
(2015) 08 AHC CK 0028
In the Allahabad High Court
Case No : Criminal Appeal No. 8284 of 2008

Ram Das

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 04-08-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2015) 8 ADJ 233 : (2016) 2 ALJ 307 : (2015) 90 ALLCC 915

Hon'ble Judges : Surendra Vikram Singh Rathore, J;Raghvendra Kumar, J

Bench : Division Bench

Advocate : Kamla Srivastava, for the Appellant

Final Decision : Partly Allowed

Judgement

Raghvendra Kumar, J—Under challenge in the instant appeal is the judgment and order dated 6.4.1998 passed by Third Additional Sessions Judge, Rampur, in Sessions Trial No. 109 of 1997 arising out of Case Crime No. 681 of 1996, Police Station Civil Line, District Rampur, whereby the appellant was convicted for the offence under section 376 IPC and was sentenced to undergo imprisonment for life and also with fine of Rs. 5,000/- with default stipulation of one year's additional rigorous imprisonment. The facts of this case are very shocking. Appellant Ram Das, who happens to be the step-father of the victim, is alleged to have committed rape with her while she was only aged about 10 years. The First Information Report of this case was lodged by Smt. Meena, wife of the appellant.

2. As per the First Information Report, the case of the prosecution was that on 28.9.1996, the complainant Smt. Meena had gone to Gandhi Ashram to thread the quilts. Her daughter (hereinafter referred to as victim) and her husband Ram Das were present in the house. At about 1.00 P.M., her husband came to Gandhi Ashram in a disturbed condition and informed her that the victim has been seriously injured by the hit of horn of a goat. Getting this information, the complainant immediately came to her house and then she found that there was

profuse bleeding from the private part of the victim and the victim was in an unconscious condition. She immediately took the victim to Meena Hospital situated in State Bank Colony. The doctor after giving the first aid, send the victim back. Thereafter, in the evening at about 7.00 P.M., bleeding again started, so the complainant immediately took her to the District Hospital, Rampur, where the doctor immediately got her admitted and ultimately on 1.10.1996 at 12.00 Noon, she was discharged. Since the victim was telling that she has received injury by the hit of horn of a goat, therefore, no First Information Report was lodged. But after discharge when the victim came back to her house then she told the complainant that her father has committed rape with her after extending threats on knife point. She was threatened that in case she disclosed this incident to any person then she and her mother shall be killed. After getting this information from her daughter, the complainant got the First Information Report scribed by one Arshi Irani and thereafter the same was filed at the police station on 6.10.1996 at 00.05 hours. On the basis of this First Information Report, the investigation started. The victim was medically examined on 6.10.1996 at 2.00 PM in District Women Hospital, Rampur by PW-3 Dr. (Smt.) Savitri Naroola. According to the medical examination report, no injury was seen on any part of the body of the victim. Her height was 3' 11", weight was 23 kg and teeth were 13/13. No axillary and pubic hairs were present and breasts were not developed. On internal examination, no injury was seen on or around the private parts of the victim. Hymen was torn. Vagina just admit tip of little finger with difficulty. It was also mentioned that the patient was admitted in the hospital on 29.9.1996 at 8.15 P.M. as a case of accidental injury. Vaginal smear was taken and sent for hysto-pathological examination. The victim was referred for X-ray for determination of her age. On the basis of these tests, by means of supplementary report, the age of the victim was reported to be above 9 years. However, no exact opinion regarding rape could be given. The place of occurrence was inspected and site plan was prepared. The skirt of the victim was taken into custody and its memo was prepared. After completing the investigation, charge-sheet was filed against the appellant.

3. The case of the appellant was that the complainant Meena used to work at dairy and the appellant had objected to her profession, therefore, he has been falsely implicated. In the statement under section 313 Cr.P.C., the appellant has submitted that he has not committed any offence and he has been falsely implicated due to enmity. He has further stated that the character of her wife Meena was bad, therefore, he has been falsely implicated.

