

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL APPEAL NO.1071 OF 2013

JUDGMENT: {Per the Hon'ble Sri Justice Raghvendra Singh Chauhan}

Alleged to have committed rape on a minor girl, aged twelve years, the IV Additional Sessions Judge (FTC), FAC.II Additional District and Sessions Judge (FTC), Khammam, has convicted the accused, Jinneka Balakrishna for offences under Sections 376(1), and 506 of the Indian Penal Code (IPC). For the offence under Section 376(1) IPC, the accused has been sentenced to life imprisonment, and imposed with a fine of Rs.5,000/-, and in default, to undergo a simple imprisonment for six months; for the offence under Section 506 IPC, he has been sentenced to imprisonment for two years, imposed with a fine of Rs.5,000/-, and in default, to undergo a simple imprisonment for six months. It was further ordered that the entire fine amount shall be given to the prosecutrix (P.W.2). The accused has challenged the said conviction and sentence before this Court.

Briefly stated, the facts of the case are that Ms. N.Dhanalaxmi (P.W.1) lodged a written complaint, (Ex.P.1), at Khammam Rural Police Station, wherein she claimed that on 23.05.2012, she along with her daughter (the prosecutrix, P.W.2) came to attend a function at the house of J. Ravi (P.W.6) in Arempula Village. Having attended the function, she and her daughter went back to her parents' place, the house of her father, K.Sathulu @ Sathaiah (P.W.4). At around 8:00 pm, the prosecutrix (P.W.2) went to the house of her aunt, D.Uppalamma (P.W.5), in

order to take bath. But the child did not return back till 9:00 pm. Therefore, she and N.Krishnaveni (P.W.3) went to the house of her sister, D.Uppalamma (P.W.5) to enquire about the whereabouts of the child. D.Uppalamma (P.W.5) told the complainant that after taking the bath, the child had left the house. Therefore, the family, namely N.Dhanalaxmi (P.W.1), K.Sathulu @ Sathaiah (P.W.4) and N.Krishnaveni (P.W.3) and others searched for the child. D.Soujanya (P.W.7) informed them that she had heard cries of a child. When they went to the place told by her, they discovered the prosecutrix. The prosecutrix told them that while she was crossing the house of the accused, he came from behind, closed her mouth, and took her to a newly constructed house, where he committed sexual assault against her. On the basis of the complaint, a FIR (Ex.P7) was chalked out, namely FIR.No.138/2012, for offences under Sections 376 (f) and 506 IPC by the Khammam Rural Police Station. Subsequently, the appellant was arrested by the police; he was put up for trial.

In order to substantiate its case, the prosecution examined thirteen witnesses, exhibited seven documents, and submitted six material objects before the learned Trial Court. After completing the trial, the Trial Court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

Mr. Nazeer Khan, the learned counsel for the appellant, has strenuously pleaded that the prosecution has failed to establish its case beyond a reasonable doubt. For, the prosecutrix (P.W.2) has vaguely described the incident of the alleged rape.

Secondly, although she claims, in her cross-examination, that she had suffered injuries on her back, and on her hand, even

this part of the testimony is not supported by the medical evidence.

Thirdly, and most importantly, her testimony is belied by the Medical Certificate (Ex.P.3). According to the Medical Certificate (Ex.P3), the hymen was found to be intact, there were no tears, no congestion. In fact, even insertion of a single finger caused pain. According to the Medical Report (Ex.P4), “*there is no evidence suggestive of intercourse*”. Moreover, according to the RFSL Report (Ex.P5), although the vaginal swap was examined by the FSL, no semen or spermatozoa was detected in the vaginal swap. Thus, according to the learned counsel, the testimony of the prosecutrix is belied by the medical and scientific evidence available on record. Relying on the case in **Sham Singh v. State of Haryana**¹, the learned counsel has pleaded that if the testimony of the prosecutrix is contradicted by the medical evidence, in such a scenario, the testimony of the prosecutrix cannot be taken to be trustworthy. According to the learned counsel, the present case is squarely covered by the case of **Sham Singh** (supra).

Lastly, although by no stretch of imagination this case falls within the category of being “the rarest of the rare”, yet, the learned Trial Court has awarded the harshest of the punishment for the offence under Section 376 IPC. Therefore, the learned counsel has pleaded that conviction and sentence of the appellant is legally untenable.

On the other hand, Mrs. Sridevi Juvvadi, the learned Additional Public Prosecutor for the State, has vehemently contended that it is a case of a rape on a minor girl. In her

¹ AIR 2018 SC 3976

testimony, she has clearly stated that she was sexually assaulted by the accused.

Secondly, the testimony of the prosecutrix need not be supported by medical evidence. In fact, her testimony should be treated as the gospel truth. Relying on the case of **State of Himachal Pradesh v. Sanjay Kumar Alias Sunny**², the learned Additional Public Prosecutor has pleaded that since the prosecutrix is an injured witness, no further corroboration is to be looked for by the Trial Court.

Lastly, since a minor child has been raped by the accused, the harshest punishment available under the law should have been imposed by the learned Trial Court. Therefore, the learned Additional Public Prosecutor has supported the impugned judgment.

Heard the learned counsel for the parties, perused the impugned judgment, and examined the record.

Undoubtedly, a rape with a minor girl is a heinous crime. However, even if there is an allegation that the accused has committed offence of rape with a minor, even then, the Courts are bound to examine the evidence objectively in order to separate the wheat from the chaff. Merely because the allegation is of rape with a minor, the Court cannot afford to get carried away by emotional pleas. Therefore, it is imperative for the Court to critically examine the testimony of the prosecutrix, and other oral and documentary evidence available on record.

