

A.F.R.

Court No. - 49

Case :- GOVERNMENT APPEAL No. - 1450 of 1989

Appellant :- State of U.P.

Respondent :- Dharma

Counsel for Appellant :- A.G.A

Counsel for Respondent :- Vinay Saran,Virendra Saran

Bench : Hon'ble Suneet Kumar & Hon'ble Vikram D. Chauhan,JJ.

Suneet Kumar,J

1. Heard Sri Vikas Goswami, learned Additional Government Advocate and Sri Ajay Kumar Srivastava learned counsel appearing for the accused respondent.

2. The instant appeal is directed against the judgment and order dated 25 February 1989 passed by the Sessions Judge, Farrukhabad in Sessions Trial No. 784 of 1988 (State vs. Dharmu alias Dharam Singh) arising from Case Crime No. 183 of 1988, under Section 376 IPC, Police Station Kannauj, District Farrukhabad, whereby, accused-respondent was acquitted.

3. As per prosecution case FIR came to be lodged on 21.05.1988 at 18:40 hours, alleging that daughter of the complainant, aged about 10 years, had gone out at 10:00 a.m. to graze goats, accused reached at the field where accused caught hold of his daughter and dropped her on the ground holding her mouth and committed offence of rape. The persons passing nearby exhorted the accused, he thereafter ran away. It is further alleged that the victim was bleeding from her private part; on return, to the house after selling bangles, complainant was informed of the incident.

4. The victim was medically examined on 22.05.1988 at 3:00 p.m. Supplementary medical report was prepared after receiving the x-ray report; age of the victim was assessed 9 years; in the opinion of the medical expert, rape was committed 24 to 30 hours earlier.

5. The charge-sheet came to be filed against the accused respondent under Section 376 IPC. The accused respondent was summoned to stand trial. In defence, he denied the allegations and demanded trial. No defence witness was produced. The Trial Court acquitted the accused as the prosecution failed to prove the charge beyond reasonable doubt. Trial Court reached a finding that the victim was tutored and that the time of the alleged incident as per the medical expert opinion does not corroborate with the alleged time of the incident.

6. Prosecution to prove the charge examined in all 5 witnesses of fact; complainant, Ram Sewak (PW-1), father of the victim, victim (PW-2), Dr. P. Singh (PW-3), S.I. A.K. Singh (PW-4), Head Moharrir Ganga Prasad (PW-5).

7. The following documents were exhibited:

1.	F.I.R.	21.05.1988	Ex. Ka. 8
2.	Written Report	21.05.1988	Ex. Ka. 1
3.	Recovery Memo and supurdginama of ‘Under-Wear’	21.05.1989	Ex. Ka. 7
4.	Injury Report	22.05.1988	Ex. Ka. 2
5.	Supplementary Report	24.05.1988	Ex. Ka. 3
6.	Site Plan with Index	22.05.1988	Ex. Ka. 6

8. PW-1, father of the victim, in Examination-in-Chief stated that when he returned home at 3:00 p.m. on the day of incident he saw that the physical condition of his daughter was in bad state; private part of the prosecutrix was bleeding, blood was visible on her underwear. He further stated that he was informed by the victim that accused had committed the offence of rape. He further stated that he got the report transcribed by Jeetan Lal on his dictation. He further stated that at 4:00 p.m., he alongwith his daughter and other villagers had gone to the police station. In cross-examination, he reiterated the FIR version and stated that on returning to his house at 3:00 p.m., 3-4 persons of the village had assembled and were talking with his daughter, she informed

him of the incident; he denied the suggestion that he had reported the incident after due consultation.

