STATE OF M.P. A

v.

DAYAL SAHU

SEPTEMBER 29, 2005

[H.K. SEMA AND G.P. MATHUR, JJ.] B

Penal Code, 1860:

s. 376—Non-examination of doctor who medically examined prosecutrix and non-production of doctor's report—Held, would not cause fatal to prosecution case if statements of prosecutrix and other prosecution witnesses inspire confidence—On facts, accused rightly convicted and sentenced by trial court—Evidence. C

Respondent stayed for the night at the house of his relative and ravished her in the guise of her husband while she was asleep. The victim awoke her husband and other members who were sleeping outside the house. The respondent confessed to them. The matter was reported to the police. The investigation culminated in trial of the accused. The trial court after examining the evidence of the prosecutrix (PW1), her husband (PW-2), her father-in-law (PW-5), and the person who took her to the police station (PW-4) as also the report of the Serologist, held that the testimony of the witnesses inspired confidence; and convicted and sentenced the respondent to seven years RI u/s 376 IPC. On appeal by the accused, the High Court although rejected his plea that the prosecution witnesses were not reliable, yet acquitted him on benefit of doubt observing that non-examination of the doctor who medically examined the prosecutrix and not providing any opportunity to the accused to cross-examine the doctor was a great and fatal lacuna in the prosecution case. Aggrieved, the State filed the present appeal. D E F

Allowing the appeal, the Court

HELD: 1.1. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. The Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings G

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A **of the guilt on the basis of irrelevant circumstances or mere technicalities. [711-C]**

Sheikh Zakir **v.** *State of Bihar,* **[1983]4 SCC 10 and** *Ranjit Hazarika* **v.** *State of Assam,* **[1998] 8 SCC 635, relied on.**

B **1.2. A plethora of decisions by the Supreme Court would show that once the statement of prosecutrix inspires confidence and is accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration**
C **of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. [711-A-B]**

D *State of Punjab* **v.** *Gurmit Singh,* **[1996] 2 SCC 384 and** *State of Rajasthan* **v.** *N.K., the accused,* **[2005] 5 SCC 30, relied on.**

1.3. On facts, the testimony of prosecutrix-PW.1 that she has been ravished by the accused at 4.00 A.M. on 1.4.1991 remains unimpeached. She was subjected to cross-examination but nothing could be elicited to demolish
E **the statement-in-chief. Her statement was corroborated by the statements of PWs 2, 4 and 5 in material particulars, coupled with FSL report Ex. P-8 and Ex. P-9, which has been accepted by the trial court and even by the High Court. The High Court totally erred in law in recording the acquittal of the accused by giving him benefit of doubt for non-examination of doctor, and thereby committed grave miscarriage of justice. The order of conviction and sentence**
F **recorded by the Trial Court is restored. [711-D-E]**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 8 of 1998.

From the Judgment and Order dated 18.12.96 of the Madhya Pradesh
G High Court in Crl. A. No. 1128 of 1993.

Dr. N.M. Ghatate and C.D. Singh for the Appellant.

Shakeel Ahmed for the Respondent.

H The Judgment of the Court was delivered by

H.K. SEMA. J. The respondent-accused Dayal Sahu was put to trial under Section 376 IPC. He was convicted by the Trial Court and sentenced to seven years imprisonment and a fine of Rs. 500, in default three months' rigorous imprisonment. The High Court, on appeal preferred by the accused, set-aside the conviction recorded by the Trial Court and acquitted the accused (respondent herein) solely on the ground for non-examination of PW-9 Dr. V.M. Pursule, as according to the High Court, non-examination of PW-9 prejudiced the case of the accused for non-providing of an opportunity to the accused to cross-examine the doctor. Being aggrieved, this appeal is preferred by the State of Madhya Pradesh by special leave.

