
(2017) 11 AHC CK 0007
In the Allahabad High Court
Case No : 217 of 2009

Surendra Singh Yadav

APPELLANT

Vs

State Of U.P.

RESPONDENT

Date of Decision : 06-11-2017

Acts Referred:

Code of Criminal Procedure, 1973, Section 313 - Power to examine the accused
Indian Penal Code, 1860, Section 376, Section 375, Section 376(2)(f), Section 376(2)(I) - Punishment for rape - Rape - Punishment for rape

Citation : (2017) 11 AHC CK 0007

Hon'ble Judges : Narayan Shukla, Chandra Dhari Singh

Bench : Division Bench

Advocate : Umesh Chandra Mishra, A.K. Pandey, G.P.Dikshit, R.V. Singh, Ravesh Kumar Singh

Judgement

1. Heard Sri Ravesh Kumar Singh, learned counsel for the appellant and Sri N.B.Singh, learned Additional Government Advocate for the State.
2. This appeal has been preferred against the judgement and order dated 17.12.2008 passed by the Additional Sessions Judge, Court no.7, Etawah in S.T. No.430 of 2007, by which the appellant was convicted under Section 376 I.P.C. and sentenced him to undergo life imprisonment and fine of Rs.50,000/-. In default of payment of fine, the appellant would further undergo R.I. for one year. The victim will be paid 50% of all the amount of fine imposed on the accused as compensation.
3. The facts and circumstances giving rise to this appeal are that on 11.11.2007, the accused who is father of the prosecutrix forcefully assaulted her sexually and committed rape upon her at about 8/9 P.M. and again on 12.11.2007 at about 6.00 A.M. in the morning. As per the prosecution case, on the fateful date the prosecutrix was sleeping with her mother Rambeti. When the mother of the

prosecutrix raised the objection then accused pushed her and tied her hands and legs. Subsequently he has taken the prosecutrix towards baramada and he committed rape upon her. On 12.11.2007 at 10.30 A.M., F.I.R. of this incident was promptly lodged, at police station Chakar Nagar, Etawa. Medical examination was conducted on 12.11.2007, wherein it was found that hymen was torn although no external injury was found on the body of the prosecutrix. No definite opinion about rape was given by the Doctor, who had conducted medical examination of the prosecutrix. After completion of the investigation, the police filed a chargesheet under Section 376 I.P.C. against the appellant. As he denied the charge, refuted the prosecution story and pleaded innocence, he was put to trial.

4. The trial court after concluding the proceedings vide judgement and order dated 17.12.2008, convicted the appellant for the offence punishable under Section 376 I.P.C. and sentenced him to life imprisonment and fine of Rs.50,000/-.

5. Aggrieved by the said judgement and order dated 17.12.2008 passed by the Additional Sessions Judge, the present criminal appeal has been filed before this Court on the ground that he was falsely implicated due to enmity as his wife and daughter wanted the entire property to be transferred in their name.

6. Learned counsel appearing for the appellant has submitted that the appellant was falsely implicated in the case as he had not good relation with his wife Rambeti. At the instance of Rambbeti the prosecutrix has falsely implicated her father for the offence punishable under Section 376 I.P.C. The appellant has not given share of the property to her and her children, therefore, she has given warning to the appellant that she will implicate him in a crime which will destroy his whole life. On that pretext appellant was falsely implicated in the case.

7. Learned counsel for the appellant further submitted that as per defence witness the prosecutrix and her mother were not present at the time of incident at the place of occurrence as they have already left the house and they were residing at the place of maternal father.

8. On the other hand learned counsel for the State vehemently opposed the appeal contending that the prosecutrix was raped by his own father. There was no reason for false implication of his own father in such heinous crime. The prosecutrix stated in her deposition that her father committed rape upon her and the same was supported by P.W.2 Rambeti. It was further submitted that discrepancies in the statement of the witnesses or prosecutrix are such that the same are not sufficient to demolish the prosecution case. In a rape case, accused can be convicted on the sole testimony of the prosecutrix. The prosecution has proved its case beyond any reasonable doubt and, therefore, present criminal appeal lacks merit and is liable to be dismissed.

9. We have considered the rival submission made by the learned counsel for the parties and perused the record.

10. Before we proceed to examine the impugned judgment of the court below and the facts of the case, it may be desirable refer to settled legal proposition which has to be applied in the instant case.

11. Section 375 I.P.C. reads as under:-

"375 Rape.- A man is said to commit "rape" if he

(a) penetrates his penis, to any extent, into the vagina, mouth urethra or anus of a woman or makes her to do so with him or any other person; or

(b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or

(c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or

(d) applies his moth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances failing under any of the following seven descriptions:-

First.-Against her will.

Secondly.-Without her consent.

Thirdly.-With her consent, when her consent has been obtained by putting her or any person in whom she is interested, in fear of death or of hurt.

