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HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No. 711 of 1999

1. Navin Kurre, S/o. Tahluram Satnami, aged about 19 years, R/o. Krishak Nagar, Jora, Raipur (M.P.) (Now C.G.).
2. Sonu Satnami, S/o. Baliram, aged about 20 years, R/o. Jora, Thana Civil Lines, Raipur (M.P.) (Now C.G.)

---- Appellants

Versus

The State of Madhya Pradesh (Now C.G.), through the Police Station Civil Lines, Raipur (M.P.) (Now C.G.).

---- Respondent

For Appellant No.2	:	Mr. Y.C. Sharma, Advocate
For Appellant No.1	:	Mr. L.C. Dash, Advocate & Mr. Shailendra Sharma, Advocate
For State/Respondent	:	Mr. Anil S. Pandey, Govt. Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

19.05.2017

1. This appeal is against the judgment of conviction and sentence dated 26.02.1999, passed by the learned 4th Additional Sessions Judge, Raipur, in Session Trial No.19/1998, whereby the appellants have been convicted under Section 376 (g) of Indian Penal Code and sentenced to under to R.I. for 10 years and fine of Rs.2000/- and in default of payment of fine further under go R.I. for 6 months and have further convicted under Section 342/34 of I.P.C. and sentenced to under go R.I. for 1 year.



2. As per the case of the prosecution, the prosecutrix had went to her neighbour's house and while she was coming back at that time, the appellant -Sonu Satnami (Accused No.2) called her to the house of Navin Kurre (Accused No.1) when she went there, the door was locked and thereafter they forcefully closed the mouth of the prosecutrix and committed sexual intercourse against her will. Subsequently, the report having been made, police started investigation and after investigation, the case was registered under Section 376 (g) and 342 read with Section 34 of Indian Penal Code.
3. During the course of trial, the appellants/accused abjured their guilt and claimed to be tried.
4. The prosecution on their behalf had examined the prosecutrix as (P.W.-1), the father of the prosecutrix as (P.W.-2), one Hemendra Masih as (P.W.-3), Smt. Nitu Das as (P.W.-4), the person was residing in the vicinity, Derha Singh Vinayak, Police Constable as (P.W.-5), Dashrath as (P.W.-6), Smt. Asha Vani, sister of the victim as (P.W.-7), the mother of the victim as (P.W.-8), the brother of the victim as (P.W.-9), Dr. N. Dash as (P.W.-10), Dr. Nalini Mishra as (P.W.-11), who examined the prosecutrix, Sub-Inspector, C.S. Netam as (P.W.-12) and the defence has examined one Budharu Ram Baghel as (D.W.-1).
5. The learned trial Court after examining the evidence on record, convicted the accused/appellants under the aforementioned sections, therefore, the instant appeal.

6. Mr. Y.C. Sharma, Mr. L.C. Dash & Mr. Shailendra Sharma, Advocates appearing on behalf of the appellants would submit that reading of the statement of the witness (P.W.-1) would show that it is a case of consent. It is further submitted that cross-examination of the prosecutrix would point out that she was a consenting party and when such relations were made known to the others, in order to save herself, the report was made. It is further submitted that the prosecutrix initially had not disclosed the incident but the appellants themselves have stated it to the brother of the prosecutrix, therefore, in order to save herself, this report is made as otherwise, no report would have been made. It is further submitted that this statement is corroborated by (P.W.-9) the brother of the prosecutrix, which would suggest that consent was existing. It is further submitted that statement of Dr. Nalini Mishra (P.W.-11) would also suggest that she was a consenting party. They would further submit that the time of incident was broad daylight and if the prosecutrix had resisted, it would have known to public but she opted not to do so, and the prosecutrix, who is a major girl, which would show that she was consenting party to the entire incident, as such conviction and sentenced imposed on the appellants is completely illegal, which requires modification by setting aside the same.
7. *Per contra*, Mr. Anil S. Pandey, Govt. Advocate for the State opposes the argument advanced by learned counsel for the appellants and supported the order of the Court below and

would submit that the order is well merited which do not call for any interference.

