

HEM RAJ S/O. MOTI RAM

v.

STATE OF HARYANA  
(Criminal Appeal No.9 of 2014)

JANUARY 3, 2014.

**[RANJANA PRAKASH DESAI AND  
J. CHELAMESWAR, JJ.]**

*PENAL CODE, 1860:*

*s. 376 – Rape – Held: In a case involving charge of rape, evidence of prosecutrix is most vital and is on par with evidence of an injured witness — If it is found credible and inspires total confidence, it can be relied upon even sans corroboration — Court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice – Evidence – Evidentiary value of evidence of prosecutrix.*

*ss. 376 and 450 – Accused alleged to have jumped into the courtyard of prosecutrix in the night and ravished her – Conviction and sentence of 7 years RI by courts below – Held: – In the instant case, it would be extremely dangerous to rely on evidence of prosecutrix — She was declared hostile — In examination-in-chief she stated that appellant raped her and immediately thereafter retracted the statement and stated that he did not rape her but attempted to rape her — She refused to acknowledge the statement made by her to police — The evidence of her brother is far from satisfactory — The conscience of the Court would not permit it to rely on such evidence — Further, the doctor, who had examined the prosecutrix, was not examined in court — From the MLR produced in the court, it cannot be inferred that prosecutrix was raped by appellant — Taking an overall view of the*

A *matter, prosecution case that prosecutrix was raped by appellant cannot be sustained — This is a case where appellant must be given benefit of doubt— Accordingly, his conviction and sentences u/ss 376 and 450 are set aside.*

B *Investigation:*

*Rape case — Failure of prosecution to examine the doctor who had examined the prosecutrix – Effect of – Explained.*

C The appellant was prosecuted on the allegation that in night of occurrence at 12.30 A.M., he jumped into the courtyard of the prosecutrix, a 19 year old girl, and raped her. The trial court convicted him u/ss 376 and 450, IPC and sentenced him to 7 years RI and 2 years RI, respectively, under the two courts. The High Court dismissed the appeal.

Allowing the appeal, the Court

E HELD: 1.1. In a case involving charge of rape, the evidence of the prosecutrix is most vital. If it is found credible and inspires total confidence, it can be relied upon even sans corroboration. The court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice.

F Such weight is given to the prosecutrix's evidence because her evidence is on par with the evidence of an injured witness, and, therefore, it is the duty of the court to scrutinize it carefully. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness, rely upon it. [para 6] [14-D-F]

G

*State of Maharashtra v. Chandraprakash Kewalchand Jain* 1990 (1) SCR 115 = 1990 (1) SCC 550 – relied on.

H

1.2. In the instant case, it would be extremely dangerous to rely on evidence of the prosecutrix. She knew the appellant being her neighbour. It is her case that she used to write letters to him. In the examination-in-chief she stated at one stage that the appellant raped her and immediately thereafter retracted the statement and stated that he did not rape her but attempted to rape her. She refused to acknowledge that the statement which was read over to her was made by her to the police. She expressed surprise as to how her signatures appeared on the said statement. The Public Prosecutor had to, therefore, declare her hostile. The conscience of the Court would not permit it to rely on such evidence. It would be hazardous to confirm the conviction on the prosecutrix's sole testimony. [para 8] [15-H; 16-A-C]

1.3. The evidence of PW-1, the brother of the prosecutrix, is far from satisfactory and is incapable of offering any corroboration to the prosecutrix's evidence, assuming her evidence does spell out the case of rape. He stated that the appellant had closed the prosecutrix's mouth and was trying to rape her. He stated that he apprehended the appellant and woke up his father. He further stated that he told the police that the appellant had attempted to rape the prosecutrix. He was confronted with his police statement where he had stated that the appellant had raped the prosecutrix. He went to the extent of saying that he did not make any statement to the police. No reliance can be placed on such evidence. [para 9] [16-D, E-H]

1.4. The prosecution has failed to examine the doctor who had examined the prosecutrix. This is a serious lapse on the part of the prosecution. The MLR was produced in the court by PW-6, the Medical Record Technician. It is true that lapses on the part of the prosecution should not lead to unmerited acquittals. This is, however, subject to the rider that in such a situation the evidence on record

A must be clinching so that the lapses of the prosecution could be condoned. Such is not the case here. The MLR does suggest that the hymen of the prosecutrix was torn. It is difficult to infer that the prosecutrix was raped by the appellant. [para 10] [17-A-D]

B 1.5. Taking an overall view of the matter, the prosecution case that the prosecutrix was raped by the appellant cannot be sustained. This is a case where the appellant must be given benefit of doubt. In the circumstances, the impugned judgment convicting the  
C appellant u/ss 376 and 450 of the IPC and sentencing him for the said offences is quashed and set aside. [para 10-11] [17-E-G]

**Case Law Reference:**

D 1990 (1) SCR 115 relied on para 6

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 9 of 2014.

