STATE OF PUNJAB

v.

RAMDEV SINGH

DECEMBER 17, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Penal Code, 1860—Section 376—Rape committed on minor—Delay of 17-18 days in lodging FIR—Medical evidence confirmed that victim habitual to sexual intercourse—Trial Court convicted accused—High Court set aside conviction due to delay in lodging FIR and on basis of medical evidence—Held, delay in lodging FIR cannot be used as a ritualistic formula to doubt and discard prosecution case—Explanation of delay by prosecution remained unshaken in spite of cross-examination by defence—No rule of law that testimony of rape victim cannot be acted without corroboration in material particulars—Signs of previous sexual intercourse no ground for acquittal—Unmerited acquittal does no good to society—Conviction and sentence imposed by trial court restored.

Section 228-A—Disclosure of identity of victim—Social object of provision—Restriction on disclousure of identity does not relate to printing or publication of judgment by High Court or Supreme Court—However, appropriately in judgments of any court name of victim should not be indicated—Sections 376, 376-A, 376B, 376C and 376-D.

The respondent-accused had allegedly committed rape on a minor girl. The mother of the victim lodged the information with the police after 17-18 days of the occurrence. The delay in lodging the information was caused, as the father of victim was seriously ill. The medical examination of the victim revealed that she was habituated to regular sexual intercourse. The accused denied the charges of rape stating that a false accusation had been set up as the mother of the victim owed some money to him, which she refused to refund. The trial court convicted the accused. The High Court on appeal set aside the conviction mainly due to delay in lodging FIR, non-examination of a friend of the victim to whom the incident was conveyed, confirmation by medical evidence that the victim was habituated to sexual intercourse and that there was no evidence to show that she was employed

A in the house of the accused. Hence this appeal against acquittal.

The appellant contended that delay in lodging FIR was properly explained; that hypothetical medical evidence was given primacy to cast doubt over the victim's version; and that the defence itself had suggested that the victim was employed in the house of the accused.

B

The respondent-accused contended that testimony of the victim was completely unreliable as it was at great variance with the medical evidence; and that a judgment of acquittal should not be interfered with after a long lapse of time.

C

Allowing the appeal, the Court

HELD : 1. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem
D and dignity—it degrades and humiliates the victim and where the victim is helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape
E is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21
F of the Constitution of India. The Courts are expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.
G [999-G, H; 1000-A-C]

Shri Bodhi Sattwa Gautam v. *Miss Subhra Chakraborty,* A.I.R. (1996) SC 922, relied on.

2.1. Delay in lodging the FIR cannot be used as a ritualistic
H formula for doubting the prosecution case and discarding the same

solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, same cannot by itself be a ground for disbelieving and discarding the entire prosecution version. [1002-E-G]

2.2. The evidence clearly explained as to why the first information report was lodged after 17-18 days. Evidence of the witnesses clearly show that the father of the victim was seriously ill and the family members did not want to create tension in his mind when he was not physically well and waited for his recovery. In spite of the lengthy cross-examination this aspect has not been shaken by the defence. [1002-G, H; 1003-A]

3. The view that the victim should have told some respectable person or the father earlier to say the least is a view which has no foundation and overlooks the very reason to shun or openly publicise it to avoid the ignominy involved in it. In a tradition bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 14 years cannot be lost sight of. This down to earth reality has been lost sight of in the judgment of acquittal. [1003-B-C]

4. As regards absence of injuries on the person of the victim, the doctor examined the victim after about 3 weeks, and the effect of the act on the physical form was practically obliterated, which is not denied by the doctor. Merely because the friend of the victim to whom the victim narrated the incident was not examined that also cannot be a suspicious circumstance to throw suspicion on the victim's evidence. [1003-E-F]

5. Signs of previous sexual intercourse on the victim cannot, by any stretch of imagination be a ground to acquit an alleged rapist. Even assuming that the victim was previously accustomed to sexual intercourse, that is not a determinative question. On the contrary, the question requiring adjudication was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and

A cannot in law give license to any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behavious earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being B sexually assaulted by anyone and everyone. [1003-G-H; 1004-A]

6. There is a fallacy in the reasoning about lack of evidence relating to the employment of the victim as a maid servant. The judgment of acquittal completely overlooked the fact that the suggestions given to witnesses, more particularly the victim and her parents C that the accused or his wife had threatened to put an end to the victim's service as a maid servant because of her immoral character, or refusal to refund the amount taken as advance for her employment as a servant. [1004-B, C]

7. A prosecutrix complaining of having been a victim of the D offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. E However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do. [1004-D, E]

F *State of Rajasthan* v. *Noore Khan,* (2003) 3 Supreme 70, relied on.