Briefly stated the facts of the prosecution case are as follows:-

In the night of 1.4.1991 the accused-respondent Dayal Sahu who was a relative of complainant came to the village Mandvi with another man Jagdish as guests. The prosecutrix-Santribai, wife of PW-2 Ramdas was sleeping inside the house. Other family members were sleeping outside the house with guests. At about 4.00 A.M. the accused entered into the room of prosecutrix in the guise of her husband and committed rape upon her by removing all her clothes. On query by the prosecutrix as who he was, the accused pressed her mouth; only then the prosecutrix came to know that the man who had intercourse with her was not her husband. Thereafter, she awakes her husband and other members. The husband of prosecutrix entered the room and lit lantern and found the accused Dayal Sahu present there. The accused made a confessional statement for avoiding any event of demoral nature and to avoid an apprehension of beating. The matter was reported to the Kotwar of the village, who took the prosecutrix to the police station and reported the matter on 1.4.1991 itself wherein the fact was recorded regarding the commission of rape with Santribai.

The prosecution examined as many as 14 witnesses. Amongst others, the prosecutrix-Santribai was examined as PW-1. Ramdas, the husband of the prosecutrix was examined as PW-2. Puslibai, the mother-in-law of the prosecutrix was examined as PW-3, who was declared hostile by the Trial Court. She was cross-examined by Public Prosecutor, when she admitted that she is hard of hearing. Deorao Kotwar, who took the prosecutrix to the police station and got the report lodged, was examined as PW-4. Chindhiye, the father-in-law of the prosecutrix was examined as PW-5. Dr.V.M. Pursule, who examined the accused and on examination of his private parts found that the accused was healthy and capable of committing sexual intercourse, was examined as PW-

A 9. It appears that the prosecutrix was also medically examined by a lady doctor and her slide, pubic hair, saree, underwear and petticoat, which she was wearing at the time of incident, had been sent to F.S.L. Sagar for examination. The report of F.S.L. was also received vide Ex.P.8 and Ex.P.9. According to the report, white and hard stains were found on the underwear of the accused and on the saree and petticoat of the prosecutrix. As per Ex.P-9 report, stains
B of semen and sperms were found on the underwear of accused.

Considering the fact that the point involved in this appeal is within a narrow compass, it is not necessary to recite entire facts, which are admitted by the Trial Court and confirmed by the High Court.

C In this case, the Trial Court examined the evidence of the P.W.1-prosecutrix, P.W.2-husband, P.W.4-Deorao Kotwar and P.W.5- father in law and came to a conclusion that their testimony inspires confidence and recorded the conviction as aforesaid. As would appear from the judgment of the High Court four contentions have been raised by the respondent herein before the
D High Court. These are:-

(1) That it is a case of high degree contradiction between the statements of PW-1, 4 and 5 on account of which the prosecution version becomes doubtful.

(2) The prosecutrix was medically examined but the doctor who
E examined her did not come in the witness box to prove the report or the prosecution did not take care to examine the doctor.

(3) Serologist's report is on the record but the same was not proved.

(4) Prosecution witnesses were not reliable.

F The first contention has been repelled by the High Court as under:-

"So far as the first point is concerned, regarding contradictions between the statements of PW-1, PW-4, and PW-5 are concerned, they are very minor and such contradictions in the case of the nature cannot be
G given any weightage. The trial Court has considered this aspect and I find no reason to disagree with the findings recorded by the trial court.

Contention No. 3, the High Court has answered as under:-

"So far as the Serologist's report is concerned, that report is on record
H as Exs. P-8 and P-9."

Contention No.4 has also been repelled by the High Court as under:- A

"The submission that the prosecution witnesses were not reliable is without any substance. The only thing which creates a doubt regarding the defence version was not accepted as the father of the appellant Ranglal (DW-1) was a labourer and there is no explanation as to why this person took a sum of Rs. 10,000 to the house of the prosecutrix B which was not explained and it was also not explained as to wherefrom that money was obtained. Moreover, a labourer is not supposed to be in possession of such an amount. The medical report is proved by Shri S.R. Choudhary, Assistant sub Inspector of Police, who conducted the investigation but this by itself is not sufficient as the accused-appellant was deprived of an opportunity to cross-examine the doctor C who conducted the medical examination but did not enter the witness box to give evidence. Even the report which is on the record, mentions that no definite opinion can be given regarding commission of rape. I think it is a case where the appellant is entitled for benefit of doubt."