E From the Judgment & Order dated 22.11.2011 of the High Court of Punjab & Haryana at Chandigarh in Criminal Appeal No. 853-SB of 2001.

F D.P. Singh, Sonam Gupta, Salil Bhattacharya, Rajkiran Vais, Ravi Prakash Vyas (for Shivaji M. Jadhav) for the Appellant.

Deepkaran Dalal, AAG, Naresh Bakshi for the Respondent.

The Judgment of the Court was delivered by

G (SMT.) RANJANA PRAKASH DESAI, J. 1. Leave granted.

H 2. The appellant was tried by the Additional Sessions Judge, Faridabad in Sessions Case No.RBT-8 of 1999 for offences punishable under Sections 376 and 450 of the IPC.

By judgment and order dated 3/8/2001, learned Additional Sessions Judge convicted the appellant for the offence punishable under Section 376 of the IPC and sentenced him to undergo rigorous imprisonment for seven years and to pay a fine of Rs.5,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for a period of one year. The appellant was also convicted for offence punishable under Section 450 of the IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-. In default of payment of fine, he was directed to undergo rigorous imprisonment for a period of two months. The substantive sentences were ordered to run concurrently. Being aggrieved by the said conviction and sentence, the appellant filed criminal appeal in the Punjab and Haryana High Court. By the impugned judgment, the High Court dismissed the said appeal. Hence, this appeal, by special leave.

3. According to the prosecution on 12/3/1999, the prosecutrix who was examined as PW-5 was watching a film on television along with her younger brothers till 12.30 in the night. Both her brothers went to sleep. She went outside the veranda to relieve herself. The appellant, who is her neighbour, was standing on the wall of his house. He jumped from the wall, came to her house and raped her. When the prosecutrix raised alarm, her elder brother PW-1 Fateh Ram came there whereupon the appellant ran away. The prosecutrix lodged her complaint on 14/3/1999 on the basis of which investigation was set into motion. After completion of investigation, the appellant came to be charged as aforesaid.

4. The prosecution case is sought to be established through the evidence of the prosecutrix and her brother PW-1 Fateh Ram. The appellant denied the prosecution case and pleaded innocence. Having gone through the evidence adduced by the prosecution, the trial court convicted the appellant and sentenced him as aforesaid. The High Court confirmed the conviction and sentence of the appellant.

A 5. Mr. D.P. Singh, learned counsel for the appellant, strenuously urged that the evidence of the prosecutrix is totally unreliable and deserves to be discarded. She has not supported the prosecution. Evidence of her brother also does not substantiate the prosecution case. The doctor who  
 B examined the prosecutrix has not been examined by the prosecution. Counsel submitted that conviction of the appellant must, therefore, be set aside. Mr. Deepkaran Dalal, learned AAG for the State, however, submitted that the prosecution case can be sustained on the basis of the evidence of the prosecutrix:  
 C The Medico Legal Report (MLR) establishes the case of rape. The appeal, therefore, deserves to be dismissed.

6. In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The  
 D court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of an accomplice. [See: *State of Maharashtra v. Chandraprakash Kewalchand Jain*<sup>1</sup>]. Such weight is given to the prosecutrix's evidence because her  
 E evidence is on par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix's evidence on such a high pedestal, it is the duty of the court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life  
 F imprisonment. The court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it.

G 7. We shall now read the prosecutrix's evidence keeping the above caution in mind. There is no dispute about the fact that when the incident-in-question took-place the prosecutrix was 19 years old. In her evidence she stated that on 12/03/1991 she was watching a movie on the television along with

H 1. (1990) 1 SCC 550.

