

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 56 of 1990

**Khagendra Nath Barman
-Vs-
The State of West Bengal**

For the Appellant : Ms. Afreen Begum
(Amicus Curiae)

For the State : Mr. Narayan Prasad Agarwala

Heard on : 22.02.2024, 12.03.2024, 19.06.2024

Judgment on : 25.09.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against an order of conviction and sentence passed by the Sessions Judge, West Dinajpur at Balurghat on December 15, 1989 in Sessions Case No.105 of 1989/Sessions Trial No.25 of 1989, finding the accused/appellant guilty of the charge under Section 376 of the Indian Penal Code and convicting him thereunder and sentenced to suffer rigorous imprisonment for 7 years and to pay a fine of Rs.2,000/-, in default, to suffer rigorous imprisonment for one year more.
2. The prosecution case precisely stated a complaint was filed on 10.08.1987 narrating on August 4, 1987 at about 11:00 a.m., as the complainant was mowing in a nearby jute field, the accused/appellant caught hold of her

from behind. The complainant was threatened to be killed by the accused grasping her mouth preventing her to raise alarm. Thereafter, the accused forcibly removed her blouse and sari, ravished her and escaped. Hearing cries of the complainant, the villagers reached the spot. The complainant then returned her home and narrated the incident to her husband. Neighbours also heard of the incident.

There was a 'salish' in the village over the said incident and in the said 'salish' the accused admitted his guilt and his confession was recorded and handed over to the villagers. The matter was also reported to Balurghat Police Station but the said police station told her to lodge complaint in Court and hence there was a delay in filing the case in Court.

The said complaint was forwarded to the Officer-in-Charge of Balurghat Police Station by the Learned Magistrate under Section 156(3) of the Criminal Procedure Code, 1973 with a direction to treat the said complaint as First Information Report and to investigate into the allegations made therein.

3. Subsequently Balurghat Police Station and Balurghat Police Station Case No.15 dated August 26, 1987 under Section 376 of the Indian Penal Code was initiated. The said case corresponded to G.R. Case No.614 of 1987 in the Court of the Sub-Divisional Judicial Magistrate, Balurghat, West Dinajpur.

4. On completion of investigation, the Investigating Officer submitted Charge-sheet No.228 dated December 9, 1987 imputing charge under Section 376 of the Indian Penal Code against the accused/appellant.
5. Charge under Section 376 of the Indian Penal Code was framed against the accused/appellant to which he pleaded not guilty and claimed to be tried.
6. The prosecution cited 10 witnesses and exhibited certain documents.
7. Although in the said trial as many as 10 witnesses were examined in support of the prosecution case but amongst them PW-2 Madhai Lohar, PW-3 Gouranga Sarkar and PW-4 Nripen Barman were declared hostile and were cross-examined by the prosecution. PW-5 Niranjan Barman and PW-6 Joy Chand Lohar expressed their ignorance about the alleged incident. In the said trial, the defence of the accused/appellant was that he was innocent and had been falsely implicated in the case and that with intention to make some material gain out of it.
8. Learned Amicus Curiae representing the appellant submitted as follows:-
 - i. The contradictions in the evidence of prosecution witnesses relating to 'salish' and 'salishnama' was not duly considered.
 - ii. The evidence of PW-7 to the effect that he did not know anything about 'salish' and at the instance of the police he signed the said document was not considered.
 - iii. The evidence of PW-8 to the effect that if the writing of Nishit Barman be mixed up with writing of 20 others he could not differentiate the writing of Nishit Barman and the evidence of PW-7 to the effect that he did not know anything about salish and at the

instant of police he signed the said document complied with non-examination of the scribe Nishit Barman and seizure of the said document from the possession of PW-1, Kalpana Lohar, cast a doubt on the genuineness of the said document. The evidence of PW-8, the seizure list witness was inconsistent and contradictory.