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Regarding contention No. 2 - non-examination of a lady doctor who medically examined the prosecutrix-PW.1, the High Court was of the opinion that non-examination of doctor and non-providing of an opportunity to the accused-person to cross-examine the doctor is a fatal one and is a great lacuna in the prosecution case. On the basis of this view, the High Court acquitted the accused on benefit of doubt. E

The view taken by the High Court, in our view, is perverse, erred in law as well as on fact and contrary to the established law laid down by this Court in a catena of decisions. The High Court having accepted the statements of P.Ws.1, 2, 4 and 5 as having inspired confidence yet acquitted the accused by giving him benefit of doubt in an offence of rape. F

In the case of *State of Punjab* v. *Gurmit Singh,* [1996] 2 SCC 384, it has been held that a conviction can be founded on the testimony of prosecutrix alone unless there are compelling reasons for seeking corroboration. It is further held that her evidence is more reliable than that of an injured witness. G

It was pointed out in paragraph 8 at scc pp. 395-396 as under: -

"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 H

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 a probable". A

In the case of *Sheikh Zakir* v. *State of Bihar,* [1983] 4 SCC 10, in paragraph 8 at scc p.18 it has been held:- B

"Insofar as non-production of a medical examination report and the clothes which contained semen, the trial court has observed that the complainant being a woman who had given birth to four children it was likely that there would not have been any injuries on her private parts. The complainant and her husband being persons belonging to a backward community like the Santhal tribe living a remote area could not be expected to know that they should rush to a doctor. In fact the complainant has deposed that she had taken bath and washed her clothes after the incident. The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation the non-production of a medical report would not be of much consequence if the other evidence on record is believable. It is, however, nobody's case that there was such a report and it had been withheld." C D E

In the case of *Ranjit Hazarika* v. *State of Assam,* [1998] 8 SCC 635, it was pointed out in paragraph 5 at scc. p 637 as under:-

"The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we F G H

find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

In the case of *State of Rajasthan* v. *N.K,* the accused (2000) 5 SCC 30, it was pointed out in paragraph 9 at scc p. 38 as under:-

"Having heard the learned counsel for the parties we are of the opinion that the High Court was not justified in reversing the conviction of the respondent and recording the order of acquittal. It is true that the golden thread which runs throughout the cobweb of criminal jurisprudence as administered in India is that nine guilty may escape but one innocent should not suffer. But at the same time no guilty should escape unpunished once the guilt has been proved to hilt. An unmerited acquittal does no good to the society. If the prosecution has succeeded in making out a convincing case for recording a finding as to the accused being guilty, the court should not lean in favour of acquittal by giving weight to irrelevant or insignificant circumstances or by resorting to technicalities or by assuming doubts and given benefit thereof where none exists. A doubt, as understood in criminal jurisprudence, has to be a reasonable doubt and not an excuse for a finding in favour of acquittal. An unmerited acquittal encourages wolves in the society being on the prowl for easy prey, more so when the victims of crime are helpless females. It is the spurt in the number of unmerited acquittals recorded by criminal courts which gives rise to the demand for death sentence to the rapists. The courts have to display a greater sense of responsibility and to be more sensitive while dealing with charges of sexual assault on women. In *Bharwada Bhoginbhai Hirjibhai* v. *State of Gujarat,* [1983] 3 SCC 217, this Court observed that refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. This Court deprecated viewing evidence of such victim with the aid of spectacles fitted with lenses tinted with doubt, disbelief or suspicion."

A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.

Reverting back to the facts of the case, the testimony of prosecutrix-PW.1 that she has been ravished by the accused at 4.00 A.M. on 1.4.1991 remains unimpeached. She was subjected to cross-examination but nothing could be elicited to demolish the statement-in-chief. Her statement was corroborated by the statements of PWs 2, 4 and 5 in material particular, coupled with FSL report Ex.P-8 and Ex.P-9, which has been accepted by the Trial Court and even by the High Court. The High Court was totally erred in law in recording the acquittal of the accused by giving him benefit of doubt for non-examination of doctor, thereby committed grave miscarriage of justice.

In the result, this appeal is allowed. The order of acquittal passed by the High Court is set-aside. The order of conviction and sentence recorded by the Trial Court is restored. The respondent-accused Dayal Sahu is on bail. His bail bonds and surety are cancelled and he is directed to be taken back into custody forthwith to serve out the remaining part of sentence. Compliance report should be sent to this Court within one month.

R.P. Appeal allowed.