9. PW-2, victim stated that she is aged about 9-10 years, the Trial Court assessed her intelligence by putting several question to ascertain as to whether victim understood the questions. On specific query of the court, she stated that she is not educated, she was aware of her father's earning by selling bangles, 4 bangles are sold for one rupee; 8 bangles in 2 rupee. On specific query, she recognised the accused respondent present in the court and narrated the incident stating that accused had caught hold of her and dropped her on the ground, removed her underwear and committed the offence. She incurred injuries; blood had come out and stained her underwear, thereafter, accused escaped from the spot. On specific query, she stated that she narrated the incident to her father, thereafter, report was lodged. She further stated that she accompanied her father to the police station. On query she stated that the incident had occurred at the agricultural field of Jhabba. On specific query by the defence as to whether she had been tutored, she denied and answered in negative.

10. Dr. P. Singh, PW-3, stated that she examined the victim on 22.05.1988; she did not find injury on the body of victim on external examination; on internal examination injury was found on the private part and it was bleeding; to ascertain the age of the victim she advised x-ray; supplement report was prepared on 24.05.1988 after receiving the x-ray report. In her opinion, the victim was aged about 9 years; incident of rape occurred 24 to 30 hours; she prepared the supplementary report; x-ray report dated 24.05.1988 was prepared by Dr. S.K. Rathour.

11. On specific query by the Trial court as to why she did not give her opinion of rape on examining the victim on 22.05.1988; the witness replied that she was awaiting the x-ray report, therefore, she did not give any opinion. She further stated that normally the information of rape is given after receiving the x-ray report; in this case there is no report of pathology otherwise opinion is generally given after receiving

either x-ray report or pathology report. She further stated that the x-ray of the victim was done for the purposes of determining the age and not to ascertain whether offence of rape was committed. On drawing the attention of the witness (PW-3) with regard to her opinion that “I came to conclusion that her age is about Nine Years. Rape has been done. Duration of injury about twenty four to thirty Hrs”. On query she stated that victim was not produced on 24.05.1988; opinion of the approximate time of the crime of offence is based on medical examination report dated 22.05.1988 when the victim was produced for medical examination and the opinion is based on the injury report dated 22.05.1988. On suggestion as to whether the victim could have incurred injury on her private part by falling from a cot or any other manner, the witness declined and answered in negative. The witness categorically stated that injury could not have been caused by falling from a cot.

12. S.I. A.K. Singh, (PW-4), deposed that the investigation was entrusted to him on 22.06.1988. He recorded the statement of the victim and the complainant on 16.07.1988. On 12.08.1988 he recorded the statement of the accused in jail. The site plan was prepared on 22.05.1988; recovery memo of underwear of the victim was prepared by the constable Ganga Prasad. Charge-sheet was filed on 12.08.1988.

13. Head Moharrir Ganga Prasad (PW-5), deposed that he had taken the underwear of the victim on 21.05.1988 at police station.

14. The Trial Court rejected the testimony of the victim on being tutored, hence, not trustworthy. The opinion of the medical expert (PW-3) was also rejected as in the opinion of the court in the supplementary examination report dated 24.05.1988, it was opined that rape has been committed on the prosecutrix and duration of injury was 24 to 30 hours. The probable time recorded in the supplementary affidavit does not corroborate the time of the alleged incident of rape. It is further noted that PW-3, Dr. P. Singh was unable to submit plausible explanation as to why she did not record her opinion

on the point of rape on 22.05.1988 itself when she examined the victim as also the duration of injury. According to the Trial Court, negligence on the part of the medical expert was considered fatal to the case of the prosecution. Further, the court directed District Magistrate and Chief Medical Officer to inquire into the circumstances under which PW-3 failed to give proper opinion on the point of rape and duration of injury on 22.05.1988. The relevant portion of the judgment is extracted:

“A perusal of the aforesaid statement of the prosecutrix reveals that the reply which the prosecutrix gave to the questions put to her by the Public Prosecutor was probably the result of tutoring. In the instant case before this court, I find that even the Investigating Officer S.I. A.K. Singh had examined the prosecutrix after a lapse of a period of one month and 22 days, the occurrence having taken place on 21.05.1988 (**wrongly mentioned as 21.06.1988**) and the statement of the prosecutrix having being recorded on 16.07.1988. The circumstances that even the Investigating agency never bothered to record the statement of the prosecutrix promptly fully go to show that the answers to the questions which the prosecutrix has given in reply to the questions put to her by the Public Prosecutor is the out come of her tutoring.

