

A

STATE OF MADHYA PRADESH

v.

KESHAR SINGH

(Criminal Appeal No.2244 Of 2009)

B

JULY 03, 2015

[PINAKI CHANDRA GHOSE AND
UDAY UMESH LALIT, JJ.]

C

Penal Code, 1860—s.376—Rape of minor girl of unsound mind – Two eye-witnesses to the incident – Acquittal by the courts below – On appeal, held: The prosecution case suffers from inherent inconsistencies and flaws – The three witnesses have three versions and the testimonies of the two eye-witnesses are irreconcilable – Medical evidence also does not support prosecution case – The evidence of the doctor as well is inconsistent – Order of acquittal upheld.

D

Dismissing the appeal, the Court

E

HELD: 1. There are inherent inconsistencies in the case of the prosecution. The testimonies of two alleged eye-witnesses, PW2 & PW3, are irreconcilable. The statement of PW2 is incredible. The three witnesses viz. PW2, PW3 and PW4 have three different versions.

F

Moreover, both PW2 and PW3 have said that they saw accused inflicting knife blows at the prosecutrix on her thigh and blood oozed out on that account. This is completely unsupported by the medical evidence; no such injury by knife was found on the thigh of the prosecutrix. [Para 8] [501-C, G]

G

2. The medical evidence also seems to be not wholly supportive to the case of the prosecution. The evidence of the doctor shows that, probably, the sexual

H

intercourse was done more than 24 hours back. In her cross-examination she said that rupture of hymen was at the most 2-3 days prior to the medical examination. If this be so, the entire story of the prosecution would go. There is another inconsistency to be found from the deposition of the doctor. She said in her statement that the girl she had examined was a healthy and 'normal' one. However, there is no dispute that the prosecutrix was far from normal as she was suffering from some mental disorder. It would be highly unlikely and assumptuous to say that even after conducting the whole examination of the prosecutrix, the doctor may not have come to know of the mental disorder of the prosecutrix. [Para 9] [501-C,G]

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 2244 of 2009

From the Judgment and Order dated 09.10.2006 in Criminal Appeal No. 684 of 1992 of the High Court of Judicature of Madhya Pradesh at Jabalpur

Naveen Sharma, Mishra Saurabh, Vibha Datta Makhija for the Appellant.

Irshad Ahmad, Anurag Rawat, Sudhir Kumar for the Respondent.

The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. - 1. In the present case, there is concurrent decision of acquittal of the accused by the Sessions Court as well as the High Court of Madhya Pradesh. The offence alleged to have been committed in this case is rape, punishable under Section 376 of Indian Penal Code, 1860 ("IPC", for short).

A 2. The story of the prosecution is that the prosecutrix
is a minor of unsound mind. On 09-11-1990 at around 8:30
a.m. when prosecutrix and her younger sister Nirmala (PW3)
were going to their field with food for their father, the accused
came and caught hold of the prosecutrix. He took her to
B some distance near a pond and committed rape on her.
Prosecutrix's private parts had bled and the petticoat was
blood-stained. On seeing this, PW3 Nirmala rushed to her
father Gopal (PW4) and informed him of the incident. Then
C PW4 came to the prosecutrix who told him with the help of
sign language (since she cannot speak properly) that the
accused committed rape on her. He noticed that there were
blood stains on her petticoat near the private parts.
Thereafter, PW4 took the prosecutrix to police station and
D lodged an FIR at 11:30 a.m. on the same day. Medical
examination of the prosecutrix was conducted which revealed
that the hymen was ruptured and the examining doctor Dr.
(Mrs.) F.A. Qureshi opined that the prosecutrix was subjected
to sexual intercourse. During investigation the accused was
E arrested on 21-11-1990 and was medically examined. He
was found to be capable of performing sexual intercourse.
The police filed charge-sheet against the accused with the
charge of rape under Section 376 of IPC.

F 3. The prosecution produced PW1 Dr. Smt. F.A.
Qureshi, PW2 Manohar Singh (uncle of the prosecutrix),
PW3 Nirmala (younger sister of the prosecutrix), PW4 Gopal
(father of the prosecutrix) and PW5 R.K. Mishra (Investigating
Officer). Other witnesses were formal witnesses. It is
G important to note that the prosecutrix was also produced as
a witness, being PW6, but it was found that she was not
capable of understanding what was asked and made
irrelevant answers. In the medical examination of the
prosecutrix also, she is found to be 12-16 years old with low
H I.Q.

4. PW1 has deposed in her categorical finding that the private parts of the prosecutrix were injured, her hymen was ruptured and that she was subjected to sexual intercourse. The major eye witness in the present case is PW3 who is also a minor girl of 10 years. However, in her examination she was found to be competent witness as she answered the preliminary questions correctly and with understanding. She has in her examination-in-chief brought out the story that the accused, whom she knows, had caught her sister and taken her near the pond. According to her, he threw the prosecutrix on the ground, opened his pyjama and sat on her and gave the prosecutrix some money, which was thrown away by her. The witness further stated in her deposition that the accused filled the mouth of the prosecutrix with lungi, raised her petticoat and committed sexual intercourse and that the private part of the prosecutrix bled. She also stated that her uncle Manohar Lal arrived there on whose asking she went to her father in a car and told him about the incident. She has also stated that the accused had inflicted knife blows on the thigh of the prosecutrix. In the cross-examination, we find that the counsel for defence has asked the child witness (PW3) many leading questions, the implication of which the child witness would never be able to understand. Therefore, she has answered most of the questions with a mechanical one word answer "Yes", without any elaboration. In this way, the defence elicited from the child witness the statements to the effect that the accused had given knife blows on the face, neck and thigh of the prosecutrix and that it was all these parts of the prosecutrix from where blood oozed out. In the same way she admitted the suggestion that she was read out a statement by police outside the Court and that she has made the same statement in the Court.