- iv. The Seizure of salishnama from PW-1 cast a doubt on the genuineness of the said document inasmuch as PW-1 in her written complaint stated that the accused admitted his guilt and gave a writing to that effect to the villagers.
 - v. The delay in lodging the complaint in the facts and circumstances of the presence case cast a doubt on the veracity of the prosecution case.
 - vi. The defence case to the effect that he had been falsely implicated in the case at the instant of villagers to extract money found support from the evidence of PW-1 and in that view of the matter the accused/appellant was entitled to benefit of doubt.
 - vii. Absence of any mark of violence on the body of the victim cast a doubt on the veracity of the prosecution case and the accused/appellant was entitled to benefit of doubt.
9. Considered the submissions of the Learned Amicus Curiae for the appellant as well as the Learned Advocate for the State.
 10. A circumspection of evidence of the prosecution witnesses revealed as follows:-

- i. PW-1, the victim reiterated the statement of her complaint in her testimony.
- ii. PW-2, PW-3 and PW-4 were declared hostile by prosecution.
- iii. PW-5 stated in his evidence that he knew the victim, the wife of Madhai Lohar and the appellant. He did not know about the incident of the victim with the appellant. He was not present on the date of salish.
- iv. PW-6 in his examination-in-chief stated that he knew the victim and he did not know anything about the incident between PW-1 and the appellant.
- v. PW-7 stated that on 27.08.1987 the police officer went there and seized one torn up blouse and cloth and a paper of salish in presence of PW-7 and the police officer prepared a seizure list. PW-7 identified his signatures on seizure list and salishnama which were marked Exhibit-1 and Exhibit-2 respectively.
- vi. During cross-examination, PW-7 deposed that he did not know anything about the salish. He did not know what was written in the salishnama. At the instance of the police, he signed the same. He signed the seizure list as per the instruction of the police. He could not say what was written. He did not personally see the seizure of the wearing apparels of PW-1.
- vii. PW-8 stated in his evidence that on 04.08.1987 there was a salish in the village about the incident of PW-1 and the appellant who signed a salishnama. PW-8 identified the signature of Khagendra

Nath Barman marked Exhibit-3. PW-8 signed the salishnama as villager. The appellant raped PW-1 and over that incident the salish took place. On 04.08.1987 the salish took place at Barowaritali at Kasiadanga village. The victim demanded Rs.801/- from the accused for committing the offence. One Nisit Barman wrote out the salishnama. He knew his handwriting. PW-8 identified the salishnama written by Nisit which was marked as Exhibit-4 (after objection). The salishnama was seized in presence of PW-8 and PW-8 signed the seizure list. He identified his signature on seizure list marked as Exhibit-5.

- viii. During cross-examination, PW-8 deposed that there was no endorsement in the salishnama that Nishit Barman wrote it. If the writing of Nishit Barman was mixed up with writing of 20 others, PW-8 could not differentiate the writing of Nisit Barman. PW-8 heard that the appellant raped PW-1. PW-8 and the villagers including the victim were present at the salish. Wearing apparels were not seized in his presence.
- ix. PW-9, the investigating officer deposed on 27.08.1987 he went to the place of occurrence and seized the wearing apparels of the victim and prepared a seizure list. He seized one torn up blouse and old sari and a salishnama. He seized those articles and the salishnama from the victim and wrote out a seizure list in presence of the witnesses Dwijendra Nath Mondal and Nripendra Nath Barman also signed the seizure list as witnesses. He identified the

seizure list written and signed by him marked Exbt.-8. The witnesses signed their names on the seizure list in his presence. He identified the salishnama which he seized from the possession of PW-1 marked as Exbt.-4. He identified the sari and the torn up blouse seized from PW-1 marked Exbt. I collectively. He examined witnesses and sent the victim girl to hospital for medical examination. He also arrested the accused and sent him before the Learned S.D.J.M., Balurghat. He examined Madhai Lohar, husband of PW-1, Gouranga Sarkar and Nripen Barman.

