A

GURCHARAN SINGH

v.

STATE OF HARYANA

September 13, 1972

[A. N. RAY AND I. D. DUA, JJ.]

B

Indian Penal Code (Act 45 of 1860). ss.362. 366 and 376—Girl under 16 years forced to go to a place where rape was committed on her—Effect of absence of marks of violence or person of victim.

Practice—Sexual offence—Necessity for corroboration.

A girl under 16 years was induced to go to a particular house from where she was threatened to go to the house of the appellant who forcibly C took her to his fields outside the village and committed rape on her. The appellant was convicted for offences under ss. 366 and 376 I.P.C. The medical evidence showed that there was penetration but no marks of violence on the victim's person.

Dismissing the appeal to this Court,

HELD : (1) The gravamen of the offence was that the appellant forced the girl to go with him to the fields to commit rape on her and this D constitutes abduction punishable under s. 362 and 366, I.P.C. There is no question of any kidnapping from lawful guardianship or the appellant taking or enticing her out of the keeping of her lawful guardian or later taking her away for illicit purpose from unlawful custody. [201A-E]

State v. *Gopichand*, A.I.R. 1961 Bom. 282, held inapplicable.

(2) Under s. 375, I.P.C. read with the Explanation, where a person E on whom rape is committed is under 16 years of age, her consent is immaterial and penetration is sufficient to constitute the offence. In the present case, mere absence of marks of violence on the person of the victim is immaterial because, that would merely suggest want of voilent resistance on her part which is wholly inconsequential since she is under 16 years of age. [201G-H]

(3) In cases of sexual offences the prosecutrix is not considered as an F accomplice and her testimony is not equated with that of an accomplice in an offence. It is only as a rule of prudence that courts normally look for some corroboration of her testimony so as to satisfy their conscience that she is telling the truth and that the person accused of rape on her is not being falsely implicated. [202G-H]

In the present case, the testimony of the victim by itself is impressive enough to render it safe for sustaining the appellant's conviction. More- G over, the rescue of the victim from the appellant's sugarcane field, her complaint soon thereafter to the prosecution witnesses about the abduction and the rape, the later recovery of some broken pieces of bangles from the scene of occurrence, and the medical evidence, fully corroborate testimoney. [205A-D]

Rameshwar v. *State of Rajasthan*, [1952], S.C.R. 177 *and Sidheswar Ganguly* v. *State of West Bengal*, A.I.R. 1958 S.C. 143 followed.

H

Janardan Tewari v. *State of Bihar*, [1971] 3 S.C.C. 927 referred to.

CRIMINAL APPELLATE JURISDICTION : Cr. A. No. 232 of 1969.

Appeal by special leave from the judgment and order dated November 28, 1968 of the Punjab & Haryana High Court at Chandigarh, in Criminal Appeal No. 633 of 1968.

Bal Raj Trika, N. S. Das Behl and *Sat Pal Arora,* for the appellant.

Harbans Singh and *R. N. Sachthey,* for the respondent.

The Judgment of the Court was delivered by

DUA, J. This is an appeal by special leave under Art. 136 of the Constitution. The appellant Gurcharan Singh, his servant Shri Sanjha Ram, Dalip Singh, his wife Smt. Surjit Kaur and under the latter section to rigorous imprisonment for four Sessions Judge, Karnal on charges under ss. 366, 368 and 376, Indian Penal Code. Gurcharan Singh, appellant, with whom alone we are concerned in this appeal was charged with commission of offences under ss. 366 and 376, I.P.C. The trial court acquitted Phullan and Surjit Kaur but convicted Gurcharan Singh, appellant, under ss. 366 and 376, I.P.C. sentencing him under the former section to rigorous imprisonment for three years and under the latter section to rigorous imprisonment for four years and fine of Rs. 200, with further rigorous imprisonment for six months in the event of default in payment of fine. The substantive sentences were to run concurrently. Sanjha Ram was convicted under s. 376, I.P.C. and sentenced to rigorous imprisonment for four years and a fine of Rs. 200, with further rigorous imprisonment for six months in case of default in payment of fine. He was also convicted under s. 368, I.P.C. and sentenced to rigorous imprisonment for two years. The substantive sentences were to run concurrently. Dalip Singh was convicted under s. 366, I.P.C. and sentenced to rigorous imprisonment for three years and fine of Rs. 200 with further rigorous imprisonment for six months in the event of default.

