HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
SINGLE BENCH : Hon'ble Shri Justice Ved Prakash Sharma

Cr.A. No.747/1997

Bhawarlal S/o Raisingh
Vs.
The State of M.P.

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Smt. Seema Sharma, learned counsel for the appellant.

Shri Pankaj Wadhwani, learned Public Prosecutor for the respondent-State.

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J U D G M E N T

(Delivered on 15th day of December, 2016)

This appeal preferred under Section 374 of the Code of Criminal Procedure, 1973 (for short 'the Code') is directed against judgment and order dated 10.07.1997 passed by learned Additional Sessions Judge, Biaora, Distt. Rajgarh in S.T. No.89/1996, whereby Bhawarlal (appellant) has been found guilty for offences under Section 376 and 506 (Part-II) of Indian Penal Code, 1861 (for short 'IPC') and has been sentenced to undergo 8 years R.I. and to pay a fine of Rs.500/- for offence under Section 376 'IPC' and to undergo 2 years R.I. for offence under Section 506 (Part II) 'IPC'. Both the substantive sentences were directed to run concurrently.

02. Prosecution story, briefly stated, is that on 11th of February, 1996 around 4 p.m., the prosecutrix (P.W.1), aged about 12 years, had gone to a nearby well situated around about ½ kilometers away from her residence in village Gujri, P.S. Biaora, Distt. Rajgarh to wash her garments. After putting

the garments near the well, she went inside a hut situated near the well to fetch soap. Allegedly, while she was coming out of the hut, the appellant reached there and took her forcibly inside the hut; after putting her down on the ground, he removed her undergarments and forcibly committed sexual intercourse upon her, despite her resistance. It is further the case of the prosecution that when the prosecutrix (P.W.1) tried to raise an alarm, the appellant closed her mouth by his hand and further threatened to kill her. Allegedly, thereafter, the appellant left the place of occurrence further threatening the prosecutrix (P.W.1) not to reveal about this incident to anyone, else, she will be put to death.

03. As per prosecution, after the incident, the prosecutrix came back to her house. Her mother, sister Shagun Bai (P.W.7) and brother were not present in the house as they had gone to some other village to attend a marrige. Though prosecutrix's father Ratanlal (P.W.2) was there, however, she did not reveal anything to him about this incident. Next day, the prosecutrix (P.W.1) narrated this incident to Kantibai (P.W.7), her friend, when she had gone with her to prepare cowdung cakes. The prosecutrix further narrated this incident to her mother, sister Shagun Bai (P.W.7) when they came back after attending the marriage. Thereafter, on 13.02.1998 the matter was reported by the prosecutrix (P.W.1) to police, leading to registration of First Information Report (Ex.P/1) against the appellant.

04. Bherusingh (P.W.9) - the then Sub-Inspector, Police Station Biaora, during the course of investigation

prepared site map (Ex.P/2). The prosecutrix (P.W.1) and other witnesses were interrogated. The prosecutrix (P.W.1) was sent for medical examination. Dr. Shashi Gupta (P.W.6) examined her on 13.02.1996 and, vide report Ex.P/6, found following injuries on her person, which, as opined by her, were caused within 2-5 days of examination :

i) Abrasion ½ cm. x ¼ cm. (superficial) over left lateral part of the neck.

ii) Bruise coupled with the abrasion 1 cm. x 1 cm. on the back (lumber region).

05. On examination of the private parts, though hymen was found intact, however, inflammation and pain was noticed one cm. below vagina. Dr. Shasi Gupta (P.W.6) prepared two slides of vaginal swab taken from the private parts of the prosecutrix. Apart this, pubic hairs were also taken. The petticoat worn by the prosecutrix was also seized. The appellant was arrested and sent for medical examination. After usual investigation, a charge-sheet was laid before the learned Magistrate, who committed the case to the Sessions. Charges for offences under Section 376 & 506 (Part-II) 'IPC' were framed against the appellant who pleaded not guilty and claimed to be tried.

06. The prosecution in support of its case examined as many as 10 witnesses including prosecutrix (P.W.1), her father Ratanlal (P.W.2), sister Shagun Bai (P.W.5) and friend Kanti Bai (P.W.7). Dr. Shashi Gupta (P.W.6) had conducted medical examination of the prosecutrix, while Bherusingh (P.W.9) is the investigating officer. Documents Ex.P/1 to P/10 were also

marked in evidence.

