

A THE STATE OF HIMACHAL PRADESH

v.

MANGA SINGH

(Criminal Appeal No. 1481 of 2018)

NOVEMBER 28, 2018

B [R. BANUMATHI AND INDIRA BANERJEE, JJ.]

Penal Code, 1860 – s.376 – Prosecutrix-PW-4 was staying in her aunt’s house – Respondent-accused is son of the aunt – FIR filed stating that the respondent used to make the prosecutrix sleep with him and commit sexual intercourse with her – Trial Court convicted the respondent – High Court reversed the conviction – On appeal, held: Trial court, which had the opportunity of observing and hearing the prosecutrix, recorded a finding of fact that the evidence of prosecutrix is convincing and inspires the confidence of the court – In the absence of any convincing reason, the High Court ought not to have interfered with such finding of fact – Further, merely because there was no rupture of hymen/injury marks it cannot be said that there was no question of sexual intercourse – It cannot be the reason to disbelieve the testimony of the prosecutrix – Prosecutrix was reluctant to go back to her aunt’s house and complained the act of sexual intercourse committed by the respondent to her teachers, PW-1 and PW-2 – Prosecutrix being a young girl aged about nine years, had no reason to falsely implicate the respondent – Evidence of the prosecutrix established that the accused was committing rape on her by penetration – Impugned judgment set aside – Crime against Women.

F *Evidence – Rape – Sole testimony of prosecutrix – Appreciation of – Discussed.*

Evidence – Rape – Absence of external injury on the body of the prosecutrix – Effect of – Held: Respondent-accused (Prosecutrix’s cousin brother) used to make the prosecutrix sleep with him and insert his private part in the private part of the prosecutrix which constitutes rape – This may not have ruptured the hymen – In case of rape it is not necessary that external injury is to be found on the body of the prosecutrix – Absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.

H

Allowing the appeal, the Court

HELD: 1.1 The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix. Corroboration is not a *sine qua non* for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the ‘*probabilities factor*’ does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court. The prosecutrix was aged only nine years, she had no reason to falsely implicate her cousin. Since the prosecutrix has been compelled to face the ordeal of sleeping with the respondent-accused every night, on 04.03.2010 she refused to go the house of her aunt. Considering the evidence of PW-4 – a girl of tender year, corroboration from an independent source of the evidence of the prosecutrix is not required. The evidence of the prosecutrix clearly established that the accused was committing rape on her by penetration. [Paras 11, 12 and 14][909-C-F; 910-D-E]

1.2 The Trial Court, which had the opportunity of observing and hearing the prosecutrix (PW-4), recorded a finding of fact that the evidence of prosecutrix (PW-4) is convincing and inspires the confidence of the court. When the Trial Court held that the evidence of the prosecutrix (PW-4) inspires confidence of the court, in the absence of any convincing reason, the High Court ought not to have interfered with such finding of fact. PW-6, the doctor in her evidence has categorically stated that merely because there was no injury marks it cannot be said that there was no question of sexual intercourse. In her Chief Examination PW-6 has further stated that in case of small/slightest penetration

- A the hymen will not rupture; the hymen will rupture only in case of complete penetration with force. The respondent-accused made the prosecutrix to sleep with him and inserted his private part in the private part of the prosecutrix which constitutes rape. This may not have ruptured the hymen. In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case. In case of rape it is not necessary that external injury is to be found on the body of the prosecutrix. [Paras 15-17][910-E-H; 911-A-C]

- 1.3 The testimony of the prosecutrix must have been appreciated in the light of the background of the case; more so, the prosecutrix was reluctant to go back to the house of her aunt and complained the act of sexual intercourse committed by the respondent-accused to her teachers, PW-1 and PW-2. In the light of the evidence of the prosecutrix and the categorical findings recorded by the Trial Court, the High Court was not justified in reversing the conviction of the respondent-accused and recording order of acquittal of the respondent-accused. In order to give the benefit of doubt to the accused, it has to be a reasonable doubt. The impugned judgment of the High Court is not sustainable and is set aside. Since at the time of incident the victim was at her tender age, there is reason to show sympathy towards the respondent. The judgment of the Trial Court is restored confirming conviction of the respondent under Section 376 I.P.C. and the sentence of imprisonment of ten years. [Paras 19, 21 and 22][911-E-F; 912-H; 913-A-C]

- G *State of Punjab v. Gurmit Singh and Others* (1996) 2 SCC 384: [1996] 1 SCR 532 ; *State of Rajasthan v. N.K. The Accused* (2000) 5 SCC 30 : [2000] 2 SCR 818 – relied on.