- x. PW-10, the Medical Officer attached to Balurghat Hospital deposed on 27.08.87 he examined the victim.
- xi. During his cross-examination PW-10 stated that there was no sign to detect the victim to have been raped 10 days ago.

11. The Hon'ble Supreme Court held the following in ***Manak Chand v. State of Haryana***¹:-

“7. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in State of Punjab v. Gurmit Singh, (1996) 2 SCC 384:

“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

¹ 2023 SCC OnLine SC 1397

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 cases involving sexual molestations.”

8. This was reiterated by this Court in *Sadashiv Ramrao Hadbe v. State of Maharashtra*, (2006) 10 SCC 92:

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

9. Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. Relying upon the case of *Gurmit Singh (supra)* this court in *Raju v. State of Madhya Pradesh*, (2008) 15 SCC 133 held as under:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the

accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

12. The Hon’ble Supreme Court held the following in **Santosh Prasad v. State of Bihar**²:-

“5.4.1. *In Raju [Raju v. State of M.P., (2008) 15 SCC 133 : (2009) 3 SCC (Cri) 751] , it is observed and held by this Court in paras 11 and 12 as under: (SCC p. 141)*

“11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.

12. Reference has been made in Gurmit Singh case [State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 : 1996 SCC (Cri) 316] to the amendments in 1983 to Sections 375 and 376 of the Penal Code making the penal provisions relating to rape more stringent, and also

² (2020) 3 SCC 443

to Section 114-A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113-A and 113-B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualised as the presumption under Section 114-A is extremely restricted in its applicability. This clearly shows that insofar as allegations of rape are concerned, the evidence of a 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, without exception, be taken as the gospel truth. Additionally, her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.”

5.4.2. *In Rai Sandeep [Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 : (2012) 3 SCC (Cri) 750] , this Court had an occasion to consider who can be said to be a “sterling witness”. In para 22, it is observed and held as under: (SCC p. 29)*

“22. In our considered opinion, the “sterling witness” should be of a very high quality and calibre whose version should, therefore, be unassailable. The court considering the version of such witness should be in a position to accept it for its face value without any hesitation. To test the quality of such a witness, the status of the witness would be immaterial and what would be relevant is the truthfulness of the statement made by such a witness. What would be more relevant would be the consistency of the statement right from the starting point till the end, namely, at the time when the witness makes the initial statement and ultimately before the court.

It should be natural and consistent with the case of the prosecution qua the accused. There should not be any prevarication in the version of such a witness. The witness should be in a position to withstand the cross-examination of any length and howsoever strenuous it may be and under no circumstance should give room for any doubt as to the factum of the occurrence, the persons involved, as well as the sequence of it. Such a version should have co-relation with each and every one of other supporting material such as the recoveries made, the weapons used, the manner of offence committed, the scientific evidence and the expert opinion. The said version should consistently match with the version of every other witness. It can even be stated that it should be akin to the test applied in the case of circumstantial evidence where there should not be any missing link in the chain of circumstances to hold the accused guilty of the offence alleged against him. Only if the version of such a witness qualifies the above test as well as all other such similar tests to be applied, can it be held that such a witness can be called as a “sterling witness” whose version can be accepted by the court without any corroboration and based on which the guilty can be punished. To be more precise, the version of the said witness on the core spectrum of the crime should remain intact while all other attendant materials, namely, oral, documentary and material objects should match the said version in material particulars in order to enable the court trying the offence to rely on the core version to sieve the other supporting materials for holding the offender guilty of the charge alleged.”

5.4.3. *In Krishan Kumar Malik v. State of Haryana [Krishan Kumar Malik v. State of Haryana, (2011) 7 SCC 130 : (2011) 3 SCC (Cri) 61] , it is observed and held by this Court that no doubt, it is true that to hold an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient provided the same*

inspires confidence and appears to be absolutely trustworthy, unblemished and should be of sterling quality.

