KARNEL SINGH

v.

THE STATE OF M.P.

AUGUST 11, 1995

[A.M. AHMADI CJ. AND S.C. SEN, J.]

Indian Penal Code, 1860

Section 376—Rape of a labourer by contractor—Convicted by Courts below—Absence of marks of injury on the person of victim—Satisfactorily explained—No reason to implicate the accused—Loopholes in investigation—Not to help the accused at the cost of poor prosecutrix—Conviction upheld.

According to the prosecution, the prosecutrix was working at a factory of the appellant-contractor. On the morning of 28.8.1987 she was working inside the factory along with a male labourer. The appellant and his companion came to the factory premises asked the male labourer to fetch tea and on his departure the appellant lifted her bodily and took her inside the machine room, placed her on the ground, undressed her from below the waist and had sexual intercourse with her. His companion, since acquitted, was asked to keep a watch outside the factory. After the appellant had satisfied his lust and before his companion could take his turn the prosecutrix ran through the opening in the compound wall of the factory, searched out her husband, a rickshaw puller, and thereafter lodged the First Information Report. The appellant was charged with and tried for an offence under Section 376 IPC. He was convicted by the Trial Court and his appeal was dismissed by the High Court.

In this appeal it was contended that there was delay in filing the F.I.R., there were no marks of injury on the person of the prosecutrix and that she had falsely implicated the appellant to grab money.

Dismissing the appeal, this Court

HELD : 1. The investigation officer had not taken the care expected of him. He did not record the statements of the two witnesses nor did he refer to the attachment of the 'Chaddi' in his oral evidence. That was a

A very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. There is no doubt that the investigation was casual and defective. On closer scrutiny there is reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit the accused solely on that ground would be adding insult to injury. [632-G; 633-D]

2.1. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the Police is because of society's attitude towards such a woman; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases do not necessarily indicate that her version is false. The possibility of tutoring is ruled out because the evidence does not show that her husband knew the appellant and his companion before the incident. She too had started work hardly three days before and therefore she had no reason to falsely involve the appellant. No such reason is even suggested. She was a poor labourer hired by a contractor just a few days back and had no enmity with the appellant and his companion. Nor is there any such history so far as her husband is concerned. There is, therefore, no reason to doubt her word. As for corroboration the find of semen stains on her 'saya' and in her vagina lends sufficient assurance to her accusation. [634-A-D]

2.2. Immediately after the incident she did go in search of her husband who was a rickshaw puller, narrate to him the incident, go down to the police station and then lodge the complaint. She has explained the absence of injuries by stating that she was laid on sand which was lying on the floor and, therefore, there were no marks of injury. The only explanation is by way of suggestion in the cross-examination of the prosecutrix to the effect that she was falsely implicating the appellant in order to grab money. Therefore, taking on overall view of the matter it is safe to place reliance on the testimony of the prosecutrix. Both the courts below relied on her evidence and there is no reason to take a different view. [635-H; 636-A-B]

State of Maharashtra v. *Chandraprakash Kewal Chand Jain,* [1990] 1 SCC 550, relied on.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 877 of 1995. A

From the Judgment and Order dated 23.4.94 of the Madhya Pradesh High Court in Crl.A.No. 170 of 1991.

R.K. Mahajan and B.Y. Kulkarni for the Appellants. B

Prashant Kumar and Uma Nath Singh for the Respondents.

The Judgment of the Court was delivered by

AHMADI, CJ. Special leave granted. C

The appellant challenges his conviction under Section 376, IPC, and the sentence and fine imposed on him. The facts leading to the conviction, briefly stated, are that the prosecutrix (PW 1) Panchbai, was working at a factory where she had reported for duty on the morning of 28.8.1987 around 8.00 a.m. Her job was to lift boulders and place them within the factory premises. While she was working inside the factory, another labourer by the name Charan was also present. The appellant and his companion Pyaru came to the factory premises, asked Charan to fetch tea and on his departure the appellant lifted her bodily and took her inside the machine room, place her on the ground, undressed her from below the waist and had sexual intercourse with her. Pyaru, since acquitted, was asked to keep a watch outside the factory. According to the prosecution after the appellant had satisfied his lust and before Pyaru could take his turn the prosecutrix ran through the opening in the compound wall of the factory, searched her husband, a rickshaw puller, and thereafter lodged the First Information Report (Ex.P-1). She was sent to the Hospital for medical examination where PW2 Dr. (Smt.) S. Rajpoot examined her and prepared the Report (Ex.P-3). Her evidence has been recorded in brief to the effect that she examined the prosecutrix on that very night at about 9.00 p.m. and found that she was habituated to sexual intercourse. She did not find any marks of injury or struggle on the person of the prosecutrix. However, her Saya (petticoat) which was attached earlier in point of time and shown to her bore semen stains. In her cross-examination she stated that she did not see any signs of forcible intercourse on the prosecutrix and was, therefore, not in a position to say whether or not she was the victim of rape. The garment of the prosecutrix was got examined by the Chemical Analyser, D E F G H

A which examination confirmed the existence of semen stains. The prosecutrix in her evidence has stated that immediately after she ran from the place of occurrence she met one Reza Multanabai, a co-labourer, and narrated to her the incident before going in search of her husband. Thus, at the earliest point of time she narrated incident to the aforesaid person, but unfortunately that person was not cited and examined as a witness, nor was Charan produced as a witness. Thus, both these witnesses who could have corroborated the prosecutrix were not examined. In the course of investigation the under-garment (Chaddi) of the accused is stated to have been recovered. Dr. R.D. Sharma noted semen like stains on the garment and advised its examination by the Chemical Analyser. The seizure of the 'Chaddi' was, however, held not proved. Surprisingly, the Investigating Officer has not uttered a word about the seizure of this article. Therefore, this important piece of evidence on which the prosecution sought to rely is of no avail to it. The vaginal swabs had semen stains. This is the state of evidence.

