

CASE NO.:
Appeal (crl.) 646 of 1994

PETITIONER:
Sudhansu Sekhar Sahoo

RESPONDENT:
State of Orissa

DATE OF JUDGMENT: 18/12/2002

BENCH:
Y.K. Sabharwal & K.G. Balakrishnan.

JUDGMENT:

J U D G M E N T

K.G. Balakrishnan, J.

This appeal is preferred against the judgment of the High Court of Orissa, dated 27th July, 1993. The appellant was found guilty of offences punishable under section 376 IPC and 342 IPC by the Sessions Court, Kalahandi, and was sentenced to undergo imprisonment for seven years for the offence under section 376 IPC and for three months for the offence under section 342 IPC. The conviction and sentence of the appellant was confirmed by the High Court.

During the relevant time, the appellant was a District Malaria Officer. The complainant, (hereinafter referred to as Ms. X) was a lady Supervisor working in the Integrated Child Development Project. She was a post-graduate and was about 29 years of age during the relevant time. She was staying in a rented house owned by the local post master. The case of the prosecution was that on 1.3.1987, PW-2, a female Anganwadi worker, along with her female helper came to Ms. X at 6. P.M. in a jeep and told her that she was required by District Social Welfare Officer. Ms. X accompanied them in the jeep which was being driven by a driver and there was also a Malaria Inspector in the jeep. PW-2 told Ms. X that she had come pursuant to the direction given by the appellant and that she had been told to inform Ms. X that D.S.W.O. required her presence. At about 7 P.M., all of them left in the jeep and when they reached a small town, which was about 13 kms. away from the residence of Ms. X, the appellant was waiting there. The further case of the prosecution is that when the jeep reached that place, PW-2, (the female Anganwadi worker) and her helper alighted from the jeep and Ms. X though wanted to alight, but she was prevented from doing so and the appellant got into the driver's seat of the jeep and drove away the vehicle speedily. The jeep driven by the appellant along with Ms. X, the Malaria Inspector and the driver reached the house of the appellant at about 11.30 P.M. The house of the appellant was about 120 kms. away from the place of residence of Ms. X. Ms. X was told that D.S.W.O. was sitting inside the house and the appellant invited Ms. X to his house. The bag of Ms. X was carried inside the house of the appellant by a peon. The case of the prosecution is that as soon as Ms. X entered the house of the appellant, the appellant closed the door. Though Ms. X wanted to leave the place, she was not allowed to go. She was offered dinner, but she declined to have it. Thereafter, according to the prosecution, the appellant had forcible sexual intercourse with Ms. X and she fell unconscious. When she regained her senses, she found her clothes in disorder and discovered that she had been ravished by the appellant. At about 7.30 A.M. on 2.3.1987, PW-3, the driver along with one Junior Engineer came to the house of the appellant and made enquiries about Ms. X. The Junior Engineer told that he came to know

that Ms. X was ill and had come for treatment and that she was in the house of the appellant. PW-3 brought an autorickshaw and in that autorickshaw Ms. X proceeded to the bus stand and travelled in a bus and reached the house of PW-4, a project officer. PW-4 found Ms. X in a disturbed mood and in spite of repeated questions, Ms. X did not tell as to what had happened to her. In the evening, PW-4 came back from her office and made further enquiries when she found Ms. X crying and not taking any food. On the next morning, Ms. X told everything about the incident that had taken place in the house of the appellant and narrated how she was subjected to forcible sexual intercourse. PW-4 advised her to give a statement in writing. On 4.3.1987, PW-4, along with Ms. X, went to the police station and handed over the written statement. As per the direction of the Investigating Officer, Ms. X was sent for medical examination. On the next day, she handed over the clothes worn by her at the time of commission of offence by the appellant.

The Investigating Officer got the statements of the witnesses recorded under Section 164 Cr.P.C. The Sessions Court after considering the evidence came to the conclusion that the appellant had committed the offence of wrongful confinement and rape. In the Sessions Court, the appellant admitted that Ms. X was brought to his house in a jeep. According to the appellant, he was told that a sick lady required treatment urgently. The Malaria Inspector and the driver were present in the jeep and he took the sick lady in the jeep and when the jeep reached his place of residence at about 11.30 P.M., he asked the Malaria Inspector to take the sick lady to the hospital, but she requested that she may be given shelter in his house. As it was difficult to find an alternative place, he allowed the lady to stay in his house and asked the watchman to give her food. The sick lady was found vomiting. The watchman gave her a separate room and the appellant slept in his own room. The appellant completely denied the offence of rape and wrongful confinement.

The Sessions Court after elaborate consideration of the matter came to the conclusion that Ms. X had no motive to falsely implicate the appellant who was a superior officer and that she being the prosecutrix in a rape case, her evidence has to be given due weight. The High Court also agreed with the conclusion reached by the Sessions Court.