Fourthly.- With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.-With her consent when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through another of any stupefying or unwholesome substance, she is unable to understand the nature and consequences of that to which she gives consent.

Sixthly.-With or without her consent, when she is under eighteen years of age.

Seventhly.- When she is unable to communicate consent.

12. Section 376 I.P.C. reads as under:-

"376, Punishment for rape.-(1) Whoever, except in the cases provided in sub-section (2), commits rape, shall be punished with rigorous imprisonment of either description for a term which shall not be less than seven years, but which may extend to imprisonment for life, and shall also be liable to fine.

(2) Whoever"-

(a) being a police officer, commits rape--

- (i) within the limits of the police station to which such police officer is appointed; or
- (ii) in the premises of any station house; or
- (iii) on a woman in such police officer's custody or in the custody of a police officer subordinate to such police officer; or
- (b) being a public servant, commits rape on a woman in such public servant's custody or in the custody of a public servant subordinate to such public servant; or
- (c) being a member of the armed forces deployed in area by the Central or a state Government commits rape in such area; or
- (d) being on the management or on the staff of a jail, remand home or other place of custody established by or under any law for the time being in force or of a woman's or children's institution takes advantage of his official position and commits rape on any inmate of such jail, remand home, place or institution; or
- (e) being on the management or on the staff of a hospital, commits rape on a woman in that hospital; or
- (f) being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, commits rape on such woman; or
- (g) commits rape during communal or sectarian violence; or
- (h) commits rape on a woman knowing her to be pregnant; or
- (i) commits rape on a woman when she is under sixteen years of age;
- (j) commits rape, on a woman incapable of giving consent; or
- (k) being in a position of control or dominance over a woman, commits rape on such woman; or
- (l) commits rape on a woman suffering from mental or physical disability; or
- (m) while committing rape causes grievous bodily harm or maims or disfigures or endangers the life of a woman; or
- (n) commits rape repeatedly on the same woman,

shall be punished with rigorous imprisonment for a term which shall not be less than ten years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, and shall also be liable to fine."

13. As per the aforesaid Sections, the person who has committed the rape being a relative, guardian or teacher of, or a person in a position of trust or authority towards the woman, shall be punished with R.I. for a term shall not be less than 10 years, which may extend to imprisonment for life. In an instant case father

has raped the girl, therefore, it is duty of the Court to examine the facts as well as the legal proposition in the instant case very carefully.

14. In the instant case the prosecutrix P.W.1, her mother, P.W.2 Rambeti have stated in their deposition that rape was committed by the father of the prosecutrix. As per the report given by Dr. P.W.4, hymen was torn but further Doctor has not given any definite opinion of commission of rape.

15. In Bhupendra Sharma vs. State of Himachal Pradesh (2003) 8 SCC 551, the Hon"ble Supreme Court held :-

"The offence of rape in its simplest term is "the ravishment of a woman, without her consent, by force, fear or fraud", or as "the carnal knowledge of a woman by force against her will". "Rape" or "Raptus" is when a man hath carnal knowledge of a woman by force and against her will; or as expressed more fully, "rape is the carnal knowledge of any woman, above the age of particular years, against her will; or of a woman child, under that age, with or against her will". The essential words in an indictment for rape are rapuit and carnaliter cognovit; but carnaliter cognovit, nor any other circumlocution without the word rapuit, are not sufficient in a legal sense to express rape. In the crime of rape, "carnal knowledge" means the penetration to any the slightest degree of the organ alleged to have been carnally known by the male organ of generation. It is violation with violence of the private person of a woman-an-outrage by all means."

16. In State of U.P. Vs. Pappu @Yunus & Anr. AIR 2005 SC 1248, the Hon"ble Supreme Court held that "even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under :-

"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 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 State of Orissa Vs. Thakara Besra & Anr. AIR 2002 SC 1963, the Hon"ble Supreme Court held that "rape is not mere a physical assault, rather it often

distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence."

18. In *State of Punjab Vs. Gurmit Singh & Ors.* AIR 1996 SC 1393, the Hon'ble Supreme Court held:- "in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under :-

"The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix?The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix.....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.....Seeking corroboration of her statement before replying upon the same as a rule, in such cases, amounts to adding insult to injury.....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."

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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."

19. In *State of Himachal Pradesh Vs. Raghubir Singh* (1993) 2 SCC 622, the Hon"ble Supreme Court held:-

"there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity."

20. In *Ranjit Hazarika vs. State of Assam*, (1998) 8 SCC 635 the Hon"ble Supreme Court held:-

"6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In *State of Punjab v. Gurmit Singh*, to which one of us (Anand, J.) was a party, while dealing with this aspect observed: (SCC pp. 395-96, para 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 leveled 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 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."

21. The case requires to be considered in the light of the aforesaid settled legal proposition.

22. P.W.1 the prosecutrix remained on her statement that her father committed rape upon her. She has also mentioned about strain relationship of his father in her deposition.