4. In order to prove its case, the prosecution/has examined PW-1 Smt. Meena - the complainant, PW-2 the victim, PW-3 Dr. (Smt. Savitri Naroola, who had medically examined the victim on 6.10.1996, PW-4 Head Constable Tej Pal Singh, who had prepared the Chik Report and G.D. of this case and has proved the same, PW-5 Dr. (Smt.) Paramjeet Kaur, who had medically examined the victim on 29.9.1996, PW-6 S.I. Mahipal Singh, who had initially investigated this case and because of his transfer, the investigation was handed over to S.I. Arvind

Kumar Singh, who is PW-7 and had only recorded the statement of the appellant and had filed charge-sheet.

5. No evidence in defence, on behalf of the appellant, was adduced.

6. Submission of learned Counsel for the appellant was that the appellant has been falsely implicated and no such incident had taken place. The victim had received injuries accidentally by hit of horn of a goat. The First Information Report has been delayed and not even a single injury was found on the body of the victim. No spermatozoa was found and all these facts indicate that no such offence was committed.

7. Learned AGA, appearing on behalf of the State, has submitted that the appellant is the step-father of the victim. The First Information Report of this case was lodged by his own wife. So, it cannot be presumed that the wife will falsely implicate her own husband and that too in an offence of this nature. It has further been submitted that mere absence of injuries cannot be a ground to discard the otherwise reliable evidence of the prosecutrix. The prosecutrix has fully supported the case of the prosecution in her evidence and the same stands corroborated by the medical evidence also.

8. The first point to be considered in the instant case is the delay in the first information report. The occurrence is alleged to have taken place on 28.9.1996 and the First Information Report of the same was lodged on 6.10.1996 i.e. after about eight days of the occurrence. The delay in lodging the First Information Report has been explained in the first information report itself. The complainant has stated that the appellant himself had informed the complainant at Gandhi Ashram that the victim has accidentally received injury by hit of horn of a goat, and therefore, the victim was taken to a private hospital. But when the bleeding again started, she took her to Government Hospital where she was admitted because of the injury and she was discharged on 1.10.1996. When the victim disclosed this incident to her mother then she lodged the first information report of this case. The First Information Report of this case was lodged in the midnight and this conduct of the complainant shows that the moment she got the information from the victim, she immediately got the First Information Report scribed and lodged it at the Police Station. In the instant case, the appellant was the step-father of the victim and husband of the complainant. So in such circumstances, the complainant must be in a dilemma whether to lodge the first information report to get justice for her daughter and on the other hand, if she lodges the First Information Report, she will ruin her own future. She must have undergone a long thought process before lodging the F.I.R. In such nature of cases, the delay in lodging the First Information Report is not very much material.

9. In the cases of rape, a different approach has to be adopted regarding delay in the first information report. Hon''ble the Apex Court in the case of State of Himachal Pradesh Vs. Prem Singh, AIR 2009 SC 1010 : (2009) CriLJ 786 : (2009) 1 SCC 420 : (2009) AIRSCW 105 , has considered this aspect in

paragraph 6 and has held as under:--

"6. So far as the delay in lodging the FIR is concerned, the delay in a case of sexual assault, cannot be equated with the case involving other offences. There are several factors which weigh in the mind of the prosecutrix and her family members before coming to the police station to lodge a complaint. In a tradition-bound society prevalent in India, more particularly rural areas, it would be quite unsafe to throw out the prosecution case merely on the ground that there is some delay in lodging the FIR, In that score, learned Counsel for the appellant is right that the High Court has lost sight of this vital distinction."

10. In" another case of Sri Narayan Sato and another v. State of Tripura 2004 (50) ACC 472 (SC), Hon"ble the Apex Court in para 8 has held as under:--

"In India if the prosecutrix happened to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the question that the complaint was false. The reluctance to go to the police is because of society"s attitude towards such women. It casts doubt and shame upon her rather than comfort and sympathy. Therefore, the delay in lodging complaint in such cases does not necessarily indicate that her version is false."

11. Keeping in view the aforesaid pronouncements of Hon"ble the Apex Court and the legal position narrated above, the delay in the First Information Report in the instant case is not of any consequence in our considered view.

12. The complainant herself is not an eye-witness of this incident. The victim has been examined as PW-2 and she is the only witness so far as the incident is concerned. How the evidence of a victim of offence of rape should be considered and what value should be attached to it, has been considered by Hon"ble the Apex Court in several cases.