The learned counsel for the appellant-accused strongly urged that the investigation leaves much to be desired and the prosecution evidence does not carry the case beyond suspicion. He stated that the two independent witnesses who could have corroborated the prosecutrix have, for reasons best known to the prosecution, not been called to the witness stand. The story regarding the recovery of the 'Chaddi' with semen stains is a concoction and the prosecution could not prove its recovery. In the circumstances he contended that the courts below were wrong in holding the case proved beyond reasonable doubt. He, therefore, urged that the conviction is unsustainable and the appeal must be allowed.

We have very carefully scrutinized the evidence having regard to the fact that (PW6) the investigation officer had not taken the care expected of him. He did not record the statements of the two witnesses nor did he refer to the attachment of the 'Chaddi' in his oral evidence. That was a very vital piece of evidence to which little or no attention was paid. If the seizure of that article was properly proved, the article with semen stains would have lent strong corroboration to the evidence of the prosecutrix. There is no doubt that the investigation was causal and defective. But despite these deficiencies both the courts below have recorded a conviction. The question is : are they right ?

Notwithstanding our unhappiness regarding the nature of investigation, we have to consider whether the evidence on record, even on strict scrutiny, establishes the guilt. In cases of defective investigation the court has to be circumspect in evaluating the evidence but it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective. Any investigating officer, in fairness to the prosecutrix as well as the accused, would have recorded the statements of the two witnesses and would have drawn up a proper seizure-memo in regard to the 'Chaddi'. That is the reason why we have said that the investigation was slip shod and defective.

We must admit that the defective investigation gave us some anxious moments and we were at first blush inclined to think that the accused was prejudiced. But on closer scrutiny we have reason to think that the loopholes in the investigation were left to help the accused at the cost of the poor prosecutrix, a labourer. To acquit solely on that ground would be adding insult to injury.

We have carefully examined the evidence of the prosecutrix, the medical evidence of her examination and the evidence of the investigating officer and we are inclined to think there is no risk involved in accepting the version of the prosecutrix. Her evidence shows that she had joined the two accused persons hardly three days before the incident as a laborer under a contractor. She was, therefore, in not too familiar an environment. She was the only female worker just out of her teens. Besides, the two accused persons and the prosecutrix there was one more person by the name Charan who was sent away to fetch tea. Taking advantage of the prosecutrix being alone in their company the appellant picked her up and took her inside the machine room, laid her on a pile of sand, removed her saree and petticoat, and had sexual intercourse with her against her wish. After he had satisfied his lust, he called his companion but before the latter could have her, she ran away and narrated the incident to Multanabai and then went in search of her husband, a rickshaw puller. After narrating the incident to him, both of them went to the police station and lodged the complaint, Exhibit P.1, at about 4.10 p.m. It was said that there was considerable delay and sufficient time for tutoring and therefore her evidence could not be believed. There is no merit in this contention. The

A submission overlooks the fact that in India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police B is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathise with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. The possibility of tutoring is ruled out because the evidence does not show that her husband knew the appellant and his companion before the incident. She too had started work hardly three days C before and therefore she had no reason to falsely involve the appellant. No such reason is even suggested. She was a poor labourer hired by a contractor just a few days back and had no enmity with the appellant and his companion. Nor is there any such history so far as her husband is concerned. There is, therefore, no reason to doubt her word. As for corroboration D the find of semen stains on her 'saya' and in her vagina lends sufficient assurance to her accusation. in *State of Maharashtra* v. *Chandraprakash Kewal Chand Jain,* [1990] 1 SCC 550, this Court speaking through one of us (Ahmadi, J) had on occasion to point out that a women who is a victim of a sexual assault is not an accomplice to the crime but is a victim of E another person's lust and therefore her evidence need not be tested with the same amount of suspicion as that of an accomplice. She is not in the category of a child witness or an accomplice and therefore the rule of prudence that her evidence must be corroborated in material particulars has no application, at the most the court may look for some evidence which F lends assurance.

This is what this Court said in paragraph 16 of the judgment in the aforementioned case :

G "A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive H the same weight as is attached to an injured in cases of physical

violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge leveled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

Applying the above test to the facts of the present case we are satisfied beyond any manner of doubt that the prosecutrix, a victim of the crime, had absolutely no reason whatsoever to falsely involve the appellant nor did her husband have any reason to do so or tutor his wife to involve the appellant. No such suggestion was made to the prosecution witnesses in cross examination nor in there any evidence on record in that behalf. The prosecutrix is a poor labourer who was toiling to earn her livelihood to augment the family income. She was working in the factory since the last few days only and the appellant and his companion, taking advantage of the situation, drove away Charan by asking him to fetch tea and after he left the appellant violated her person. The find of semen stains on the petticoat and in the vagina lend assurance to the story narrated by the prosecutrix. The submission that there was delay in lodging the complaint has to be stated to be rejected for the simple reason that immediately after

A the incident she had to go in search of her husband who was a Rickshaw Puller, narrate to him the incident, go down to the police station and then lodge the complaint. She has explained the absence of injuries by stating that she was laid on minute sand no marks of injury. The only explanation is by way of suggestion in the cross-examination of the prosecutrix to the effect that she was falsely implicating the appellant in order to grab money. Therefore, taking an overall view of the matter we are satisfied that it is safe to place reliance on the testimony of the prosecutrix. Both the courts below relied on her evidence and we see no reason to take a different view.

B

C For the above reasons we see no merit in this appeal and dismiss the same.

G.N. Appeal dismissed.