

SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Babu Meena

Crl.A.No.570 of 2007

(A.K. Patnaik and Chandramauli Kr. Prasad JJ.)

13.02.2013

JUDGMENT

CHANDRAMAULI KR. PRASAD, J.

1. State of Rajasthan, aggrieved by the order of the High Court refusing to grant leave against the judgment of acquittal, is before us with the leave of the Court.

2. Prosecution started on the basis of a first information report lodged by PW-4, Prem Singh, inter alia alleging that on 20th of April, 2005 his daughter Kirti Chauhan, aged about 16 years left the house and her whereabouts are not known. The informant suspected that his elder daughter Jitendra had allured her. He further disclosed that Jitendra had solemnized inter-caste marriage with Babu Meena, the accused herein and was staying in Udaipur, Rajasthan. Accordingly, informant prayed that search be made to recover his daughter. On the basis of the aforesaid information, a case under Section 363 and 366 of the Indian Penal Code was registered. During the course of investigation, the statements of informant Prem Singh, his wife Pushpa (PW-5) and their daughter Kirti Chauhan (PW-3) were recorded. During the course of investigation, it surfaced that Kirti Chauhan received a telephone call from her sister Jitendra and her husband, the accused herein, who enquired about her marriage. Kirti replied that her marriage was going to be held soon on which her sister counseled her that the boy with whom her marriage is going to be solemnized is a vagabond and asked her not to marry him. They also told her that the accused will go to her and she should come along with him. Kirti, as requested by her sister, came along with the accused and, according to her, she was treated well for couple of days. She further stated during the course

of investigation that the accused subjected her to sexual intercourse against her consent.

3. Police, after usual investigation, submitted charge-sheet and the accused was ultimately committed to the Court of Sessions to face the trial. Charges under Section 363, 366, 376 and 323 of the Indian Penal Code were framed against the accused. The accused denied the charges and claimed to be tried. To bring home the charges the prosecution has examined altogether 12 witnesses besides a large number of documents were also exhibited.

4. The trial court, on appreciation of evidence, came to the conclusion that Kirti was more than 18 years of age and she had left the house voluntarily. The only witness to support the allegation of rape is the victim herself. Kirti (PW-3) had stated in her evidence that the accused committed rape at 12.00 noon but, in her statement recorded during the course of investigation, her allegation was that she was raped by the accused at 06.30 A.M. To establish that the rape was committed without her consent she has deposed that while she was subjected to rape she shouted, but nobody came to her rescue. However, Ramchandra Salvi (PW-11), the owner of the house in which the alleged rape took place has not supported the victim. Dr. Smt. Sushila (PW-12), who examined the victim had also not supported the allegation of rape. Further, the report of the Forensic Science Laboratory also does not support the allegation of rape. Taking into account the aforesaid infirmities in the case of the prosecution, the trial court held that the prosecution has not been able to prove its case beyond reasonable doubt and accordingly, gave the accused the benefit of doubt and acquitted him of all the charges.

5. Aggrieved by the aforesaid decision, State of Rajasthan preferred an appeal and sought leave of the High Court for filing such an appeal. The High Court declined to grant the leave inter alia observing that the order of acquittal has been rendered on proper appreciation of evidence available on record.

6. Mr. Ajay Veer Singh Jain appears on behalf of the appellant. Despite service, nobody has chosen to appear on behalf of the accused-respondent.

7. Mr. Jain assails the acquittal of the respondent under Section 376 of the Indian Penal Code and contends that the trial court ought to have accepted the evidence of Kirti (PW-3). He submits that conviction can be based on the sole testimony of the prosecutrix and the trial court erred in rejecting her evidence and acquitting the respondent. In support of the submission he has placed reliance on the judgment of

this Court in the case of *Vijay v. State of Madhya Pradesh*, (2010) 8 SCC 191. Relevant para of the judgment reads as under:

“14. Thus, the law that emerges on the issue is to the effect that the statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix.”

8. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.

9. In the background of the aforesaid legal position, when we consider the case in hand we are of the opinion that the statement of the prosecutrix is not at all reliable or in other words wholly unreliable. No other evidence has been led to support the allegation of rape. Hence, it shall be unsafe to base the conviction on her sole testimony. In her evidence she had stated that she was subjected to rape at 12.00 noon when her sister Jitendra, the wife of the accused had gone to purchase milk. However, during the course of investigation she alleged that she was subjected to rape at 06.30 A.M. When confronted with the aforesaid contradiction in the cross-examination, she could not explain the aforesaid discrepancy. Her statement that she shouted for help when she was subjected to rape also does not find support from the evidence of Ramchandra Salvi (PW-11), the owner of the house where the incident is alleged to have taken place. Dr. Smt. Sushila (PW-12), has also not supported the allegation of rape as also the Forensic Science Laboratory Report. In the face of what we have observed above, the evidence of the prosecutrix cannot be said to be wholly reliable.

10. In light of the aforesaid evidence the view taken by the trial court was the only possible view. Once it is held so the order of acquittal is not fit to be interfered with and the High Court rightly declined to grant leave against the judgment of acquittal.

11. In view of what we have observed above, we do not find any merit in the appeal and it is dismissed accordingly.