Case Law Reference

- | | | | |
|---|------------------|-----------|---------|
| | [1996] 1 SCR 532 | relied on | Para 13 |
| H | [2000] 2 SCR 818 | relied on | Para 20 |

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
No. 1481 of 2018.

From the Judgment and Order dated 22.10.2014 of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No. 523 of 2010.

Ms. Bihu Sharma, Ms. Purnima Krishna, Ms. Pratishtha Vij (For Abhinav Mukerji), Advs. for the Appellant. B

Ms. Manjeet Chawla, Adv. for the Respondent.

The Judgment of the Court was delivered by

BANUMATHI, J.

1. Leave granted.

2. This appeal arises out of judgment and order of the High Court of Himachal Pradesh at Shimla in Criminal Appeal No.523 of 2010 dated 22nd October, 2014 in and by which the High Court has reversed the verdict of conviction of the respondent-accused under Section 376 I.P.C. to acquittal and also set aside the sentence of imprisonment of 10 years imposed upon the respondent-accused. D

3. Briefly stated the case of the prosecution is that the prosecutrix (PW-4), who was aged about 9 years at the relevant point of time, was studying in Class-III in Government Primary School. The prosecutrix (PW-4) was staying in her aunt's house along with her brother. The respondent-accused is the cousin (son of the aunt) of the prosecutrix (PW-4). E

4. On 4th March, 2010, after the school hours, the prosecutrix (PW-4) was very reluctant to go to her aunt's house where she was staying; and she came back to the school. On being asked by Pooja Mahajan (PW-1) the school teacher and other teachers, the prosecutrix (PW-4) informed the teachers, Pooja Mahajan (PW-1) and Ritubala (PW-2), that she lives in her aunt's house and that the respondent-accused made her sleep with him and during the nights the respondent-accused used to put off her clothes and used to commit sexual intercourse with her. The prosecutrix stated that the respondent-accused had been doing the same for about three years. On hearing the same from the prosecutrix, the school teacher, Pooja Mahajan (PW-1), informed the president of the Gram Pachayat (PW-3) who came to the school and made enquiries whereupon the prosecutrix (PW-4) told the president that the respondent-accused had been committing sexual intercourse with her during the night. F
G

H

A 5. A complaint was lodged by the teacher, Pooja Mahajan (PW-1), and an F.I.R. was registered against the respondent-accused under Section 376 I.P.C. Dr. Neerja Gupta (PW-6) who medically examined the prosecutrix (PW-4) found that there was no injury found on her private parts. Dr. Neerja Gupta (PW-6) gave her opinion in writing (MLC Ex.PW6/B) in which she has opined that “in case of
B slightest or small penetration, hymen will not rupture”. Dr. Pooja Gupta (PW-7) also examined the prosecutrix (PW-4).

6. To substantiate the case of the prosecution, the prosecution has examined the prosecutrix (PW-4), the school teachers, Pooja Mahajan (PW-1) and Ritubala (PW-2), and the president of the Gram Panchayat
C (PW-3) and other witnesses. Based on the evidence of the prosecutrix (PW-4) and the medical evidence, the Trial Court convicted the respondent-accused under Section 376 I.P.C. and sentenced him to undergo sentence of ten years of rigorous imprisonment and also imposed a fine of Rs.25,000/-. In appeal, the High Court reversed the verdict of conviction of the respondent-accused only on the ground that the opinion
D of Dr. Neerja Gupta (PW-6) and Dr. Pooja Gupta (PW-7) are not conclusive to hold that the respondent-accused has forcefully committed sexual intercourse with the prosecutrix. The High Court held that the evidence of the prosecutrix (PW-4) does not inspire the confidence of the court to sustain the conviction and the respondent-accused is entitled
E to the benefit of doubt and on those findings the High Court has reversed the judgment of the Trial Court and set aside the conviction and sentence of the imprisonment imposed upon respondent-accused.

