

A

STATE OF RAJASTHAN

v.

BIRAM LAL

APRIL 13, 2005

B

[B.P. SINGH AND S.B. SINHA, JJ.]

C

Penal Code, 1860—Section 376—Prosecution under—Version of Prosecutrix—Corroboration by 3 witnesses—Conviction by Trial Court—Acquittal by High Court disbelieving the corroborating evidence and for non-availability of Report of Chemical Examiner—On appeal, held: Accused was liable to be convicted in view of the evidence of the prosecutrix being free from any blemish and being duly corroborated by other witnesses.

D

Evidence—Rape case—Version of prosecutrix—Evidentiary value of—Held: Corroboration of version of prosecutrix by independent witness in every material particular is not a must—Where her version is free from blemish and implicitly reliable, then conviction can be recorded even on her sole testimony.

E

Respondent-accused was tried u/s 450 and 376 IPC for having trespassed into the house of PW-1 and for having committed rape upon her. Prosecution case was that before the alleged incident respondent had misbehaved with prosecutrix, but could not cause any harm to her due to intervention of PW-9. Thereafter he entered the house of the prosecutrix with a knife and raped her. On her raising alarm PW-2 her mother, PW-3 and PW-7 came there. She narrated the incident to her mother. On the next morning when she was going to lodge the report, she was intercepted by the accused and threatened. Hence she lodged the report after 5 days of the incident. Trial Court, relying on the evidence of the witnesses convicted the accused u/ss.376 and 450. On appeal High Court upheld the conviction under Section 450 IPC reducing the sentence thereunder to already undergone. However, it set aside the conviction u/s.376 IPC disbelieving the evidence of PWs 2, 3 and 7, and on the ground that the report of the chemical examiner with regard to the clothes of the prosecutrix and other items was not produced before the Court. Hence the present appeal questioning acquittal of the accused u/s.376 IPC.

F

G

H

Allowing the appeal, the Court

A

HELD : 1.1. The order of acquittal passed by the High Court in respect of the offence under Section 376 IPC cannot be sustained. It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the Court is satisfied that the evidence of prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases the Court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction. In the instant case, the evidence of the prosecutrix is worthy of credit and implicitly reliable. [587-A-C]

B

C

1.2. The evidence of the prosecutrix is free from any blemish. Even if it required any corroboration, that is forthcoming from the evidence of PWs 2, 3 and 7. Moreover, the High Court affirmed the finding that in the middle of the night the respondent had trespassed into the room of the prosecutrix and thus upheld his conviction under Section 450 IPC. That itself strongly supports the case of the prosecution and corroborates the version of the prosecutrix. In a case of this nature, one would not expect the medical evidence to significantly improve the case of prosecution or the defence, particularly when the prosecutrix was examined after several days of the occurrence, and she was the mother of three children. So far as the report of the Chemical Examiner is concerned, since the prosecution did not produce the report, the prosecution is deprived of any corroborative evidence which the report may have provided. However on examination of the evidence of the prosecutrix and three other witnesses, there is no reason to disbelieve the prosecutrix. The High Court misread the evidence and committed an error of record in holding that PW-2, the mother of the prosecutrix, did not support the case of the prosecutrix as regard the commission of offence of rape. There is no justification for the High Court to record such a finding. [586-B-F]

D

E

F

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1292-1293 of 1999.

G

From the Judgment and Order dated 31.3.99 of the Rajasthan High Court in S.B.Crl.A. No. 86/96 and S.B.Crl.J.A. No. 51 of 1996.

H

A Ms. Madhurima Tatia and Aruneshwar Gupta for the Appellant.

Mrs. M. Qamaruddin for the Respondent.

