

CASE NO.:
Appeal (crl.) 1266 of 1998

PETITIONER:
State of Himachal Pradesh

RESPONDENT:
Asha Ram

DATE OF JUDGMENT: 17/11/2005

BENCH:
H.K. SEMA & P.P.NAOLEKAR

JUDGMENT:
J U D G M E N T

H.K.SEMA, J

There can never be more graver and heinous crime than the father being charged of raping his own daughter. He not only delicts the law but it is a betrayal of trust. The father is the fortress and refuge of his daughter in whom the daughter trusts. Charged of raping his own daughter under his refuge and fortress is worst than the gamekeeper becoming a poacher and treasury guard becoming a robber.

The facts of this case as unfolded by the prosecution shocked the judicial conscience. Briefly stated the facts are as follows:-

The respondent-accused Asha Ram married to one Smt.Kalawati - PW3. Out of the wedlock they have three daughters and two sons. Accused and PW-3 were having strained relations and living separately. PW-3 was living in some servant quarters in Brockhurst with one of the daughters and two sons. Accused was living in the accommodation allotted to him in the servant quarters attached to Raj Bhawan with the other two daughters namely Kumari Uma and Kumari Seema (prosecutrix). In the intervening night of 23/24.8.1988 the accused returned home at about 12.30 AM and went to the room where his daughters Uma and Seema were sleeping. He asked Kumari Seema to serve him the dinner. On being asked, the prosecutrix went to the kitchen and brought the food to the room of the accused. The accused is alleged to have bolted the door of his room from inside and after switching off the light asked Kumari Seema to sleep in the same room. He then forcibly made Kumari Seema to lie on the bed and after untying the waistband of her salwar started to commit rape on her. The prosecutrix pleaded with the accused that she is his daughter but he turned a deaf ear and forcibly committed sexual intercourse with her. It is further alleged that when she tried to raise cries, her mouth was gagged by the accused with a piece of cloth. Her sister Uma started knocking at the door. After about half an hour when she came out of the room of her father she found the door of the quarters, where her sister was sleeping, bolted from outside and her sister was not at home. Being frightened she climbed down from sanitary pipe. She met her sister on the ground floor of the building and both returned to their quarter. She narrated the entire occurrence to her sister Uma. On the following morning they went to their mother to inform her about the occurrence. The prosecutrix accompanied by her mother went to the police station and on the basis of her statement lodged a complaint registered vide FIR No.110 of 1988 (Ex.PA) under Section 376 IPC.

In the course of investigation a prima facie case was established. A charge was laid under Section 376 IPC and the Trial Court after examining PW-1(prosecutrix), PW2-Kumari Uma, sister of the prosecutrix, PW3 - mother of the prosecutrix, medical evidence of PW4-Dr.A Banerji and PW5- Dr.H.K.Premi, PW11- Dr.L.R. Verma and found the respondent-Asha Ram guilty under Section 376 IPC and

sentenced him to suffer rigorous imprisonment for 5 years and a fine of Rs.1000/- and in default rigorous imprisonment for 3 months.

Aggrieved thereby the respondent preferred an appeal before the High Court registered as Criminal Appeal No.6 of 1994. By the impugned order Justice R.L. Khurana (since retired) acquitted the accused on a perverse finding against all canon of justice. Hence this appeal by special leave by the State of Himachal Pradesh.

The High Court after examining the prosecution evidence and documents on record acquitted the accused after recording the following findings:-

"From the evidence coming on record, it is not established that PW 1 was subjected to sexual intercourse on the night intervening 23/24.8.1988. No spermatozoa were found on the salwar and underwear of the prosecutrix, though according to the prosecution, complete act of sexual intercourse was committed. No spermatozoa were also found on the clothes of the accused. No evidence has come on the record to show that hymen was ruptured and if ruptured, the same was afresh rupture. The medical evidence coming on record, as discussed above, is highly unreliable and even otherwise it does not establish that PW 1 Kumari Seema was subjected to sexual intercourse."

We record our displeasure and dismay, the way the High Court dealt casually with the offence so grave, as in the case at hand, overlooking the alarming and shocking increase of sexual assault on the minor girls. The High Court was swayed by sheer insensitivity totally oblivious of growing menace of sex violence against the minors much less by the father. The High Court also totally overlooked the prosecution evidence, which inspired confidence and merited acceptance. It is now well settled principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. The evidence of a prosecutrix is more reliable than that of an injured witness. The testimony of the victim of sexual assault is vital unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty in acting 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. It is also well settled principle of law that 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. The evidence of the prosecutrix is more reliable than that of an injured witness. Even minor contradictions or insignificant discrepancies in the statement of the prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case.

