e. FIR was registered after 42 days of alleged incident, in the absence of proper explanation, the conviction and sentence cannot be sustained.

He further submitted that in view of the contradiction in the evidence of PWs 1 and 2, it is not safe to rely on their testimony and convict the accused. Finally, he submitted that the evidence of doctors i.e., PWs 7 and 8 does not support the claim of PWs 1 and 2/alleged victims, in that event, it would not be proper to convict the accused under Section 376 IPC.

On the other hand, learned counsel appearing for the State submitted that taking note of the evidence of victims PWs 1 and 2 and the acceptable explanation offered by them for the delay in lodging complaint as well as their family circumstances and of the fact that they received threat from the accused, they did not make a formal complaint immediately after the incident. According to him, inasmuch as the delay was properly explained by the prosecution, the courts below are justified in convicting and sentencing the accused for offence under Section 376. He further pointed out the alleged contradictions are rather negligible or minimal. He further pointed out that in view of the assertion of the victims PWs 1 and 2, the prosecution claim cannot be thrown out.

According to him, since both the Courts have accepted the case of prosecution, there is no valid ground for interference by this Court.

5) Discussion on merits:

The victims are sisters and both of them explained how they suffered at the hands of the accused. PW 1 is the elder sister. In her evidence, she has deposed that on 02.06.2004 she and her younger sister PW 2 after completing their work were waiting near the bus stop at Sampige in order to go to their place at Ashwathapura. The second accused - A-2 came in an auto-rickshaw which was driven by A1. She explained that they know both the accused since they were also doing quarry work under

their employer. According to PW 1, Santhosh Moolya - A-1 asked them to get into the auto because they were also going to their place i.e. Ashwathapura.

Believing his statement, PW 1 and her sister PW 2 entered the autorickshaw and A-2 seated next to them. She further explained that after traveling sometime in the main road auto went off in a kutcha road and it was stopped after some distance. It was drizzling at that time. She further added that A-1 pulled her out of the auto and A-2 pulled her sister. Both of them were prevented from raising their voice since the accused covered their mouth and forced both of them to lie down on the ground. By threat, they made both PWs 1 and 2 to lie on the ground and removed their clothes and they were made naked. She narrated that thereafter, A1 had a forcible intercourse with her and A2 with her sister PW 2.

6) While narrating what had happened after forcible intercourse by A1 and A2, PW1 explained that both she and her sister tried to escape from the clutches of the two accused but they could not succeed since there was no one to help them and added to it both the accused threatened that if they inform the incident to anyone they would kill them. PW 1 further explained that she and her sister had injuries on their body and also in their private parts. Their clothes were torn and with great difficulty on reaching home, they informed their mother about the incident. In the same way, PW 2 also explained and narrated how she suffered and raped at the hands of A2.

7) It is further seen from the evidence of PWs 1 and 2 that on reaching their home, apart from informing their mother, they also informed about the incident to one Nonayya Gowda PW5 who, in turn, informed their owner Subhash Jain PW 4. PW 1 explained that though PW 4 asked them to make a complaint, because of the threat posed by A-1 and A-2 and out of fear they did not inform the incident to the police and after gaining confidence and courage, finally a complaint (Ex. P1) was lodged with the police on 14.07.2004. Though there was a delay of 42 days in lodging complaint to the police, PWs 1 and 2, in their evidence, explained that all their family members including themselves are uneducated, no male members in their family for their assistance and they settled in the present village to eke out their livelihood. Admittedly, on the date of the incident, they were working in quarry owned by PW 4 and while returning from their workplace by force A-1 and A-2 committed rape of PWs 1 and 2. The mother of PWs 1 and 2 was examined as PW 14. She also corroborated the assertion of PWs 1 and 2 about their illiteracy and fear due to the threat call of A1 and A2. In those circumstances, the evidence of PWs 1 and 2 and their complaint Ex.P1 cannot be rejected as unacceptable. In a case of rape, particularly, the victims are illiterate, uneducated, their statements have to be accepted in toto without further corroboration. In State of Punjab vs. Gurmit Singh and Others, (1996) 2 SCC 384 speaking for the Bench Dr. A.S. Anand, J. (as His Lordship then was) has observed thus:

"... .... 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 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. ... . "

8) 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. [Vide Rajinder @ Raju vs. Sate of H.P., JT 2009 (9) SC 9] 9) In Sohan Singh and Another vs. State of Bihar, (2010) 1 SCC 68, this Court has observed as under:

"When FIR by a Hindu lady is to be lodged with regard to commission of offence like rape, many questions would obviously crop up for consideration before one finally decides to lodge the FIR. It is difficult to appreciate the plight of the victim who has been criminally assaulted in such a manner.

Obviously, the prosecutrix must have also gone through great turmoil and only after giving it a serious thought, must have decided to lodge the FIR."

10) From the evidence of PW 1, PW 2, owner of the quarry PW 4 and mother of the victim PW-14, we are satisfied that though there was a delay of 42 days in lodging the complaint, the same was properly explained by the victims and the other witnesses. In addition to the same, we have also noticed that except the victims, no male member is available in their family to help them. In fact they came to the village where the incident occurred to eke out their livelihood. Further, PWs 1 and 2 asserted that after committing rape A-1 and A-2 threatened that they would kill them if they inform anyone.

All these material aspects were duly considered by the trial Court and accepted by the High Court. We concur with the same.

11) Coming to the discrepancies in the evidence of PWs 1 and 2, as rightly pointed out by the prosecution and accepted by both the Courts below, they are negligible in nature and it had not affected their grievance, hence we reject the said contention also.

12) It was argued that the doctors PWs 7 and 8 did not notice any injury on the private part of PWs 1 and 2. It is relevant to note that due to threat from A1 and A2, coupled with illiteracy and poverty, the two victims were not taken to the doctor immediately after the incident but they were taken after a month and 14 days. In such circumstances, as rightly observed by the trial Court and the High Court, it is unlikely that any sign of sexual intercourse will be feasible by examining the private part of the victims. Added to it, PW 1 happens to be a married woman and having children which indicates that she is accustomed to sexual intercourse and in view of the same, it would be difficult to expect the doctor, who examined after quite sometime, to indicate the sign of sexual intercourse. The plea that no marks of injuries were found either on the person of the accused or the person of the prosecutrix does not lead to any inference that the accused has not committed forcible sexual intercourse on the prosecutrix. As observed earlier, there is no reason to disbelieve the statement of the victims PWs 1 and 2. On the other hand, their oral testimony which is found to be cogent, reliable, convincing and trustworthy has to be accepted.

Further, both the Courts have rightly accepted the statement of prosecutrix.

13) In the light of the above discussion, we are in agreement with the conclusion arrived at by the trial Court as well as the High Court. Consequently, we dismiss the appeal as devoid of any merit.