



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

Crl.A. No. 20 of 2022

Date of Decision: 25.10.2024

Md. Rafiqul Ali,
 Son of: Md. Nusad Ali,
 Resident of: Khilabari (Ghilabari)
 Post Office: Damansos
 Police Station: Boko
 District: Kamrup, Assam

.....Applicant/Accused

-Versus-

1. The State of Meghalaya represented
 by the Secretary Home (Police)
 Department, Meghalaya, Shillong
2. The Superintendent of Police, East Garo Hills District,
 Williamnagar
3. The Officer-in-Charge, Williamnagar
 Women Police Station, East Garo Hills, Meghalaya

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. A.H. Hazarika, Adv.

For the Respondent(s) : Mr. K. Khan, P.P. with
 Mr. A.H. Kharwanlang, Addl. Sr. GA

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |



J U D G M E N T

1. The judgment and order dated 29.06.2022 passed by the learned Sessions Judge, East Garo Hills District, Williamnagar in Sessions Case No. 6 of 2017, whereby by such order, the appellant herein was convicted and sentenced to undergo rigorous imprisonment for a period of 7(seven) years along with fine of ₹ 1500/- (rupees one thousand and five hundred) only, for having committed an offence under Section 376 IPC and further, to undergo simple imprisonment of 1(one) year and fine of ₹ 500/- (rupees five hundred) only, for the offence under Section 354 IPC, both sentence to run concurrently, is the subject of appeal herein preferred under Section 374 Cr.P.C.

2. The genesis of the case is that on 23.02.2017, an FIR was lodged before the Officer-in-Charge, Rongjeng Police Station, East Garo Hills, to inform about an incident which occurred on the same day at about 5.00 pm or so wherein one unknown person was alleged to have entered the shop of the sister of the complainant while she was working in the kitchen and she was forcible held by her hair and neck and sexually assaulted with even her underwear torn by such person.

3. Immediately, the FIR was registered as Williamnagar Women P.S. Case No. 03(02) 2017 under Section 376 IPC and an Investigating Officer (IO) was assigned to take up the investigation in the case. The IO then arrested the accused person/appellant herein and he was remanded to custody. Upon initiation of the investigation, the IO visited the place of occurrence and also met the complainant as well as the accused/appellant who was in the custody of the police of Rongmil OGC, since at that point of time, he was assaulted by a number of persons who came to know of the said incident.



4. The IO after completion of the investigation had then submitted the final report under Section 173 Cr.P.C. by stating the steps taken during the course of investigation and also by filing the chargesheet with a prima facie finding that a well-established case has been made out against the accused/appellant who is said to have committed the offence under Section 376 and 354 IPC.

5. The learned Sessions Judge, taking cognizance of the said offence had framed the charges on 30.11.2017, under two heads, that is, under Sections 376 and 354 IPC and the accused/appellant being made to stand trial, the prosecution witnesses were summoned by the court to give their evidence. In all, 11 prosecution witnesses were examined and some material exhibits, including the medical report of the victim were also produced.

6. The learned Sessions Judge on conclusion of the recording of evidence of the prosecution's witnesses then recorded the statement of the accused/appellant under Section 313 Cr.P.C. and on the accused/appellant not willing to call any witnesses on his part, the argument of the parties was heard. On consideration of all the relevant evidence, the impugned judgment and order was therefore passed.

7. Heard Mr. A.H. Hazarika, learned counsel for the appellant who has submitted that the evidence on record would show that there is a marked discrepancy in the statement of the prosecutrix vis-à-vis the statement of the other witnesses as to the detailing of what actually happened on the day of the alleged incident.

8. The learned counsel has firstly referred to the statement of the prosecutrix made before the police under Section 161 Cr.P.C wherein



she has narrated the fact that the appellant/accused whose name is not known to her at that point of time, came into the tea stall she was tending to and he caught hold of her hair and her neck and penetrated his penis into her by tearing her underwear. When she was released, she ran towards her home and shouted for help and on hearing her cry, her husband and another person came running to the tea stall and caught hold of the accused/appellant. In her statement before the Magistrate made under Section 164 Cr.P.C she had stated that her husband had gone to fend the cattle when the accused/appellant had sexually assaulted her and later on her husband and brother-in-law arrived at the scene. In her deposition in court as PW5 she had stated that her husband who had come back after bath saw the accused committing rape on her and held the accused. The learned counsel has submitted that this discrepancy has not been explained by the prosecution as far as the role of the husband as an eye-witness of the incident is concerned.

