S. RAMAKRISHNA

v.

THE STATE REP. BY THE PUBLIC PROSECUTOR, HIGH COURT OF A.P. HYDERABAD

(Criminal Appeal No. 1636 of 2008)

OCTOBER 20, 2008

[DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860:

ss.376 and 342 – Rape – Of 14 year old girl – PW1, the victim, described the manner in which rape was committed on her – She mentioned about the incident to her mother PW2 and two other PWs – PW9, the Doctor, stated that sexual intercourse had occurred on PW1 – Presence of human semen and protozoa clearly established rape – Conviction by Courts below accordingly upheld.

ss.228A, 376, 376A, 376B, 376C and 376D – Sexual offence – Identity of victim – Held: Not to be indicated in judgments passed by Court.

Evidence Act, 1872 – s.118 – Testimony of victim of sexual offence – Appreciation of – Held: Victim of a sexual offence is 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 – If totality of the circumstances appearing on record of a case discloses that the victim did not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence.

According to the prosecution, Appellant raped PW-1, a girl aged 14 years, and also threatened to kill her. PW1 was medically examined by PW9, the doctor. Placing reliance on the evidence of PW-1 as also the evidence of PW9, the Courts below convicted Appellant under ss.376 and 342 IPC. Hence the present appeal.

A Dismissing the appeal, the Court

HELD: 1. S.228-A 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 ss.376, B 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 publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimisation or ostra- C cism of the victim of a sexual offence for which s.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. [Para 8] [856-F-H; 857-A]

D *State of Karnataka v. Puttaraja* (2004) 1 SCC 475 – relied on.

2. A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. E The Indian Evidence Act, 1872 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 at- F tach 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 G 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 hesi- H tant 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 discloses 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. [Para 10] [857-C-H; 858-A]

State of Maharashtra v. Chandraprakash Kewalchand Jain (1990) 1 SCC 550; *Karnel Singh v. State of M.P.* (1995) 5 SCC 518 and *Sri Narayan Saha v. State of Tripura* (2004) 7 SCC 775 – relied on.

3.1. The evidence of the prosecutrix (PW-1) shows that she has described the manner in which the rape was committed on her. Apart from that PW1 has stated that on the way she had met PWs 3 and 4 to whom she had mentioned about the incident. That was in addition to the information given to her mother PW2. [Para 9] [857-B]

3.2. Coming to the medical evidence though at first it appears that the doctor had opined that rape was not committed, it was, in fact, not so. On closer reading of the evidence of PW9, the position is crystal clear that the doctor has, in fact, stated that sexual intercourse had occurred on PW1. Apart from that presence of human semen and protozoa clearly establishes allegation of rape. Therefore, the prosecution has clearly established the allegation of rape. [Para 12] [858-C-D]

A **CASE LAW REFERENCE**

(2004) 1 SCC 475	**relied on**	**Para 8**
(1990) 1 SCC 550	**relied on**	**Para 11**
(1995) 5 SCC 518	**relied on**	**Para 11**
(2004) 7 SCC 775	**relied on**	**Para 11**

B CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1636 of 2008

From the final Judgment and Order dated 24.2.2006 of C the High Court of Judicature, Andhra Pradesh at Hyderabad in Crl. Appeal No. 34 of 2003

Anil Kumar Tandale for the Appellant.

D. Bharathi Reddy for the Respondents.

D The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment of the learned E Single Judge of the Andhra Pradesh High Court upholding the conviction of the appellant for the offences punishable under Sections 376 and 342 of the Indian Penal Code, 1860 (for short 'IPC'), while acquitting the appellant of the charges in terms of Section 506 IPC. The accused was sentenced to 10 years imprisonment by learned Sessions Judge, Chittoor, which was F reduced to 7 years by the High Court. The appellant faced trial for offences punishable under Sections 376, 323, 342 and 506 IPC. The Trial Court directed acquittal of the appellant in respect of offence punishable under Section 323 IPC but convicted in respect of other offences as noted above.