7. Despite service of notice, the respondent has not entered appearance. Accordingly Mrs. Manjeet Chawla, Advocate, has been
F nominated by the Supreme Court Legal Services Committee as amicus to contest the appeal on behalf of the respondent-accused.

8. We have heard Ms. Bihu Sharma, learned counsel appearing for the appellant-State and Mrs. Manjeet Chawla, learned amicus. We have carefully perused the impugned judgment, the evidence of the witnesses and materials on record.
G

9. The High Court has given the benefit of doubt to the respondent-accused mainly on two grounds : (i) Evidence of the prosecutrix (PW-4) does not inspire confidence; and (ii) the medical evidence of Dr. Neerja Gupta (PW-6) Dr. Pooja Gupta (PW-7) is not conclusive to hold that the prosecutrix (PW-4) was subjected to sexual intercourse.
H

10. The Trial Court has elaborately referred to the evidence of the prosecutrix (PW-4) who was studying in Class III in Kandwal Primary School and was staying in the house of her aunt. The prosecutrix (PW-4) has categorically stated that while she was staying in her aunt's house for pursuing her studies, the respondent-accused made her sleep with him and that the respondent-accused used to put off her clothes and his own clothes and that he used to touch her private part with his private part and used to insert his private part inside her private part. The respondent-accused had told her not to reveal it to anybody otherwise he would do away her life. The prosecutrix (PW-4) further stated that she told the aforesaid facts to her teacher, Pooja Mahajan (PW-1), and other lady teachers.

11. The conviction can be sustained on the sole testimony of the prosecutrix, if it inspires confidence. The conviction can be based solely on the solitary evidence of the prosecutrix and no corroboration be required unless there are compelling reasons which necessitate the courts to insist for corroboration of her statement. Corroboration of the testimony of the prosecutrix is not a requirement of law; but a guidance of prudence under the given facts and circumstances. Minor contractions or small discrepancies should not be a ground for throwing the evidence of the prosecutrix.

12. It is well settled by a catena of decisions of the Supreme Court that corroboration is not a *sine qua non* for conviction in a rape case. If the evidence of the victim does not suffer from any basic infirmity and the '*probabilities factor*' does not render it unworthy of credence. As a general rule, there is no reason to insist on corroboration except from medical evidence. However, having regard to the circumstances of the case, medical evidence may not be available. In such cases, solitary testimony of the prosecutrix would be sufficient to base the conviction, if it inspires the confidence of the court.

13. In State of Punjab v. Gurmit Singh and Others - (1996) 2 SCC 384, it was held 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

- A 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?.....”.
- B
- C (Underlining added)

14. The prosecutrix was aged only nine years, she had no reason to falsely implicate her cousin. Since the prosecutrix has been compelled to face the ordeal of sleeping with the respondent-accused everyday night, On 04.03.2010 she refused to go the house of her aunt. Considering the evidence of PW-4 – a girl of tender year, corroboration from an independent source of the evidence of the prosecutrix is not required. The evidence of the prosecutrix clearly established that the accused was committing rape on her by penetration.
- D
- E

15. The Trial Court, which had the opportunity of observing and hearing the prosecutrix (PW-4), recorded a finding of fact that the evidence of prosecutrix (PW-4) is convincing and inspires the confidence of the court. When the Trial Court which had the opportunity of seeing and hearing the witness has held that the evidence of the prosecutrix (PW-4) inspires confidence of the court, in our considered view, in the absence of any convincing reason, the High Court ought not to have interfered with such finding of fact.
- F

