(2008) 07 SC CK 0130

Supreme Court of India

Case No: Criminal Appeal No. 1092 of 2008 (Arising out of SLP (Criminal) No. 4751 of 2006)

Moti Lal — APPELLANT

Vs

State of M.P. — RESPONDENT

Date of Decision: July 15, 2008

Acts Referred:

- Evidence Act, 1872 - Section 114, 118
- Penal Code, 1860 (IPC) - Section 376, 376(1), 450, 452
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3, 3(1)

Citation: (2008) 1 ALT(Cri) 441 : (2008) CriLJ 3543 : (2008) 8 JT 271 : (2009) 1 MPJR 14 : (2008) 10 SCALE 81 : (2008) 11 SCC 20

Hon'ble Judges: P. Sathasivam, J; Arijit Pasayat, J

Bench: Division Bench

Advocate: Deepshikha Bharti A.C, for the Appellant; Vibha Datta Makhija, for the Respondent

Final Decision: Dismissed

Judgement

Arijit Pasayat, J.
Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Madhya Pradesh High Court at Jabalpur upholding the conviction of the appellant for offence punishable under Sections 450 and 376(1) of the Indian Penal Code, 1860 (in short the `IPC'') and sentence of five years and seven years rigorous imprisonment respectively and fine of Rs. 2,000/- and 1,000/- respectively with default stipulation as recorded and imposed by the Learned Special Judge Chhattarpur in Special Case No. 33 of 2002. Appellant (hereinafter also referred to as an `accused'') was charged for commission of offences punishable under Sections 450 and 376(1) IPC and 3(1)(xii) of the Scheduled Castes and Scheduled Tribes

Prevention of Atrocities Act, 1989, (in short the `Act'').

3. Prosecution version as unfolded during trial was as follows:

On 17.1.2002 at 1735 hours prosecutrix lodged report at police station Khajuraho to that effect that on the said date at 11 O''clock she was in the field of Hannu Gadariya at Bhusaur. The said field was taken on share basis by her husband, in which gram and wheat were sown. As usual, she had gone to the field for guarding. One hut was situated there, in which she lives and cooks and eats food at that place. At the said time she was alone in the hut. Her husband had gone to village Rajnagar. Accused Motilal Gadariya who was resident of same village, came there and enquired from her about her husband Barelal. She told him that he had gone to Rajnagar, and he went away. She started sweeping with broom, inside the hut. After some time, Motilal forcibly entered her hut and knocked her down on the floor. He pulled up her saree and committed sexual intercourse. She kept shouting to break free, but there was no body. Then he ran away. Being knocked down by Motilal, her bangle on the right hand had broken and ankle had bruised. When her husband returned from Rajnagar, she narrated the incident to him. Then she and her husband went to Hannu Pal and informed him about the incident. Report was lodged and on the basis of aforesaid facts offences were registered under Sections 452, 376 IPC and Section 3 of the Act. The said First Information Report (in short the `FIR'') was recorded by Sub-Inspector-S.R. Rai (PW 7).
The prosecutrix was sent for medical examination. Dr. Smt. Rama Parihar performed the medical examination of which the medical examination report is Ex.P.10. The then Sub-Divisional Officer, Police-S.S. Chahal (PW 11) prepared spot map Exb.P7 of the place of incident during the investigation and from the place of incident, pieces of broken bangles found were seized vide seizure Panchnama - Exb. P.5. On 18.01.2002 the statements of prosecutrix her husband Parelal, Habbu and Manua were recorded. On 19.1.2002, accused was arrested vide arrest Panchnama -Exb.P.8 and one of his used underwear which was bearing some stains was seized vide Seizure Panchnama -Exb.P.6. Accused was sent for medical examination regarding his capability of performing intercourse. The examination report is Exb.P.11. After completion of investigation, chargesheet was produced before Chief judicial Magistrate, Chhatarpur. On 18.2.2002 the case has been committed from the said court to the Court of Sessions.

Considering the evidence more particularly of the prosecutrix conviction was recorded. Accused preferred an appeal before the High Court.

The High Court on considering the evidence given by the prosecution came to hold that the accused was guilty of the offences punishable under Sections 376 and 450 IPC. The appeal was accordingly dismissed.

4. In support of the appeal, learned Counsel for the appellant submitted that the prosecution version has not been established. The uncorroborated version of the

prosecutrix should not have been relied upon by the trial court and the High Court. It was also submitted that the punishment is harsh.

5. Learned Counsel for the State on the other hand supported the judgments of the trial court and the High Court.

6. 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 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 offence is entitled to great weight, absence of corroboration notwithstanding. A woman or a girl who is raped is not an accomplice. Corroboration is not the sine qua non for conviction in a rape case. The observations of Vivian Bose, J. in 281167 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 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....

7. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before the police station and lodge a case. In the instant case the suggestion given on behalf of the defence that the victim has falsely implicated the accused does not appeal to reasoning. There was no apparent reason for a married woman to falsely implicate the accused after scatting her own prestige and honour.

8. Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women''s rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim''s privacy and personal integrity, but inevitably causes serious psychological as well as

physical harm in the process. Rape is not merely a physical assault -- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Court, therefore, shoulders a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of 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 appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. This position was highlighted in 290979 .

9. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness u/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 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 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 Indian Evidence Act, 1872 (in short `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 own 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. This position was highlighted in 284852 .

10. It needs no emphasis that the physical scar on a rape victim may heal up, but the mental scar will always remain. When a woman is ravished, what is inflicted is not merely physical injury but the deep sense of some deathless shame. 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.

11. The measure of punishment in a case of rape cannot depend upon the social status of the victim or the accused. It must depend upon the conduct of the accused, the state and age of the sexually assaulted female and the gravity of the criminal act. Crimes of violence upon women need to be severely dealt with. The socio-economic status, religion, race, caste or creed of the accused or the victim are irrelevant considerations in sentencing policy. Protection of society and deterring the criminal is the avowed object of law and that is required to be achieved by imposing an appropriate sentence. The sentencing Courts are expected to consider all relevant facts and circumstances bearing on the question of sentence and proceed to impose a sentence commensurate with the gravity of the offence. Courts must hear the loud cry for justice by the society in cases of the heinous crime of rape on innocent helpless girls of tender years, married women and respond by imposition of proper sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. There are no extenuating or mitigating circumstances available on the record which may justify imposition of any sentence less than the prescribed minimum. To show mercy in the case of such a heinous crime would be a travesty of justice and the plea for leniency is wholly misplaced.
12. The evidence on record is analysed on the basis of the principles set out above. The inevitable conclusion is that the accused has been rightly convicted and sentenced. Impugned judgment does not warrant any interference.

13. The appeal stands dismissed.