KUM. NARAYANAMMA

v.

STATE OF KARNATAKA AND ORS.

AUGUST 31, 1994

[MADAN MOHAN PUNCHHI AND K. JAYACHANDRA REDDY, JJ.]

Indian Penal Code 1860—Sections 376, 114—Rape of minor girl—Evidence of prosecutrix corraborating in all material particulars with medical examination and evidence of other witnesses—Accused convicted by trial court—High Court acquitting—Held, offence proved—Conviction by Trial Court restored.

The appeallant-prosecutrix was gang-raped by the accused. She was 14 years old at that time. Being illitrate, she was working as an agricultural labourer.

After the investigation, two of the three accused viz. V. And S were charged with the offence u/s. 376 IPC directly and accused M was charged constructively with the aid of S. 114 IPC. The Trial Court convicted all the accused. On appeal, the High Court reversed the said decision and acquitted the accused, on the ground that the prosecutrix was not a reliable witness as her statement was not corroborated by medical evidence. The State Government and the prosecutrix filed the present appeals.

Allowing the appeals, this Court

HELD : 1. The prosecutrix was a reliable witness. She stood corroborated on all material particulars not only by medical evidence but also by the evidence of P.W. 2 who had appeared on the scene of the crime and seen it being committed by the accused respondents. [803-G]

2. The High Court unfortunately did not appreciate that in the month of October when the occurrence took place, the jowar stalks would have been more than a man's height and when trampled upon the matted would provide sufficiently a cushion for the crime being committed without the prosecutrix receiving any inquiry on her back. The surrounding crop would also provide a cover obstructing visibility to a casual passer-by. Thus the absence of injuries on the back of the prosecutrix can be of no consequnece.

A [804-C-D]

3. The prosecutrix's statement to the Doctor about her naming one person to have committed rape on her was not put to the prosecutrix during cross-examination, in the absence of which it cannot be said that there was a contradiction for there might well have been an omission which the B prosecutrix could supply and render a plausible acceptable explanation. Besides the first assault in any case was by S which was correct; and her statement to the Doctor may not have been complete. But that cannot be the end of the matter. This particular cannot weigh against the prosecutrix. [804-E-G]

C

4. The prosecutrix having supplied the details of the crime to her mother P.W. 6 the mother deposed at the trial that she was told by the prosecutrix that the three named accused had committed rape on her. The High Court termed it as an exaggeration because as is the version M had not committed rape. In a sense, M facilitated the commission. He was the D initiator and had an active role to play and was equally guilty. The prosecutrix could not be condemned if she conveyed to her mother that he was guilty of the crime of rape committed on her. It could be a difference of perceptions. This particular also does not weigh against the prosecutrix. [804-H, 805-A-B]

E

5. When the Doctor who examined the prosecutrix had opined that the hymen was ruptured, she did not qualify her statement that it stood ruptured as of old or carried an old tear. With clear objective in view, the Doctor must be presumed to have noticed the hymen as freshly ruptured, as otherwise, the Doctor would not have described it in that fashion to be F bleeding, tender and painful. The factum of admission of two fingers could not be held adverse to the prosecutrix for it would depend upon the size of the fingers inserted. Experience tells that when medical experts try to opine about the medical condition of a woman used to sexual intercourse, it is described as admission of two fingers *easily,* but here the Docter qualified her statement by saying that it was painful and bleeding on touch. These G conditions obviously related to the hymen. The Doctor was thus clear in her opinion that rape had been committed on the prosecutrix. [805-D-F]

6. That there were injuries such as irregular linear contusion on both the breasts of the prosecutrix being 3 to 4 in number, redish in colour, is H also suggestive of force being used on her while she was subjected to the

crime. [805-G]

7. No presumption can be made that penetration of penis in the private parts of rape victim must necessarily lead to the discovery of spermatoza. 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 spermatoza such as faulty taking of the smear, its preservation, quality of semen etc. The absence of spermatoza *prima facie* could not be allowed to tell against the version of the prosecutrix. [806-B-C]