9. The husband of the prosecutrix who was examined as PW6 has also stated that he saw the accused raping his wife and when he tried to escape, he managed to detain him. In his cross-examination he has also maintained that he saw the accused when he was raping his wife. Therefore, as has been submitted, this discrepancy in the statement of the prosecutrix and the PW6 would only show that the prosecutrix has not been truthful in her narration of the incident which had allegedly taken place on 23.02.2017, submits the learned counsel.

10. The learned counsel has also referred to the evidence of PW1, the doctor who had examined the prosecutrix soon after the said incident wherein in his deposition he has stated that the prosecutrix had narrated the incident to him and on physical examination, he found that there is



penetration by penis on her genitalia but there is no emission of semen. There is also no finding of violence on other parts of the body, no bite mark or scratches were also found on the body of the accused as well as no foreign pubic hair was found in his garment. However, the doctor has confirmed that the accused/appellant had consumed alcohol but can control himself at the relevant point of time. In view of such evidence, the learned counsel has submitted that no case of sexual assault can be made out, though an offence under Section 354 IPC may be attracted against the accused/appellant.

11. The learned counsel has then submitted that the evidence of the prosecutrix and the so-called relevant witnesses not being convincing, the accused/appellant should have been given the benefit of doubt considering the fact that the case of the prosecution has not been proved beyond reasonable doubt.

12. In support of his contention, the learned counsel has cited the following authorities:

- i. Radhey Shyam v. State of Rajasthan, (2014) 5 SCC 389, para 27 and 28;
- ii. Shivasharanappa & Ors. v. State of Karnataka, (2013) 5 SCC 705, para 19, 20, 21 and 22;
- iii. Mohan Baitha & Ors. v. State of Bihar & Anr., (2001) 4 SCC 350, para 4; and
- iv. Suresh N. Bhusare & Ors. v. State of Maharashtra, (1999) 1 SCC 220, para 6, 7, 8, 9 and 10.



13. Refuting the contention and submission of the learned counsel for the appellant, Mr. K. Khan learned P.P has submitted that this Court on scrutiny of the impugned judgment and order dated 29.06.2022 whereby the appellant was sentenced to undergo 7(seven) years rigorous imprisonment for the offence punishable under Section 376 IPC and also 1(one) year imprisonment for the offence punishable under Section 354 IPC along with fine, would find that there is no infirmity or illegality in the well-reasoned order passed by the learned Sessions Judge.

14. The learned P.P while narrating the incident as was detailed by the prosecutrix has submitted that the prosecutrix in her deposition had accurately given the factual details as it happened to say that the appellant while she was busy in the kitchen at the tea stall of her elder sister, which tea stall was situated by the road side but isolated from other tea stalls, the appellant who entered the said tea stall suddenly caught her by her hair and also held her tightly by her neck and thereafter raped her after forcefully taking off her garments, including her undergarment. The statement given by the prosecutrix in this regard is found to be consistent when one looks at what she has stated before the police, before the Magistrate as well as in the court when she was called to depose as PW5. Therefore, considering the consistency of her statement, there can be no doubt on the truthfulness of the same which has convinced the learned trial court to believe her.

15. It is the further submission of the learned P.P that the prosecutrix who is an adult and is aware of what had happened to her including the repercussions of her action, when the FIR was lodged against the accused/appellant who is a total stranger to her, there is no



reason why she would falsely implicate the appellant had the incident not taken place.

16. In the context of reliance on the evidence of a sole witness, more so when the case involves sexual assault or rape, the learned P.P has placed before this Court the case of Vijay alias Chinee v. State of Madhya Pradesh, (2010) 8 SCC 191, para 9 and also the case of Ranjit Hazarika v. State of Assam, (1998) 8 SCC 635, para 6 as well as the case of Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, (1983) 3 SCC 217, para 9 and 10 and has submitted that the evidence of the prosecutrix is strong enough to prove that the appellant had indeed sexually assaulted her and as such, the conviction by the learned trial court cannot be faulted.

