(2002) 02 MP CK 0079

Madhya Pradesh High Court

Case No: Criminal Appeal No. 116/94

Ram Kumar		APPELLANT
	Vs	
State of M.P.		RESPONDENT

Date of Decision: Feb. 11, 2002

Acts Referred:

- Penal Code, 1860 (IPC) - Section 376

Citation: (2002) 3 MPHT 111 : (2002) 4 MPLJ 101

Hon'ble Judges: Dipak Misra, J

Bench: Single Bench

Advocate: U.K. Sharma, for the Appellant; Dinesh Joshi, Panel Lawyer, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Dipak Misra, J.

Not for nothing it has been said by many a sagacious person that life, a priceless gift from the Almighty, folds itself in a multifaced manner so that many things ungravel sometimes creating shock and puzzlement. To what extent inferior endowments of nature can degrade a man to get himself involved in an activity which is comparable to a bestial proclivity, contrary to all the injunctions of the ethics has been exposed in the case at hand where the accused-appellant has approached this Court assailing the defensibilily of the judgment of conviction and order of sentence in respect of an offence punishable u/s 376 of the Indian Penal Code (in short ''the IPC'') as he has been found guilty for having committed rape on his own daughter-in-law, the young lass who had a dream to fulfil and many aspirations to achieve. Going through the evidence (which shall be dealt with at a later stage) one is compelled to wonder and ponder whether man is ''at once is animal and god'' and ''a disparate enigma of God''s make''.

The factual setting exposits a morbid scenario. The prosecutrix got into wedlock with the son of the accused but the religious ceremony of ''gona'' was not performed. The prosecutrix was at the house of her maternal grandfather to attend the ''Tija'' festival. While she was in the house of her grandfather the accused visited their house and brought her to his house on 13-9-1992 at about 3 p.m. On that day, the mother-in-law and the husband of the prosecutrix went to Village Khonsara. As the night approached the prosecutrix closed the door and went to sleep. At about 10 p.m. the accused got opened the door and entered into the room and had sexual intercourse with her. On the next day he took her to her grand-father''s house. The young colleen narrated the incident to her grand-parents and thereafter an FIR was lodged on 15-9-1992. On the criminal law being set in motion the investigating agency ceased the wearing apparel of the prosecutrix and under garments of the accused. The prosecutrix as well as the accused were medically examined and clothes were sent for forensic examination. After concluding the investigation the investigating agency filed the charge-sheet in respect of the offence punishable u/s 376 of the IPC in the Competent Court which committed the matter to the Court of Session and eventually the trial was held by the IIIrd Additional Sessions Judge, Shahdol.
The accused abjured his guilt and further took the stand that he had been falsely roped in.

The prosecution in order to substantiate its case examined 11 witnesses. The defence chose not to adduce any evidence.

The learned Trial Judge addressed himself to the three aspects, namely, the age of the prosecutrix; the allegations made by her and credence it deserves; and the evidence which had been brought on record. It came to hold that the prosecutrix was below 16 years of age and the accused had raped her under peculiar circumstances and allegations levelled by the prosecutrix got corroboration from other testimony brought on record. Being of this view the learned Trial Judge passed the order of conviction as has been indicated above and sentenced him to undergo RI for 10 years.

Assailing the aforesaid judgment of conviction, it is contended by the learned Counsel for the appellant that the determination of age by the learned Trial Judge is not based on proper appreciation of the material brought on record and hence, finding on that score is untenable. It is canvassed by him that the allegations made against him are totally motivated and, therefore, the version of the prosecutrix should not have been given credence to. It is also highlighted that there are irreconcilable discrepancies in the evidence of the prosecutrix and, therefore, her version should be taken with a pinch of salt. The learned Counsel, pyramiding the submission has putforth that the medical of evidence which has been placed reliance upon by the learned Trial Judge is far from being credible. It has also been submitted that though the clothes were sent for chemical examination, the said

report has not been brought on record and that makes the conviction vulnerable in law.

On the contrary, it is submitted by the learned Counsel for the State that the version of the prosecutrix is absolutely credible and unimpeachable and there is no reason why should a young girl implicate her father-in-law. It is putforth by him that when the testimony of the prosecutrix is believed in entirety there is no justification for seeking corroboration. It is urged by him that the medical evidence will go a long way to corroborate the version of the prosecutrix and hence, the learned Trial Judge has correctly held that version of the prosecutrix finds support from the material brought on record. The learned Counsel has submitted that non-receipt of the chemical examination report does not vitiate the conviction in any manner whatsoever.