On appeal a learned single Judge of the Punjab and Haryana High Court upheld these convictions and sentences.

The prosecution story, as upheld by both the learned Sessions Judge and the High Court, is that Smt. Paramajit Kaur (prosecutrix), a young girl under 16 years of age, whose father Avtar Singh, had served in the Army from 1947 to 1967 and was, according to the High Court, a man of meagre means went out in the evening of November 26, 1967 to ease herself. When she was returning home Surjit Kaur and Phullan met her and induced her to visit Dalip Singh's house so that she may be given nice clothes. On reaching Dalip Singh's house she was handed over to him. By then it had grown dark. Dalip Singh threatened her with a knife and asked her to accompany him. He took her

A to the appellant's *baithak* (sitting room) closeby and after handing her over to the appellant, Dalip Singh went away. The appellant threatened Paramjit Kaur with a pistol and took her to his fields outside the village and in the room where his tube-well machine was installed he committed rape on her twice. After a couple of hours Sanjha Ram arrived there. The appellant then B went away leaving Paramjit Kaur in Sanjha Ram's custody. During the appellant's absence Sanjha Ram also committed rape on her. After sometime the appellant returned with a bedding and food for Paramjit Kaur. But she declined to eat anything. The whole night she was kept in that room where the appellant and Sanjha Ram both committed rape on her. On the following C morning the appellant left her in the custody of Sanjha Ram with a direction that some customer should be found for her. Sanjha Ram used to take Paramjit Kaur to the sugarcane field during day time and bring her back to the room during the night. Sanjha raped her even in the sugarcane field.

In the meantime, when Paramjit Kaur did not return home on D November 26, 1967, her uncle Shingara Singh, her father Avtar Singh and some others began searching for her in their village and also in the other nearby villages. Having failed in their search, first information report was lodged on the morning of November 29, 1967 by Shingara Singh, younger brother of Avtar Singh, with the police station Ladwa, about two miles away from E village Nawarsi, where Paramjit Kaur resided with her parents. The offence mentioned in the F.I.R. was under ss. 363/366, I.P.C. Suspicion was cast in the F.I.R. on Dalip Singh, his son Trilok Singh, his wife Surjit Kaur, Gurcharan Singh, appellant and his wife because Paramjit Kaur used to go to their house which was located in the neighbourhood. The same day *viz.*: November 29, Anokh Singh (P.W. 6) felt the presence of some F persons in Gurcharan Singh, appellant's sugarcane field which is near to his own sugarcane field and conveyed this information to Col. Harnam Singh, (P.W. 4). Thereupon Col. Harnam Singh, along with Jagjit Singh, Gian Singh, Rachpal Singh Chima, Rachhpal Singh Nagra, Gian Chand, Kishan Singh and Anokh Singh, the informant, went to the sugarcane field of Gurcharan G Singh, where they saw Paramjit Kaur and Sanjha Ram. The latter tried to escape but was secured. Paramjit Kaur, narrated the whole story of what had happened since the evening of November 26, 1967. Paramjit Kaur and Sanjha Ram were then taken to the police station Ladwa. On the way they met S.I. Balwant Singh, who was coming to village Nawarsi for investiga- H tion pursuant to the information lodged by Shingara Singh, uncle of the prosecutrix. The Sub-Inspector, on meeting this party, recorded the statement of the prosecutrix and of the other witnesses accompanying her. Paramjit Kaur was got examined by

lady doctor K. Kaushalya, Medical Officer, Civil Hospital, Karnal at about 7 p.m. who found a tear on the posterior margin of her hymen which bled on examination. In the lady doctor's opinion rape had been committed on her about three or four days prior to the examination. In the doctor's opinion the healing process of the hymen was going on. She also examined her for finding her age. X-ray examination for determining the age of the prosecutrix was also taken by Dr. L. R. Sardana, Radiologist in the same hospital. According to both Dr. Sardana and Dr. Kaushalya the age of the prosecutrix could be between 15 and 16 years. She was clearly under 16 years.