8. I have heard learned counsel for the parties at length, perused the documents and statements on record.
9. The prosecutrix in this case is examined as P.W.-1. The FIR is of 27.11.1997 for the incident happened on 25.11.1997 and it was made by the prosecutrix. Perusal of the FIR would show that report was made on 25.11.1997 that the prosecutrix went to her friend's house named one Nitu and while she was coming back, Sonu Satnami, who also resides nearby to her house called her to the house of Navin Kurre, the other accused. The reasons assigned that some work was there and when she went to the house of Navin Kurre and asked what is the work at that time Sonu and Navin both caught hold of her and forcefully closed her mouth and closed the door and thereafter Navin took out her garments and Sonu had closed her mouth thereafter both of them committed forceful sexual intercourse by turn. The FIR is marked as Ex.P/1.
10. Now coming to the statement of victim (P.W.-1). The same incident has been narrated by the prosecutrix (P.W.-1) that her mouth was closed and she was forced to lie down in the bed and her entire garments were taken out and rape was committed. She has further stated that initially she has not disclosed it to her mother as she was not well and her father was out of home and when her father came back then it was



disclosed to him. Thereafter, the report was made. She further stated that she was subjected to medical examination.

11. Derha Singh Vinayak (P.W.-5) in his statement has stated that on 28.11.1997 he brought the victim to the hospital for examination. Dr. Nalini Mishra (P.W.-11) stated that she examined the victim on 28.11.1997. In the statement, this witness had referred certain injuries and has further stated that private parts were found to be lacerated and Hyman was toned at two places and swelling was also present. Further it was stated that it was difficult to give any opinion about forceful rape. Therefore, the question arises as to whether the statement of the victim can be accepted?

12. Therefore, further coming to the statement of victim (P.W.-1), she has stated that while she made a report, the garments which she was wearing had blood stain, which was taken by the police. The mother of the victim (P.W.8) stated that on 27.11.1997, her husband i.e. father of the victim when came back from his job, then happening of incidence was disclosed to him. The mother had stated that the victim was in the state of shock, therefore, she had not disclosed it even to her. Non-disclosure about the incident to the mother is also corroborated by P.W.-1, the victim. The father of the victim (P.W.-2) has stated that on 27.11.1997 her daughter had disclosed that she was subjected to rape when he came back from his duties, thereafter, the report was made.



13.(P.W.-7) sister of the victim also corroborated the fact that on 27.11.1997, when she had gone to her mother, the commission of rape was known to her and she also made an enquiry of her own and the victim had stated about the commission of rape by the appellants.

14.Now coming back to the statement of the victim (P.W.1), the entire examination and cross-examination would suggest about the place of incident that the appellants were the neighbours and nearby residents of same place, where the victim resides. It has also come in evidence that on the date of incident, the victim had initially went to house of one Nitu her friend and while coming back, she was called by one of the accused and on the date of incident, no one was in the house of Navin when she went there. The statement of witnesses would also suggest that she was known to Navin Kurre earlier and she had also visited the house of Navin. She stated that initially when Navin Kurre had taken out her all the garments at that time, the other accused Sonu was standing nearby and when she tried to raise the voice to protest, Sonu closed her mouth. Thereafter, forcefully the cloths were taken out and rape was committed. Explaining the delay in lodging the FIR, she stated that in order to avoid tarnish the image in the people of the society, it was not disclosed immediately but later on report was made after father came. With respect to the resistance, the witness has categorically maintained the stand that she tried to resist by raising alarm but her mouth was

forcefully closed. She further stated that she tried to bite the hands, however, she could not succeed in her attempt.

