(1989) 04 CAL CK 0001

Calcutta High Court

Case No: Criminal Appeal No. 2 of 1979

Ajit Kumar Mondal alias Amar	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision: April 12, 1989

Acts Referred:

- Evidence Act, 1872 - Section 157
- Penal Code, 1860 (IPC) - Section 376

Citation: 93 CWN 1138

Hon'ble Judges: P.K. Banerjee, J; A.M. Bhattacharjee, J

Bench: Division Bench

Advocate: Balai Chandra Roy, Ashim Kumar Roy and S.K. Batabyal, for the Appellant; Sarojesh Mukherjee and Parul Banerjee, for the Respondent

Final Decision: Dismissed

Judgement

Prabir Kumar Banerjee, J.

The accused Ajit Kumar Mondal alias Amar has been convicted u/s 376 of the Indian Penal Code and sentenced to R.I. for eight years and to pay fine of Rs.1000/-, in default, to suffer R.I. for a further period of one year by the learned Assistant Sessions Judge, Birbhum by his judgment and order dated 22.12.78. It is this order of conviction and sentence which is under challenge in this appeal. Succinctly put, the case of the prosecution was that on 18th Aswin 1384 B.S. corresponding to 5th October 1977 at about 2. P.M. while the victim girl, Sitala Bagchi was cutting grass in Chouka field near the tank Salgere at village Demuria, the accused grabbed her from behind, snatched away the sickle from her hand and threatened her with dire consequences if she shouted The accused then took Sitala to a nearby all and ravished her against her will. The victim girl returned home, reported the incident to her parents, brothers and therafter to some neighbours. On the following day, that is on 6.10.77 a written complaint was submitted to the O.C., Khoirasole P.S. District Birbhum which was treated as the FIR Ext. 2 and on the basis of which Khoriasole

P.S. Case No. 6 dated 6.10.77 u/s 376 IPC was started against the accused. S.I. of Police Brajadulal Sarkar, who took up the investigation of the case, visited village Demura, prepared a sketch map Ext.3, seized the wearing apparels produced by Sitala under a seizure list Ext. 1 and examined some witnesses. The FIR named accused absconded till 20.10.77 on which date he was arrested at village Palasbandi. The victim girl and the accused, were produced before the D.M.O. and the Radiologist attached to Suri Hospital and the wearing apparels of Sitala were sent to the Chemical Examiner for examination and report. The investigation resulted in a chargesheet, a trial and eventually in a conviction and sentence in the manner hereinbefore stated.

2. Mr. Balai Chandra Roy, while challenging the propriety of the impugned order of conviction and sentence, set forth for our consideration the following infirmities in the prosecution case, namely, (1) that the prosecutrix is untruthful (2) that the alleged corroborative evidence of P.W.s 2,3 & 6 is in admissible u/s 157 of the Evidence Act and (3) that judged by the yardstick of probability the prosecution case of the accused committing rape on the victim girl is highly improbable. It was next contended that the failure of the prosecution to produce independent and respectable witnesses of the locality and the delay in lodging the F.I.R. lend support to the strong suspicion that the accused has been implicated falsely after a good deal of deliberation. In support of the contentions aforesaid, Mr. Roy relied upon the two decisions respectively reported in AIR 1983 SC 506 (Bhugdomal Gangaram & Ors. v. State of Gujarat) and 1948(1) All England Reports 551 (R. V. Cummings).

3. The main prosecution evidence consisted of the testimony of P.W.s 1,2,3 and 6. P.W.1 Sitala is the victim girl, P.W.2 Naba is the father and P.W.3 Ajit alias Atu and P.W.6 Gosal are the brothers of P.W.I. The prosecutrix Sitala, a 20-year-old married woman was living with her parents since the desertion by her husband 3/4 years back. She is a poor illiterate rustic woman who was earning her livelihood by cutting grass and doing cultivation works. The occurrence is stated to have taken place on a field at the outskirts of village Demuria and the time was midday. As this was not the cultivation season, at that hour of the day none was expected to be present near about that place. It, is probable that the accused considered the situation ideal for the outrageous act. The victim girl has stated how the accused raped her and how the accused warned her not to shout on pain of being severely dealt with. From the field the victim girl straight went home and related the incident to her parents and then to her brothers. She reported the incident to P.W.8 Sujit and went to the thana along with her father to submit the written complaint. She produced the wearing apparels and pointed out the place of. occurrence to the I.O. when the latter had been to the village for investigation. All these facts'' show consistency of conduct on her part. The statement made by P.W. 1 before the Court has been substantially corroborated by her statement in the FIR. The argument that while in her examination-in-Chief P.W.I has stated that she reported the incident to her fattier and brothers, in her cross-examination she deposed that she related the same to

her mother first who in turn communicated it to her husband (P.W. 1''s father) and other brothers, has little substance in it. This contradiction is neither fatal, nor does it shake the credibility of the witness. P.W.I has categorically stated that the returned home to her parents and reported the incident to her father and brothers. The statement clearly indicates that when she related the incident for the first time both the father and the mother were present and if we take note of the fact that an illiterate rustic woman had come to depose after a time-lag of fourteen months, the discrepancy appears to be natural.