“Now coming to the evidence of Dr. (Smt.) P. Singh (P.W. 3), Medical Officer, Women Hospital, Fatehgarh, I find that on 25.05.1988, Dr. (Smt.) P. Singh never gave any opinion on the point of rape. She mentioned in her supplementary medical examination report dated 24.05.1988 that rape has been committed upon the prosecutrix and the duration of injury was 25 to 30 hours. Dr. (Smt.) P. Singh was unable to submit any plausible explanation as to why she did not state her opinion on the point of rape right on 22.05.1988 as also the duration of injury. When Dr. (Smt.) P. Singh had medically examined the prosecutrix on 22.05.1988 and when the prosecutrix was referred to her for examination as a case of rape by the Police, it was her bounden duty to have given her opinion on the point of rape right on 22.05.1988. She ought to have mentioned the duration of injury right on 22.05.1988. The negligence on the part of Dr. (Smt.) P. Singh in this behalf is considered fatal to the case of prosecution. I leave it to the discretion of the District Magistrate and the Chief Medical Officer to enquire into the circumstances under which Dr. (Smt.) P. Singh failed to give her proper opinion on the point of rape and duration of injury on 22.05.1988 and under what circumstances she wrote after two days in her injury report that rape had been

committed and that the duration of the injury was about 25 to 30 hours”.

15. It is settled legal position that the evidence of rape victim stands at par with the evidence of an injured witness. Injury of the rape victim being physical, as well as, psychological in the form of traumatised assault and ravishment of her chastity and womanhood. It is also settled that if the evidence of the prosecutrix inspires confidence and appears to be trustworthy and natural, no further corroboration by an independent eye-witness is required. Corroboration from medical evidence varies from case to case as it depends upon the circumstances of each case.

16. We have gone through the cross-examination of the victim. It runs into 9 typed pages; the Trial Court, the defence counsel and the prosecution, severely grilled the victim, aged about 9-10 years. However, we find that the victim did not budge from the prosecution version; she identified the accused; she categorically stated that the accused respondent committed the offence; she further stated the time of incident; site of the incident; and on specific query as to whether she has deposed on being tutored, she declined. The court after examining the witnesses of fact and considering the circumstances was of the opinion that the victim is intelligent enough and is able to understand the questions. It is to be noted that there is no major contradiction in her statement with regard to the incident; and her testimony is truthful, credible and trustworthy having regard to the fact that victim is illiterate/villagers, coming from marginalised section of society and is not worldly-wise; statement of the victim supports the prosecution case which has been duly testified and proved by the informant (PW-1). The site plan prepared on 22.05.1988, as per the prosecution version i.e. agricultural field of Chhabi Nath.

17. The fact that witness being a tutored one should be reflected from the over all style of deposition and all the attending circumstances. A tutored witness normally sticks to his/her earlier statement very faithfully. This is also not the

case in the present matter because the testimony of the witness before the court is silent about a few facts.

18. Who can be said to be a “sterling witness”, has been dealt with and considered in *Rai Sandeep v. State (NCT of Delhi)*¹. In para 22, it is observed and held as under:

“In our considered opinion, the ‘sterling witness’ should be of a very high quality and caliber whose version should, therefore, be unassailable. The Court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the Court. It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as, the sequence of it. Such a version should have co-relation with each and everyone of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other similar such tests to be applied, it can be held that such a witness can be called as a ‘sterling witness’ whose version can be accepted by the Court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the Court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

¹ (2012) 8 SCC 21

19. In the case of *Sham Singh v. State of Haryana*², it is observed that testimony of the victim 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 the victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. The courts should not get swayed by minor or insignificant contradictions/ discrepancies in the statement of the prosecutrix. In paragraphs 6 & 7, it is observed and held as under:

“6. We are conscious that the courts 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 the 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 court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations or sexual assaults. [See: *State of Punjab v. Gurmit Singh*³].

