

STATE OF U.P.
v.
PAPPU @ YUNUS AND ANR.

DECEMBER 1, 2004

[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Penal Code, 1860 :

S.376—Conviction by trial Court—Acquittal by High Court merely on the ground that prosecutrix was easy virtues—Held, the question to be adjudicated was if the accused committed rape on the victim on the occasion complained of—Appellate court should not interfere with findings recorded by trial court without indicating reasons therefor—Since the judgment of the High Court is practically unreasoned, the matter is remitted back to it for fresh hearing—Practice and Procedure.

Criminal Law:

Offence of rape—Testimony of prosecutrix—Appreciation of

Prosecution case was that when the prosecutrix was alone at her home, the two accused-appellants entered her house through the roof, and raped her at gunpoint. When her mother returned from market and knocked at the door, she saw both the accused fleeing the way they had come. The trial court on examining the evidence on record and the testimony of the victims and her mother, convicted both the accused under s.376 IPC. On appeal by the accused, the High Court, acquitted them on the sole ground that the prosecutrix was of easy virtues. Aggrieved, the State filed the appeal.

Disposing of the appeal, the Court

HELD : 1. The High Court's view that the girl being of loose moral and easy virtues the accused were entitled to acquittal, is indefensible. Even assuming that the victim was earlier subjected to sexual intercourse, that is not a determinative question; nor can it be a defence to the accused. On the contrary, the question, which was required to be

A adjudicated, was; did the accused commit rape on the victim on the occasion complained of? [588-G-H]

B 2. 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 in material particulars. 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 accomplice, would suffice. [589-B-D]

C 3. The appellant court should not interfere with the findings recorded by the trial court without indicating reasons or basis therefor. It is incumbent upon the appellate court, if it takes a contrary view, to analyse the evidence and to record its own conclusions. That has not been done in the instant case. Therefore, the matter is remitted to High Court for fresh hearing. [589-D-E]

D CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1382 of 2004.

E From the Judgment and Order dated 3.3.2003 of the High Court of Judicature at Allahabad, Lucknow Bench in Crl. A. No. 342 of 1995.

Mrs. Alka Agrawal and Ravi Prakash Mehrotra for the Appellant.

F Goodwill Indeevar for the Respondent.

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Leave granted.

G The State of U.P. has questioned in this appeal correctness of the judgment rendered by a learned Single Judge of the Allahabad High Court at Lucknow directing acquittal of the respondents (hereafter referred to as the 'accused'). The respondents were charged for alleged commission of offence punishable under Section 376 of the Indian Penal Code, 1860 (in short the 'IPC'). The Vth Additional District and Sessions Judge, Sitapur

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found them guilty and sentenced each to undergo RI for five years and to pay a fine of Rs. 2,000. A.

The factual position in a nutshell is that while the prosecutrix was alone in her house, at about 11.00 a.m. on 21.5.1987 since her mother had gone out to market for purchasing vegetables, the respondents who belonged to her locality came to her house, knocked the door. The prosecutrix asked them as to who they were and they disclosed their identity. The prosecutrix refused to open the door as her mother was not at home. But both the accused persons went to the neighbouring house and came to the roof of her house and jumped into the courtyard and showed her a 'tamancha'. She was first raped by accused respondent Mannoo and thereafter by accused respondent Pappoo. After sometime her mother came home and knocked the door and hearing the voice of knocking, the accused persons ran away and climbed over the roof. While they were climbing, the mother had seen them and she started shouting and hearing it one Vimalesh Kumar Verma of the locality came there and he also saw both the accused persons running away. Written report of the incident was lodged at the Police Station at 3.10 p.m. Investigation was undertaken. The prosecutrix was sent to the District Hospital for medical check up. The accused persons were also sent for medical examination and their clothing were sent for chemical examination. After completion of investigation, charge-sheet was filed and accused persons were sent up for trial. The accused persons pleaded innocence. In the additional statements submitted during examination under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') respondent Pappoo stated that the prosecutrix was not having a good character and since her house was in front of his house, he and his family members asked them to leave that place and hence the false case was foisted. To similar effect was the plea of accused Mannoo. B
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Placing reliance on the evidence of the prosecutrix and her mother who were examined as PWs 1 and 2 respectively learned trial Judge found accused persons guilty, convicted and sentenced them as afore-noted. G

The plea that she was a girl of easy morale was found to be of no consequence. There was some dispute as regards the age of the victim. The trial Court on consideration of the evidence came to hold that she was a minor at the time of commission of the offence and the question of any consent being there was really of no consequence. H

A The conviction and the sentence were questioned by the accused person persons by failing an appeal before the High Court and as noted above the High Court directed their acquittal.

B Learned counsel for the appellant-State submitted that the High Court has disposed of the appeal in the most laconic and casual manner. There is not even any discussion on the evidence adduced, and practically on the sole ground that the mother of the prosecutrix accepted that the victim was of easy virtues, the acquittal has been directed.

C Learned counsel for the accused-respondent on the other hand submitted that the High Court noticed that the prosecutrix was not having a good character and she was a girl of easy virtues. The medical evidence showed that she was habitual to sexual intercourse and there was no injury on her body. Accordingly, prosecution case was wholly doubtful. That being so, the order acquittal does not suffer from any infirmity to warrant interference.

D We find that the High Court's judgment is practically un-reasoned and its and its approach in dealing with the appeal is rather casual, disclosing non-application of mind.

E There appears to be some mis-reading of the evidence of PW-2, the mother of the prosecutrix. The trial Court had noticed as to how even in the absence of any external injury an offence could have been committed after analysing the doctor's evidence. The evidence of PW-2 has been read out of context by the High Court. As noticed by the trial Court, she had categorically denied that the character of her daughter was not good and had denied suggestion that her character being not good, they have been forcibly extricated from the mohalla. But at another place, she has accepted that character of her daughter was not good. Even if that he so, that does not dilute the offence.

G 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 licence 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

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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. A

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 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. 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. B C

Above being the position, the position, the High Court's view that the girl being of loose morale and easy virtues the accused were entitled to acquittal is indefensible. Without indicating reasons or basis the appellate Court should not interfere with the findings recorded by the trial court. It is incumbent upon the appellate Court, if it takes a contrary view, to analyse the evidence and to record its own conclusions. That has not been done in the instant case. This is a fit case where the matter needs to be re-heard by the High Court. Accordingly the judgment of the High Court is set aside. The matter is remitted to the High Court for fresh hearing. We make it clear that we have not expressed any opinion on the merits of the case except indicating as to how the character of the victim is really of no consequence while adjudicating the question as to whether any rape was committed on her or not. Learned counsel for the respondents submitted that since the respondents were acquitted by the High Court, the bail which was originally granted to them should be continued. It shall be open to the respondents to move the High Court for bail which shall be considered on its own perspective. D E F

The appeal is disposed of accordingly. G

R.P.

Appeal disposed of.