4. Why should Sitala fabricate a false story when she knew that she could not gain anything out of the scandal? There is no a legation that Sitala tried to blackmail the accused. In the absence of enmity against the accused there is no reason why she should implicate him falsely. Similarly, Sitala''s father and brother would not have supported such a cause if they did not believe her statement. So also P.W. 8 Sujit, a man of the adjoining village, would not have certainly obliged Sitala by drawing up the complaint unless he himself was satisfied that what Sitala had reported to him was true. P.W.8 is not a partisan witness, nor had be any enmity with the accused. Beyond cross-examining the prosecution witnesses and pointing out a few contradictions and omissions at the trial, the defence could not suggest or press any circumstances in support of the alleged improbability.

Sitala has complained that in Ashar and Shravan of the same year the accused had committed rape on her. Sitala might have tolerated the outrageous act of the accused on two previous occasions, may be out of fear or for some other reasons, but that does not mean that she would never protest and keep quite on future occasions. There is no defence that the prosexutrix was a consenting party.

It is true that there has been delay of more than 24 hours in lodging the FIR. It is possible that on 5th October the victim girl, her father and brothers were busy approaching some neighbours maki(sic) the accusation and seeking redress and in this process evening (sic) set in and the party did not go to the P.S., which is at some distance from village Demuria, that day. The prosecution still insisted that verbal complaint was lodged by the prosecutrix on the same day and this proved ineffective. This part of the prosecution (sic) must have been introduced to explain the delay in lodging the FIR and we refuse to accept the same because the I.O. said nothing about the alleged verbal complaint and no such suggestion was put to the witness at the trial. But even if we discard this story of 5th October complaint, we are at liberty to accept the remaining part, if it is possible to do so. The case of Abdul Gani reported in AIR 1954 SC page 31 is an authority for the proposition that the Court should try to disengage truth from falsehood and sift the grain from the chaff and if it is not possible to say that the entire prosecution case is a fabrication, it should proceed to appreciate the entire evidence without rejecting the'' whole case mechanically. Accordingly, after sifting the grain from the chaff, we are left with the testimony of the rape-victim and that of P.W.s 2, 3 & 6 and the medical evidence

which we propose to discuss at the appropriate stage.

5. At this juncture the question which arises for our consideration is whether a conviction can be based upon the testimony of the prosecutrix alone. We may read the ratio from the decisions reported in 44 CWN page 830 (Hirendra Prasad Bagchi v. Emperor), 1952 SCR page 377 (Rameswar v. The State of Rajesthan), 1984(1) All England Reports page 551 (R. V. Cummings), 1980 Cr.L.J. page 1344 (Rafiq v. The State of Uttar Pradesh) and AIR 1958 SCR page 143 (Siddheswar Ganguli v. State of West Bengal) respectively wherein the. principles formulated on the subject under consideration were as under -

A girl who is a victim of an outrageous act, is, generally speaking, not an accomplice, though, the rule of prudence requires that the evidence of the prosecutrix should be corroborated before a conviction can be based upon it. In other words, insistence on corroboration is advisable, but is not compulsory in the eye of law. The corroboration rule can be dispensed with in a given case as much as the necessity for any corroboration at all.

In R. V. Cummings'' case (supra) the accused took the prosecutrix in his van for a drive. He took her out of the van to the lonely field, assaulted her and raped her. The girl returned to the hostel in the accused''s van, accepted money from the accused for the torn mackintosh but did not make any complaint to the warden or to any other girls in the hostel. On the following morning the girl complain for the first time to one Mrs. Watson who lived two miles away. The conviction was based on the sole testimony of the victim girl. In Rafique"s case (Supra) the accused was convicted on the sole testimony of a middle-aged woman who was raped while sleeping. In Rameswar''s case conviction was based on the sole testimony of a young girl of eight years of age. So also in Siddheswar Ganguli''s case (supra) the accused was convicted substantially on the testimony of the victim girl.

In the instant case from the conduct of the prosecutrix and the sequence divulged at the trial, it is undoubtedly safe to rely on the testimony of the prosecutrix and the rule of corroboration connecting the accused with the crime can be waived.

6. In the case at hand, however, there has been corroboration of P.W.1''s statement with regard to the offence of rape. The testimony of P.W.s 2, 3 and 6 is more or less uniform and all of them have stated that P.W.I reported to them that the accused had committed rape on her on 5th October at about 2 p.m.

