

CASE NO.:
Appeal (crl.) 667 of 1998

PETITIONER:
State of Chhattisgarh

RESPONDENT:
Derha

DATE OF JUDGMENT: 21/04/2004

BENCH:
N.Santosh Hegde & B.P.Singh.

JUDGMENT:
J U D G M E N T

SANTOSH HEGDE, J.

Respondent herein was charged of an offence punishable under section 376(2) of the Indian Penal Code before the Second Additional Sessions Judge, Durg, M.P. The trial court found him guilty of the offence charged and sentenced him to undergo RI for 10 years. In appeal filed against the said conviction and sentence before the High Court of Madhya Pradesh at Jabalpur, the High Court allowed the appeal, setting aside the said conviction and sentence. It is against the said judgment of the High Court u/s. 376(2)(F) the State of Madhya Pradesh is in appeal before us. Brief facts necessary for the disposal of this appeal are as follows :

Complainant Manbai was residing with family at Kaktipara within the jurisdiction of Rajhara Police Station. Her family consisted of her husband, 2 sons aged 12 and 6 years and a daughter aged about 8 years. It is stated that on 6.3.1990 her husband had gone out of station and at about 4 p.m. when she had gone to work as a labourer at the Railway colony, the respondent herein forcibly took her daughter Duleshwari PW-2 to his house and committed rape on her. Prosecution alleges that said PW-2 returned home and after arrival of her mother, told her about the incident in question but since the father of the victim was not in station they did not lodge any complaint. The further case of the prosecution is that the father of the victim came back to the house on 7.3.1990 and when he was told about the said incident he decided that the accused should be first traced and taken to the Police Station and thereafter they should lodge a complaint. In that process the prosecution alleges that on finding the accused on 10.3.1990 the parents of PW-2 went to the Police Station and lodged a complaint in regard to the incident which took place on 6.3.1990. PW-6, I.O. who was Incharge of the Police Station as on that date, took down the statement of PW-1, the mother of the victim and registered the case. He also seized the underwear of the victim and after arrest of the accused, seized his trousers of brown colour. The seized articles were sent for chemical examination. Said I.O. then sent the victim PW-2 and the accused for medical examination and on receipt of the medical reports, filed a chargesheet as stated above.

Prosecution in support of its case relied on the evidence of the mother of the victim PW-1, the victim herself who was examined as PW-2 and the doctor PW-3 who examined the victim. The accused was examined by one Dr. G.R. Naamdev on 10.3.1990. The trial court relying on the evidence led by the

prosecution came to the conclusion that the accused was known to the victim since he was staying in the same locality and the actual act of rape having been proved by the medical evidence, there was no reason why the evidence of PW-2 should not be accepted since nothing was suggested by the defence against this victim. The only suggestion made was that there was some dispute between the parents of the victim and the accused without giving any particulars whatsoever of such enmity. The trial court also came to the conclusion that though there was delay in filing the complaint said delay was properly explained by the prosecution which was mainly due to the fact that the father of the victim was not in station on the said date of the incident and after he came back to the station they had decided first to trace the accused before lodging a complaint in question. Thus primarily based on the evidence of PW-2, the victim and the medical evidence which proved the factum of rape and there being no enmity or reason for PW-2 to state falsely convicted the accused, as stated hereinabove.

In the appeal filed by the accused before the High Court the High Court firstly found that the delay in lodging a complaint was fatal to the prosecution case. The explanation given in regard to this delay was rejected by the High Court. The High Court also came to the conclusion that it was not safe to rely on the evidence of PW-2, the victim to base a conviction because according to the High Court there was some discrepancy as to the act of penetration while committing rape in the evidence of the victim and the evidence of the doctor. It also relied on a reply given by the doctor PW-3 to a suggestion made by the defence that the injury suffered by PW-2 may also have been suffered by hard and blunt object hence the High Court inferred that the injury on the victim could have been suffered by the victim by falling on some such hard and blunt object. It also took note of the fact that the medical examination of the accused did not show any injury on his private parts therefore it inferred that the accused could not have committed rape on the minor without hurting himself on his private part. In regard to the evidence of PW-2 the High Court was of the opinion she being a child witness who was about 8 years of age it is possible that she could have been tutored. On the above basis the High Court came to the conclusion that it is not safe to base a conviction hence allowed the appeal, setting aside the conviction and sentence imposed on the appellant.