13. The Hon"ble Apex Court in a recent judgment in the case of Hem Raj Vs. State of Haryana, (2014) 2 JT 399 : (2014) 1 SCALE 48 : (2014) 2 SCC 395 , has observed,

"In a case involving charge of rape the evidence of the prosecutrix is most vital. If it is found credible; if it inspires total confidence, it can be relied upon even sans corroboration. The Court may, however, if it is hesitant to place implicit reliance on it, look into other evidence to lend assurance to it short of corroboration required in the case of art accomplice. [State of Maharashtra Vs. Chandraprakash Kewalchand Jain, AIR 1990 SC 658 : (1990) CriLJ 889 : (1990) 1 Crimes 724 : (1990) 1 JT 61 : (1990) 1 SCALE 33 : (1990) 1 SCC 550 : (1990) 1 SCR 115] Such weight is given to the prosecutrix"s evidence because her evidence is on par with the evidence of an injured witness which seldom fails to inspire confidence. Having placed the prosecutrix"s evidence on such a high pedestal, it is the duty of the Court to scrutinize it carefully, because in a given case on that lone evidence a man can be sentenced to life imprisonment. The

Court must, therefore, with its rich experience evaluate such evidence with care and circumspection and only after its conscience is satisfied about its creditworthiness rely upon it."

14. A prosecutrix is undoubtedly a competent witness and her evidence receives the same weight as is attached to an injured witness. She cannot be treated to be an accomplice of the offence. What value should be attached to the evidence of prosecutrix in rape cases has been considered by the Hon"ble Apex Court in the cases of Rajoo and Others Vs. State of M.P., AIR 2009 SC 858 : (2008) 12 JT 457 : (2012) AIRSCW 4565 . Hon"ble Apex Court has held in para 10 as under:--

"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. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court."

15. On this point, the observations in the case of State of Punjab Vs. Gurmit Singh and Others, (1996) 1 AD 492 : AIR 1996 SC 1393 : (1996) CriLJ 1728 : (1996) 1 Crimes 37 : (1996) 1 JT 298 : (1996) 1 SCALE 309 : (1996) 2 SCC 384 : (1996) 1 SCR 532 , has been reiterated by the Hon"ble Apex Court in the case of Rajoo and Others Vs. State of M.P., AIR 2009 SC 858 : (2008) 12 JT 457 : (2012) AIRSCW 4565 , and quoted para 8 of the judgment which reads as under:--

"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. 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 acquirement 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"

16. Hon'ble the Apex Court in the case of State of Uttar Pradesh Vs. Pappu alias Yunus and Another, (2005) CriLJ 331 : (2005) 1 JT 153 : (2004) 10 SCALE 147 : (2005) 3 SCC 594 : (2004) AIRSCW 6563 : (2004) 8 Supreme 656 , has held in paragraph No. 12 as under:--

"12. It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the Court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."

17. In the instant case, the victim in her statement has fully supported the case of the prosecution. She was aged about 11 years only when her statement was recorded. She has stated that the appellant is her step-father. On the date of incident, at about 01.00 P.M., she and her father were present and at that time, her mother had gone to Gandhi Ashram. Her father took her to a room and closed the door of the house and also of the room. Thereafter, she was laid on a cot and she was undressed by removing her underwear. Appellant put a

handkerchief on her mouth and pushed the same with his hand. Thereafter, he committed rape with her. The incident of rape has been described by this witness in her own words. She has further stated that there was bleeding and the same was cleaned by the appellant with handkerchief. She has also stated that she was threatened on the point of knife and also on the point of country made pistol not to disclose the incident to any other person. She has stated that the appellant told her that she should tell her mother that she has received injury by hit of horn of a goat and thereafter she became unconscious. When her mother came, because of fear of the appellant/she disclosed about the incident as she was asked by the appellant. She was taken to the hospital where the same story was told by her.