07. The appellant in his examination under Section 313 of 'the Code' denied the incriminating circumstances appearing against him in the evidence and claiming innocence submitted that he was falsely implicated because of enmity between his family and the family of the prosecutrix. Sole witness Biram (D.W.1) was examined in defence.

08. The learned trial Court on the basis of evidence, vide the impugned judgment, found the charges proved against the appellant beyond reasonable doubt and accordingly, he was convicted and sentenced as stated herein-above with regard to charges for offence under Section 376 & 506 (Part-II) 'IPC'.

09. The conviction and sentence has been challenged in this appeal on the ground that the learned trial Judge has committed a serious error in relying upon the testimony of the prosecution witnesses and in discarding the version put forth by the defence. It is submitted that finding of guilt recorded by the learned trial Court is totally unwarranted. It is contended that considering the fact that First Information Report was lodged quite belatedly and that the prosecutrix's father has been on inimical terms with the appellant, the trial Court ought not to have believed the version put forth by the prosecutrix, particularly, in the background that no definite opinion regarding commission of rape was given by the concerned doctor.

10. Per contra, the learned Public Prosecutor has submitted that the testimony of the prosecutrix is free from any serious anomaly or contradiction; being a case involving prestige of the prosecutrix, her family was slow in reporting the matter to the police, therefore, the delay in lodging the FIR has rightly been held to be not fatal. The doctor who conducted medical examination of the prosecutrix has found injuries not only on the neck and back of the prosecutrix but also on her private parts which corroborates the version put forth by the prosecutrix (P.W.1) with regard to commission of rape. Lastly, it is submitted that generally the parents will not go to the extent of levelling a false charge on account of enmity at the cost of the reputation of their daughter. Learned Public Prosecutor submits that the conviction and sentence being in accordance with law and evidence, the same does not call for any interference.

11. Heard the learned counsel for the parties and perused the record.

12. The question before this Court is whether the conviction and sentence recorded by the learned trial Court is not in conformity with relevant law and the evidences on record and, therefore, unsustainable ?

13. The prosecutrix (P.W.1) has clearly deposed that on the date of the incident, she had gone to the nearby well to wash her clothes and that when she was coming out of the hut, situated near the well, after fetching soap, the appellant came

there and took her forcibly inside the hut. This witness has further stated that she was put down by the appellant on the ground and thereafter, the appellant after removing her ***'Ghagri'***, had put his private part into her private part and also pressed her breasts and that when she tried to raise alarm, he had pressed her neck. This witness has further stated that despite her resistance, the appellant had sexually assaulted her and thereafter, left the spot by threatening her not to reveal the incident to anyone.

14. It has come in the testimony of Shagun Bai (PW5), the sister of the prosecutrix, that on the date of the incident, she along with her mother and brother had gone to village Banania to attend a marriage leaving behind her father and the prosecutrix and that she returned back on Monday i.e. next day of the incident. The prosecutrix (P.W.1) has testified that when she returned back to her house after the incident her father Ratanlal (P.W.2) was there, however, she did not narrate the incident to him. This conduct on the part of the prosecutrix cannot be said to be unusual or unnatural. Ratanlal (P.W.2) the father of the prosecutrix has stated that the prosecutrix had narrated the incident to her mother and sister Shagun Bai (P.W.5). Considering the nature of the incident involving sexual assault it was but natural on the part of the prosecutrix (P.W.1) to feel shy about narrating the incident to his father. Usually, in such a situation the girl will reveal the incident to mother & sister. Though, the prosecutrix allegedly, narrated the incident to Kantibai (P.W.7) her friend, however, she has

not supported the prosecutrix on this point and after being declared hostile has been contradicted by her previous statement (Ex.P/7) recorded under Section 161 Cr.P.C. so as to discredit her. Be that as it may, the testimony of the prosecutrix has stood the test of cross-examination, because no serious anomaly, omission or contradiction could be elicited therein as regards substantive facts with regard to alleged incident except a minor omission in her case-diary statement (Ex.D/1) with regard to broken bangles, buttons and torn out blouse.

15. The testimony of the prosecutrix (P.W.1) has been challenged by the defence primarily on three grounds, firstly, delay in lodging First Information Report (Ex.P/1); secondly, lack of corroboration from independent source and thirdly, that as deposed by Dr. Shashi Gupta (P.W.6) hymen of the prosecutrix was found intact. It is further submitted that Ratanlal (P.W.2) has admitted in para-7 of his deposition about enmity between his family and the family of appellant, therefore, false implication cannot be ruled out.

