

STATE OF KARNATAKA

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v.

MANJANNA

MAY 4, 2000

[A.S. ANAND, CJ, D.P. WADHWA AND RUMA PAL, JJ.]

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Indian penal Code, 1860—Section 376(1)—Offence under—Corroboration of Testimony of prosecutrix—By independent witnesses, medical evidence and the report of the chemical examiner—Conviction by trial court—Acquittal by High Court disbelieving the testimony of the prosecutrix—Conviction, held sustainable.

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Criminal Trial :

Delay in lodging FIR—In rape case—Whether fatal—Held, no—The nature of the offence in the social context of this country has to be taken into account.

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Age of prosecutrix—Determination of—Prosecutrix and her father stating her age to be 15 years—X-Ray report stating the age to be between 16 and 18 years—However the doctor admitting not to be specialist in radiology—Whether holding the age of the prosecutrix below 16 years correct—Held, yes.

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The appellant was charged under Section 376 for having committed rape of a 16 year old girl. The prosecution case is that the accused forced the prosecutrix in a ditch on the side of the road and raped her after gagging her mouth. When she cried PW 16 saw her and making her sit under a tree went to the shop of her parents and informed about the incident to the mother and brother of the prosecutrix.

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The incident was informed to the pradhan of panchayat who took her to hospital for medical examination where she narrated the incident to the doctor and then to the nurse. She was referred to a lady doctor but the lady doctor refused to examine her as she was not referred by the police. The prosecutrix after coming back reported the case to the police and thereafter she was examined by the doctor PW-13. In the medical examination injuries were found on the cheeks and thigh of the prosecutrix. The

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A doctor also gave the X-Ray report stating therein that the prosecutrix was above 16 years and below 18 years. In chemical examiner's report seminal stains were found on the clothes of the prosecutrix. Appellant-accused was arrested after 23 days of the incident and thereafter examined. In the chemical examination of his clothes no semen stains were found.

B The prosecutrix stated in her evidence that her date of birth was 8.10.1972. The father of the prosecutrix also stated that his daughter was 15 years old. Their statements were not countenanced in cross-examination. PW-13, who had given the X-ray report admitted that she was not the specialist in radiology and that only a radiologist would be able to furnish the approximate age. The prosecutrix also stated that she had sustained scratches on the right side of her cheeks and chin and on the left side of the hip. Mother of the prosecutrix also stated that she had scratches on her cheeks and hip. PW-13 also stated in her oral testimony that the injuries found on the face of the prosecutrix could be caused while she was struggling to extricate herself from the clutches of the person committing rape and the injury on her hip when she was forcibly thrown on the ground. As per the statement of I.O. PW-18, the site had been identified by PW-16. It was never put to prosecutrix by the defence that the place of the occurrence was not that she had described.

E The accused in his, S. 313/Cr.P.C. statement denied his involvement in the case and said that he has been falsely implicated. The accused also contended that the prosecutrix was not below 16 years of age.

Trial Court held the accused guilty of having committed rape of a girl below the age of 16 years and convicted him.

F In appeal, High Court acquitted the appellant disbelieving the testimony of the prosecutrix on the grounds that as the prosecutrix was subjected to rape in a ditch full of thorns, but injuries were not found on the person of the prosecutrix, that it is highly improbable that the accused will choose such a place for committing the offence which would attract the attention of the people walking on the road due to screaming; that in the wound certificate there is no mention of the rupture of hymen and PW-13 had made material improvement in her statement by stating that there was rupture of hymen; that the mother not enquiring immediately as to what happened and keeping quiet till late evening is quite an unnatural reaction; that even if the date of birth told by the prosecutrix is considered to

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be correct she is 16 years old, as per the evidence of PW-13 she is between 16 and 18 years, and the birth certificate alleged to have been produced to the police has not been produced; and that there was inordinate delay in filing the complaint. Hence appeal was preferred by the State.

Allowing the appeal, this Court

HELD : 1. The enmity alleged by the accused for falsely implicating him was rejected correctly, on the ground that given the present social ethos in this country, it was improbable that either the girl or her parents would set up such a case. [1013-G]

2. The evidence given by the prosecutrix was not only corroborated by the several prosecution witnesses but also by the medical evidence. The chemical examiner's report to the effect that there were semen stains on the clothes worn by the prosecutrix also supports the prosecution case. The lack of semen stains on the clothes of the accused is natural when the accused was examined more than 23 days after the incident. The narration of the incident to so many independent witnesses without any discrepancy soon after the incident was also, admitted by the trial court under Section 157 of the Evidence Act as corroborative of prosecutrix's testimony.