7. It is also by now well settled that 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 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

2 (2018) 18 SCC 34

3 (1996) 2 SCC 384 (SCC p. 403, para 21)

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. (See: **Ranjit Hazarika v. State of Assam**⁴).

20. Further, the testimony of the victim is duly corroborated by the medical expert opinion, internal medical examination notes the injury on the private part including blood seen therein; blood stained underwear of the victim was recovered on the date of incident at the police station (per PW-5). The factum of injury and the blood present on the private part is duly corroborated by statement of the informant, victim and medical expert opinion. The contents of the report has not been doubted by the defence. The medical opinion was doubted merely for the reason that in the medical examination report the expert has not mentioned the probable time of rape. The Trial Court committed serious error in rejecting the testimony and the report of the medical expert (PW-3), merely for the reason that the supplementary medical examination report notes that the offence was committed 24-30 hours and the same was not noted by the medical expert while examining the prosecutrix on 22.05.1988. The short coming of the prosecution, if any, would not benefit the defence, nor can the defence take any advantage. The prosecution case has to stand on its own legs, and the incriminating circumstances has to be proved beyond reasonable doubt.

21. The conviction of the accused respondent can rest on the sole testimony of the prosecutrix provided she is a sterling witness; her testimony is credible, truthful and trustworthy. Further, the accused cannot take any advantage that there was some short coming in the investigation i.e. the statement of the victim not recorded promptly by the Investigating Officer or the medical expert not recording her opinion that rape was committed on the report when the victim was examined.

4 (1998) 8 SCC 635

22. We have no hesitation, in the given facts, and having regard to the testimony of victim (PW-2) and medical expert (PW-3), the charge against the accused respondent stands proved beyond reasonable doubt. The sole testimony of the victim was sufficient to have convicted the accused respondent. In our opinion, the finding reached by the Trial Court is per-se perverse and against the testimony of the victim, duly supported by medical evidence.

23. The courts are expected to try and decide cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is a better armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and complicated provisos.

24. Once a person is convicted for an offence of rape, he should be treated with a heavy hand. An undeserved indulgence or liberal attitude in not awarding adequate sentence in such cases would amount to allowing or even to encouraging 'potential criminals'. The society can no longer endure under such serious threats. Courts must hear the loud cry for justice by society in cases of heinous crime of rape and impose adequate sentence. Public abhorrence of the crime needs reflection through imposition of appropriate sentence by the Court. [Refer: **State of M.P. v. Babulal**⁵ and **Dinesh Vs. State of Rajshtan**]⁶

25. In view thereof, government appeal is **allowed**. The order dated 25 February 1989, passed by the Sessions Judge, Farrukhabad in Sessions Trial No. 784 of 1988 (State vs. Dharmu alias Dharam Singh) arising from Case Crime No. 183 of 1988, under Section 376 IPC, Police Station Kannauj, District Farrukhabad, is set aside.

26. Accused-respondent Dharmu alias Dharam Singh is, hereby, held guilty. He is convicted under Section 376 IPC and sentenced to 10 years rigorous imprisonment with fine of Rs.25,000/-, on default of deposition of fine the accused

5 (2008) 1 SCC 234

6. (2006) 3 SCC 771

respondent shall serve one year simple imprisonment. Rs.20,000/- of the fine so realized, shall be given to the victim towards compensation. The accused, Dharmu alias Dharam Singh, is on bail. His bail bonds are cancelled and sureties are discharged. He should be taken into custody forthwith to serve out the sentence awarded to him. The office is directed to communicate this order to the CJM concerned within a week for compliance.

27. The trial court record, along with the copy of this order, be returned forthwith.

Order Date :- 14.3.2022
Mukesh Kr.

(Vikram D. Chauhan,J)

(Suneet Kumar,J)