The prosecutrix appeared as P.W. 3 and narrated the whole story in a straightforward manner. She had off and on been going to the house of Gurcharan Singh, appellant, during the last four or five years and also borrowing odd articles from the appellant's wife. The appellant's wife also used to pay visits to Paramjit Kaur's house. On the evening of November 26 Paramjit Kaur who, like all young girls, was fond of nice clothes, was induced by Surjit Kaur, wife of Dalip Singh to go with her to see new clothe. Surjit Kaur wanted to sell those clothes. Thus induced the prosecutrix was taken to Dalip Singh and handed over to him. The prosecutrix had, however, never been to the house of Sanjha Ram. In her cross-examination an attempt was made on behalf of the accused to elicit from her if there was any animosity or litigation between Dalip Singh on the one side and Shingara Singh and Anokh Singh on the other but Paramjit Kaur expressed her ignorance about it. She also denied the suggestion that she had gone out on November 26 of her own accord and had herself returned home on the 28th. She was cross-examined at great length but her credibility remained unshaken. Lady doctor K. Kaushalya's statement recorded in the committing magistrate's court was brought on the record of the Sessions Court where she was also further examined and cross-examined. Nothing was elicited to discredit her evidence. Harnam Singh (P.W. 4) who is a Sarpanch and a retired Lt. Colonel from the Army has deposed about the circumstances, in which at about 11.30 a.m. on November 29, 1967, he and others, when considering their future course of action and plan for making further search for Paramjit Kaur, learnt from Anokh Singh about the presence of someone in the sugarcane field of Gurcharan Singh and on going there found Paramjit Kaur and Sanjha Ram. The main challenge on behalf of the appellant has been that this Harnam Singh has enmity with the appellant and that he has been instrumental in falsely implicating the appellant in this case.

As already observed, the two courts below have accepted the prosecution version and convicted the appellant for both offences *viz* : under ss. 366 and 376, I.P.C.

A In this Court the first objection raised on behalf of the appellant against his prosecution and conviction under s. 366, I.P.C. is that kidnapping and abduction of the prosecutrix was complete as soon as she was induced by the two ladies to accompany them. In support of this submission reliance has been placed on a decision of the Bombay High Court reported as *State* v. *Gopichand*(1). B This decision is wholly unhelpful to the appellant. According to this decision, when a minor girl was kidnapped by A from the lawful custody of her husband, her subsequent taking away by B, who was no party to the original kidnapping, from the unlawful custody of A, for illicit intercourse, does not amount to kidnapping and B is not guilty under s. 366. Plainly the ratio of C this decision has no application to the case in hand. There is no question of any kidnapping from the lawful custody in the present case, the real gravamen of the offence here being that Gurcharan Singh, appellant, induced the prosecutrix by threatening her with a pistol to go with him to the room in his fields where his tube-well was fixed and there he committed rape on her. Section 362, I.P.C., which defines abduction lays down that whoever D by force compels or by any deceitful means induces any person to go from any place is said to abduct that person. The appellant's case clearly falls within this definition. Kidnapping from lawful guardianship which offence was the subject matter of discussion in *Gopichand's* case (supra) is defined in s. 361, I.P.C. and according to that definition undoubtedly taking or enticing any E minor out of the keeping of the lawful guardian of such minor completes the offence. That is not the case before us. The first challenge, therefore, fails.

The counsel has then contended that there was no question of the commission of rape in this case and for that purpose he has F tried to seek support from the medical evidence. We consider it unnecessary to deal at length with this argument, which, in face of the medical evidence and the statement of the prosecutrix, does not seem to possess any merit. The suggestion that, there being no marks of violence on the private parts or elsewhere on the person of the prosecutrix, there could be no offence of rape on G her, is wholly misconceived. Rape has been defined in s. 375, I.P.C., according to which a man is said to commit "rape", who, except in the cases therein excepted, has sexual intercourse with a woman under circumstances falling under any of the five descriptions stated therein. We need not deal with all the descriptions. Suffice it to point out that where a person on whom rape is committed is under 16 years of age, even consent is immaterial (*vide* H fifthly of s. 375) and penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape (*vide* : explana-

(1) A.I.R. 1961 Bom. 282.