Mr. Rajesh Srivastava, learned counsel for the appellant submitted that the High Court erred in doubting the prosecution case because of the fact that there was some delay in filing the complaint and also based its findings on certain inferences which could not have been drawn by any reasonable person, such as the possibility of injury suffered by the victim by falling on a hard and blunt object. Learned counsel also contended that there was absolutely no reason why the High Court could not have accepted the evidence of PW-2 alone to base a conviction even assuming that there was no other corroboration in regard to her statement.

While Ms. K Sharda Devi, learned counsel for the respondent contended that the nature of injury suffered by PW-2 being capable of being caused in the alternate manner suggested by the defence and accepted by the doctor by itself was sufficient to come to the conclusion that the respondent was not guilty of the offence. She also pointed out that the inordinate delay in filing the complaint and non-examination of the father of the victim could also indicate that there was some collateral reason for lodging the complaint against the respondent. She specifically pointed out from the evidence of PW-2 that she had stated in the cross-examination that the grandparents of the

accused were present in the house, forgetting for a moment that in an answer to the previous question this witness had specifically stated that there was no person in the house when she was forcibly taken to his house and raped.

Having heard learned counsel for the parties and perused the records, we are satisfied that the High Court has erred in coming to the conclusion that the accused was not guilty of the offence charged. We first notice from the evidence of PW-3 the doctor that the injuries suffered by PW-2 could not have been self-inflicted. There was blood on her private part, the hymen was torn and medial side of the labiaminora was inflamed. This was even after 4 days of the incident. The doctor in specific terms had stated that the victim is not habituated to sexual intercourse. The mere fact that to a suggestion made in the cross-examination that such injuries could be suffered by the victim by falling on a hard and blunt substance, by itself, in our opinion, would not suffice to reject the evidence of PW-2 who had no enmity whatsoever to implicate the respondent-accused. The suggestion which has come in the form of 313 statement merely says that there was some enmity between the parents of the accused and that of the victim. Neither the nature of enmity nor gravity of the same has been stated, therefore, that explanation would be of no assistance to the accused to establish the fact that he has been falsely implicated. The law is well settled in regard to the evidence of a prosecutrix. It is now well established that if the court is satisfied from the evidence of the victim a conviction can be solely based on such evidence without looking for further corroboration. Same can be done because prosecutrix is no more treated as an accomplice in the crime. In the instant case the factum of injury suffered by PW-2 and the opinion of the doctor that such injury could have been caused by sexual intercourse and the victim having not been habituated to earlier sexual intercourse itself goes to show that the injury suffered by the victim was one that could have been caused only by an act of rape as alleged by the prosecution. Even in identification of the accused by the victim we have no doubt because he was known to the victim.

We have noticed the fact that there has been some delay in filing the complaint which according to us has been explained by PW-1 mother. The fact that their father was out of station on the date of occurrence is not disputed. In such circumstances since it is a minor who was violated the possibility of there being hesitation on the part of mother to lodge a complaint cannot be over ruled. Even otherwise the mere factum of delay in filing complaint in regard to an offence of this nature by itself would not be fatal so as to vitiate the prosecution case. The fact that the accused did not suffer any injury on his private part also will not be of much help to him because he was medically examined 4 days after the incident in question. For the reasons stated above we are satisfied that the High Court was in error in taking a view different from that of the trial court and acquitting the accused.

The question then arises what should be the sentence that should be imposed on the accused. The trial court as stated above has sentenced the respondent for an offence under section 376(2)(F) to 10 years RI. We are told by learned counsel for the respondent that he was hardly 18 years of age at the time of the incident in question and has already served about 6 = years imprisonment consequent to the sentence imposed on him by the trial court. It is also submitted that he has since married and has a family. In such circumstances we think a sentence of 7 years RI would be appropriate in the facts and circumstances of the case. Hence while allowing the appeal of the State, setting aside

the judgment of the High Court and restoring the conviction recorded by the trial court, we reduce the sentence to 7 years RI. We further direct that if the respondent has undergone any part of the sentence as submitted by learned counsel, set off shall be given for the said part of the sentence and he will also be entitled to any legal remission permissible in law for having served 6 = years' imprisonment.

With the above observations, this appeal succeeds and the same is allowed to the extent stated above.

JUDIS