8. The prosecutrix was 14 years of age. She had no axe to grind in accusing the respondents of the crime and describing the roles played by them in the commission of it. The F.I.R. was lodged by her at the earliest possible time. She was medically examined immediately thereafter within six hours of the commission of the crime. She stood corroborated not only by the medical evidence but also by the evidence of persons who came by and who met her immediately after the occurence. [806-D]

9. The evidence of P.W.2 is of great significance. He is an independent witness. There is no reason why he should speak against the accused respondents. The prosecutrix also could not be doubted on the supposition that her cries should have attracted some people from the neighbouring fields, or people returning to the village in the evening. Her word could not be disbelieved on mere generalities. Whosoever was close by, such as P.W.2 was attracted to the scene. He saw what was happening to the prosecutrix. Things spoke to him on their own. The fact that he accompanied the brother of the prosecutrix and the prosecutrix to the police station further lends credence to his testimony. [806-E-G]

10. The prosecutrix being below the age of consent, the respondents cannot escape liability merely because no marks of injury on their person suggesting resistence could be found. [806-H, 807-A]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 547 of 1988.

From the Judgment and Order dated 20.11.87 of the Karnataka High Court in Crl. A. No. 157 of 1986.

With

A Criminal Appeal No. 548/88.

R. Jaganath, T.C. Sharma, P. Narasimhan, Ms. Rajni K. Prasad for the Appellants.

M. Veerappa for the State.

B

P. Mahale for the Respondent in Nos. 2-4.

The Judgment of the Court was delivered by

PUNCHHI, J. These two appeals by special leave, one by the State C of Karnataka and the other by the victim of the crime, are directed against the judgment and order of the High Court of Karnataka in Criminal Appeal No. 157 of 1986 decided on 20th November, 1987 recording an order of acquittal in favour of the accused-respondents.

D Kum. Narayanamma is the prosecutrix. She was about 14 years of age on the date of the commission of the offence. She is illiterate and used to eke out a living, as did her other family members, by working as an agricultural labourer (in common parlance a "coolie"). On 3.10.1983 at about 3.30 p.m she has gone towards the fields to cut some grass for her cattle, and while she was returning at about 5.00 p.m. with a basket full of E grass, she found accused No. 1, Muniyappa, aged about 23 years standing close to a "Honge" tree on the footpath. When she got close to him, he caught her by the hands, speaking to her suggestively with an evil design. Accused No. 2 Venkataswamy aged about 17 years emerged from a close-by fence and caught her by the legs. Both of them bodily lifted the prosecutrix by her hands and legs and took her a few feet away in the field F of one Gopalappa known as the "field of stones". There Sorghum (jowar) crop was standing and they dumped her on the standing jowar plants which matted. Accused No. 3, Somanna, aged about 20 years, who has already present there, lifted her clothes, forcibly inserted his organ in the private parts of the prosecutrix as also broke open the hooks of her blouse and G squeezed her breasts, while the victim was immobilised by Muniyappa who held her by her hands closing her mouth and Venkataswamy catching her by the legs. Having laid up on the prosecutrix for some time Somanna got up and immediately thereafter Venkataswamy indulged in the same act. At that time, Somanna stood close by, and Muniyappa kept holding the hands of the prosecutrix for her resistance and somewhat waned away by that H time. She kept raising however screams and cries all the same which