17. The learned P.P has however submitted that there may be minor discrepancies in the evidence of the prosecutrix but the same would not dilute the fact that the offence has indeed been committed by the appellant as has been amply proven by the evidence on record including the medical report which has confirmed the fact that the prosecutrix was sexually assaulted. In this regard, the learned P.P has once again referred to the case of Vijay (supra) at para 22, 23 and 24 of the same wherein the Hon'ble Supreme Court has observed that the court while appreciating the evidence of a witness, minor discrepancies on trivial matters which do not affect the core of the prosecution case may not prompt the court to reject the evidence in its entirety. The case State of Punjab v. Gurmit Singh & Ors., (1996) 2 SCC 384, para 21, was also cited in this regard.



18. As to the contention of the learned counsel for the appellant that because there was no injury on the genital parts of the prosecutrix the same would not mean that there was no sexual assault perpetrated upon her since the doctor who had examined her has also come to a finding that there was vaginal discharge which suggests recent sexual intercourse, as such, the assertion of the appellant in this regard cannot be accepted. Even so, the Hon'ble Supreme Court in the case of B.C. Deva alias Dyava v. State of Karnataka, (2007) 12 SCC 122, has, at para 18 observed that even if no marks of injuries were found either on the person of the accused or the person of the prosecutrix or that the medical examination of the prosecutrix does not disclose any evidence of sexual intercourse, however if the oral testimony of the prosecutrix is found to be cogent, reliable, convincing and trustworthy, the same has to be accepted, further submits the learned P.P.

19. The prosecution case having been proven beyond reasonable doubt, the punishment imposed is found reasonable and the appellant cannot make out a case for appeal, this appeal is therefore liable to be dismissed, submits the learned P.P.

20. To the extent of repetition, the factual aspect of the case of the prosecution revolves around the event which occurred on 23.02.2017 when the appellant is said to have entered the tea stall and found the prosecutrix alone which perhaps prompted him to take advantage of the situation resulting in his forcible sexual assault till he was accosted by the husband of the prosecutrix who may have been called by her or may have seen the act perpetrated by the appellant.



21. The narration of how the appellant sexually assaulted the prosecutrix by catching hold of her neck and tearing off her clothes including her underwear and the very act of rape has been consistent even in her statement made under Section 161 as well as under Section 164 Cr.P.C and in her deposition in court as PW5. It is also noticed that the accused/appellant has not been able to contradict the statement made by the prosecutrix.

22. When the prosecutrix in her examination-in-chief stated that the accused/appellant tore off her 'panty' and 'petticoat' and raped her, he could not demolish such statement of fact in the cross-examination. What emerged would be the assumption that the allegation against the accused/appellant had indeed committed rape is true. Even logically speaking, the fact that the prosecutrix had mentioned about her underwear being torn by the appellant and the same being seized by the police speak volumes about her bonafide as it cannot be expected that any woman would be callous enough to speak publicly about such an incident only to frame the appellant who is a total stranger to her.

23. The Doctor who was examined as PW1 in his deposition has also exhibited the medical report based on his examination of the prosecutrix, which records would show that she was medically examined at about 1:30 am on 24.02.2017 roughly 9 hours after the incident. That the Doctor has come to the conclusion that there was vaginal penetration and such act of sexual intercourse was as recent as 8 hours ago, the timing matching with what has been stated by the prosecutrix, there cannot be any other conclusion but only to point a finger to the complicity of the accused/appellant in such respect. Again, such facts not being able to be refuted by the accused/appellant in the cross-



examination of the said Doctor, the evidence of the prosecutrix was indeed corroborated by the evidence of the Doctor.

24. As to the veracity of the evidence of the husband of the prosecutrix, who in his deposition as PW6 has maintained that he saw the accused/appellant raping his wife and that he caught hold of the appellant who fought back, thereafter, he and his brother-in-law and two others took the appellant to the parking till the time the police came and arrested the accused/appellant, the same though slightly distorted, since at one point of time, this witness said he saw the appellant raping his wife, yet he also said when he heard his wife calling for help, when at that time he went to the tea shop and saw the accused/appellant putting on his shorts, there could be some doubt as to whether he was an eye-witness to the incident or not. Be that as it may, this Court is persuaded to believe that the fact that the appellant had raped the prosecutrix has been well established.