To appreciate the rival submissions raised at the Bar, I have carefully perused the judgment and scanned the evidence brought on record. The prosecutrix has been examined as P.W. 1. She has stated that she had lodged the FIR and the FIR has been marked as Ex. P-1. She in her deposition has categorically stated that her marriage was solemnised with the son of the accused but the ''gona'' ceremony had not taken place. She has unequivocally stated that when she was in the house of accused her husband and the mother-in-law had left for Village Khonsara. At about 10 p.m. the accused entered into her room and committed rape on her. It is in her version that the accused had told her that if his son would marry another girl, the prosecutrix would be allowed to stay with him. She has also deposed that she was not allowed to shout as the accused had gagged her mouth. It is also stated by her that the accused had sexual intercourse with her three times at that night. According to her after she reached her grand-parents'' house there was consultation with her father and eventually the FIR was lodged. In the cross-examination she stood firm and totally embedded. She has clearly deposed that she had no option but to succumb the salacious proclivity and lascivious attitude of the accused. She has clearly stated that she was in such a helpless situation that she could not even raise an alarm. An attempt has been made in the cross-examination why she had not stated this aspect to her brother-in-law. She has very categorically stated that her husband never had any sexual intercourse with her. She has also deposed that she sustained injuries in her private parts.

P.W. 2 is the mother of the prosecutrix. She has stated that it was intimated to her by Sukeriddeen that the accused had ravished P.W. 1. She has also deposed with regard to the age of the petitioner. The grand-father of the prosecutrix has also deposed with regard to the age of the prosecutrix as well as other aspects. P.W. 9, Smt. M. Saxena, the doctor who examined the prosecutrix, has affirmed that hymen of the prosecutrix was ruptured and there was blood clot in the private parts and there were injuries and the prosecutrix had complained about pain. She has also asserted that injuries were the result of sexual intercourse.

I have referred to the aforesaid essential evidence to show whether the prosecutrix was able to prove the case against the accused or the learned Trial Judge erroneously arrived at the conclusion with regard to the age of the prosecutrix and the carnal act of the accused. In the case at hand the age factor is not at all an essential factor. It is not the case where the accused had given her consent so that the prosecution had to prove about the age to show that even if the consent was there it would have amounted to rape. In my considered opinion deliberation on that score is absolutely unwarranted. The question is whether the accused has committed rape on the prosecutrix or not. I have already referred to the evidence as well as report brought on record. Though there was probing cross-examination of the prosecutrix, nothing has been elicited and she has not given way to transgiversation and remained settled and composed. The young girl was quite firm, consistent and embedded in her version. There is no reason to discard her evidence. It is absolutely reliable, credible and unimpeachable. The law is well settled that if the evidence of the prosecutrix can be relied upon the Court need not search for corroboration, and solely on the basis of the testimony of the prosecutrix an order of conviction can be passed. In this context I may profitably refer to the decision rendered in the case of State of Punjab Vs. Gurmit Singh and Others, , wherein their Lordships held as under :--

"The testimony of the victim of sexual assault is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty in acting on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion ? The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. Corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence under given circumstances. It must not be overlooked that a woman or another person''s lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an

accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

(quoted from the placitum)

Thereafter their Lordships proceeded to lay down as under :--

"The Courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self-respective woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material effect on the veracity of the prosecution case or even discrepancies in the statement of the prosecutrix should not, unless the discrepancies are such which are of fatal nature, be allowed to throw out an otherwise reliable prosecution case. The inherent bashfulness of the females and the tendency to conceal outrage of sexual aggression are factors which the Courts should not over look."

(quoted from the placitum)

In the case of State of Himichal Pradesh Vs. Gian Chand, in Paragraph 13 their Lordships reiterated the principle in the following term :--

"The Court has first to assess the trustworthiness of the evidence adduced and available on record. If the Court finds the evidence adduced worthy of being relied on then the testimony has to be accepted and acted on though there may be other witnesses available evidence suffers from some infirmity or cannot be accepted in the absence of other evidence which though available has been withheld from the Court then the question of drawing an adverse inference against the prosecution for non-examination of such witnesses may arise. It is now well settled that conviction for an offence of rape can be based on the sole testimony of prosecutrix corroborated by medical evidence and other circumstances such as report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on. "If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.... In the present case we are clearly of the opinion that in view of the accused being a relation of the in-laws of the mother of the prosecutrix and the other young girls who are alleged to have been not examined being from the family of such in-laws, it is futile to expect that such girls

would have been allowed by their parents to be examined as witnesses, and if allowed, could have freely deposed to in the Court. The question of drawing an adverse inference against the prosecution for such non-examination does not arise."

In view of the aforesaid enunciation of law, I am of the considered view that the order of conviction based on the sole testimony of the prosecutrix can not be fault with and, therefore, the judgment of conviction passed by the learned Trial Judge deserves the stamp of approval being impeccable and it is hereby so given.

Resultantly, the criminal appeal, being sans merit, stands dismissed.