attracted on the scene a grazier by the name of Muniswamappa, P.W.2. He had seen Muniyappa having immobilised the prosecutrix, Somanna standing close by and Venkataswamy raping her. On seeing P.W. 2, the three accused ran away. In the meantime the nephew of the prosecutrix, a child about 9 years named Yellappa P.W. 7 helped her get up and made her wear her clothes. Then came the sister of the prosecutrix by the name Nagrathna P.W. 5 and her mother, Venkatagiriamma, P.W.6 to whom the prosecutrix narrated as to what had happened to her. They then took her to the village. In the meantime Krishnappa P.W.8, brother of the prosecutrix arrived and he too was told by the prosecutrix as to what had happened to her. Then he taking his sister, the prosecutrix as also Muniswamappa P.W. 2 went to the Police Station, Bangarpet having travelled a distance of about 9 miles on foot where First Information Report was lodged on the statement of the prosecutrix much before midnight. The police then went into action by inspecting the spot wherefrom they could recover some pieces of broken bangles belonging to the prosecutrix. The police also took care of arresting the accused and in having them medically examined from Dr. Basavaraju, P.W.4 on the day following the day of the occurrence at about 1.15 p.m. Beforehand the police had taken care to have the prosecutrix examined by Dr. C.V. Reeta, P.W. 3 immediately after the recording of the F.I.R. within about six hours of the incident.

On completion of the investigation, the three accused respondents were put up for trial, Muniyappa constructively with the aid of section 114 of the India Penal Code and the other two accused directly for the offence of rape, besides all the three accused for peripheral offences. The trial ended in conviction of the respondents under all counts for which they were awarded terms of imprisonment as disclosed in the judgment and order of the Sessions Judge, Kolar. The High Court reversed that decision and recorded order of acquittal.

According to the High Court, the prosecutrix was not a reliable witness as her statement was not corroborated by medical evidence. We on closer consideration of the matter, with respect, differ from the High Court. As we view it, the prosecutrix was a reliable witness. She stood corroborated on all material particulars not only by the medical evidence but by the evidence of P.W.2 who had appeared on the scene of the crime and seen it being committed, by the accused respondents. The particulars which have attracted adverse comments from the High Court and which we have smoothened in our effort are as follows :

A (i) According to the prosecutrix, she had been bodily lifted by Muniyappa and Venkataswamy, respondents, taken to the field of Gopalappa Where Somanna already present in waiting raped her while she was forcibly laid on the matted jowar crop. Since there was no marks of injury on the back of the prosecutrix and the field was reported to be having stones on the surface, the word of the B prosecutrix was doubted by the High Court about the manner in which the crime was committed. The High Court unfortunately did not appreciate the importance of the use of jowar stalks, which in the month of October, when the occurrence took place would have been more than a man's height and when trampled upon and C matted would provide sufficiently a cushion for the crime being committed without the prosecutrix receiving any injury on her back. The surrounding crop would also provide a cover obstructing visibility to a causal passer-by. Thus we view that the absence of injuries on the back of the prosecutrix can be of no consequence D in the circumstances;

(ii) According to Dr. Reeta, P.W. 3, the prosecutrix told her that she had been caught hold of by Muniyappa and Venkataswamy and was raped by Somanna. When the prosecutrix had laid claim in the First Information Report, and to which she struck to at the E trial, that Somanna and Venkataswamy had committed rape on her while Muniyappa immobilised her, the High Court viewed that there was a contradiction made by the prosecutrix when naming only one person as her ravisher to Dr. Reeta, P.W. 3. Surprisingly, the prosecutrix's statement to Dr. Reeta about her naming one F person to have committed rape on her was not put to the prosecutrix during cross-examination. In the absence of the same being put to her it cannot be said that there was a contradiction for there might well have been an omission which the prosecutrix could supply and render a plausible acceptable explanation. Besides the first assault in any case was by Somanna which was G correct; and her statement to the Doctor may not have been completed. But that cannot be the end of the matter. This particular, in our view, cannot weigh against the prosecutrix.

(iii) The prosecutrix having supplied the details of the crime to her H mother P.W.6, the mother deposed at the trial that she was told

by the prosecutrix that the three accused by name had committed rape on her. This the High Court termed as an exaggeration because as is the version Muniyappa had not committed rape. In a sense, Muniyappa facilitated the commission of the crime. He was the initiator and had an active role to play and was equally guilty. The prosecutrix could not be condemned if she conveyed to her mother that he was guilty of the crime of rape committed on her. It could be a difference of perceptions. This particular also does not weigh against the prosecutrix.