The Judgment of the Court was delivered by

B **B.P. SINGH, J.** The State of Rajasthan has preferred this appeal by special leave which is directed against the judgment of acquittal recorded by the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur in S.B.Criminal Appeal No. 86 of 1996 and S.B.Criminal Jail Appeal No. 51 of 1996. By its impugned judgment and order dated March 31, 1999, the High Court while affirming the conviction of the respondent under Section 450
C IPC, acquitted him of the charge under Section 376 IPC. The sentence under Section 450 IPC was reduced to the period already undergone. Earlier the trial court had found the respondent guilty of the offence under Section 376
D IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs. 1,000. Under Section 450 IPC, the respondent had been sentenced to undergo rigorous imprisonment for five years apart from payment of fine of Rs. 1,000.

The case of the prosecution is that the prosecutrix Smt. Geeta Bai (P.W.1) is a widow aged about 35 years. Her husband had died a few years before the date of occurrence leaving behind three children out of whom the
E eldest being a daughter had also died. The prosecutrix was working as a labourer at a construction site and lived in a house along with her children, mother Smt. Sushila (P.W.2) and brother Mangi Lal (P.W.7). According to the prosecution, on February 2, 1994, the respondent misbehaved with the prosecutrix in a drunken state but on intervention of Ram Kalyan (PW-9), he
F was prevented from causing any harm to the prosecutrix. On the same night, while the prosecutrix was sleeping in her room along with her four years old child, the respondent entered the room armed with a knife, threatened her, gagged her and thereafter committed rape. After that, he ran away. The prosecutrix raised an alarm attracting to the place of occurrence her mother Smt. Sushila (P.W.2), another lady Gulab Bai (P.W.3) and her brother Mangi
G Lal (P.W.7). She narrated the incident to her mother Smt.Sushila (P.W.2). She informed her that she had been raped by the respondent. It is the case of the prosecutrix that on the following morning, when she was on her way to the police station to lodge a report, she was intercepted by the respondent who was armed with a gandasi and who threatened her with dire consequences
H if she lodged a police report. The prosecutrix was scared and did not go to

the police station and returned home. After four or five days, it appears that she went to the Superintendent of Police with a written report but she was directed to lodge the report at the police station Jawar. Accordingly, the police report was lodged and a case was registered under Section 450 and 376 IPC. After investigation, the respondent was put up for trial before the learned Addl. District and Sessions Judge, Camp at Eklera (Dist. Jhalawar) who held the respondent guilty of the offences under Sections 376 and 450 IPC.

At the trial, the prosecution relied upon the testimony of four witnesses to prove the offence under Section 376 IPC, namely, PW-1 (prosecutrix), PW-2 (her mother Smt.Sushila), PW-3 (Gulab Bai) and her younger brother PW-7 (Mangi Lal). So far as the incident which took place earlier that day is concerned, the prosecution also examined Ram Kalyan (PW-9) who fully supported the version deposed to by the prosecutrix. The trial court relying upon the testimony of these witnesses found the respondent guilty of the offence under Sections 376 and 450 IPC. On appeal, the High Court has set aside the conviction of the respondent under Section 376 IPC but upheld his conviction under Section 450 IPC while reducing the sentence to the period already undergone by him.

Learned counsel appearing on behalf of the State submitted that there is cogent and reliable evidence on record to prove the commission of the offence punishable under Section 376 IPC. Apart from the evidence of the prosecutrix herself which is without blemish, there is also the evidence of PW-2, PW-3 and PW-7 which clearly establish the case of the prosecution. The High Court has misread the evidence on record and reached a conclusion which is perverse. She, therefore, submitted that the respondent should be punished for the offence punishable under Section 376 IPC.

Learned counsel appearing on behalf of the respondent supported the High Court's judgment and the conclusion arrived at by the High Court.

Before considering the evidence relating to the offence under Section 376 IPC, we may notice that the High Court has upheld the conviction of the respondent under Section 450 IPC meaning thereby that the respondent had trespassed into the house of the prosecutrix on the fateful day in order to the committing of an offence punishable with imprisonment for life. His conviction under Section 450 IPC has not been challenged before us.