The learned counsel who appeared for the appellant drew our attention to the various circumstances which made the prosecution story highly improbable. It was argued that Ms. X travelled nearly 120 kms. during night and reached the appellant's house, but she had not raised any protest against the conduct of the appellant till she filed her written statement before the police. It was also pointed out that the evidence of the prosecutrix is not supported by any medical evidence and there are so many other circumstances which would belie the prosecution case.

Ms. X was staying near the place of her work in a rented house. When the female Anganwadi worker along with her helper came to her and told that she was required by her superior officer, she did not ask anything as to why her presence was required during night. She readily followed them and went in a jeep to the place which was about 13 kms. away. There, she met the appellant and according to Ms. X, she was prevented from alighting from the jeep and the appellant drove away the vehicle hastily in order to prevent Ms. X from getting down from the vehicle. But she admitted during cross-examination that she had not stated these facts in the written complaint made by her. Therefore, the element of forcible taking away of Ms. X by the appellant is lacking in the complaint. According to Ms. X, the appellant forcibly had sexual intercourse with her though she resisted this physical onslaught and sustained injuries. According to her, both nail marks and biting marks were there on her body. Ms. X was examined by a doctor on 4.3.1987, but she was not satisfied with this examination and she was again taken to another doctor on 10.3.1987 for medical examination. The doctor, who examined her on 4.3.1987 was not examined and the medical certificate also was not produced as an item of evidence. In the medical certificate that was produced pursuant to the medical examination done on 10.3.1987, there was no mention of nail marks or any other signs of violence on her body. Thus, the corroborative evidence is lacking in this

case. It is significant to note that according to Ms. X, her clothes had seminal stains. She produced these clothes before the police, but these clothes did not contain any stain either of blood or semen. Had there been any stains of semen or blood on the clothes allegedly worn by her at the time of commission of offence, it would have gone a long way to prove the case of the prosecution, especially Ms. X being an unmarried woman.

That apart, there is no valid explanation offered by Ms. X to travel all the way from her place of residence. Ms. X being an educated woman would have naturally foreseen the impropriety of travelling along with other males in a jeep for such a long distance during night. It is true, people act differently to same situations. There are persons who are unduly timorous and imagine every path beset with lions and there are others of more of robust temperament who fail to foresee or non-challantly disregard even the most obvious dangers. Ms. X, an unmarried woman travelled in a jeep for long distance in night and her conduct appears to be unusual and there is no rational explanation as to what urgent official work could have been there to undertake this nocturnal journey to meet her superior officer.

It is also pertinent to note that the appellant and the Malaria Officer were known to Ms. X. Two days prior to 2.3.1987, i.e. 28.2.1987, there was a circle meeting where Ms. X was required in her capacity as lady supervisor. The place of that meeting was 35 kms. away from her residence. Ms. X admitted in her evidence that on the same day the appellant came to her house and enquired why she had not attended the circle meeting and the appellant offered help for her treatment. She also deposed that the appellant noted his address in her diary. This shows the previous acquaintance of Ms. X with the appellant. It is also significant to note that on the next day at about 7.30 A.M., the Junior Engineer and one driver came and enquired about Ms. X. How these two persons came to know of the presence of Ms. X in the house of the appellant, also is not known.

It is true that the evidence of the prosecutrix in a rape case is to be given due weight. The sexual violence is a dehumanising act and it is an unlawful encroachment into the right to privacy and sanctity of woman. The courts also should be strict and vigilant to protect the society from such evils. It is in the interest of the society that serious crimes like rape should be effectively investigated. It is equally important that there must be fairness to all sides. In a criminal case, the court has to consider the triangulation of interests. It involves taking into account the position of the accused, the victim and his or her family and the public. The purpose of criminal law is to permit everyone to go about their daily lives without fear of harm to person or property.

The counsel for the respondent State contended that the evidence of the prosecutrix, which is accepted by two courts, is sufficient to uphold the conviction of the appellant for the offence of rape and it was argued that in rape cases, the sole testimony of the victim is sufficient to enter a conviction.

It is true that the sole testimony of the victim of a sexual offence can be a basis for conviction provided it is safe, reliable and worthy of acceptance. This Court had occasion, in many cases, to consider the nature of evidence required when the conviction mainly based on the testimony of the victim of the sexual offence.

In *Balwant Singh & Ors. Vs. State of Punjab* (1987) 2 SCC 27, the victim was a 19 years old student and the allegation was that when she was on her way to the college, three accused persons forcibly took her away in a car to the canal bank where she was subjected to sexual intercourse by the accused. She fell unconscious and later she was found lying in a state of unconsciousness under a Banyan tree by her father. There was no eye witness. On medical examination, her hymen was found torn and there were reddish abrasions on her breast. The police investigated the case and the case was reported to be cancelled. The victim filed a private complaint and the Magistrate committed the accused persons for trial to the court of sessions. The Sessions Judge convicted the accused persons and this Court confirmed the

conviction. This Court held that both the learned Additional Sessions Judge and the High Court have believed the evidence of the prosecutrix and her father and in their opinion there is no reason why their evidence should not be believed and the conviction was thus solely based on the evidence of the prosecutrix.