5. PW2 Manohar Lal (uncle of the prosecutrix) has

- A also stated in his deposition that he saw the accused sitting over the prosecutrix and having his private part inserted in the private parts of the prosecutrix. He says on his coming to the place, the accused fled away. He further states that he had seen the accused giving knife blows to the prosecutrix as a result of which the thigh of the prosecutrix started bleeding. However, he also states that private parts of the prosecutrix were also bleeding. He further states that while leaving the two sisters on the road, he went to call the father of the prosecutrix (PW4) and when he came back along with PW4, he found them sitting where he had left them.

6. PW5 has corroborated the version of PW3 and said that he was informed of the incident by PW3 and he went to the prosecutrix where he found her petticoat blood-stained. He has deposed that his daughter (prosecutrix) had told him in sign language that the accused Keshar Singh had committed rape on her. According to this witness when he reached the place of incident, he found the prosecutrix sitting alone near a khankri tree and not on the road. He has further stated that he did not see the blood oozing out of thigh or private parts of the prosecutrix as, being her father, he could not examine her private parts but he confirms that the petticoat was blood stained.

7. In view of the above evidence, both the Sessions Court and the High Court found inherent inconsistencies in the statements of the prosecution witnesses. While PW2 and PW3 speak about knife blows being inflicted on thighs and blood oozing from there, the medical evidence does not support this theory. Further, PW3 said that she went to call her father PW4, while PW2 has said he had gone to call PW4. PW2 has also stated that when PW4 came along with him, they found the prosecutrix on the road, while PW4 has stated that he found the prosecutrix near khankri tree near a pond. Thus, the Sessions Court has rightly not considered

the statement of the prosecutrix as she was found to be incompetent to understand the questions. In view of the above-mentioned inconsistencies, the Sessions Court found that although it is proved that rape was committed with the prosecutrix, but that it was done by the accused was not proved.

8. We have heard the learned counsel for both the sides and also analysed the evidence in this case. We find that there are inherent inconsistencies in the case of the prosecution. The testimonies of two alleged eye witnesses, PW2 & PW3, are irreconcilable. PW2, the uncle of the prosecutrix says that he saw the accused sitting over the prosecutrix with his private part inside the private part of the prosecutrix when he was 25 feet away. We find this statement incredible for the reason that he could not have made such detailed observation from such a distance. Also, according to PW2, he had left the prosecutrix and PW3 on the road when he had gone to call PW4, while PW3 has completely contrary version where she states that she had gone to call PW4 leaving the prosecutrix with PW2. This creates a serious doubt as to who out of PW2 or PW3 stayed with the prosecutrix and who went to call PW4. Also PW2 stated that when he came with PW4, they found prosecutrix and PW3 on the road where PW2 had left them. However, PW4 states that it was PW3 who had come to inform him and he came with her to find the prosecutrix sitting alone near a tree next to the pond. In this way the three witnesses have three different versions. Moreover, both PW2 and PW3 have said that they saw accused inflicting knife blows at the prosecutrix on her thigh and blood oozed out on that account. This is completely unsupported by the medical evidence; no such injury by knife was found on the thigh of the prosecutrix.

9. We may note that PW3 had told about the accused inflicting knife blows in her examination in chief itself, and

- A therefore, one cannot say she said so because of being misled by the cross-examiner. This is a major inconsistency in the testimony of both PW2 and PW3 which makes their statement unworthy of credit. Furthermore, the conduct of PW2 seems to be uncharacteristic of an uncle as he makes
- B no mention of his raising any alarm or running towards the accused to apprehend him on seeing that the accused was sexually assaulting the prosecutrix. Also the medical evidence of Dr. Mrs. F.A. Qureshi on analysis seems to be not wholly supportive to the case of the prosecution. Dr.
- C Quershi has accepted that if the sexual intercourse has happened in last 24 hours, then on touching the hymen fresh blood must necessarily ooze out. In saying so, she has approved what is written in the Modi's book on Medical
- D Jurisprudence. However, she testifies that when she touched the hymen of the prosecutrix, no fresh blood oozed out. This may be contrasted to the fact that allegedly, the medical examination of the prosecutrix was conducted within 12 hours of the alleged incident of rape. Had that been so, the
- E prosecutrix must have bled fresh during the medical examination, but that did not happen. This shows that, probably, the sexual intercourse was done more than 24 hours back. In fact, Dr. Qureshi in her cross-examination has said that rupture of hymen was at the most 2-3 days
- F prior to the medical examination. If this be so, the entire story of the prosecution would go out of the window. Further, there is another inconsistency to be found from the deposition of Dr. Qureshi. She has said in her statement that the girl she had examined was a healthy and 'normal' one. However,
- G there is no dispute that the prosecutrix was far from normal as she was suffering from some mental disorder. Even when she was examined in Court, she was found to be of unsound mind. It would be highly unlikely and assumptuous on our part to say that even after conducting the whole examination
- H of the prosecutrix, Dr. Qureshi may not have come to know

of the mental disorder of the prosecutrix. A

10. In view of the above reasoning, we are of the opinion that the case of the prosecution suffers from inherent inconsistencies and flaws. We do not find any merit in this appeal. Accordingly, this appeal is dismissed. B

Kalpana K. Tripathy

Appeal dismissed.

C

D

E

F

G

H