The evidence of PW-1 is quite clear and categorical. She has deposed

A about the occurrence which took place earlier in the day when she was saved by Ram Kalyan (PW-9) from the respondent, who had come in drunken state and was chasing her from place to place with a knife in his hand. Later, in the day, she cooked food for her children and for herself and went to sleep. The respondent entered her room after lifting the main door and thereafter gagged the prosecutrix and prevented her from raising an alarm. He thereafter committed rape. He was carrying a knife with which he threatened her saying that if she raised an alarm, she would be killed. After the respondent left the place of occurrence, she raised an alarm and on hearing the alarm, her mother Sushila (PW-2), another lady Gulab Bai (PW-3) and her brother Mangi Lal (PW-7) along with her brother's wife Shyam Bai came to her room. By the time they came, the respondent had run away from her room. PW-1 stated that she had mentioned about the occurrence to her mother and told her that she had been raped by the respondent. On the following day, when she was going to the police station to lodge the report, she had been threatened by the respondent and, therefore, due to fear she returned. Few days later, she went to the district headquarter at Jhalawar and gave a written report to the Superintendent of Police, but she was directed to lodge the report at police station Jawar. Thereafter, she went and lodged the report at Jawar. It is alleged that the offence was committed on the night of 5th February, 1994 and the first information report was lodged at Jawar on 9.2.2004. She was questioned as to whether she had informed the villagers about what had happened in the night, and her answer was that as it was night time, she did not inform anybody in the village about the incident, but she had told all these facts to her mother PW-2 who had come on hearing her alarm.

F PW-2 Smt. Sushila is the mother of the prosecutrix. She has corroborated the testimony of PW-1. She has stated categorically that when she went to the room of PW-1, she was told by her that the respondent had raped her. She claimed to have seen the respondent running away from the place of occurrence. She has also deposed that she along with Gulab Bai (PW-3) and the prosecutrix had gone to the police station Jawar where she lodged the report.

G PW-3 (Gulab Bai) has also supported the case of the prosecution inasmuch as she has stated that on hearing the alarm, she had run to the room of the prosecutrix along with the mother of the prosecutrix. About the occurrence that had taken place, according to this witness, prosecutrix had reported that the respondent had tried to outrage her modesty. There is hardly any cross-examination of this witness.

H

PW-7 (Mangi Lal) is the brother of the prosecutrix. He has also supported the case of the prosecution inasmuch as he also states that on hearing the alarm raised by his sister PW-1, he rushed to her house, but he waited outside the house. He has deposed that his mother also came with him. He heard his sister telling his mother that she had been raped by the respondent. He had seen the respondent running away from the house of the prosecutrix. He had also noticed that the clothes of his sister were torn and she told him that the respondent had raped her. A
B

The trial court accepted the evidence of these witnesses and convicted the respondent. The High Court has considered the evidence of the prosecutrix. After narrating the facts stated by her, the High Court proceeded to consider the other evidence on record with a view to assess to what extent the testimony of the prosecutrix can be believed. The High Court has not pointed out any inconsistency or infirmity in the evidence of the prosecutrix which may render her deposition incredible. However, it sought corroboration of the testimony of the prosecutrix from the evidence of other witnesses. While testing the evidence of PW-2, the High Court noticed the deposition of the witness to the effect that at first, the witness stated that her daughter had told her nothing about the incident but in the next sentence, she stated that the prosecutrix had told her that the respondent had committed rape upon her. From this fact alone, the High Court jumped to the conclusion that the version of the mother (PW-2) did not support the prosecutrix on the point of commission of any sexual act by the respondent. The High Court also observed that surprisingly no other person from the locality reached the house of the prosecutrix. Noticing the evidence of PW-3 (Gulab Bai), the High Court observed that Gulab Bai (PW-3) had deposed that the prosecutrix had stated that the respondent had tried to outrage her modesty. This, according to the High Court, did not support the prosecution version. C
D
E
F