Mr. Roy, the learned counsel for the appellant, strenuously urged that as P.W.I has not specifically stated that she related the incident to P.W.s 2, 3, 7 6, their evidence against the accused with regard to the commission of rape is inadmissible for the purpose of corroboration u/s 157 Evidence Act. It is impossible to accept the contention of Mr. Roy because, as already pointed out, P.W. 1 has made general statement that she related the incident to her father and brothers at or about the time when the fact took place. It may be recalled that the report is said to have been

made between 2 and 2-30 p.m. It should also be borne in mind that P.W.I never said in her deposition that she did not make any such statement to any one of them.

In Rameswar''s case (Supra) the victim girl related the incident to her mother about four hours after the occurrence and the evidence of the mother was admitted as a piece of corroborative evidence. In Bhudomal Gangaram''s case (Supra) P.W. 11 had deposed that one Pesumal told him about certain criminal acts of the accused. It was held that the evidence of P.W.11 was inadmissible because Pesumal had not been examined. In the instant case P.W.I has been examined and therefore the present case is distinguishable from the facts of the reported decision just referred to. In this context it would be appropriate to refer to an earlier decision of the Supreme Court reported in AIR 1962 SC page 424 (Ram Ratan and Others v. The State of Rajasthan) wherein their Lordships made detailed discussions about the true import of section 157 Evidence Act and laid down the following principles for future guidance. The principles enunciated are as follows

There are only two things which are essential for Section 157 to apply. The first is that a witness should have given testimony with respect to some fact. The second is that he should have made a statement earlier with" respect to the same fact at or about the time when the fact took place or before any authority legally competent to investigate the fact. There is nothing in Section 157 which requires that before the corroborating witness deposes to the former statement the witness to be corroborated must also say in his testimony in Court that he had made that former statement to the witness who is corroborating him. Of course, if the witness to be corroborated also says in his testimony that he had made the former statement to someone, that would add to the weight of the evidence of the person who gives evidence in corroboration just as, if the witness to be corroborated says in his evidence that he had made no former statement to anybody, that may the statement of any witness appearing as a corroborating witness as to the former statement of little value. But in order to make the former statement admissible u/s 157 it is not necessary that the witness to be corroborated must also, besides making the former statement at or about the time the fact took place, say in court in his testimony that he had made the former statement.

It may be noted that in Bugdomal Gangaram''s case (Supra) the two-Judge Bench of the Supreme Court did not discuss or distinguish the decision in Ramratan''s case (Supra) propounded by a Bench consisting of three judges. We can therefore safely rely upon the principles enunciated in Ramratan''s case and hold that in the instant case evidence of P.W.S 2, 3 and 6 is admissible as a piece of corroborative evidence within the meaning of Section 157 Evidence Act.

We next turn to the medical evidence of the two doctors P.W.s 4 and 5. From the evidence of P.W.4 it appears that the vagina of the victim girl admitted two fingers freely and the penis of the accused was of adult size. The accused, who was 20 was capable of having sexual intercourse with the prosecutrix. The opinion of the

Radiologist is that the prosecutrix was 20 years old-margin of error might be three years on either side. It is true that no injuries were found on the persons of the victim girl and of the accused but the absence of the injuries is of no significance because while the occurrence took place on 5th October, the victim girl was medically examined on 11th October and the accused on 24th. Along with the oral and documentary evidence discussed in the preceeding paragraphs, the abscondence of the accused after the incident and his having made himself scaru right from 5th October till 20th October is a further circumstance against the accused. It appears that the prosecution did not produce Balakrishna, Tulshi, Kalipada, Pasu and others to whom P.W.s 1 and 2 are stated to have related the incident. The persons were not examined by the I. O and so they could not be produced at the Trial. But the prosecution must not fail simply because some persons were not examined by the I.O and produced in the Court because the evidence that has been adduced is considered sufficient in proof of the guilt of the accused. The accused cannot be set free simply because the constable has blundered.

Viewing all these circumstances, we are satisfied that the guilt of the accused u/s 376 I.P.C. has been proved beyond all reasonable doubts and the learned Assistant Sessions Judge was quite justified in convicting the accused under the aforesaid section. The accused has committed a sexual offence of the worst kind on a 20 years old woman and there is no extenuating circumstance which could mitigate the gravity of the offence. The accused deserves deterrent punishment and accordingly in our opinion the sentence of eight year''s Rl and a fine of Rs. 1000/- is not disproportionate to the offence committed. We, therefore, dismiss the appeal and uphold the impugned order of conviction and sentence. The accused to surrender to the bail bond forthwith for serving out the sentence after setting off the period already spent behind bars in connection with this case.

A.M. Bhattacharjee, J.

I agree.