16. Insofar as the second ground on which the High Court gave the benefit of doubt to the respondent-accused that the medical evidence was inconclusive, it is to be pointed out that Dr. Neerja Gupta (PW-6) in her evidence has categorically stated that merely because there was no injury marks it cannot be said that there was no question of sexual intercourse. In her Chief Examination Dr. Neerja Gupta (PW-6) has further stated that in case of small/slightest penetration the hymen will not rupture; the hymen will rupture only in case of complete penetration
- G
- H

with force. As discussed earlier, the respondent-accused made the prosecutrix (PW-4) to sleep with him and inserted his private part in the private part of the prosecutrix which constitutes rape. This may not have ruptured the hymen. In the absence of injury on the private part of the prosecutrix, it cannot be concluded that the incident had not taken place or the sexual intercourse was committed with the consent of the prosecutrix. The prosecutrix being a small child of about nine years of age, there could be no question of her giving consent to sexual intercourse. The absence of injuries on the private part of the prosecutrix can be of no consequence in the facts and circumstances of the present case.

17. As rightly stated by Dr. Neerja Gupta (PW-6) that merely because there was no rupture of hymen it cannot be said that there was penetration. It cannot be the reason to disbelieve the testimony of the prosecutrix (PW-4). It is fairly a well-settled principle that in case of rape it is not necessary that external injury is to be found on the body of the prosecutrix.

18. Mrs. Manjeet Chawla, learned counsel for the respondent-accused, has submitted that non-examination of aunt of the prosecutrix (PW-4) is fatal to the case of the prosecution and no reason is forthcoming as to why aunt was not examined.

19. Be it noted that the respondent-accused is the son of the aunt of the prosecutrix. Nothing prevented the respondent-accused to have examined his mother as his witness. The non-examination of aunt of the prosecutrix (PW-4) cannot be put against the prosecution. In the light of the evidence of the prosecutrix and the categorical findings recorded by the Trial Court, in our view the High Court was not justified in reversing the conviction of the respondent-accused and recording order of acquittal of the respondent-accused. In order to give the benefit of doubt to the accused, it has to be a reasonable doubt.

20. Observing that there are number of unmerited acquittals in rape cases and that the courts have to display a greater sense of responsibility and to be more sensitive while dealing with the charges of sexual assault on woman, in State of Rajasthan v. N.K. The Accused – (2000) 5 SCC 30, this Court has held as under :

“9. ...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

- A 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
- B *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. We need only remind ourselves of what this Court has said through one of us (Dr A. S.
- C Anand, J. as his Lordship then was) in *State of Punjab v. Gurmeet Singh*:- (1996) 2 SCC 384: p. 403, para 21)
- D “[A] rapist not only violates the victim’s privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault- it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very should of the helpless female. The courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. The must deal with such cases with utmost sensitivity. The courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case.”
- E
- F 10. The questions arising for consideration before us are: whether the prosecution story, as alleged, inspires confidence of the court on the evidence adduced? Whether the prosecutrix, is a witness worthy of reliance? Whether the testimony of a prosecutrix who has been in victim of rape stands in need of corroboration and, if so, whether such corroboration is available in the facts of the present case? What was the age of the prosecutrix? Whether she was a consenting party to the crime? Whether there was unexplained delay in lodging the FIR?”
- G
- H 21. In the present case, the prosecutrix (PW-4), being a young girl aged about nine years, had no reason to falsely implicate the respondent-accused. The testimony of the prosecutrix (PW-4) must

have been appreciated in the light of the background of the case; more so, the prosecutrix (PW-4) was reluctant to go back to the house of her aunt and complained the act of sexual intercourse committed by the respondent-accused to her teachers, Pooja Mahajan (PW-1) and Ritubala (PW-2). The High Court has not appreciated the evidence of the prosecutrix (PW-4) in the light of the well-settled principles and erred in reversing the conviction of the respondent-accused to the acquittal. The impugned judgment of the High Court is not sustainable and is liable to be set aside. Since at the time of incident the victim was at her tender age, we do not find any reason to show sympathy towards the respondent-accused.

22. In the result, the impugned judgment and order of the High Court is set aside and this appeal is allowed. The judgment of the Trial Court is restored confirming conviction of the respondent under Section 376 I.P.C. and the sentence of imprisonment of ten years.

23. The respondent-accused is to surrender to custody within a period of four weeks from today to serve the remaining sentence failing which he shall be taken to custody.

24. A copy of this order be sent to the concerned trial court for necessary action.