[1013-H; 1014-A; C-D]

3. There was no evidence that the ditch was full of thorns. The evidence was that the ditch had sand and thorns which got entangled in PW 1's hair. PW 15, a witness to the site had said that the ditch was 7 feet deep and 15 feet wide. To have drawn an inference from this that the entire ditch was fully thorns was fallacious. The "contradiction" in the evidence of PW 13, with regard to the thorns coming into contact with her legs shows a singular lack of anatomical knowledge. [1016-C]

4. The second ground for rejecting the evidence of the victim is equally unacceptable. According to the I.O. (PW 18) the site had been identified by PW 16. It was never put to prosecutrix by the defence that the place of the occurrence was not that she had described. In saying that the victim's screams would have attracted attention, the High Court ignored the fact that the accused had gagged the victim with his towel while raping her. [1016-D]

5. On what basis the High Court came to the conclusion about what the natural reaction of a rape victim and her mother would be, is not explained.

A This finding as well as the finding regarding the delay in lodging of the FIR apart from being contrary to the evidence has taken no account of the nature of the offence in the social context of this country. [1016-G]

State of Punjab v. Gurmeet Singh & Ors., [1996] 2 SCC 384, relied on.

B 6. On the question of prosecutrix's date of birth, the High Court ignored the admission by PW-13 herself that she was not competent to determine the age of the victim from the X-ray report nor did the High Court give any reason for disbelieving the express statement of the victim as to the date of her birth particularly in the absence of any challenge to the same in her cross-examination. Besides, the High Court has made an error in calculation when it held that if the date of birth was taken as 8.10.72, she would be 16 years old at the time of the incident. The incident took place on 6.4.1988. This would mean that the victim was 15 and a half years old when she was raped. [1017-F-G]

D The Court recorded its disapproval of the refusal of some Government Hospital doctors, particularly in rural area, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost. [1018-A; B]

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1911 of 1996.

F From the Judgment and Order dated 20.12.93 of the Karnataka High Court in CrI.A. No. 722 of 1990.

P. Mahale, Sanjay R. Hegde and Satya Mitra for the Appellant.

G B.K. Choudhary and E.C. Vidya Sagar for the Respondent.

The Judgment of the Court was delivered

H This appeal has been preferred from the decision of the Karnataka High Court reversing the conviction and sentencing of the respondent under Section 376(1) of the India Penal Code (IPC).

The case of the prosecution was that prosecutrix, a school girl, was raped by respondent on 6th April, 1988 at about 12 noon. Prosecutrix (PW 1) was residing with her parents at Hosahatti. The school was at Belagur. She had taken the IXth standard examination in March 1988. The results were to be announced in April, 1988.

During the 1st week of April, 1988 there was Jatra at a Village called Kabbala. Prosecutrix's mother, Gowramma (PW 10), her father Ramaiah (PW 12) and her brother had opened a shop in that Jatra. On 6th April 1988, prosecutrix and her sister Shardamma (PW 11) were in their house at Hosahatti. At about 12 noon, prosecutrix left Hosahatti to go to Kabbala so as to get her bus fare from her parents because she wanted to go to Belagur to ascertain her examination results. While she was on the road from Hosahatti to Kabbala, the accused started following her. Suddenly, the accused caught hold of prosecutrix's left shoulder and dragged her into a ditch next to the road. The ditch was situated on the right side of the road. The accused threw prosecutrix down, gagged her with his towel, raised her lehnga and raped her. When she struggled to release herself, the accused slapped her on her cheeks and tried to throttle her. She sustained scratches on the right cheek, on her chin and on her buttocks. After raping her the accused removed the towel from prosecutrix's mouth. She immediately screamed loudly. Yellabovi (PW 16) was going along the road when he heard the screaming of prosecutrix. He went to the spot and found the accused on top of prosecutrix in the ditch. He raised a hue and cry and the accused ran away from the spot. Yellabovi took prosecutrix out of the ditch and made her sit under a tamarind tree. There was a cactus like bush locally called "antarikey mullu" in the ditch. The thorns from the bush had caught in the hair of prosecutrix. Yellabovi started removing the thorns from her hair. By this time Kumara (PW 4) was returning from the Jatra at Kabbala and was on his way to Hosahatti. Kumara saw Yellabovi removing the thorns from the hair of the prosecutrix and asked him what had happened. Yellabovi told him what had happened but that he did not know who the girl was. Prosecutrix who was weeping raised her head, Kumara recognized her as prosecutrix. Kumara told Yellabovi that prosecutrix's father had opened a shop in the Jatra at Kabbala and asked him to inform her parents. Yellabovi went to Kabbala. Prosecutrix's father (PW 12) was not available. Yellabovi however, informed Gowramma and her son about the incident. Gowramma and her son went to the place described by Yellabovi and found prosecutrix sitting under a tamarind tree. They brought prosecutrix to the shop in the