25. At this juncture, this Court need not look to other factors to try and find supporting evidence to back the prosecution's case, suffice it to say that only on the question of facts, the prosecution has been able to prove that the prosecutrix had been raped by the appellant.

26. As to the authorities cited by the learned counsel for the appellant, the case of Radhey Shyam (*supra*) at para 27 and 28 speaks about the conduct of the accused therein which did not match with the account of the relevant witnesses as far as the commission of the crime is concerned and on this premise the accused was let off. However, in this instant case, the accused/appellant has not been able to disprove the



testimony of the prosecutrix as far as his conduct is concerned and as such, evidence confirming his guilt has to be accepted.

27. In the case of Shivasharanappa also relied upon by the appellant at para 19, 20, 21 and 22 of the same, the Hon'ble Supreme Court has discussed the behavioural pattern of the witnesses in connection with their account of how a crime was committed, it is the opinion of the Court that having regard to the natural reaction of man which is unpredictable, evidence in this regard has to be appreciated in the context of given facts and circumstances of the case and if the behaviour is absolutely unnatural, the testimony of such witness may not deserve credence and acceptance. In the context of the case before this Court, no unnatural behavioural pattern as far as the prosecutrix is concerned has been observed. Her testimony is therefore found acceptable.

28. In the same manner the appellant has also cited the case of Suresh N. Bhusare (supra) to say that in that case, the Court has observed the conduct of the prosecutrix therein who is said to be a victim of rape but her testimony is found inconsistent as far as her account of how the incident occurred and the role of the accused therein who are said to be the perpetrators of such an act. Her testimony was accordingly disregarded as infirmed. However, it is reiterated that this is not the case as far as the testimony of the prosecutrix herein is concerned.

29. On the other hand, the prosecution has relied in the case of Vijay (supra) wherein at para 9 of the same the Hon'ble Supreme Court has cited the case of State of Maharashtra v. Chandraprakash



Kewalchand Jain, para 16 to emphasize the fact that the testimony of a prosecutrix has to be given special consideration and could not be made to be at par with that of an accomplice. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

30. As has been discussed above, this Court would find it safe to rely on the testimony of the prosecutrix. This aspect of the matter is further fortified by the observation of the Hon'ble Supreme Court in the case of Ranjit Hazarika (supra) wherein at para 6 of the same is found the following:

“6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In *State of Punjab v. Gurmit Singh*, to which one of us (Anand, J.) was a party, while dealing with this aspect observed: (SCC pp. 395-96, para 8)

"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. Why should the evidence of a girl or a woman who complains of rape or sexual molestation be viewed with doubt, disbelief or suspicion? The court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused. The evidence of a victim of sexual assault stands almost on a par with the evidence of an injured witness and to an extent is even more reliable. Just as a witness who has sustained some injury in the occurrence, which is not found to be self-inflicted, is considered to be a good witness in the sense that he is least likely to shield the real culprit, the evidence of a victim of a sexual offence is entitled to great weight, absence of corroboration notwithstanding. Corroborative evidence is not an imperative component of judicial credence in every case of rape. 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. It must not be overlooked that a woman or a girl subjected to sexual assault is not an accomplice to the crime but is a victim of another person's lust and it is improper and undesirable to test her evidence with a certain amount of suspicion, treating her as if she were an accomplice. Inferences have to be drawn from a given set of facts and circumstances with realistic diversity and not dead uniformity lest that



type of rigidity in the shape of rule of law is introduced through a new form of testimonial tyranny making justice a casualty. Courts cannot cling to a fossil formula and insist upon corroboration even if, taken as a whole, the case spoken of by the victim of sex crime strikes the judicial mind as probable."

We are in agreement with the aforesaid view."

31. In view of the above findings and observations, this Court is convinced that the accused/appellant has not been able to demolish the case of the prosecution or the findings of the learned trial court in the impugned judgment and accordingly, the appeal is found lacking in substance. The same is hereby dismissed.

32. Appeal disposed of. No costs.

33. Trial court case records to be returned.



Judge