

SRI NARAYAN SAHA AND ANR.

v.

STATE OF TRIPURA

SEPTEMBER 8, 2004

[ARIJIT PASAYAT AND C.K. THAKKER, JJ.]

Penal Code, 1860—Section 376 r/w 34—Rape—Conviction based on testimony of victim—Relying on her evidence, Trial Court convicted the two accused—Appellants—Conviction confirmed by High Court—On appeal, held : If victim is adult and of full understanding, Court is entitled to base conviction on her evidence unless the same is shown to be infirm—Mere delay in lodging FIR is of no consequence, if delay explained—Statement of doctor, that there was profuse bleeding rendering any definite opinion difficult, inconsequential in view of unimpeached evidence of PW 3—There was also no reason for false implication—Minor discrepancies in testimony of PW3 and her husband rightly held inconsequential by Courts below in view of the evidence having been recorded in Court after seven years of the occurrence—Evidence Act, 1872—Section 118.

According to prosecution version PW 3 was proceeding towards her house on foot, when accused-Appellants forcibly dragged her to a nearby jungle and after gagging her mouth, committed rape on her one after the other for the whole night. Next day morning, PW 3 went to her maternal uncle's house wherefrom she was taken to her house by her husband when she disclosed the incident to her husband. The matter was reported to the police and FIR was recorded, and she was examined by PW 5, the Doctor.

Appellants faced trial for alleged commission of offences punishable under Section 376 read with Section 34 IPC. Placing reliance on evidence of PW 3, Trial Court found them guilty and sentenced each one to suffer rigorous imprisonment for six years and to pay a fine of Rs. 1000 each with default stipulation. High Court affirmed the conviction and the sentence.

In appeal to this Court, Appellants assailed the conviction, *inter alia*, on grounds that there was unexplained delay of five days in reporting the matter to the police; that additionally there was no corroboration to

A the evidence of PW 3, the victim, and that the medical evidence did not lend any assurance to her testimony.

Dismissing the appeal, the Court

B HELD : 1.1. Mere delay in lodging the FIR is really of no consequence, if the reason is explained. In the instant case, the evidence of PW 3, the victim and that of her husband, PW 4, clearly show that there was initial reluctance to report the matter to the police by PW 4. He, in fact had taken his wife to task for the incident and had slapped her. [216-H; 217-A]

C 1.2. In India if the prosecutrix happened 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 question that the complaint was false. The reluctance to go the police is because of society's attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy with her. Therefore, the delay lodging complaint in such cases does not necessarily indicate that her version is false. [218-B]

E 2.1. A prosecutrix of a sex offence cannot be put on par with an accomplice, She is in fact a victim of the crime. The Indian Evidence Act, 1972 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 the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in 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 the conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled 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. [217-C, D, E]

H 2.2. 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. [217-F, G]

State of Maharashtra v. Chandraprakash Kewalchand Jain, [1990] 1 SCC 550 and *Karnel Singh v. State of Madhya Pradesh*, AIR (1995) SC 2472, relied on.

3. It was categorically stated by the Doctor that there was profuse bleeding which rendered any definite opinion difficult. That really is of no consequence in view of the un-impeached evidence of the victim PW 3. [218-C]

4. There is no reason as to why a woman, more particularly a married woman would falsely implicate the two accused persons. Minor discrepancies in the testimony of PWs 3 and 4 were sought to be highlighted. Taking into account the fact that the evidence was recorded in court after about seven years of the occurrence, these have been rightly held to be of no consequence by both the Trial Court and the High Court. [218-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 637 of 2003.

From the Judgment Order dated 20.8.2002 of the Gauhati High Court at Assam in CrI.A. No. 1997.

Vimal Chandra and S. Dave for the Appellants.

Gopal Singh and Anurag Sharma for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : The appellants faced trial for alleged commission of offences punishable under Section 376 read with Section 34

A of the Indian Penal Code, 1860 (in short the 'IPC'). The Trial Court found the accused-appellants guilty and sentenced each one to suffer rigorous imprisonment for six years and to pay a fine of Rs. 1,000 each with default stipulation. The High Court, by the impugned judgment, affirmed the conviction and the sentence.

B The prosecution version, in a nut shell is as follows :

C On 22.07.1989, the victim, a married, women, aged about 20 years alighted from the bus and around 6 P.M. was proceeding towards her house on foot. When she reached near a Banyan tree, the accused persons forcibly dragged her to a nearby jungle and after gagging her mouth, committed rape on her one after the other. She suffered the trauma for the whole night and in the early morning, she was dropped near Bhattapukur. Next day morning, the victim went to her maternal uncle's house wherefrom she was taken to her house by her husband when she disclosed the incident to her husband. She was moved to the hospital on 24.07.1989. The matter was reported to the police and FIR was recorded at the hospital on the version of the victim. D She was examined by PW-5, the Doctor on 24.07.1989. Placing reliance on the evidence of PW-3, the Victim, the Trial Court found the accused persons guilty, ordered convicted and sentence, as noted above. The matter was carried in appeal before the High Court which did not bring relief to the accused-appellants.

E Learned counsel for the appellants submitted that there was unexplained delay of five days in reporting the matter to the police. Additionally, there was no corroboration to the evidence of the victim. The medical evidence does not lend any assurance to the testimony of the victim. It was further submitted that one of the accused persons had an amputated arm and it is highly F improper that he would be able to control the victim facilitating rape by the co-accused. In the aforesaid background, it is submitted that the conviction, as recorded, is not proper.

G In response, learned counsel for the respondent-State of Tripura submitted that both the Trial Court and High Court had placed reliance on the evidence of the victim, PW-3. There is nothing brought out in cross-examination to render her evidence fragile. The reason for the delayed reporting of the FIR has been also explained by the prosecution.

H We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR

is really of no consequence, if the reason is explained. In the instant case, the evidence of PW-3, the victim and that of her husband, PW-4, clearly show that there was initial reluctance to report the matter to the police by PW-4. He, in fact, had taken his wife to task for the incident and had slapped her. In *Karnel Singh v. State of Madhya Pradesh*, AIR (1995) SC 2472, it was observed that a women who was a victim of a sexual violence, is not an accomplice to the crime but is a victim of another persons' lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of a culprit. Therefore, the Rule of prudence that her evidence in material particulars, has no application. At the most, the court may look for some evidence which lends assurance.

A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short '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 S. 118 and her evidence must receive 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 levelled 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 S. 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 necessary 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.

The aforesaid position was highlighted in *State of Maharashtra v.*

A *Chandraprakash Kewalchand Jain*, [1990] 1 SCC 550 and *Karnel Singh's* case (supra).

B In India if the prosecutrix happened to be a married person, she will not do anything informing her husband. Merely because the complaint was lodged less than promptly, does not raise the question that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women. It casts doubt and same upon her rather than comfort and sympathy with her. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false.

C Coming to the Doctor's evidence, it was categorically stated by him that there was profuse bleeding which rendered any definite opinion difficult. That really is of no consequence in view of the un-impeached evidence of the victim-PW-3.

D There was no reason as to why a women, more particularly a married women would falsely implicate the two accused persons. Minor discrepancies in the testimony of Pws. 3 and 4 were sought to be highlighted. Taking into account the fact that the evidence was recorded in court after about seven years of the occurrence, these have been rightly held to be of no consequence by both the Trial Court and the High Court.

E We do not find any infirmity in the conclusions arrived at by the High Court to warrant any interference. The appeal fails and is hereby dismissed.

B.B.B.

Appeal dismissed.