tion to s. 375.) No attempt has been made on behalf of the appellant to take his case out of these provisions. No other argument was addressed on the basis of the medical evidence for contending that there was no penetration except, as already noted, that there were no marks of violence on the person of the prosecutrix. That is clearly immaterial because that would merely suggest want of violent resistance on the part of the prosecutrix, which is wholly inconsequential when the prosecutrix is under 16 years of age. Absence of violent or stiff resistance in the present case may as well suggest, helpless surrender to the inevitable due to sheer timidity. In any event her consent would not take the case out of the definition of rape. So far as the age of the prosecutrix is concerned, it is noteworthy that in the High Court her age was not questioned at least by the counsel appearing for Dalip Singh as expressly noticed in the impugned judgment. Even on behalf of Gurcharan Singh, appellant, we do not find any challenge to the age of the prosecutrix in the High Court. In any event the High Court considered the evidence on the point and believing the testimony of Tilak Raj (P.W. 8), who is the head master of the school in which the prosecutrix had been studying, and the evidence of the mother of the prosecutrix, came to the conclusion that her date of birth was April 10, 1952 and, therefore, she was less than 16 years of age on the date of the occurrence. This conclusion is unquestionable.

Indeed, before us the conclusion of the High Court on the age of the prosecutrix was not assailed.

The point most seriously canvassed in this Court on behalf of the appellant was that the solitary statement of the prosecutrix without corroboration in material particulars is not enough to sustain the conviction of the appellant. The learned counsel appearing for Gurcharan Singh contended that Dalip Singh and Sanjha Ram may have rightly convicted. But so far as the appellant is concerned the evidence against him is neither reliable nor sufficient for bringing home to him the offence of abduction and rape beyond reasonable doubt. The basic question which, therefore, arises is as to how far the testimony of the prosecutrix before us can form the basis of the appellant's conviction. It is well-settled that the prosecutrix cannot be considered as an accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence. As a rule of prudence, however, court normally looks for some corroboration of her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated. The matter is not *res integra* and this Court has, on more occasions than one, considered and enunciated the legal position. In *Rameshwar* v. *State of Rajasthan*(1) this Court observed :

(1) [1952] S.C.R. 377.

A "Now a woman who has been raped is not an accomplice. If she was ravished she is the victim of an outrage. If she consented there is no offence unless she is a married woman, in which case questions of adultery may arise. But adultery presupposes consent and so is not on the same footing as rape. In the case of a girl who is below the age of consent, her consent will not B matter so far as the offence of rape is concerned, but if she consented her testimony will naturally be as suspect as that of an accomplice. So also in the case of unnatural offences. But in all these cases a large volume of case law has grown up which treats the evidence of the complainant somewhat along the same lines as accom- C plice evidence though often for widely different reasons and the position now reached is that the rule about corroboration has hardened into one of law. But it is important to understand exactly what the rule is and what the expression 'hardened into a rule of law' means."

After referring to the well-known English decision in *King* v. D *Baskerville*(1) from which the observations of Lord Reading, the Lord Chief Justice of England, were quoted with approval, the law in India was stated to be exactly the same so far as the accomplices are concerned and it was observed that in case of sexual offences it could not be any higher. The view taken by the High Court in that case that as a matter of law no conviction without corroboraion was possible was disapproved. The true rule, after E consideration of decided cases is stated thus :

"In my opinion, the true rule is that in every case of this type the rule about the advisability of corroboration should be present to the mind of the judge. In a jury case he must tell the jury of it and in a non-jury F case he must show that it is present to his mind by indicating that in his judgment. But he should also point out that corroboration can be dispensed with if, in the particular circumstances of the case before him, either the jury, or, when there is no jury, he himself, is satisfied that it is safe to do so. The rule, which according G to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge, and in jury cases, must find place in the H charge, before a conviction without corroboration can be sustained. The tender years of the child, coupled

(1) [1916] 2 K.B. 658.

A

with other circumstances appearing in the case, such, for example as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand."

B

Adverting to the nature and extent of corroboration required when it is not considered safe to dispense with it this Court added :

C

"It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should, or would, be regarded as corroboration. Its nature and extent must necessarily vary with circumstances of each case and also according to the particular circumstances of the offence charged."

D

In *Sidheswar Ganguly* v. *State of West Bengal*(1) the decision in *Ramashwar's* case (*supra*) was approved and it was added that the nature of the corroborative evidence should be such as to lend assurance that the evidence of the prosecutrix can be safely acted upon.

E

In *Janardan Tewari* v. *State of Bihar*(2) it was observed :

"We are satisfied that this girl was raped and we have only to find out who the culprits were. In this connection, the law is that the evidence of the prosecutrix must be corroborated in some measure to connect the accused. Enough corroboration is available in this case from the evidence of Bir Kumar who gave the information to his grand mother immediately after the incident and also deposed on oath in Court. Bir Kumar Singh is a young boy aged 12 years and therefore, we have to be cautious about accepting his testimony. We have read his evidence. Bir Kumar Singh was closely questioned to find out whether he understood nature of evidence and whether he was capable of giving answers to the questions put to him. The Sessions Judge was satisfied that Bir Kumar was a competent witness and his statement struck us as being true."