her brothers. The movie got over at about 12.30 a.m. Thereafter, her brothers went to sleep. After that she went to the compound to ease herself. The appellant, who is her neighbour, was standing on the wall. He jumped over the wall, came to her house and raped her. She immediately retracted her statement and stated that the appellant did not rape her but undressed her and attempted to rape her. Thereafter, she raised a cry. Her brother PW-1 Fateh Ram came there. The appellant ran away. The prosecutrix further went on to say that because the appellant tried to rape her she was depressed and hence she consumed celphos tablets. She, then, categorically stated that she did not make any statement to the police. She admitted that statement Ex-P1 contained her signatures, but, she denied that the said statement, which was read over to her was made by her to the police. She further stated that she did not know how her signatures appeared on the said statement. The prosecutrix having completely given a go-by to the prosecution case learned Public Prosecutor declared her hostile. He cross-examined her. Surprisingly, in the cross-examination the prosecutrix changed her version and stated that the appellant had raped her and her earlier statement that the appellant had not raped her is not correct. In her cross-examination conducted by the defence counsel, the prosecutrix stated that she did not raise any alarm when she saw the appellant standing on the wall of his house. She stated that the appellant removed her salwar, removed all her clothes and raped her for about five minutes. Though, she stated that the accused had closed her mouth and did not allow her to struggle, it does not stand to reason that till the appellant untied the string of her salwar and removed all her clothes she could not raise a cry. Her cries would have brought her brother immediately to the room. Pertinently, the prosecutrix stated that the appellant used to visit her house. She admitted that prior to the occurrence she used to write letters to him.

8. It would be extremely dangerous to rely on such evidence. The prosecutrix obviously knew the appellant being

A her neighbour. It is her case that she used to write letters to  
him. In the examination-in-chief she stated at one stage that the  
appellant raped her and immediately thereafter retracted the  
statement and stated that he did not rape her but he attempted  
to rape her. She refused to acknowledge that the statement  
B which was read over to her was made by her to the police. She  
expressed surprise as to how her signatures appeared on the  
said statement. The Public Prosecutor had to, therefore,  
declare her hostile. Our conscience would not permit us to rely  
on such evidence. It would be hazardous to confirm the  
conviction on the prosecutrix's sole testimony. Let us, therefore,  
C see whether there is any other evidence on record which bears  
out the prosecution case.

9. PW-1 Fateh Ram brother of the prosecutrix stated in his  
evidence that at the relevant time he was sleeping in his house.  
D The prosecutrix and his two brothers were witnessing film on  
the television. The film ended at about 12.30 a.m. in the night.  
Thereafter the prosecutrix went out to ease herself. He also got  
up after some time to ease himself and went out. According to  
him, he found the appellant in their house. He stated that the  
E appellant had closed the prosecutrix's mouth and was trying to  
rape her. He, then, apprehended the appellant and woke up his  
father. The appellant was beaten-up. After his brother came he  
was allowed to go. He stated that he did not make any statement  
to the police. He stated that he did not tell the police that he  
F went to sleep while the prosecutrix was watching television  
along with her brothers. He stated that he had told the police  
that the appellant had attempted to rape the prosecutrix. He  
was confronted with his police statement where he had stated  
that the appellant had raped the prosecutrix. Thus, on a vital  
G aspect he has contradicted himself. His evidence is, therefore,  
far from satisfactory and incapable of offering any corroboration  
to the prosecutrix's evidence, assuming her evidence does  
spell out the case of rape. He went to the extent of saying that  
he did not make any statement to the police. No reliance can  
H be placed on such evidence.

10. Faced with such a situation, we were anxious to find out whether there can be any clinching medical evidence suggesting rape, but, unfortunately, the prosecution has failed to examine Dr. Anjali Shah, who had examined the prosecutrix. The MLR was produced in the court by PW-6 J.B. Bhardwaj, Medical Record Technician. This is a serious lapse on the part of the prosecution. We are aware that lapses on the part of the prosecution should not lead to unmerited acquittals. This is, however, subject to the rider that in such a situation the evidence on record must be clinching so that the lapses of the prosecution could be condoned. Such is not the case here. The MLR does suggest that the hymen of the prosecutrix was torn. It is also true that the prosecution has brought on record FSL Report which shows that human semen was detected on the salwar of the prosecutrix and on the underwear of the accused. However, it is difficult to infer from this that the prosecutrix was raped by the appellant. The prosecutrix herself has vacillated on this aspect. It was pointed out that no injuries were found on the prosecutrix. We do not attach much importance to this aspect because presence of injuries is not a must to prove commission of rape. But the prosecutrix's evidence is so infirm that it deserves to be rejected. Her brother has come out with a case that the appellant tried to rape the prosecutrix. He did not say that the appellant raped the prosecutrix. Taking an overall view of the matter, we find it difficult to sustain the prosecution case that the prosecutrix was raped by the appellant. This is a case where the appellant must be given benefit of doubt

11. In the circumstances, the impugned judgment convicting the appellant under Sections 376 and 450 of the IPC and sentencing him for the said offences is quashed and set aside. The appellant is directed to be released forthwith, unless he is required in any other case.

12. The appeal is disposed of in the afore-stated terms.

R.P.

Appeal allowed. H