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A Kabbala Jatra. Gowamma did not question prosecutrix about the incident then. It was only when her husband (PW 12) returned in the evening that she asked prosecutrix what had happened. Prosecutrix narrated the incident to her. The accused was known to the victim and her family as he used to come to their shop at Kabbala. Gowamma immediately told her husband what

B prosecutrix had said. The parents debated as to what they should do as prosecutrix was unmarried and the question of her reputation was involved. On the next day, i.e. 7th April 1988, their elder daughter, Shardamma (PW 9) and her husband came to Kabbala in the morning. Prosecutrix again told her sister about the incident naming the accused. Prosecutrix's father decided to inform the Pradhan, Govindappa (PW 14) of Belagur Mandal Panchayat

C and asked Shardamma and her husband to take prosecutrix to him. At about 9 or 10 A.M. Shardamma and her husband took prosecutrix to Govindappa. Prosecutrix again told Govindappa about the entire incident. Govindappa took them to the Belagur hospital where prosecutrix was seen by Dr. Chidananda (PW 2) the medical officer. Prosecutrix narrated the incident to Dr. Chidananda.

D Dr. Chidananda asked the staff nurse, Sheela Meri (PW 3) to enquire into the matter. The staff nurse asked prosecutrix what had happened. Prosecutrix narrated the incident again to her. This was re-counted by the staff nurse to Dr. Chidananda. As there was no lady medical officer at Belagur Hospital. Dr. Chidananda referred prosecutrix to the lady Medical Officer at Hosadurga Hospital. Shardamma and her husband took prosecutrix to Hosadurga Hospital and gave Dr. Chidananda's letter to Dr. Thripulamba (PW 5). Dr. Thripulamba however declined to examine prosecutrix because she had not been referred by the police. shardamma, her husband and prosecutrix then returned to Hosahatti and informed Ramaiah of Dr. Thripulamba's refusal to examine prosecutrix. The next day, on 8th April 1988, PW 12 took his daughter to Srirampura Police Station. Prosecutrix's oral complaint to the

F SHO (PW 8) of the Sri Rampura Police Station was recorded in writing (Ext. P-1). The writing was affirmed by prosecutrix by signing it. A case was registered against the accused under Section 376 IPC and the FIR (Ext. P-5) was sent through a constable (PW 9) to the Magistrate at 8.00 P.M. After dispatching the FIR PW 8 sent prosecutrix to Hosadurga Hospital escorted by police constable. But the lady medical officer at Hosadurga Hospital was on leave. Prosecutrix was brought back. Whereupon the Circle Inspector (PW 18) sent prosecutrix to the Lady Medical Officer of the District Hospital at Chitradurga escorted by the same constable. Prosecutrix was ultimately examined by Dr. Shantabai (PW 13) and a report (Ext. P-6) was prepared in

G which it was stated that prosecutrix had a 1/2 inch abrasion on the left side

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of her face, a 1/2 inch abrasion over the right side of her chin and a 2-1/2 inch abrasion over the right side of her right hip. It was also recorded :

“I conducted Pelvic examination and found white discharge. No external injuries were seen around the external genitalia. No injuries over the thighs. The vaginal Orifice admits one finger easily. Tenderness was present in lower abdomen. Vagina is warm and tender.”

The final opinion was withheld until the chemical analysis report was obtained of the clothes of prosecutrix. Prosecutrix's clothes were chemically examined (Ext. P-7) and it was found that the lehnga worn by prosecutrix during the incident had semen stains. Dr. Shantabai gave her opinion in a separate report (P 8) in which she opined that after examining prosecutrix internally that prosecutrix had sexual intercourse about four days prior to her examination. On the next day the Investigating Officer (PW 18) visited the place of occurrence as indicated by Yellabovi (PW 16) and prepared a spot mahazar (Ext.P-9) in the presence of Panchayatdars. The accused could not be found till 29.4.1988 when he was produced before the Investigating Officer. This accused was thereupon arrested. The accused produced his clothes from his house. These were seized (Ext. P-3). The accused himself was referred to Dr. Neminatha (PW 17) of Srirampura Hospital. Dr. Neminatha after examining the accused found that the accused was capable of sexual intercourse (Ext. P-11). After this, as the accused had obtained anticipatory bail, he was released. His clothes which had seized were sent to the Chemical Examiner, Bangalore. The Chemical Examiner's report (Ext.P-7) was to the effect that no bloodstains or semen were found on the clothes sent.