(iv) According to Dr. Reeta, P.W.3 hymen of the prosecutrix was ruptured, admitted two fingers bled on touch, was redish in colour, and was painful and tender. On this basis, the Doctor opined that these were signs of rape. The ability of admission of two fingers and the hymen being ruptured was viewed by a High Court was if the prosecutrix was habitual to sexual intercourse. When the Doctor had opined that the hymen was ruptured, she did not qualify her statement that it stood ruptured as of old or carried an old tear. With clear objective in view, the Doctor must be presumed to have noticed the hymen as freshly ruptured, as otherwise, the doctor would not have described it in that fashion to be bleeding, tender and painful. The factum of admission of two fingers could not be held adverse to the prosecutrix for it would depend upon the size of the fingers inserted. Experience tells us that when medical experts try to opine about medical condition of a woman used to sexual intercourse, it is described as admission of two fingers *easily,* but here the Doctor qualified her statement by saying that it was painful and bleeding on touch. These conditions obviously related to the hymen. The Doctor was thus clear in her opinion that rape had been committed on the prosecutrix. There was no occasion for the High Court in holding it to the contrary.

(v) That there were injuries such as irregular linear contusion on both the breasts of the prosecutrix being 3 to 4 in number, redish in colour, is also suggestive of force being used on her while she was subjected to the crime. The High Court unfortunately did not give weight to this piece of evidence as it deserved.

(vi) With regard to the vaginal smear examination conducted at a

different hospital, Dr. Reeta, P.W.3 was reported that no spermatoza was seen on it, and the absence of sperms has been viewed against the version of the prosecutrix. It was never elicited from the prosecutrix as to whether the two person 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 spermatoza. It is a question of detail and has to be put to test cross-examination. Otherwise also there may be various other factors which may negative the presence of spermatoza such a faulty taking of the smear, it's preservation, quality of semen etc. The absence of spermatoza *prima facie* could not be allowed to tell against the version of the prosecutrix.

It cannot be forgotten that the prosecutrix was 14 years of age. She had no axe to grind in accusing the respondents of the crime and describing the roles played by them in the commission of it. The F.I.R. was lodged by her at the earliest possible time. She was medically examined immediately thereafter within six hours of the commission of the crime. She stood corroborated not only by the medical evidence but also by the evidence of person who came by and who met her immediately after the occurrence. In particular evidence of Muniswamappa, P.W.2 is of great significance. He is an independent witness. There is no reason why he should speak against the accused respondents. The reason suggested that he had some sort of ill-will with the respondents, is neither here nor there. The prosecutrix also could not be doubted on the supposition that her cries should have attracted some people from the neighbouring fields, or people returning to the village in the evening. Her word could not be disbelieved on mere generalities. Whosoever was close by such as Muniswamappa, P.W.2 was attracted to the scene. He saw what was happening to the prosecutrix. Things spoke to him on their own. The fact that he accompanied the brother of the prosecutrix and the prosecutrix to the police station further lends credence to his testimony.

To conclude the aforesaid discussion, we hold that the High Court fell into error in rejecting the clear and natural testimony of the prosecutrix. We hold her to a reliable witness. Her evidence not only inspires confidence but is otherwise corroborated on all material particulars. She being below the age of consent, the respondents cannot escape

liability merely because no marks of injury on their person suggesting resistance could be found. Thus we have to reverse the judgment and order of the High Court restoring that of the Sessions Judge, Kolar whereunder the respondents were veriedly sentenced, as is evident from his judgment. Though we consider that the sentence awarded by the Session Judge was not adequate being barely three years rigorous imprisonment for the crime of rape such as this, but at this point of time we do not wish to enhance it in these proceedings and would be content in restoration of the orders of the Sessions Judge, Kolar and conviction and sentences recorded by him. Order accordingly.

For the aforesaid reasons, these appeals are allowed in the terms and manner abovementioned.

G.N. Appeal allowed.