8. High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused G being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a H finding in favour of acquittal. An unmerited acquittal encourages

wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children. The acquittal deserves to be set aside and conviction as recorded by the trial Court and the sentence imposed be restored. [1005-D-G]

9. Section 228-A of IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. The restriction does not relate to printing or publication of judgment by High Court or Supreme Court, but keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 338-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. [1000-E-G]

State of Karnataka **v.** *Puttaraja,* **(2003) 8 Supreme 364, relied on.**

CIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 547 of 1997.

From the Judgment and Order dated 2.12.1994 of the Punjab and Haryana High Court in Crl. A No. 432-SB of 1986.

Bimal Roy Jad (N.P.) for the Appellant.

Ranbir Singh Yadav for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity — it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a

A woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in *Shri Bodhisattwa Gautam* v. *Miss Subhra Chakraborty,* AIR (1996) SC 922, the entire psychology of a woman and pushes her into deep emotional crisis. It is B a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution'). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to C be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

The State of Punjab questions acquittal of the respondent (hereinafter D referred to as 'the accused') who was charged for commission of offence punishable under Section 376 of the Indian Penal Code, 1860 (for short 'the IPC').

We do not propose to mention name of the victim. Section 228-A of E IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or F publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have G chosen to describe her as 'victim' in the judgment. [See *State of Karnataka* v. *Puttaraja,* (2003) 8 Supreme 364]

Prosecution version as unfolded during trial is as follows:

On 1.10.1985 the mother of the victim PW-4 lodged information with H the police that 17-18 days back the accused had committed rape on her

daughter PW-7. According to the information lodged, the victim had told her mother after coming from house of the accused that she was forcibly dragged away by the accused while she was cleaning utensils and was raped. At the time of occurrence wife of the accused was absent and taking advantage of her absence, the accused committed the lustful act. As the father of the victim PW-5 was lying ill seriously they did not think it proper to inform him and when he recovered from illness, and the police had come to the village for investigating into some other case, information was lodged. The victim-girl was sent for medical examination and she was examined by PW-2. After completion of investigation, charge sheet was placed and accused faced trial. He denied the accusations and pleaded false implication. It was stated that the mother of the victim had taken some money as advance for serving as maid servant and as she did not work and refused to refund the money, a suit was filed for recovery of the amount and, therefore, with a view to avoid payment false accusation has been made. The trial Court placed reliance on the evidence of the prosecution witnesses and convicted the accused of the offence punishable under Section 376 IPC and sentenced him to 7 years rigorous imprisonment and a fine of Rs. 1,000 with default stipulation. Being aggrieved by the judgment, accused filed Crl. A. No. 432-SB/86 in the Punjab and Haryana High Court. By the impugned judgment dated 2.12.1994 the High Court allowed the appeal and set aside the conviction and consequently the sentence.

A B C D E

According to High Court primarily four factors render the prosecution version vulnerable. Firstly, there was unexplained delay in lodging FIR. Secondly, the victim's evidence did not inspire confidence as there were exaggerations, and a friend to whom she claimed to have told about the incidence was not examined. Thirdly, the medical evidence indicated that the victim was habituated to sexual intercourse and, therefore, her version that she was raped by the accused is not believable. Fourthly, there was no evidence to show that the victim was employed as a maid servant in the house of the accused.

F G

In support of the appeal learned counsel for the State submitted that approach of the High Court is totally erroneous. In case of sexual assaults the Court has to take note of the realities of life and should not enter into hyper technicalities. The delay was properly explained and nothing was

H

A brought on record to raise any doubt about the reason indicated by PWs.-4 and 5. Merely because respectable persons in the locality and police were not informed the prosecution should not have been doubted. Had they informed police earlier there was no question of explaining the delay. The reasons for which there was delay have been properly explained. The B hypothetical medical evidence has been given primacy to cast doubt over the victim's version. When the defence itself suggested that victim was engaged as maid servant, the High Court's conclusion that there was no material to show about her employment as a maid servant is based on total misreading of the evidence.

C Merely because of doctor's hypothetical and opinionative evidence that the victim was accustomed to sexual intercourse, prosecution version of rape was not to be discarded.

In response, learned counsel for the accused supported the judgment D submitting that reasonings indicated by the High Court are on *terra firma*, more particularly when the victim's testimony is completely unreliable because it is at great variance with the medical evidence. Residually, it is submitted that the judgment is one of acquittal and after a long lapse of time the jurisdiction under Article 136 should not be exercised.

E Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the Court in its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the F prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as done by the G High Court in the present case.

The evidence of PWs-4 and 5 read with that of the victim clearly explained as to why the first information report was lodged after 17-18 days. The evidence of the aforesaid three witnesses clearly show that H PW-5 was seriously ill and the family members did not want to create

tension in his mind when he was not physically well and waited for his recovery. In spite of the lengthy cross-examination this aspect has not been shaken by the defence. The view of the High Court that PW-4 should have told some respectable person or the father earlier to say least is a view which has no foundation and overlooks the very reason to shun or openly publicise it to avoid the ignominy involved in it. In a tradition bound and conservative society, more particularly in a rural area, the shame of sexual assault on a girl of about 14 years cannot be lost sight of. This down to earth reality has been lost sight of by the High Court. The trial Court had rightly emphasized this aspect, but unfortunately, the High Court took a contrary view irrationally.

Further, the victim's evidence has been discarded by holding that it is at variance with the medical evidence. The High Court has not indicated as to in what way it is at variance with the medical evidence. Mere statement that according to doctor, victim's vagina admitted two fingers and she could on earlier occasions have had sexual intercourse five, ten or fifteen times rules out rape by accused once as alleged in no way casts doubt on victim's evidence.

Learned counsel for the respondent-accused pointed out that rape as claimed by the victim was discounted by the evidence of PW-2, who did not find visible injury when she medically examined the victim. In our opinion the same is of no consequence. The doctor examined the victim after about 3 weeks. That being so, the effect of the act on the physical form was practically obliterated. That is not denied by the doctor. Merely because the friend of the victim was not examined that also cannot be a suspicious circumstance to throw suspicion on the victim's evidence.

Another factor which seems to have weighed with the High Court is the evidence of doctor PW-4 that there were signs of previous sexual intercourse on the victim. That cannot, by stretch of imagination, as noted above, be a ground to acquit an alleged rapist. Even assuming that the victim was previously accustomed sexual intercourse, that is not a determinative question. On the contrary, the question which was required to be adjudicated was did the accused commit rape on the victim on the occasion complained of. Even if it is hypothetically accepted that the victim had lost her virginity earlier, it did not and cannot in law give license to

A any person to rape her. It is the accused who was on trial and not the victim. Even if the victim in a given case has been promiscuous in her sexual behaviour earlier, she has a right to refuse to submit herself to sexual intercourse to anyone and everyone because she is not a vulnerable object or prey for being sexually assaulted by anyone and everyone. Finally, if B we may say as a last straw, is the fallacy in High Court's reasoning about lack of evidence relating to the employment of the victim as a maid servant. The High Court completely overlooked the fact that the suggestions given to witnesses, more particularly PWs-4, 5 and 7 that the accused or his wife had threatened to put an end to the victim's service as a maid servant C because of her immoral character, or refusal to refund the amount taken as advance for her employment as a maid servant.

It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration D in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as weli as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or E circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would do.

As was noted by this Court in *State of Rajasthan* v. *Noore Khan,* F (2000) 3 Supreme 70.

> "Absence of injuries on the person of the prosecutrix has weighed with the High Court for inferring consent on the part of the prosecutrix. We are not at all convinced. We have already noticed that the delay in medical examination of the prosecutrix G was occasioned by the *factum* of the lodging of the FIR having been delayed for the reasons which we have already discussed. The prosecutrix was in her teens. The perpetrator of the crime was an able-bodied youth bustling with energy and determined to fulfil his lust armed with a knife in his hand and having succeeded in H forcefully removing the victim to a secluded place where there

was none around to help the prosecutrix in her defence. The injuries which the prosecutrix suffered or might have suffered in defending herself and offering resistance to the accused were abrasions or bruises which would heal up in the ordinary course of nature within 2 to 3 days of the incident. The absence of visible marks of injuries on the person of the prosecutrix on the date of her medical examination would not necessarily mean that she had not suffered any injuries or that she had offered no resistance at the time of commission of the crime. Absence of injuries on the person of the prosecutrix is not necessarily an evidence of falsity of the allegation or an evidence of consent on the part of the prosecutrix. It will all depend on the facts and circumstances of each case."

The High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and giving benefit thereof where none reasonably exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females or minor children. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women, particularly of tender age and children.

Looked from any angle the High Court's judgment does not stand scrutiny and deserves to be set aside which we direct. The conviction as recorded by the trial Court and the sentence imposed by it are restored. The accused shall surrender forthwith to serve remainder of sentence, if any. The appeal is allowed to the extent indicated.

A.Q. Appeal allowed.