The evidence of Mangi Lal (PW-7) was rejected by the High Court on the ground that he did not enter the room of his sister but stood outside. This appeared to the High Court to be abnormal and unnatural. The High Court further noticed that after the incident, the prosecutrix had come to the house of this witness and, thereafter, his mother had gone to the house of Smt. Gulab Bai (PW-3). Gulab Bai (PW-3) had not stated any such thing in her deposition. G

Lastly, the High Court observed that though the clothes of the prosecutrix were chemically examined, the prosecution had not produced any evidence on record to prove the commission of the offence of rape. It is true that Dr. H

A Ramesh Chand (PW-4) tendered his evidence. But the report of Chemical Examiner with regard to the clothes, seized and other items sent for chemical examination, was not produced before the court. For these reasons, the High Court disbelieved the case of the prosecution so far as the charge under Section 376 IPC is concerned. However, the High Court found the respondent guilty under Section 450 IPC.

B

With the assistance of counsel appearing for the parties, we have read the evidence of PW-1, PW-2, PW-3, PW-7 and PW-9. The evidence of the prosecutrix is free from any blemish. Even if it required any corroboration, that is forthcoming from the evidence of PW-2, PW-3 and PW-7. Moreover, the High Court affirmed the finding that in the middle of the night the respondent had trespassed into the room of the prosecutrix and upheld his conviction under Section 450 IPC. That itself strongly supports the case of the prosecution and corroborates the version of the prosecutrix. In a case of this nature, one would not expect the medical evidence to significantly improve the case of prosecution or the defence, particularly when the prosecutrix was examined after several days of the occurrence, and she was the mother of three children. So far as the report of the Chemical Examiner is concerned, since the prosecution did not produce the report, the prosecution is deprived of any corroborative evidence which the report may have provided. However, we have examined the evidence of the prosecutrix and three other witnesses. We find no reason to disbelieve the prosecutrix. The High Court misread the evidence and committed an error of record in holding that PW-2 (Smt. Sushila), the mother of prosecutrix, did not support the case of the prosecutrix as regards the commission of offence of rape. We have referred to her evidence earlier and we find no justification for the High Court to record such a finding. Without any ambiguity and in clear terms, the witness stated that she was told by the prosecutrix that the respondent had committed rape upon her. So far as PW-3 (Gulab Bai) is concerned, she has stated that she heard the prosecutrix saying that the respondent had outraged her modesty. It appears to us that the prosecutrix had really reported the matter to her mother and in this process, this witness may have overheard the conversation. Therefore, she is not very exact in stating what was stated by the prosecutrix. We also find nothing in the evidence of PW-7 (Mangi Lal) which is inconsistent with the testimony of the prosecutrix. If at all his evidence corroborates the evidence of the prosecutrix inasmuch as he also stated that on hearing her alarm, he along with his mother rushed to her room but he stood outside the room while his mother went inside and talked to the prosecutrix.

H

We, therefore, find it difficult to sustain the order of acquittal passed by the High Court in respect of the offence under Section 376 IPC. It is not the law that in every case version of the prosecutrix must be corroborated in material particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the Court is satisfied that the evidence of prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the court may look for corroboration from independent source or from the circumstances of the case before recording an order of conviction. In the instant case, we find that the evidence of the prosecutrix is worthy of credit and implicitly reliable. The other evidence adduced by the prosecution, in fact, provides the necessary corroboration, even if that was considered necessary. The High Court on a clear misreading of the evidence on record, acquitted the respondent of the charge under Section 376 IPC while upholding his conviction under Section 450 IPC.

We, therefore, allow this appeal, set aside the order of acquittal passed by the High Court so far as it relates to offence under Section 376 IPC and sentence the respondent to undergo seven years' rigorous imprisonment and a fine of Rs. 1,000, and in default of payment of fine, to undergo one month rigorous imprisonment. The State shall take immediate steps to apprehend the respondent so that he may serve out the remainder of the sentence, after giving to him the benefit of Section 428 Cr.P.C.

K.K.T.

Appeal allowed.