15. With respect to lodging the report, it is stated that she also wanted to lodge the report but after her father came, she lodged the report. Explaining the non-disclosure to the mother, it is stated that she avoided the same for two reasons one it would have brought bad name to the family and also there was danger for quarrel and in respect of her mother it is stated that her mother's health was not well, therefore, it was not disclosed to her. She has stated that before disclosing the fact to her mother, one of the accused Sonu disclosed the happening of the incident to brother of the victim, thereafter, having known to all the people, the report was made. In the cross-examination, she has further stated that she tried to run away but since the doors were closed, she could not run away. Further it is stated that while the door was closed, her mouth was also closed

16. It was further stated by the victim in her cross-examination that Navin had taken out the lower garments, thereafter upper garments and while they tried to take out her other garments, she also tried to resist by shouting but her mouth was closed by other accused Sonu. She stated that while the incident happened she also resisted and scratched the accused and while one was doing rape, the other had closed her mouth.

17. With respect to the suggestion further given that false allegations have been attributed, she has denied the same.

The father of the victim (P.W.-2) has also corroborated the fact that her daughter has disclosed the happening of the incident with him when he came back on 27.11.1997 it was disclosed. Therefore, very fact that two days delay was caused it can not be taken to be the enormous as it is quite natural that after the incident, different persons behave and react differently. In the instant case plausible explanation has been given by prosecutrix herself that since father was out of city as such the report was made later.

18. In the statement of the accused U/s. 313 of Cr.P.C., no plausible explanation has been given except the denial. Only it is stated that since there has been some dispute earlier, therefore, falsely their names have been inculpated.

19. Taking into statement of the prosecution witnesses, specially the victim, the entire reading of the statement would show that nothing has come on record to demolish the incident. In the cross-examination though attempts were made to show that she did not resist but such suggestions have been plausibly explained by the prosecutrix that she could not raise the alarm as her mouth was closed forcefully and also could not run from the house as the doors were closed. Further it can assumed that had the prosecutrix was an consenting party and had relations earlier, she could have avoided the disclosure of incidence. Further more the way the offence has been committed by two persons, the same has properly been explained and narrated by the prosecutrix and the reading of

the statement do not show that false allegations have been attributed.

20. The Supreme Court in case of **Aslam Vs. State of U.P.**¹ has reiterated the law laid down in case of State of Punjab Vs. Gurmit Singh, (1996) 2 SCC 384, which is reproduced herein below :-

"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

1. (2014) 13 SCC 350

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 the 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.

19. In the contest 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. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent."

(emphasis in original)

21. Further more the Supreme Court in case of **Mukesh Vs. State of Chhattisgarh**² has held that even in absence of corroborative evidence, the sole testimony of the witness (prosecutrix) is sufficient to establish the commission of rape.

22. The Court has further reiterated the view taken in case of **Narender Kumar Vs. State (NCT of Delhi)**³ and held as under :-

2. (2014) 10 SCC 327

3. (2012) 7 SCC 171

"30.....conviction can be based on sole testimony of the prosecutrix provided it lends assurance to her testimony. However, in case the court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

31.The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtues/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim the occasion complained of."

23.Applying the aforesaid principles and after due consideration of the documents, which are exhibited and on appreciation of evidence and evaluating the statement of all the witnesses as a whole, I am of the considered opinion that no ground is made out warranting interference with the judgment of conviction and sentence awarded to the appellants.

24.In view of the forgoing discussions, the appeal has no merit and is dismissed accordingly.

25.It is reported that earlier non-bailable warrants were issued to the appellants and in pursuance of such warrant, appellant No.2 was taken into custody and he is in jail. Therefore, he shall undergo the remaining jail sentence. So far as the

appellant No.1 is concerned, it is reported that non-bailable warrant issued to him could not be served and he is still at large. If that be the position, the concerned Superintendent of Police is directed to ensure the arrest of appellant No.1 for serving the remaining jail sentence.

Sd/-
Goutam Bhaduri
Judge

Balram