F

G

H

(1) 1958 S.C. 143. (2) [1971] 3 S.C.C. 927.

A In the present case Paramjit Kaur stated to Harnam Singh (P.W. 4) as soon as he and his companions found her in the appellant's sugarcane field as to how she had been abducted and how the appellant and Sanjha Ram had committed rape on her. She wept when she narrated the story. The recovery of the prosecutrix and Sanjha Ram from the appellant's sugarcane field, B her complaint to Harnam Singh and others about the abduction and rape and the later recovery of some broken pieces of bangles from the said field and the medical evidence, in our opinion, fully corroborate the testimony of the prosecutrix which even without corroboration seems to us to be impressive enough to render it safe for sustaining the appellant's conviction. Nothing C at all has been elicited from her lengthy cross-examination by more than one defence counsel so as to shake her credibility. Her statement suggesting slight exaggeration with respect to threats shown to her by Dalip Singh and by the appellant does not affect the truth of her testimony on the real material point. A common village girl of less than 16 years that she is, due D allowance must be made for the statement elicited from her in court during cross-examination by counsel or the defence. Her recovery virtually from the custody of Sanjha Ram has been proved not only by Harnam Singh (P.W. 4) but also by Pyara Singh (P.W. 5) and Anokh Singh (P.W. 6) and we do not find any cogent ground for doubting this part of the prosecution case.

E The appellant in his defence pleaded *alibi*. He raised this plea in his statement under s. 342, Cr. P.C. in the trial court. In the commitment court we do not find this plea in his statement under s. 342, Cr. P.C. where he stated that he would make a detailed statement in the court of sessions. He produced D.W. 3, Shankar Dass, his cousin brother (the appellant's F mother's brother's son) According to this evidence marriage of Smt. Iswari Devi, sister of Sankar Dass was solemnised at Rohtak on November 24, 1967. Gurcharan Singh, according to this witness went to Rohtak on November 23. The marriage party arrived at Rohtak on 24th and departed on the evening of 25th. The appellant is said to have stayed on there for the night of the G 25th. On the 26th the appellant's son who is stated to be mentally deranged was to be examined by Dr. Vidya Sagar in the Medical College Hospital, Rohtak and the appellant is stated to have returned to Rohtak on November 27 without his son being examined by Dr. Vidya Sagar who happened to be on leave. The appellant's son was, however, shown to the doctor by Shankar H Dass on November 29, 1967. According to the trial court the appellant could easily have reached his village on the evening of November 26,—a view with which we entirely agree. The High Court also did not accept the plea of *alibi* and, in our

opinion, rightly. The appellant also pleaded that he was incapable of having sexual intercourse but this plea was belied by his medical examination. Neither the trial court nor the High Court accepted the plea. It is also interesting to note that the appellant has not been consistent in giving his age on different occasions. In his application dated August 27, 1963 to the police station, Ladwa, complaining against Harnam Singh and others that he apprehended danger at their hands, he gave out his age to be between 30 and 32 years. According to this assertion in 1967 he would be about 36 years of age. In his certificate of medical examination, Ex. PC, dated 12th December, 1967 his age is stated to be 45 years. In his statement under s. 342 he gave his age as 50 years. In the trial court he stated under s. 342, Cr. P.C. that he was unable to perform sexual intercourse but this plea, as already observed, cannot be accepted in face of the result of his medical examination. A faint-hearted suggestion was thrown by the appellant's counsel that it is impossible for a medical man to state whether a man is capable of sexual intercourse. But this argument was not seriously pursued and in our opinion rightly.

On a consideration of the arguments addressed we have no doubt that the appellant has been rightly convicted for both the offences. So far as the question of sentence is concerned it has to be borne in mind that the appellant is a Lumbardar of his village and has also officiated as Sarpanch for some time. Keeping in view the responsible position held by the appellant in our view, the sentence imposed is by no means unduly harsh. The appeal accordingly fails and is dismissed. The appellant should surrender to his bail bond to serve out the sentence.

W.P.S. *Appeal dismissed.*