
(2010) 02 AHC CK 0147
In the Allahabad High Court

Mukhtayar Ahmad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-02-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 376, 506

Citation : (2010) 02 AHC CK 0147

Hon'ble Judges : Shyam Shankar Tiwari, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shyam Shankar Tiwari, J.—Heard learned Counsel for the appellant Mukhtayar Ahmad and learned AGA.

2. Objections filed by the State is taken on record.

3. Prayer for bail has been made by appellant Mukhtayar Ahmad in Crl. Appeal No. 5633 of 2009 as he has been convicted by learned Addl. Sessions Judge, Saharanpur u/s 376 IPC and sentenced to undergo life imprisonment along with fine of Rs. 5000/- and in default to undergo further imprisonment of six months. He has further been convicted u/s 506 IPC and sentenced to one year RI in S.T. No. 105 of 2008 relating to P.S. Mandi District Saharanpur.

4. Prosecution case in brief is that victim Km. Fatima is the daughter of the appellant Mukhtayar Ahmad. About 10 years back he had divorced his wife and by a judicial order got the custody of the victim and her brother Bilal who were minors at that time. In due course of time when the victim grew up, the appellant repeatedly committed rape on her after threatening to kill her. Ultimately the victim contacted her Mamu on telephone who came to the house of the appellant and after being acquainted with the facts he took away the victim and her brother Bilal with him and subsequently FIR was registered against the appellant at the police station concerned on the information given by

her Mamu . After investigation charge sheet was submitted against the appellant u/s 376and 506 IPC.

5. After committal of the case to the court of Sessions, learned trial court relied upon the evidence adduced by the prosecution and holding the accused guilty under the above sections sentenced him to undergo the imprisonment as stated above.

6. It is contended by learned Counsel for the appellant that the FIR is vague in respect of date, time and place of the alleged incident. There is no specific mention of any particular time or place where the alleged rape is said to have been committed upon the victim. It is also contended that the mother of the victim and her Mamu are on litigating terms with the appellant and in order to grab the property of the appellant, they have falsely implicated the appellant in this case. It is further contended that a compromise deed was executed between the parties and there is no such mention in that deed about any such incident which shows that it is an after thought and the appellant has falsely been implicated only to pressurize him. It is also contended that there is sole testimony of the victim in support of the prosecution case which is unreliable on the face of it. The medical report also does not corroborate the prosecution story inasmuch as Doctor has not given any opinion about commission of rape on the victim. Lastly it has been argued that there are no independent witnesses of the alleged incident.

7. Learned AGA has rebutted the above contentions raised by the appellant submitting that the FIR is not vague in respect of the date, time and place of incident as it is specifically stated by the victim in her statement that whenever and where ever the appellant got an opportunity he committed rape on her in side the house including bath room. It has further been argued that the alleged litigation between the appellant and the mother and Mamu of the victim is of civil nature and is going on from much before this incident. It is also contended that the alleged compromise deed itself has not been legally proved and it cannot be relied upon. Moreover, omission of alleged incident in the compromise deed does not go to show that no such incident has taken place. It is also contended that in cases of rape the sole testimony of the victim is reliable if it is found trustworthy. The medical report supports the prosecution story in as much as it reveals that the hymen of the victim was found old torn and healed and the victim has been in the custody of the appellant since her childhood and there is specific evidence of the victim regarding rape committed by the appellant repeatedly on her. There is no such suggestion or evidence by the appellant that some other person has committed rape on the victim in the custody of the appellant. It is also contended that in cases of rape availability of independent witness is very rare and non availability of independent witnesses does not discredit the evidence of the victim herself which is otherwise reliable.

8. The Apex Court in case of State of Punjab Vs. Gurmit Singh and Others, has observed

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 the victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder 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.

Observations made by the Apex Court in Gurmit Singh's case Supra were reiterated in the case of Ranjit Hazarika Vs. State of Assam, in the following terms:

8 The courts must, while evaluating evidence, remain alive to the fact that in a case of rape, no self respecting 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 overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act 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.(emphasis supplied) 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 a girl subjected to sexual assault is not an accomplice to the crime but is a victim of 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.

9. The Hon'ble Apex Court in the case of Raju and Ors. v. State of Madhya Pradesh (2009) 3 SCC (Cri) 751 has further observed as follows:

the aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary.

10. The Apex Court in the case of Gajanand Agrawal v. State of Orissa and Ors. (2009) 1 SCC (Cri)883 has again highlighted its earlier observations made in the case of V.D. Chaudhary Vs. State of U.P. and Another, emphasizing that while considering a bail application certain aspects of the case must be considered by the courts and in that connection it has been observed as follows:

There is a need to indicate in the order, reasons for prima facie concluding why bail was being granted, particularly where an accused was charged of having committed a serious offence. It is necessary for the courts dealing with application for bail to consider among other circumstances, the following factors also before granting bail, they are:

1. The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
2. Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
3. Prima facie satisfaction of the court in support of the charge.

Any order dehors of such reasons suffers from non application of mind as was noted by this Court in Ram Govind Upadhyay Vs. Sudarshan Singh and Others,

Puran Vs. Rambilas and Another etc. etc., and in Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, and Chaman Lal Vs. State of U.P. and Another, and in Kamaljit Singh v. State of Punjab (2005) 7 SCC 226.

11. Coming to the facts of the present case a perusal of the facts put forward by the prosecution reveals that appellant has been accused of committing rape on his own daughter in his custody at his residence and the evidence adduced by the prosecution in support of the prosecution case particularly the evidence of the victim herself recorded before the trial court coupled with her statement u/s 164 Cr.P.C. reveals that appellant being the father of the victim has misused his position as a father. He got the custody of the victim by a judicial order after divorcing his wife and has been molesting the victim in one way or the other since her childhood by touching sensitive organs of her body and when the victim grew up, he started committing rape on her repeatedly after threatening to kill her if she protested to his misdeed or if she informed any other person. There is evidence to the effect that the victim had informed her step mother and other members of the family but they did nothing to rescue her. The medical report also corroborates the prosecution story in the sense that the hymen of the victim has been found torn and healed which is normally a symptom on the victim after rape. There is evidence of the victim that rape has been committed upon her by her father himself. There is no question of consent or implied consent on the part of the victim in the circumstances of the case where she has been in the custody of the appellant who was none other than her father since her childhood. The appellant has debased the relationship of father and daughter by committing rape on her. There can be no safer place than the house and custody of father to a daughter. Even if she kept mum for some time due to terror of the appellant, it does not amount to her consent for sexual intercourse by her father.

12. The Apex Court in the case of State of Himachal Pradesh Vs. Mango Ram, has observed that submission of the body under the fear of terror cannot be construed as a consented sexual act.

13. Learned trial court after considering the evidence on record has found the appellant guilty and convicted him with life imprisonment. Apparently considering the evidence on record and the attending facts and circumstances and the relationship which has been defamed by the appellant he does not deserve to be released on bail.

14. Accordingly his prayer for bail is hereby rejected.

15. Office is directed to prepare the paper book within three months and list thereafter for hearing of the appeal.

I agree