18. It transpires from her evidence that appellant accompanied them till discharge from the hospital and when he was absent only then she narrated the correct story to her mother and thereafter the First Information Report was lodged. She has fairly admitted that in Meena Hospital and in the District Hospital, she had disclosed the reason of injury as hit of horn of a goat. Here it is pertinent to mention that when this question was put to doctor whether such an injury can be caused by horn of a goat then the doctor negated this question by saying that in case of hit by a horn of a goat the injury or mark of the other horn must be present on the other part of the body. Thereafter a suggestion was advanced that if the goat happens to be having only one horn, then such an injury can be caused. It shows that appellant had no definite defence and he changed his defence and reason of his false implication at every stage. So the evidence of this witness is wholly reliable. There is absolutely no occasion for her to falsely implicate her own step-father. Perusal of the evidence of PW-1 and PW-2 shows that the first husband of the complainant died about 12 years prior to the incident and at that time, the victim was aged only about 8 months. After a very short gap of death of her first husband, the complainant married the appellant. At the time of incident, the age of the victim was about 10 years. So the victim remained with the appellant for nine long years as his daughter and PW-1 the complainant as his wife. A period of nine years was very long to develop emotional attachment with the daughter and wife but the act of the appellant shocks the conscience of the Court that in absence of her wife, he raped his own daughter.

19. Learned Counsel for the appellant has drawn the attention of this Court towards the evidence of PW-3 Dr. (Smt.) Savitri Naroola wherein she has stated that on the basis of injury report, she cannot give a definite opinion about rape. However, she has stated that the possibility of rape cannot be ruled out. Learned Counsel for the appellant has also vehemently argued that the victim has not received any injury on the outer part of her body and it falsifies the allegation of rape. Because she must have resisted and in such circumstances, natural consequence would be to receive injuries on the outer part of the body.

20. We are not the least impressed with this submission. How the girl would

react in a given circumstance, differs from person to person. In this case, the victim was aged about 10 years only and the appellant was aged about 35 years. So, she was not in a position to offer any physical resistance. Apart from it, she was also threatened on the point of knife. So, in such a situation, it appears that she desperately surrendered before the lust of the appellant. What should be the view of the Court regarding absence of injury on the body of the prosecutrix has been considered by Hon"ble Apex Court in several cases. We would like to quote the pronouncement of Hon"ble the Apex Court in the case of Balwant Singh and Others Vs. State of Punjab, AIR 1987 SC 1080 : (1987) CriLJ 971 : (1987) 1 SCALE 279 : (1987) 2 SCC 27 : (1987) 1 UJ 492 , wherein it has been held as under:--

"It cannot be said that whenever resistance is offered there must be some injury on the body of the victim. The prosecution story is that prosecutrix was raped by four accused persons. In such circumstances, resistance cannot be expected and so injuries would also not be found on the body and in such case absence of injury is not fatal to prosecution case."

21. Hon"ble Apex Court in the case of Dastgeer and another v. State of Karnataka 2004 (48) ACC 791 (SC), in para 26 has held that the injury on the body of the persons of the victim is not a sine qua non to prove a charge of rape. Absence of injury having regard to overwhelming ocular evidence cannot, thus, be the sole assertion for coming to conclusion that no such offence had taken place.

22. Learned Counsel for the appellant has also argued that in the histopathological test, no spermatozoa was found which also negatives the story of rape. But legal position is settled that mere penetration is sufficient to constitute the offence of rape. It was nowhere case of the prosecution that the complete offence of rape which ended in ejaculation took place. So when the bleeding started the victim was threatened on the point of knife. Thus, the absence of spermatozoa shall not be of any help to the appellant. In the case of Narayanamma (Kum) v. State of Karnataka and others with State of Karnataka v. Muniyappa and others 1994 (31) ACC 819 (SC), Hon"ble the Apex Court has held as under:--

"It was never elicited from the prosecutrix as to whether the two persons who committed rape on her had reached orgasm emitting semen in her private parts. No presumption can be made that penetration of penis in the private parts of a rape victim must necessarily lead to the discovery of spermatozoa. It is a question of detail and has to be put to test by cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatozoa such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatozoa prima facie could not be allowed to tell against the version of the prosecutrix".

23. Learned Counsel for the appellant has also submitted that the victim is a

child witness. Therefore, in absence of any corroboration on material particulars her evidence cannot be acted upon. Regarding the evidentiary value of a child witness, Hon'ble the Apex Court in the case of State of M.P. v. Ramesh and another 2011 (74) ACC 193 (SC), has held as under:--

"In view of the above, the law on the issue can be summarized to the effect that the deposition of a child witness may require corroboration, but in case his deposition inspires the confidence of the Court may rely upon his evidence. The evidence of a child witness must be evaluated more carefully with greater circumspection because he is susceptible to tutoring. Only in case there is evidence on record to show that a child has been tutored, the Court can reject his statement partly or fully. However, an inference as to whether child has been tutored or not, can be drawn from the contents of his deposition."