16. In reply, it is submitted by the learned Public Prosecutor that on the date of the incident, the mother, sister and brother of the prosecutrix were not present in the house as they had gone to some other village to attend a marriage; the prosecutrix, who was threatened by the appellant had narrated the incident to them when they came back to their home. It is further submitted that in rape cases, the testimony of the prosecutrix cannot be discarded simply because it is not

corroborated by independent source. It is submitted that Dr. Shashi Gupta (P.W.6) has found injuries on the person of the prosecutrix (P.W.1) which corroborates her version as regards causing of injuries during the incident. Lastly, it is submitted that no father would put the prestige and honour of her daughter at stake only for revenge on account of enmity.

17. The incident allegedly, occurred in the evening of 11.02.1996. As deposed by Shagun Bai (P.W.5), on that day, she along with her mother and brother had gone to village Banania to attend a marriage. It is quite understandable that generally, a minor girl will not feel comfortable in narrating the incident of sexual assault to her father, therefore, it cannot be considered as unusual that the prosecutrix (P.W.1) after return of her mother and sister, had disclosed the incident to them, which later came to the knowledge of her father Ratanlal (P.W.2).

18. Further, we cannot lose sight of the fact that in Indian social set-up generally, there is a tendency among victims of sexual assault not to come forward to take recourse to law and legal machinery as they apprehend that disclosure of the incident may adversely affect their prestige as well as prestige of their family.

19. In ***Harpalsingh vs. State of Himachal Pradesh, AIR 1981 SC 361***, it has been held that as the prestige and reputation of the family was at stake, therefore, delay in lodging the FIR in rape cases is not an unusual feature. A

delay of 10 days in that case was not considered fatal for the prosecution.

20. In ***Satyapal V. State of Haryana, AIR 2009 SC 2190*** (Para 20) Hon'ble the apex Court held :

> "20. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon….."

21. Dealing with the aspect of delay in lodging F.I.R. in rape cases, Hon'ble the Supreme Court in ***Karnel Singh Vs. State of M.P. (1995) 5 SCC 518***, has held as under :-

> "7…… The submission overlooks the fact that in Indian women are slow and hesitant to complaint of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less then promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than comfort and sympathies with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false (emphasis added)."

22. In the aforesaid legal and factual background, the prosecution case in the instant matter cannot be thrown away overboard only on account of delay in lodging the FIR, which rather has been explained by the prosecution.

23. As regards corroboration, the law is well settled that in rape cases corroboration cannot be demanded as a rule of law though in cases of a grown-up married women or an adult woman, by way of precaution, the Court can look for corroboration.

24. Dealing with the lack of corroboration from independent source in rape cases, the apex Court in the case of ***Bharwada Bhogin Bhai Hirji Bhai vs. State of Gujrat, AIR 1983 SC 753,*** has observed as under :-

> "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 of suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. Corroboration may be considered essential to establish a sexual offence in the back drop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society and its profile."

25. In this regard in the case of ***Om Prakash Vs. State of Uttar Pradesh AIR 2006 SC 2214 (Para 13)*** the apex Court has observed:

> "13. It is settled law that the victim of sexual assault is not treated as accomplice and as such, her evidence does not require corroboration from any other evidence including the evidence of a doctor. In a given case even if the doctor

> who examined the victim does not find sign of rape, it is no ground to disbelieve the sole testimony of the prosecutrix. In normal course a victim of sexual assault does not like to disclose such offence even before her family members much less before public or before the police. The Indian women has tendency to conceal such offence because it involves her prestige as well as prestige of her family. Only in few cases, the victim girl or the family members has courage to go before police station and lodged a case…..”

26. As regards medical evidence, though Dr. Shashi Gupta (P.W.6), who conducted medical examination of the prosecutrix (P.W.1), has not given any definite opinion with regard to the commission of the rape upon the prosecutrix, however, she has found not only an abrasion on the neck of the prosecutrix but also bruise and abrasion on her back. Injury has also been found on the private parts as stated by Dr. Gupta (P.W.6) in para-2 of her testimony. In para-6 it has been denied by Dr. Gupta (P.W.6) that the injury found on the private parts could have been caused due to fall on the ground.