In the back drop of the settled principle of law, we now proceed to examine the testimony of PW-1 (prosecutrix) corroborated by PW2- Uma her sister, PW3 - mother of the prosecutrix, PW4 - Dr.A.Banerji, PW5 - Dr.H.K.Premi and PW11 - Dr.L.R. Verma who examined the accused, on the basis of which the Trial Court recorded conviction. PW1 - Kumari Seema stated as under:-

"In the year 1988 I was living with my father Asha Ram (accused) and sister Uma Devi in the servant quarters known as Raj Bhawan At about 12.30 AM/on the intervening night of 23 and 24th August, 1988 my father (accused) entered my room switched off its light. He desired me to serve him meals. I served meals to my father (accused) in his own room. The meals were brought from the kitchen. When I was serving the meals, the accused bolted

the room from inside. My father the accused desired me to sleep in the same room. He forcibly made me to sleep on the cot lying there in his room. He switched off the light.

He untied the string of my salwar. I told him that look here Papa I am your daughter. Despite this, the accused committed sexual intercourse with me. I raised hue and cry upon which he gagged my mouth with a piece of cloth.

My sister Uam Devi came and knocked the door from outside. I came out of the room after half an hour. In the meantime my sister left the house and I found the outer door of the flat having been bolted from outside. I was so frightened that I climbed down through sanitary pipe to set out from the apartment. Uma and I again returned back to the quarter and bolted the door from outside. I narrated the whole story to my sister Uma Devi.

My salwar and underwear got blood stained because of the sexual intercourse committed with me by the accused.

My mother had been living separately. My mother had been earning her livelihood by doing manual work at the house of one Shri Atwal. I narrated the whole story to her. I accompanied my mother to report the occurrence to the police. The FIR Ext. PA was reported to the police by my mother Smt. Kala Wati.

Thereafter I was taken to the Indira Gandhi Medical Hospital Shimla for medical examination. I was medically got examined. My signatures Ext.PB are on the Medico Legal report."

She was subjected to lengthy cross-examination but the substance of the statement made in examination-in-chief remains totally unimpeached. A suggestion was put that a false case has been foisted against the accused at the instance of her mother was denied by her and that she was having menstruation at that time was also denied by her.

The statement of the prosecutrix is well corroborated in all-particular material by PW2 - Kumari Uma sister of the prosecutrix. She was also subjected to lengthy cross-examination but nothing could be elicited to dislodge the creditworthiness of her testimony in examination-in-chief. The testimony of P.Ws. 1 and 2 is also corroborated by the statement of PW3 - mother.

PW1 \026 the prosecutrix was medically examined by PW4 - Dr.A.Banerji on 24.8.1988 and he observed as under:-

"Patient was conscious and co-operative. Bloodstains on clothes (Salwar and underwear). Both the breast was normally devolved, pubic hair well grown up to symphysis pubis. Injuries:

1. Linear abrasion 2 CM long on right nasal ala. No fresh bleeding.
2. One linear abrasion 3.5 cm. Long on right lateral aspect of thigh. 30 CM below right greater trochanter. Patient was examined by Gynecologist for local examination. I referred the case to Gynecologist, MLC. PW4/A contains my material observations as given above.

My final opinion is Ex.PW4/B. It is opined that sexual intercourse could have been done with the patient examined. This opinion is based on the report given by Dr.H.K. Premi."

Dr. Banerji - PW4 at the relevant time was posted as Casualty Medical Officer and he was not a Gynecologist, therefore, he referred the prosecutrix to Dr. H.K. Premi - PW5 who was a Lecturer in the department of Obstetrics Gynaecology. He examined the prosecutrix and made the following observations.

"There was matting of the pubic hair with brownish appearance. There were no injuries marks on the thigh, pubic region and posterior commissure and libia minora and majora of the patient. There were injury marks on the posterior and lateral aspect of the hymen which showed fresh bleeding swabs taken from posterior vaginal pool alongwith two slides one for fresh examination in saline, other air dried and handed over the casualty medical officer Snowdown hospital for further examination. Dried bloodstains were seen on the perineal region and medial aspect of both thighs. Matted pubic hair were excised with scissor and handed over to casualty Medical Officer also for further medical examination. The patient had no menarche till the time of examination according to history. The patient had changed all clothes at the time of examination.

It is possible that sexual intercourse was committed with the victim whom I examined. In Ex.PW4/A my writing encircled in portion A and B is in my hands and signatures."

Dr. L.R. Varma - PW11 examined the accused and opined that there is nothing to suggest that the accused was incapable of performing the sexual intercourse. He also noticed the following injuries on the accused:

"Abrasion of 1 cm. long with over lying colour reddish on the posterior aspect of the right elbow joint, 3 cm. away from medial epicondyle. There was another abrasion of 5 cm. In size and 1 cm. away from the above mentioned abrasion and of the same colour."

Dr.N.K. Sarin - PW12 has been examined to prove the report of the radiologist. The skeletal examination was done by Dr.D.S.Dhiman who had left India and could not be examined in the court. Dr.Sarin, however, proved the report in the court given by Dr.D.S.Dhiman . As per the report the age of the prosecutrix has been mentioned between 12 = to 15 years.

On perusal of the evidence we are clearly of the view that the testimony of PW1 - prosecutrix is well corroborated by the testimony of PW-2, PW-3 corroborated by the medical evidence of P.Ws. 4,5,11 and 12 inspires confidence and the Trial Court has rightly convicted the accused - respondent under Section 376 IPC.

