

STATE OF ORISSA
v.
THAKARA BESRA AND ANR.

APRIL 16, 2002

[R.P. SETHI AND D.M. DHARMADHIKARI, JJ.]

Penal Code, 1860 : Section 376

Rape—Testimony of prosecutrix—Trustworthiness—Corroboration by medical evidence—Conviction by Trial Court—Appeal by accused persons—Re-appreciation of evidence by High Court—Acquittal—Appeal before Supreme Court—Held, High Court rejected testimony of prosecutrix on surmises—Acquittal order passed by High Court set aside.

The respondents were tried under Section 376 of the Indian Penal Code, 1860. The prosecution story was that in the absence of husband of prosecutrix the accused persons made a forcible entry into the house of prosecutrix from the thatched roof and committed, rape. On raising of a cry by the prosecutrix one of the neighbours rushed towards and thereafter FIR was lodged. The medical report indicated an injury on the private part of the victim. Blood and semen stains were found on the petticoat of the prosecutrix. The Trial Court found the evidence of the prosecutrix trustworthy as it was corroborated by medical evidence. It rejected the defence plea that the semen stains on the petticoat of the prosecutrix might have been caused by her physical contact with her husband. Accordingly, it convicted the accused persons and sentenced them to five years imprisonment. On appeal, High Court acquitted the accused persons. It disbelieved the version of the prosecution and held that (i) injury found on the private part of the prosecutrix could have been self-inflicted; (ii) semen stains found on the petticoat of the prosecutrix might have been caused by her physical contact with her husband. It also held that there were lapses in the prosecution because the neighbour of the victim had not been examined as a witness and that no evidence had been collected with regard to forcible entry of the accused in the house of prosecutrix.

State preferred appeals before this Court challenging the acquittal of respondents-accused.

A Allowing the appeal, the Court

B HELD: 1. The testimony of the prosecutrix appears truthful and trustworthy being without any embellishments and exaggerations. She is corroborated by her immediate and subsequent conduct as also the medical evidence. The High Court re-appreciated evidence and rejected the testimony of the prosecutrix on extremely insignificant alleged infirmities and adopted strange reasoning to convert the verdict of conviction into acquittal. It did not at all bestow any importance to the fact that victim of rape was not a woman of easy virtues. There is no suggestion that the prosecutrix had any grudge or reason to falsely implicate the two accused in such a heinous crime in which she herself was ravished and her honour was at stake. High Court also ventured into a wild surmise that the injury found on her private parts could have been self-inflicted. It is most unlikely that only to falsely implicate the accused the prosecutrix would inflict injury on her private parts. Non-examination of one of the neighbours who had rushed towards her house after a call by her is also not a serious infirmity in the prosecution case as he was not the witness to the commission of the offence. Consequently the acquittal order passed by the High Court is set aside.

[175-G; 176-G, H; 177-G, H; 178-A, B]

State of Punjab v. Gurmit Singh, [1996] 2 SCC, relied on.

E CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 533 of 1994.

From the Judgment and Order dated 12.1.94. of the Orissa High Court in Crl. A. No. 236 of 1990.

F Jana Kalyan Das for the Appellant.

K.K. Rohtagi and Praveen Jain for the Respondents.

The Judgment of the Court was delivered by

G DHARMADHIKARI, J. The Court of Sessions Judge, Balasore (State of Orissa) by Judgment dated 17. 8. 1980 in sessions trial No. 34 of 1990 convicted the two accused (the respondents herein) for commission of offence under Section 376 IPC and sentenced them to five years imprisonment.

H The High Court of Orissa at Cuttack in Crl. Appeal No. 236 of 1990 by judgment dated 12.1.1994 on re-appreciation of evidence acquitted the accused against which the State of Orissa has preferred this appeal.

The case of the prosecution is that prosecutrix PW1 Promila Ranjit went to Police Station Baliapal, district Balasore on 5.11.89 at about 10. 30 in the morning and lodged FIR to give full narration of the incident of rape committed by accused on her. She supported her version in FIR in her examination as PW 1 in Court. It is stated by her that in the intervening night between 4-5 of November, 1989 while her husband had gone to his sister's house at Prapatpur sometime in the midnight when she was sleeping alone with her three year old son, somebody knocked the door of her house waking her up by the name of her son. She could identify that the caller was accused Baya Tudu of her village. She did not open the door at the odd hour in the night, as her husband was not at home. The accused Thakara Besra thereafter entered by making a passage from the thatched roof followed by the co-accused Baya who also similarly made a forcible entry into the room. One of the accused then put off the chimney lamp burning in the room. Both of them then closed mouth of the prosecutrix and threatened her. They then subjected her to forcible sexual intercourse one after the other. After thus satisfying their sexual lust, from the door they made good their escape. The prosecutrix raised a cry whereupon one of the neighbours Anandi Behera rushed towards her house. Next day the prosecutrix was carried in a trolley to police station which is seven kilometers away from the place of occurrence. She lodged a report at 10. 30 hrs in morning of 5.11.1989. The learned judge of the trial court found the evidence of the prosecutrix to be truthful and trust-worthy. He rejected all hypothetical defence pleas taken by the accused and thus convicted and sentenced both of them. Looking to their young age, instead of imposing on them minimum prescribed sentence of ten years, sentence of five years was imposed on each of them.