27. It is contended by learned counsel for the appellant that as the hymen membrane was found intact, therefore, offence of rape, as defined in Section 375 IPC, cannot be made out and that at the most it can be said that attempt to rape was there. Reliance in this regard has been placed on a decision of this Court in ***Kallu Ahirwar vs. State of M.P., 2004 MPLJ (3) page 209***. The legal issue in this behalf has been considered at length by Hon’ble the apex Court in ***Madan Gopal Kakkad vs. Naval Dubey, JT 1992 (3) SC 270.***

After referring to opinion expressed by Mody in his Textbook of **Medical Jurisprudence and Toxicology** and further referring to Parikh's Textbook of **Medical Jurisprudence and Toxicology and Encyclopedia of Crime and Justice**, the apex Court has stated the legal position in paras 37 to 39 of the report as under:

> "37. We feel that it would be quite appropriate, in this context, to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads thus:
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> Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen or even an attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.
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> 38. In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

> Sexual intercourse. In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains.
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> 39. In Encyclopedia of Crime and Justice (Vol. 4) at page 1356, it is stated:
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> ... even slight penetration is sufficient and emission is unnecessary.Therefore, the absence of injuries on the private parts of a victim specially a married lady cannot, ipso facto, lead to an inference that no rape has been committed. Here the victim was a very young girl of six years of age and it is quite likely that full penetration did not take place as the accused is a grown up person of over 20 years of age. The injuries clearly indicate that rape, as defined in Section 375 IPC, did take place."

28. The aforesaid proposition of law was cited with approval by the apex Court in ***Rajendra Datta Zarekar vs. State of Goa, (2007) 14 SCC 560,*** wherein the apex Court repelled the plea that offence of rape cannot be established where the hymen has been found intact. Therefore, considering the testimony of the prosecutrix (P.W.1) despite the fact that hymen has been found intact, it is found proved beyond reasonable doubt that she was subjected to sexual assault by the appellant which considering the facts and circumstances of the case amounts to 'rape' within the meaning of Section 375 of 'IPC', therefore, the finding recorded in this regard by the learned trial Court cannot be

faulted with.

29. As regards the contention raised on behalf of the appellant as to the anomalies and contradictions in the testimony of the prosecutrix (P.W.1), the legal position in this regard, as laid down by the apex Court in ***Ranjit Hazarika vs. State of Assam, (1998) 8 SCC 635***, needs to be noticed, which runs as under:

> "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 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."

30. The prosecutrix (P.W.1) in para-8 has stated that at the time of the commission of sexual assault her bangles were broken and that buttons of her blouse also got broken and that

she had stated about this to the investigating officer. Though, there is omission in this regard in Ex.D/1, the case diary statement of the prosecutrix, and F.I.R. Ex.P/1, however, this omission, being not of serious nature, in the aforesaid legal background, cannot be made a ground to disbelieve the prosecutrix (P.W.1) and throw away her testimony which is otherwise found to be natural and creditworthy.

31. As regards plea of false implication, in ***Wahid Khan Vs. State of Madhya Pradesh, (2010) 2 SCC 9***, the Hon'ble the Supreme Court held:

> "It is a matter of common law in Indian society any girl or woman would not make such allegations against a person as such she is fully aware of the repercussions flowing there-from. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be easily reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are."

32. In ***Rajinder Vs. State of M.P., AIR 2009 SC 3022*** (Para 11) it was held as under :

> "21. In the context of Indian Culture, a woman victim of sexual aggression would rather suffer silently than to falsely implicate somebody. Any statement of rape is an

> extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the Courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and, therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for….."

33. Considering the quality and tenor of the evidence adduced by the prosecution, it cannot be said that the learned trial Court has committed any error in recording conviction against the appellant for offences under Section 376 & 506 (Part-II) IPC.

34. As regards sentence, a girl of around 12-15 years has been subjected to sexual assault. Undue leniency in imposing sentence can be counter productive in such case. It is required that appropriate sentence which has deterrent affect is imposed in such cases. The learned trial Court has imposed 8 years RI for offence under Section 376 'IPC' and 2 years RI in Section 506 (Part-II) 'IPC', which cannot be said to be unreasonable.

35. In view of the aforesaid, this appeal having no merit, is liable to be dismissed and is accordingly, hereby dismissed. The appellant, who is on bail is directed to surrender before the trial Court on or before 31/12/2016 for being sent to jail to serve out remaining custodial sentence. In case of failure to surrender, the learned trial Court shall secure

his presence by resorting to coercive process to send him to jail.

A copy of this order be sent to the trial Court for compliance.

(Ved Prakash Sharma)
Judge

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