STATE OF KERALA

v.

KURISSUM MOOTTIL ANTONY

NOVEMBER 9, 2006

[ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Penal Code 1860—Section 377—Unnatural offences—Conviction under—Evidence of victim—Need of corroboration—Held: In such cases, rule as to non-requirement of corroboration is applicable—Accused cannot cling to a fossil formula and insist on corroborative evidence, even if the case spoken to by the victim, taken as whole, strikes judicial mind as probable—Thus, in the instant case plea of lack of corroboration unsustainable—There being no material inconsistency in cross examination and also no suppression of report purported to have been given before FIR was lodged, acquittal of accused by High Court set aside—Evidence Act, 1872.

Accused committed unnatural offence on a 10 years old girl. FIR was lodged. Investigating officer carried out investigation. On basis of the evidence on record, trial court convicted and sentenced the accused under sections 377 and 451 IPC. Sessions Judge upheld the order. However, High Court set aside the conviction on the ground of absence of corroboration and alleged suppression of a report purported to have been given before FIR was lodged. Hence the present appeal.

Allowing the appeal, the Court.

HELD: 1.1. An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. [776-A-B]

1.2. To insist on corrobation except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accompliace to crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborattd in material particular as in "the case of accommplice to a crime". Why should be the evidence of the girl or the woman who complains of rape or sexual

A **molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? In cases relating to section 377 IPC the rule regarding non-requirement of corrobation is equally applicable. Thus, in the instant case, the plea about lack of corroboration has no substance.**

[776-E-G]

B **1.3. Reading of victim-PW-1's evidence shows that the High Court proceeded on erroneous impression as if written complaint was earlier lodged before the police which was suppressed by the prosecution. High Court had proceeded on the basis as if PW-2, friend of victim to whom she narrated the incident, has resiled from her statement made during investigation. It is really not so. The evidence of PW-1 who was 10 years of age at the time of**

C **occurrence and was about 14 years of age at the time of deposition in Court has categorically and elaborately described the incident. Also in cross-examination no material inconsistency has surfaced except some minor ones which are but natural. High Court clearly lost sight of these factors and passed acquittal order on untenable grounds. Thus, the order of High Court is unsustainable and is set aside. [777-B-G]**

D

Rafiq **v.** *State of U.P.,* **[1980] 4 SCC 262;** *Bharwada Bhogiabhai and Hirjibhai* **v.** *State of Gujarat,* **AIR (1988) SC 753;** *Rameshwar* **v.** *The State of Rajasthan,* **AIR (1952) SC 54;** *State of Maharashtra* **v.** *Chandra Prakash Kewalchand Jain* **[1990] 1 SCC 550;** *Bhupinder Sharma* **v.** *State of H.P.,* **[2003] 8 SCC 551, relied on.**

E

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1134 of 2006.

From the Judgment and Order dated 2.2.2005 of the High Court of Kerala at Ernakulam in Crl. R.P. No. 243/1996.

F

R. Sathish for the Appellant.

The Judgment of the Court was delivered by:

ARIJIT PASAYAT, J. Leave granted.

G

The State of Kerala challenges the order passed by the learned Single Judge of the Kerala High Court directing acquittal of the respondent by accepting revision petition filed by the respondent. Respondent was found guilty of offences punishable under Sections 451 and 377 of the Indian Penal Code, 1860 (in short 'IPC'). The Trial Court had convicted the respondent as

H aforesaid and had imposed sentence of six months and one year rigorous

imprisonment respectively with fine of Rs.2000/- in each case. The fine amount of Rs.2000/- was to be paid to the victim in terms of Section 357 (1)(b) of the Code of Criminal Procedure, 1973 (in short 'Cr.P.C.'). A

Factual background as unfolded during trial of the respondent was that on 10.11.1986 accused trespassed into the house of the victim-girl who was nearly about 10 years of age on the date of occurrence and committed unnatural offence on her. After finding the victim alone in the house the accused committed unnatural offence by putting his penis having carnal intercourse against order of nature. The victim (PW-1) told about the incident to her friend (PW-2) who narrated the same to the parents of the victim and accordingly on 13.11.1986 First Information Report was lodged. The investigation was undertaken by PW-11 who sent both the victim and the accused for medical examination. He also seized the dress worn by the victim at the time of occurrence. The Chemical Analyst report Ex.P7 indicated presence of human semen and spermatozoa on the dress of the victim. Potency of the accused was also proved by the doctor (PW-10) as per Ex.P6. B C D