In the meantime, the chargesheet was filed. The accused in his statement under Section 313 of the Code of Criminal Procedure (Cr.P.C.) denied his involvement and said that he had been falsely implicated because there was a quarrel between the accused and the father of prosecutrix over setting up of the shop at the Kabbala jatra.

In finding the accused guilty under Section 376(1) IPC, the Trial Court in a carefully reasoned judgment found that there was no reason to disbelieve the evidence of the prosecutrix. The enmity alleged by the accused for falsely implicating him was rejected, in our view correctly, on the ground that given the present social ethos in this country, it was improbable that either the girl or her parents would set up such a case. Additionally, the evidence given by prosecutrix was not only corroborated by the several prosecution witnesses

A but also by the medical evidence. Prosecutrix herself has stated that she had
sustained scratches on the right side of her cheeks, on her chin and on the
left side of the hip which was swollen. Her mother (PW 10) also said that
prosecutrix had scratches on her cheeks and on her buttocks. These statements
are corroborated not only by Exts. P7 and P8 but also by the oral testimony
B of PW 13, Dr. K.M. Shantabai. According to PW 13, the injuries found on
prosecutrix's face could be caused while she was struggling to extricate
herself from the clutches of the person committing rape and the injury to her
hip when she was forcibly thrown on the ground.

C The Chemical Examiner's report (Ext. 7) to the effect that there were
seminal stains on the blue lehanga worn by prosecutrix also supported by the
prosecution case. The lack of semen stains on the clothes of the accused is
natural when the accused was examined more than 23 days after the incident.
The narration of the incident to so many independent witnesses without any
discrepancy soon after the incident was also, in our view correctly, admitted
D by the Trial Court under Section 157 of the Evidence Act as corroborative
of prosecutrix's testimony.

E The Sessions Judge, Chitradurga negated the submission on behalf of
the accused that the prosecution had not proved that prosecutrix was below
16 years of age when the offence was committed on the ground that
prosecutrix had stated in her evidence her date of birth as 8.10.72, an
assertion which was not in her cross-examination. There was also no chal-
lenge to Ramaiah's statement that his daughter was aged 15 years at the
time of the incident. The Sections Judge noted that the X-ray report to the
effect that prosecutrix was aged above 16 years and below 18 years was given
F by Dr. Shantabai who admitted that she was not a specialist in Radiology and
that only a Radiologist would be able to furnish the approximate age.

G Having held the accused guilty under Section 376(1) IPC, because the
accused had committed rape on a girl below the age of 16 years the learned
Sessions Judge sentenced the accused to rigorous imprisonment for seven
years and also to pay a fine of Rs. 1,000 in default to undergo simple
imprisonment for three months.

H On appeal, a learned Single Judge-of the High Court of Karnataka
reversed the findings of Sessions Judge. The High Court disbelieved
prosecutrix's testimony on the following grounds :

1. "If PW 1 was subjected to the rape by the appellant in a ditch full of thorns certainly there would be injuries on the person of PW 1 and on the private part of PW 1. But such injuries were not found in this case..... It is significant to note here that the evidence of PW 1 is to the effect that her legs had come in contact with thorns but PW 13 had deposed that there were no injuries around the external genitalia and on the thighs."

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2. "It looks highly improbable that a culprit will choose such a place for committing the rape on a woman and if a rape is committed at such a place the persons walking on that road which was situated just at a distance of 15 feet would be attracted to the spot due to the screaming".

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3. "In the wound certificate issued by this witness at Ex P6 there is no mention of the rupture of the hymen."

4. "PW 13 has made a material improvement in her evidence by stating that there was a rupture of hymen. It will not be safe to act upon this version as she has not mentioned in Ex. P6. For the reasons best known to her she has lied on this point and her evidence that there was rupture of hymen will have to be excluded from consideration".

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5. "The very conduct of the PWs 1, 10, 11, 12 and 14 appears to be highly improbable and unnatural..... The natural reaction of mother is to find out what had happened to the girl and as to what were the injuries sustained by her. None of these things had been done by PW 10..... The conduct of PW 1 in not telling her mother immediately on seeing her when she came near the tamarind tree under while she was sitting, PW 10, the mother not enquiring as to what had happened on that day and keeping quiet till late evening."