In *Rafiq vs. State of U.P.* (1980) 4 SCC 262, a middle-aged bal sewika in a village welfare organisation was raped by the appellant around 2.30 a.m. when she was sleeping in a girls' school. On the next day, she reported the matter to the mukhya sewika of the village. The counsel for the accused contended that there was absence of corroboration of the testimony of the prosecutrix and that there was absence of injuries on the person of the woman and so the conviction was unsustainable. But this plea was rejected and this Court held :

"The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate, and so, rules of prudence relevant in one fact-situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law but a guidance of prudence under given circumstances."

In *Krishan Lal vs. State of Haryana* (1980) 3 SCC 159, the victim was sleeping with her mother and other children outside her house on a hot night and the two accused persons carried her away to a nearby godown under intimidation and allegedly committed rape on the young woman. In the morning, the mother of the victim found blood on the daughter's salwar and thereupon she narrated the criminal assault of the accused on the previous night. The counsel for the accused urged that the evidence of the prosecutrix, without substantial corroboration, was inadequate to rest a conviction under Section 376 IPC. This plea was rejected and it was held by this Court as under :

"We must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. What girl would foist a rape charge on a stranger unless a remarkable set of facts or clearest motives were made out? The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value..To forsake these vital considerations and go by the obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called 'Judicial' probability. Indeed, the Court loses its credibility if it rebels against realism. The law court is not an unnatural world."

In *State of Maharashtra vs. Chandraprakash Kewalchand Jain* (1990) 1 SCC 550, a girl eloped with a 25 years old young man. They went to Bombay and got married. Thereafter they came to a place near Nagpur and checked in a lodge. The local Police Sub-Inspector came to know that the couple was staying in the said lodge and he took them to the police station where the husband was beaten up and the wife was threatened. The Sub-Inspector registered a case against the husband alleging that he was found misbehaving on a public street and put him in the lock-up. The girl was left in a hotel. It was alleged that the Sub-Inspector visited the girl's room and committed rape on her. In that case, this Court elaborately considered the question whether conviction can be based on the sole testimony of the victim of the sexual offence and held :

"Is it essential that evidence of prosecutrix should be corroborated in material particulars before the court bases a conviction on her

testimony? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix..

A prosecutrix of a sex offence cannot be put on par with accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix, it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness."

In *State of H.P. vs. Lekh Raj* (2000) 1SCC 247, this Court held that "the hypertechnicalities or figment of imagination should not be allowed to divest the court of its responsibility of sifting and weighing the evidence to arrive at the conclusion regarding the existence or otherwise of a particular circumstance keeping in view the peculiar facts of each case, the social position of the victim and the accused, the larger interests of the society particularly the law and order problem and degrading values of life inherent in the prevalent system. The realities of life have to be kept in mind while appreciating the evidence for arriving at the truth."

In *State of Rajasthan vs. N.K.* (2000) 5 SCC 30, this Court held :

"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. Her testimony has to be appreciated on the principle of probabilities just as the testimony of any other witness; a high degree of probability having been shown to exist in view of the subject-matter being a criminal charge. However, if the court of facts may find 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."

It is well settled that in rape cases the conviction can be solely based on the evidence of the victim, provided such evidence inspires confidence in the mind of the court. The victim is not treated as accomplice, but could only be characterised as injured witness. It is also reasonable to assume that no

woman would falsely implicate a person in sexual offence as the honour and prestige of that woman also would be at stake. However, the evidence of the prosecution shall be cogent and convincing and if there is any supporting material likely to be available, then the rule of prudence requires that evidence of the victim may be supported by such corroborative material.

Unfortunately, the broad probabilities of the case were not considered by the Sessions Court or the High Court in the instant case. Ms. X, though asserted that she had sustained scratch injuries by nails and biting, her medical examination did not reveal any such injuries. It is true that in view of social conditions prevalent in India, there may be delay in giving the first information of such an offence to the police. A rape victim may think seriously before giving the information to the police about rape as the onslaught of a social stigma may haunt her for life. Though the delay as such is not serious, but while considering broad probabilities of the case, the delay in giving the information to the police, in the instant case, also assumes some importance. Though the past conduct of the prosecutrix is an irrelevant matter, in the instant case, Ms. X asserted that she was a virgin till the alleged incident, but the medical evidence supported by her physical features revealed that she was habituated to sex. All these factors cast a serious doubt on the prosecution case. Though there is no apparent motive for Ms. X to falsely implicate the appellant, it may be that Ms. X must have changed her mind when she came to know that others must have come to know of her conduct. So there are so many loose ends in the prosecution case. On a consideration of the broad probabilities of the case, we feel that various factors cast a serious doubt about the genuineness of the case of Ms. X that she had been forcibly ravished by the appellant. The appellant is certainly entitled to the benefit of doubt. Therefore, we set aside the conviction of the appellant under section 376 and 342 IPC and allow his appeal. The appellant was granted bail by this Court. The bail bonds furnished by the appellant are cancelled.