To further the prosecution version, 11 witnesses were examined. The accused pleaded innocence. On consideration of the evidence on record, learned Judicial Magistrate, Ist Class, found the accused guilty and convicted and sentenced as aforesaid noted. An appeal before the learned Sessions Judge, Kelpetta did not bring any relief to the accused. Revision was filed before the High Court which by the impugned order set aside the order of conviction and sentence. The primary ground on which the High Court directed acquittal was the absence of corroboration and alleged suppression of a report purported to have been given before the FIR in question was lodged. E F

In support of the appeal, learned counsel for the State submitted that the High Court's approach is clearly erroneous. This Court in a catena of cases has held that corroboration is not necessary for a case of this nature. Finding certain alleged inconsistencies in the victim's testimony, the High Court had observed that corroboration was necessary. It relied on a purported statement stated to have been made at anterior point of time. It was observed that in the said complaint details of the incident constituting the offence were not disclosed. This was suppressed by the Investigating Officer and mother of the victim i.e. PW-5. G

There is no appearance on behalf of the respondent-accused in spite of the service of the notice. H

A An accused cannot cling to a fossil formula and insist on corroborative evidence, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. Judicial response to human rights cannot be blunted by legal jugglery. A similar view was expressed by this Court in *Rafiq* v. *State of U.P.*, [1980] 4 SCC 262 with some anguish. The same was echoed again in *Bharwada Bhogiabhai and Hirjibhai* v. *State of Gujarat,* AIR (1988) B SC 753. It was observed in the said case that in the Indian setting refusal to act on the testimony of the victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity or C dignity had ever occurred. She would be conscious of the danger of being ostracized by the society and when in the face of these factors the crime is brought to light, there is inbuilt assurance that the charge is genuine rather than fabricated. Just as a witness who has sustained an injury, which is not shown or believed to be self-inflicted, is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of sex D offence is entitled to great weight, absence of corroboration notwithstanding. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in *Rameshwar* v. *The State of Rajasthan,* AIR (1952) SC 54 were, ''The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a E conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the judge...".

To insist on corroboration except in the rarest of rare cases is to equate one who is a victim of the lust of another with an accomplice to a crime and F thereby insult womanhood. It would be adding insult to injury to tell a woman that her claim of rape will not be believed unless it is corroborated in material particulars as in "the case of an accomplice to a crime". (See *State of Maharashtra* v. *Chandra Prakash Kewalchand Jain,* [1990] 1 SCC 550). Why should be the evidence of the girl or the woman who complains of rape or G sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? The plea about lack of corroboration has no substance.

It is unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. Decency and H morality in public and social life can be protected only if Courts deal strictly

with those who violate the social norms. A

The above position was highlighted by this Court in *Bhupinder Sharma* v. *State of H.P.*, [2003] 8 SCC 551.

The rule regarding non-requirement of corroboration is equally applicable to a case of this nature, relating to Section 377 IPC. B

In addition, it is to be noted that reading of PW-1's evidence shows that the High Court proceeded on erroneous impression as if written complaint was earlier lodged before the police which was suppressed by the prosecution. A close reading of PW-5's evidence shows that she has not stated anything of that nature. On the contrary, evidence of the mother PW-5 and the father C PW-4 is that they went to the police station with the victim and FIR was lodged. The High Court had proceeded on the basis as if PW-2 has resiled from her statement made during investigation. It is really not so. She has stated about accused going into the house of the victim asking for water and when PW-1 went inside to take the glass, accused forcibly catching her. The D evidence of PW-1 who was 10 years of age at the time of occurrence and was about 14 years of age at the time of deposition in Court has categorically and elaborately described the incident. She has graphically described as to how the offence was committed. She has stated that while she was alone in the house, the accused who was her neighbour came to her and asked for a glass of water. But he did not go and wanted more glass of water. When she turned E to take the glass she was caught forcibly by him and was to made lie on the floor. The accused lifted her skirt and removed her underwear and thrust his male organ, and committed carnal intercourse against the order of nature. She cried but nobody heard the same except her brother who was unable to help, as he was lying in bed because of paralysis. The accused went away thereafter. F

In cross-examination no material inconsistency has surfaced except some minor ones which are but natural. The High Court clearly lost sight of these factors and has directed acquittal on untenable grounds. It is unsustainable and is set aside. Orders of the Trial Court and First Appellate Court stand restored. Steps shall be taken by the concerned Court to take the G respondent-accused to custody to serve remainder of sentence.

Appeal is allowed.

N.J. Appeal allowed.

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