² (2017) 2 SCC 51

In the case of **Raja v. State of Karnataka**³, while relying on its earlier judgment of **Raju v. State of M.P.**⁴, the Apex Court has opined as under:-

*This Court in **Raju**⁴, while reiterating that the evidence of the prosecutrix in cases of rape, molestation and other physical outrages is to be construed to be that of an injured witness so much so that no corroboration is necessary, ruled that an accused must also be protected against the possibility of false implication. It was underlined that the testimony of the victim in such cases, though commands great weight but the same, cannot necessarily be universally and mechanically accepted to be free in all circumstances from embellishment and exaggeration. It was ruled that the presumption of absence of consent of the victim, where sexual intercourse by the accused is proved as contemplated in Section 114-A of the Evidence Act, was extremely restricted in its application compared to the sweep and ambit of the presumption under Sections 113-A and 113-B of the Indian Evidence Act. It was expounded that insofar as the allegation of rape is concerned, the evidence of the prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should always without exception, be taken as gospel truth. The essence of this verdict which has stood the test of time proclaims that though generally the testimony of a victim of rape or non-consensual physical assault ought to be accepted as true and unblemished, it would still be subject to judicial scrutiny lest a casual, routine and automatic acceptance thereof results in unwarranted conviction of the person charged.*

A similar view has been expressed by the Apex Court in **Sham Singh** (supra).

Therefore, while appreciating the evidence of the prosecutrix, the above stated principle has to be kept in mind.

In the present case, the prosecutrix (P.W.2) describes the incident in most general terms, when she tells the Court that, “after crossing the house of the accused, Balakrishna (Accused) took me by coming from behind, and closed my mouth. He took me to a

³ (2016) 10 SCC 506

⁴ (2008) 15 SCC 133

new house, under construction, bounded by walls, which is at distance of one house from his house. While she was returning to the house of grand-father, the accused lifted my middy and pulled my underwear, then put me on bed, and committed sexual assault against my wish, stating that he will kill me if I raise any slogan". In her cross-examination, she also informs the Court that, "*there is material of sand and other raw material at the scene of offence. I got injuries on my back, and on my hand*". Although the prosecution claims that broken bangles were discovered at the scene of the crime, the prosecutrix nowhere mentions that due to alleged rape, her bangles were broken.

A bare perusal of her testimony, in her examination-in-chief, clearly reveals that she does not describe and she does not claim that there was any penetration by the accused. Further, she does not claim that there was any ejaculation of the accused. Thus, she describes the entire incident in most vague and general manner merely by using the phrase "*committed sexual assault against my wish*". It is rather surprising that a child of twelve years would use a term of criminal law "*committed sexual assault*", rather than describing the actual incident, in some detail, before the Court.

Since her testimony is vague and general, the learned Trial Court should have examined the record and seen if her testimony is buttressed by any scientific evidence in the form of Medical Certificate (Ex.P3) and the RFSL Report (Ex.P5). A perusal of the Medical Certificate (Ex.P3) clearly reveals that, the hymen was intact, there were no scars, and no congestion of the edges. This Medical Certificate (Ex.P3) has been proven by examining Dr. A.Prasanna Jyothi (P.W.9). In her testimony, "*she also claims that*

she found the hymen intact, no tears, no congestion of edges, and cervix also healthy and introits admitting one finger with pain". According to her, "the prosecutrix was between the age of sixteen to eighteen".

Moreover, even the RFSL Report (Ex.P5) clearly indicates that two cardboard boxes containing two glass slides with dried semen on each, a sealed rubber corked bottle contained two cotton swab in one box, and a light green and cream colour long middy with green colour flower design, a light green colour full blouse, a blue colour mill made petty coat, and a maroon colour mill made cut drawer, in another box, were received by the RFSL, for its report. But according to the RFSL Report (Ex.P.5), semen and spermatozoa were not detected on any one of the items including the two vaginal swab sent to the RFSL. Thus, even the RFSL report (Ex.P.5) does not support the testimony of the prosecutrix.

On the basis of the RFSL Report (Ex.P.5), Dr. A.Prasanna Jyothi (P.W.9) gave a final opinion (Ex.P.4) wherein it is clearly stated that *"in the light of the chemical examination report, the doctor is of the opinion that there is no suggestive of sexual intercourse"*. Thus, none of the scientific evidence support the case of the prosecutrix that she was raped by the accused.

During the cross-examination of the witnesses, a suggestion was made to the effect that the complainant party is falsely implicating the accused because of animosity. For, the complainant party was helping one Siddamma, wife of Venkata Narayana, who died in an accident, in getting a house for which the accused had raised objection. Such suggestion has been

denied. But due to animosity, the case may have been falsely fabricated against the accused.

It is rather surprising that in a case where the prosecution has failed to prove the commission of the alleged crime, the learned Trial Court has imposed the sentence of life imprisonment for the offence under Section 376 IPC. Needless to say the harshest of the punishment can be imposed if the case falls within the category of "*rarest of the rare cases*". As mentioned above, this case does not come within the category of "*rarest of the rare cases*". Hence, the sentence imposed is legally unjustified.

For the reasons stated above, the sentence and conviction of the appellant/accused, Jinneka Balakrishna, S/o.Ramulu, for the offences punishable under Sections 376(1) and 506 of the Indian Penal Code, in S.C.No.38 of 2013, on the file of the II Additional District and Sessions Judge (FTC), Khammam, are set aside. The appellant shall be released forthwith, if not wanted in any other criminal case.

The Criminal Appeal is, accordingly, allowed. Miscellaneous petitions, if any, pending shall stand closed.

(RAGHVENDRA SINGH CHAUHAN, J)

(M.SATYANARAYANA MURTHY, J)

27th November 2018
RRB