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6. "PW 1 has given her date of birth as 8.10.1972. Even if this date of birth is taken as correct, she will be 16 years of age on the date of the offence "The evidence of PW 13 goes to show that she was aged 16 years and below 18 years and the birth certificate alleged to have been produced by PW 1 before the police has not been produced".

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A 7. "There is inordinate delay in filing the complaint. The offence had taken place on the 6.4.1988 at 12 noon. But, the complaint is filed by PW 1 on 8.4.1988."

B We find the reasoning of the High Court entirely unacceptable. The first ground mentions a 'ditch full of thorns' where the incident took place. There was no evidence that the ditch was full of thorns. The evidence was that the ditch had sand and thorns which got entangled in PW 1's hair. PW 15, a witness to the Site Mazahar (PW 9) had said that the ditch was 7 feet deep and 15 feet wide. To have drawn an inference from this that the entire ditch was gathered by thorns was fallacious. The "contradiction" between the evidence of Dr. Shantabai, PW 13, with regard to the thorns coming into contact with her legs shows a singular lack of anatomical knowledge.

C The second ground for rejecting the evidence of the victim is equally unacceptable. According to the I.O. (PW 18), the site had been identified by Yellabovi (PW 16). It was never put to prosecutrix by the defence that the place of the occurrence was not what she had described. In saying that the victim's screams would have attracted attention, the High Court ignored the fact that the accused had gagged the victim with his towel while raping her.

D The third ground for rejection of the Trial Court's findings ignores Ext. P8 altogether where it was specifically mentioned that the victim had been subjected to sexual intercourse. To have concluded that the Doctor, PW 13 had lied without at all confronting her with any alleged contradiction with Ext. P8 was wholly erroneous.

E In holding that the High Court has also ignored the unshaken unassailed evidence of lady Doctor M.S. Thripulamba (PW 5) the Staff Nurse (PW 3), Gowamma (PW 19), Ramaiah (PW 11), Sharadamma (PW 12) and the I.O. (PW 18) all of whom independently gave evidence of steps taken by the parents of the victim after they came to know of the incident.

F On what basis the High Court came to the conclusion about what the natural reaction of a rape victim and her mother would be is not explained. This finding as well as the finding regarding the delay in lodging the the FIR apart from being contrary to the evidence has taken no account of the nature of the offence in the social context of this country. This aspect of the matter has been dealt with by this Court in *State of Punjab v. Gurmit Singh and Other*, [1996] 2 SCC 384 :

“.....In our opinion, there was no delay in the lodging of the FIR either and if at all there was some delay, the same has not only been properly explained by the prosecution but in the facts and circumstances of the case was also natural. The courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of the sexual intercourse offence is generally lodged. The conduct of the prosecutrix in this regard appears to us to be most natural. The trial court overlooked that a girl, in a tradition-bound non-permissive society in India, would be extremely reluctant even to admit that any incident which is likely to reflect upon her chastity had occurred, being conscious of the danger of being ostracized by the society or being looked down, by the society. Her not informing the teachers or her friends at the examination centre under the circumstances cannot detract from her reliability. In the normal course of human conduct, this unmarried minor girl, would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate it to her teachers and others overpowered by a feeling of shame and her natural inclination would be to avoid talking it to anyone, lest the family name and honour is brought into controversy.”

On the question of prosecutrix's date of birth, the High Court ignored the admission by PW 13 herself that she was not competent to determine the age of the victim from the X-ray report nor did the High Court give any reason for disbelieving the express statement of the victim as to the date of her birth particularly in the absence of any challenge to the same in her cross-examination. Besides the High Court has made an error in calculation when it held that if the date of birth was taken as 8.10.72, she would be 16 years old at the time of the incident. The incident took place on 6.4.88. This would mean that the victim was 15 and a half years old when she was raped.

In the circumstances, we allow the appeal of the State, set aside the order of the High Court and restore the conviction and sentence as imposed by the Sessions Judge. If the accused is on bail, he shall surrender to serve out the sentence.

- A Before parting with the case, we wish to put on record our disapproval of the refusal of some Government hospital doctors, particularly in rural areas, where hospitals are few and far between, to conduct any medical examination of a rape victim unless the case of rape is referred to them by the police. Such a refusal to conduct the medical examination necessarily results in a delay in the ultimate examination of the victim, by which time the evidence of the rape may have been washed away by the complainant herself or be otherwise lost. It is expected that the State/appellant will ensure that such situation does not recur in future.
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Appeal allowed.