It is contended by the counsel for the accused that because of the strained relationship between PW3 - mother of the prosecutrix and the accused, the prosecution case has been foisted against the accused at the instigation of the mother and deserves outright rejection. From the evidence it is clearly established that P.Ws. 1 and 2 despite of strained

relationship between their mother and father were happily staying with the accused and there is no rhyme or reason as to why the daughter should depose falsely so as to expose her honour and dignity and also expose the whole family to the society risking the outcasting or ostracization and condemnation by the family circle as well as by the society. No girl of self respect and dignity who is conscious of her chastity having expectations of married life and livelihood would accuse falsely against any other person of rape, much less against her father, sacrificing thereby her chastity and also expose the entire family to shame and at the risk of condemnation and ostracization by the society. It is unthinkable to suggest that the mother would go to the extent of inventing a story of sexual assault of her own daughter and tutor her to narrate a story of sexual assault against a person who is no other than her husband and father of the girl, at the risk of bringing down their social status and spoil their reputation in the society as well as family circle to which they belong to.

In the case of *Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat*, AIR 1983 SC 753 at sc pp.756-757 this Court pointed out that in the Indian setting, 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. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? It was further pointed out that on principle the evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury (which is not shown or believed to be self inflicted) is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offence is entitled to great weight, absence of corroboration notwithstanding. The aforesaid observation was made by this Court because of the following factors: (1) A girl or a woman in the tradition bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the Society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or as acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husbands' family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as a deterrent.

In the case of *Rafiq vs. State of U.P.* (1980) 4 SCC 262, V.R. Krishna Iyer, J speaking for the Court observed at scc p.265 as under:-

"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. Indeed, from place to place, from

age to age, from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggrieved."

In the case of Madan Gopal Kakkad vs. Naval Dubey (1992) 3 SCC 204, it was pointed out at scc p.218 that even in cases wherein there is lack of oral corroboration to that of a prosecutrix, a conviction can be safely recorded, provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

In the case of Ranjit Hazarika Vs. State of Assam, (1998) 8 SCC 635, this Court held that non-rupture of hymen or absence of injury on victim's private parts does not belie her testimony. This Court further held that the opinion of doctor that no rape was committed cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. This Court held that the evidence of the prosecutrix was amply corroborated by her mother and father whom she immediately informed about the occurrence.

In the case of State of Punjab Vs. Gurmit Singh (1996) 2 SCC 384, this Court pointed out at scc p.403:-

"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 soul of the helpless female. The Court, therefore, should shoulder a great responsibility while trying an accused on charges of rape. They 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. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations."

In the case of State of Rajasthan vs. N.K. the accused, (2000) 5 SCC 30 the observation made in Gurmit Singh's case (supra) was reiterated. The Court further observed 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 giving 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 the premises aforesaid, we are clearly of the view that the High Court has erred in law as well as on facts thereby committed grave miscarriage of justice in acquitting the respondent by reversing the conviction of the respondent recorded by the Trial Court under Section 376 IPC. The impugned order of the High Court is, accordingly, set aside and the order of the Trial Court convicting the accused under Section 376 is restored.

This leads us to consider as to the quantum of punishment. The Trial Court on conviction sentenced the respondent to 5 years rigorous imprisonment and a fine of Rs.1,000/- and in default rigorous imprisonment for 3 months. Here is the case where the crime committed by the respondent not only delicts the law but it has a deleterious effect on the civilized society. Gravity of the crime has to be necessarily assessed from the nature of the crime. A crime may be grave but the nature of the crime may not be so grave. Similarly, a crime may not be so grave but the nature of the crime may be very grave. Ordinarily, the offence of rape is grave by its nature. More so, when the perpetrator of the crime is the father against his own daughter it is more graver and the rarest of rare, which warrants a strong deterrent judicial hand. Even in ordinary criminal terminology a rape is a crime more heinous than murder as it destroys the very soul of hapless woman. This is more so when the perpetrator of the grave crime is the father of the victim girl. Father is a fortress, refuge and the trustee of his daughter. By betraying the trust and taking undue advantage of trust reposed in him by the daughter, serving food at odd hours at 12.30 A.M. he ravished the chastity of his daughter, jeopardized her future prospect of getting married, enjoying marital and conjugal life, has been totally devastated. Not only that, she carries an indelible social stigma on her head and deathless shame as long as she lives.

Having said so, regarding sentence we are tempted to quote the observation of Justice Pandian in the case of Madan Gopal Kakkad (supra) where it has been observed that "Judges who bear the Sword of Justice should not hesitate to use that sword with the utmost severity, to the full and to the end if the gravity of the offences so demand."

So, while maintaining the conviction recorded by the Trial Court, we alter and enhance the sentence from 5 years rigorous imprisonment to imprisonment for life. We also enhance the fine amount of Rs.1000/- to Rs.25,000/- (Rs. Twenty Five Thousand only). The fine amount if realized shall be paid to the prosecutrix. The appeal stands allowed in the above terms. The respondent is on bail. His bail-bonds and surety

stand cancelled. He is directed to be taken back to the custody forthwith. Compliance report should be sent to this Court within one month.

JUDIS