23. P.W. 2 Rambeti supported the version of P.W.1 prsecutrix and admitted that she had seen her husband committing rape upon her daughter. She had elaborated all incidents which were occurred on the date when the incident took place.

24. P.W.3 S.I. Indal Singh Yadav conducted an investigation and submitted a chergesheet against the appellant. He prepared the site plan and seized underwear and ghaghari of the prosecutrix and same was sent to Forensic Laboratory for test. The prosecutrix has proved site plan which was prepared by the I.O.

25. P.W. 4 Dr. Nirupama Dixit has conducted the medical examination of the prosecutrix and found that hymen was torn but she has not given any definite opinion of commission of rape on the prosecutrix. In the medical report no external injury was found on the body of the prosecutrix.

26. P.W.5 Raghuvir Sahai stated about the information provided by the prosecutrix and registered the F.I.R..

27. The appellant has stated in her statement made under Section 313 Cr.P.C. that his wife and daughter prosecutrix were pressurizing him to give all landed property to them otherwise they will implicate him in the false case which will destroy his whole life but the appellant has not been able to prove his statement which has been made under Section 313 Cr.P.C..

28. The point most seriously canvassed in this Court, on behalf of the appellant was that the solitary statement of the prosecutrix without corroboration in material particulars is not enough to sustain the conviction of the appellant.

29. It is well settled that the prosecutrix cannot be considered as an accomplice and, therefore, her testimony cannot be equated with that of an accomplice is an offence. As a rule of prudence, however, court normally looks for some corroboration of her testimony so as to satisfy its conscience that she is telling the truth and that the person accused of rape on her has not been falsely implicated.

30. At the relevant time, the prosecutrix was aged about 15 years, therefore, commission of the offence falls under Section 376 (2) (i) I.P.C. Since the prosecution was raped by her own father, therefore, commission of the offence also falls under Section 376(2) (f).

31. Absence of any mark of physical violence on the prosecutrix and no definite opinion could be given whether or not the prosecutrix had been sexually assaulted, but as per the medical report hymen was torn and the statement of the prosecutrix and her mother-P.W.2 clearly stated that the prosecutrix had been continuously raped by her father. The prosecutrix is victim of lust of the appellant. By the very nature of the offence, it is an obnoxious act of the highest order. When a woman is ravished, what is inflicted is not merely physical injury but a deep sense of some deathless shame.

32. We are therefore of the opinion that if the prosecution evidence is appreciated in the correct perspective, there can be no hesitation in concluding that prosecution has succeeded in proving the appellant's guilt.

33. Learned counsel for the appellant contended that life imprisonment is not warranted and sentence may be reduced to the period already undergone.

34. Section 376 speaks about the punishment of rape. Sub-section (2) (i) makes it clear that whoever commits rape on a woman when she is under 16 years of age, shall be punished with R.I. for a term which shall not be less than 10 years, but which may extend to imprisonment for life and shall also be liable to fine. Proviso appended to sub-section (2) makes it clear 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 ten years.

35. Thus it is clear from the above statutory provision that for the offence of rape on a girl under 16 years of age, punishment shall not be less than 10 years but which may extend to life and also to fine shows that the legislature intended to adopt strictness in awarding sentence if the victim is below 16 years of age. No doubt, the proviso to Section 376 (2) lays down that the Court may, for adequate and special reasons to be mentioned in the judgment, imposed a sentence of imprisonment of either description for a term of less than 10 years. It is settled law that courts are obliged to respect the legislative mandate in the matter of awarding of sentence in all such cases.

36. In *Rajendra Datta Zarekar vs. State of Goa*, 2007 14 SCC 560 the case relates to the offence under Section 376 I.P.C. The victim was aged about six years and the accused was about 20 years. The Hon"ble Supreme Court affirmed the conviction and sentence of 10 years as awarded by the High Court. However, the fine amount of Rs.10,000/- awarded under Section 376 (2) (f) I.P.C. being found to be excessive reduced to Rs.1000/-.

37. Considering the facts that the victim in the case in hand was aged about 15 years on the date of the incident and also of the fact that incident occurred merely ten years ago awarded life imprisonment which is maximum prescribed is not warranted and also in view of the mandate under Section 376 (2) (f) (i) I.P.C., we feel that ends of justice would be met by imposing R.I. by ten years.

38. Learned counsel appearing for the appellant informed to this Court that the appellant had already served almost 10 years.

39. In view of the above discussion, the conviction imposed on the appellant herein is confirmed. However, the sentence of life imprisonment is modified to R.I. for ten years with a fine of Rs.20,000/-. In default of payment of fine, to further undergo R.I. for six months.

40. With the above modification of sentence, the appeal stands disposed of.

41. The Registry is directed to send a certified copy of the judgment with all original documents to the concerned court below for compliance.