24. In this case Dr. Paramjeet Kaur, who has examined the victim initially, has also been examined. She has stated that the hymen was lacerated, ruptured and clots of blood were present. The victim was treated by her. She was informed that she has also been treated at some private hospital. This witness has specifically stated that it could have been the case of rape but at the time of inspection, she was not informed about the incident of rape. In her cross-examination, this witness has stated that such type of injury in the private part of the victim could be the result of rape. The victim was discharged on 1.10.1996. Before starting the medical examination an inquiry was made by her with the mother of the victim who disclosed her that the injury has been caused due to hit of horn of a goat. She has also stated that when she was again examined on 30.9.1996 then there was no bleeding.

25. No other argument was advanced on behalf of the appellant. The appellant himself is not sure as to why he has been falsely implicated. On one hand he says that he was asking the complainant not to work at the dairy that is why he has been falsely implicated and on the other hand, the appellant in his statement recorded under section 313 Cr.P.C. has stated that the complainant was a lady of bad character and therefore in order to make her such activities easy, he has been falsely implicated. But there is not even an iota of evidence on this point that the appellant has been falsely implicated. On the contrary, the complainant had taken a very daring step in lodging the First Information Report against the applicant and thereby put her own future at stake. Even otherwise, the story of hit by horn of a goat was developed by the appellant himself and the victim was threatened by the appellant not to disclose this incident to anybody. The evidence of the victim stands wholly corroborated by the medical evidence. The doctors have also stated that such type of injury, which was found on the body of the victim, could have been the result of rape and likewise PW-3 Dr. (Smt.) Savitri Naroola has stated that the possibility of rape cannot be ruled out.

26. In view of discussions made above, we are of the considered opinion that the prosecution was successful in proving its case beyond reasonable doubt against the appellant.

27. In the alternative, it was submitted by learned Counsel for the appellant that if the Court reaches to the conclusion that the appellant has committed this offence then keeping in view his very long period of detention, he may be punished with the period already undergone by him.

28. The incident of this case had taken place in the year 1996 and on that date the offence of rape with a minor girl under 12 years" of age was punishable with rigorous imprisonment for a term which shall not be less than 10 years but which may be for life but it was also provided that the Court may, for adequate and special reasons to be mentioned in the judgment, impose a sentence of imprisonment of either description for a term of less than 10 years. Normally for the offences, where minimum sentence is prescribed the Court cannot inflict punishment lesser than the minimum provided for the offence. But the punishment provided for this offence there was a departure from the strict rule by conferring the discretion on the Court subject to two conditions, (i) there should be adequate and special reasons, and (ii) such reasons should be recorded in the judgment. However, subsequently the punishment provided for the offence has been changed. But the appellant shall be governed by the punishment which was in force at that time. A perusal of the record shows that the appellant was in custody on 7.11.1996. PW-7 Arvind Kumar Singh, second Investigating Officer of this case, has stated that he had recorded the statement of the accused in District Jail Rampur on 7.11.1996 and filed charge-sheet on 8.11.1996. It transpire from the perusal of the judgment that during trial the appellant remained in custody and after his conviction, he is continuously confined in jail. So the appellant is in jail since 7.11.1996. Thus, the appellant has already undergone a period of more than 18 years in detention in the instant case. The appellant was convicted on 6.4.1998 but Jail Appeal was preferred by him on 29.10.2009 i.e. after more than ten years of his conviction.

29. Keeping in view the nature of the allegations and long period of detention, we are of the considered view that it would be justified if the sentence of imprisonment of life is modified to the period already undergone by the appellant. Accordingly, this appeal is partly allowed. The conviction of the appellant under section 376 IPC is hereby confirmed. However, his sentence is modified from imprisonment of life to the period already undergone, which is more than 18 years. The appellant is in jail. He shall be released forthwith, if not wanted in any other case. Office is directed to communicate this order forthwith to the Court concerned and also to send back the lower Court record to ensure compliance.