G 3. Background facts as projected by the prosecution are as follows:

On 1.10.2001 at about 5.30 pm while U. Vijayalakshmi - PW.1 was returning from the fields to the village and when she H reached the fields of Viswanatha Reddy along with her cattle,

the accused who was hiding in the bushes, gagged her mouth with his towel and tied her hands with his lungi, pushed her to the ground, lifted her petty coat and forcibly committed rape on her. When PW.1 struggled to escape, the accused pinched on her face with nails and caused scratches. Then, the accused untied the hands of the victim-PW.1, threatened to kill her and her family members if she informs the incident to her parents. When PW.1 told the accused that she would inform the incident to her uncle, the accused threatened her with dire consequences to kill her. After accused left the place, PW.1 returned to village informed the incident to her parents, and on the next day she went to Police Station, Baireddipalli and presented a report to the Sub-Inspector of Police who in turn sent her for medical examination. The doctor gave report to the effect that sexual intercourse was committed on her. The investigation revealed that accused committed the offence of rape on PW.1 and also threatened to kill her and thus the accused committed the offence punishable under Sections 342, 376 and 506 IPC.

On the said allegations, the learned Magistrate took the case on file and after appearance of the accused furnished copies of the documents. The learned magistrate after observing all the formalities, duly committed the case to the Court of Session, Sessions Division, and the Sessions Judge took the case on file as Sessions Case and made over the same to the Additional Assistant Sessions Judge, Chittoor for trial.

The learned Additional Assistant Sessions Judge after hearing the defence counsel and the prosecutor, framed charges under sections 376, 323, 342 and 506 Indian Penal Code against the accused, read over and explained to him for which he pleaded not guilty and claimed to be tried.

4. To establish the accusations, the prosecution examined 12 witnesses and got marked 13 exhibits besides marking of MOS. After closing of prosecution evidence accused was examined in terms of Section 313 of the Code of Criminal Procedure, 1973 (in short 'Code'). The accused again pleaded inno-

A cence but marked Ex.D1. The Trial Court placed reliance on the evidence of the prosecution PW1 and the evidence of the doctor PW9 and held that the accusations were established. Accordingly, the appellant was convicted and sentenced.

5. In appeal, the stand was that PW9 has stated that the B age of the victim was around 18 years and, therefore, no offence was made out under Section 376 IPC. The reference was also made to the evidence of the doctor to show that in the note, rape was not established. The High Court did not find any substance in the plea and noted that the case of the accused was C not of consent. The age of the victim was really of no consequence. So far as the stand that no rape was established by medical evidence, the High Court analysed the evidence of the PW9 to hold that stand was without any substance.

D 6. In support of the appeal, learned counsel for the appellant submitted that the High Court has erroneously dismissed the stand of the appellant. It is submitted that the evidence of doctor clearly establish that no rape, in fact, was committed.

7. Learned counsel for the respondent, on the other hand, E supported the judgment of the Trial Court as confirmed by the High Court. Before we deal with the factual and legal position it has to be noted that in the judgment of the Trial Court and the High Court the name of the victim has been mentioned.

8. We do not propose to mention name of the victim. Sec- F tion 228-A 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. G True it is, 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 victimisation or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judg- H ments, be it of this Court. High Court or lower Court, the name

of the victim should not be indicated, we have chosen to describe her as 'victim' in the judgment. The above position was highlighted in *State of Karnataka v. Puttaraja* (2004 (1) SCC 475).

9. The evidence of the prosecutrix (PW-1) shows that she has described the manner in which the rape was committed on her. Apart from that PW1 has stated that on the way she had met PWs 3 and 4 to whom she had mentioned about the incident. That was in addition to the information given to her mother PW2. Stand of the appellant in the instant case was that there was no corroboration with the evidence of the prosecutrix.

10. A prosecutrix of a sex offence cannot be put on a 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 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 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 Section 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 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

A not trustworthy. If the totality of the circumstances appearing on the record of the case discloses 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.

B 11. The aforesaid position was highlighted in *State of Maharashtra v. Chandraprakash Kewalchand Jain* (1990 (1) SCC 550), *Karnel Singh v. State of M.P.* (1995 (5) SCC 518) and *Sri Narayan Saha v. State of Tripura* (2004) 7 SCC 775).

C 12. Coming to the medical evidence though at first it appears that the doctor had opined that rape was not committed, it was, in fact, not so. On closer reading of the evidence of PW9, the position is crystal clear that the doctor has, in fact, stated that sexual intercourse had occurred on PW1. Apart from that D presence of human semen and protozoa clearly establishes allegation of rape. Therefore, the prosecution has clearly established the allegation of rape. Though the question is not really of any importance as the stand of the accused was not one of consent, the documentary evidence adduced i.e. school certificate clearly shows that she was about 14 years of age.

E 13. That being so, the Trial Court and the High Court rightly found the accused-appellant guilty. The appeal is without merit and is dismissed.

B.B.B. Appeal dismissed.