After hearing learned counsel appearing for the State who strongly assailed the judgment of acquittal passed by the High Court and after perusing the record with the judgment of the courts below, to put it very mildly, we are extremely shocked by the manner in which the learned judge of the High Court re-appreciated evidence and rejected the testimony of the prosecutrix on extremely insignificant alleged infirmities and adopted strange reasoning to convert the verdict of conviction into acquittal.

In the course of investigation the police seized the petticoat of the prosecutrix which she was wearing at the time of forcible sexual intercourse with her and also the Kantha and mat on which she was sleeping. The prosecutrix was sent for medical examination and was found to have stains of human blood and semen. The prosecutrix was medically examined by Dr.

A Kalpana Kar PW2 on 5.11.1989 at 4.30 P.M. and she found a bruise of 1 cm x 1cm $\frac{1}{4}$ cm on the lateral side of the left of the genital canal. The bruise was found to have been caused within 24 hours.

B The accused were also medically examined on 6. 11. 1989 by the Medical Officer Braja Mohan Patra PW3 who reported that because of the non-cooperation of the accused their semen could not be collected. There is also evidence of Amiya Samantaray PW4, the Scientific Officer of Forensic Science Laboratory, Bhubaneswar. According to his chemical examination report (Ex. 3) there was presence of blood & semen's stains on the article including petticoat sent to him for chemical examination. According to the learned trial judge the version of the prosecutrix was corroborated by the medical evidence and the evidence of chemical report of the Forensic Science Laboratory. The High Court in the judgment of acquittal has disbelieved the prosecutrix. Her apparent truthful testimony was discarded on wild surmises and strange reasonings. With regard to injuries found on her private parts the High court observed that there is no evidence, as to how long before and after the alleged offence the husband of the prosecutrix was absent as he had left in the evening of 4.11.1989 and the possibility of her sexual contact with her husband cannot be ruled out. The High Court also took note of statement made in cross-examination by the doctor that the injury can be self-inflicted. The High Court gave no importance to the report of the chemical examiner and serologist which showed blood and semen stains on the petticoat of the prosecutrix. It is observed that the possibility of semen being that of her husband is not ruled out. The High Court also saw some infirmity in the prosecution case as Anadi Behera the neighbour who is alleged to have rushed towards her house after she had given a cry and when the accused ran away, was not examined as witness. The High Court also took note of the omission of the investigating officer (PW-5) in not making any attempt to collect any evidence of forcible entry of the accused in the house through the roof. It is on the above reasoning that the learned judge of the High Court acquitted the accused.

G It is distressing to note that the learned judge of the High Court did not at all bestow any importance to the fact that victim of rape was not a woman of easy virtues. There has been no suggestion made to her in a cross examination or in defence plea of the accused in the course of his examination under Section 313 of the Criminal Procedure Code that the prosecutrix had any grudge or reason to falsely implicate the two accused in such a heinous crime in which she herself was ravished and her honour was at stake. We

H

consider it necessary to reiterate the following observations of this court in *State of Punjab v. Gurmit Singh*, [1996] 2 SCC 384 containing the guidance given to the courts while appreciating evidence of prosecutrix in cases of rape: A

“We must remember that a rapist not only violates the victim’s privacy and personal integrity, but inevitably cause serious psychological as well as physical harm in the process. 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, 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 case involving sexual molestations.” B C D E

The learned judge of the High Court has dealt with alleged infirmities pointed out on behalf of the accused in the prosecution case. The learned judge has given no importance to the fact that the trial judge rejected the defence plea that the semen stains on the petticoat of the prosecutrix might have been caused by her physical contact with her husband. There was nothing to disbelieve, according to the trial judge - the version of the prosecutrix that her husband had left the house on the previous afternoon and was absent at the time of incident and when she made the report to the police. The learned Judge in appeal then ventured into a wild surmise that the injury found on her private parts could have been self-inflicted. It is most unlikely that only to falsely implicate the accused the prosecutrix would inflict injury on her private parts. Non-examination of one of the neighbours who had rushed towards her house after a call by her is also not a serious infirmity in the prosecution case as he was not the witness of the commission of the offence. F G H

- A** The testimony of the prosecutrix appears truthful and trustworthy being without any embellishments and exaggerations. She is corroborated by her immediate and subsequent conduct as also the medical evidence.

- B** Consequently, the appeal is allowed. The judgment of acquittal dated 12.1.1994 passed by the High Court in Cri. A. No. 236 of 1990 is set aside and the judgment of conviction and sentence dated 17-8-1990 of the Sessions Judge in Sessions Trial No. 34 of 1990 is maintained. The Bail-bonds of the accused are cancelled and they be re-arrested for sending them to jail to suffer the remaining sentence.

T.N.A.

Appeal allowed.