5.5. *With the aforesaid decisions in mind, it is required to be considered, whether is it safe to convict the accused solely on the solitary evidence of the prosecutrix? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality?”*

13. The Hon’ble Supreme Court held the following in **Sadashiv Ramrao Hadbe v. State of Maharashtra**³:-

“9. *It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix. The courts shall be extremely careful in accepting the sole testimony of the prosecutrix when the entire case is improbable and unlikely to happen.”*

14. The Hon’ble Supreme Court held the following in **Raju v. State of M.P.**⁴:-

“10. *The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.*

³ (2006) 10 SCC 92

⁴ (2008) 15 SCC 133

11. *It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”*

15. The following was held in **Mohd. Ali v. State of U.P.**⁵ by the Hon’ble Supreme Court:-

“30. *True it is, the grammar of law permits that the testimony of a prosecutrix can be accepted without any corroboration without material particulars, for she has to be placed on a higher pedestal than an injured witness, but, a pregnant one, when a court, on studied scrutiny of the evidence finds it difficult to accept the version of the prosecutrix, because it is not unrepachable, there is requirement for search of such direct or circumstantial evidence which would lend assurance to her testimony. As the present case would show, her testimony does not inspire confidence, and the circumstantial evidence remotely does not lend any support to the same. In the absence of both, we are compelled to hold that the learned trial Judge has erroneously convicted the appellant-accused for the alleged offences and the High Court has fallen into error, without reappreciating the material on record, by giving the stamp of approval to the same.”*

⁵ (2015) 7 SCC 272

16. The Hon'ble Supreme Court held the following in ***Kanhaiya Lal v. State of Rajasthan***⁶:-

“15. It is settled in law that mere delay in lodging the first information report cannot be regarded by itself as fatal to the case of the prosecution. However, it is obligatory on the part of the court to take notice of the delay and examine, in the backdrop of the case, whether any acceptable explanation has been offered by the prosecution and if such an explanation has been offered whether the same deserves acceptance being found to be satisfactory.

16. In this regard, we may refer with profit to a passage from State of H.P. v. Gian Chand [(2001) 6 SCC 71 : 2001 SCC (Cri) 980] , wherein a three-Judge Bench of this Court has expressed thus: (SCC p. 79, para 12)

“12. Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay, the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the delay cannot by itself be a ground for disbelieving and discarding the entire prosecution case.”

17. Conviction of a wrong-doer can be based on the sole evidence of the prosecutrix if the same is trustworthy and reliable. The prosecutrix herein lodged the complaint after six days of the occurrence of a heinous and condemnable act claims to have been experiences by her affecting her body,

⁶ (2013) 5 SCC 655

mind, dignity and honour. However, the prosecutrix without immediately seeking the punishment of the appellant for such an abominable and deprecating act sought for a 'salish' for resolution of a criminal act through acceptance of a compensation of Rs.801/-.

18. A woman whether married or a spinster will not accept such physical molestation at a bargain which is indeed a reprehensible act unacceptable and unlawful on the part of the victim herself. It would be exemplary to excite and encourage the miscreants to commit such offence and absolve himself from the inculpatory act through payment of money contrary to legal precepts and societal faith, trust and conviction in the judicial system.
19. A parallel system of redressal through 'salish' in case of criminal offences cognizable in nature cannot be allowed to be practised. The delay in filing of the complaint was not explained or accounted by the victim.
20. There had been inconsistencies in the evidence of the prosecution witnesses apart from the victim and her husband the others having turned hostile and the evidence of certain other prosecution witnesses being based on either hearsay and ignorance of the incident. The report of the medical officer having conducted the examination after 10 (ten) days of the incident was inconclusive.
21. There had been lapses on the part of the investigating agency. The deviations and omissions in the evidence of the victim as well as her husband returned the same to be untrustworthy and therefore discredited. The enmity between the parties resulting in the false implication of the appellant cannot be disregarded.

22. Under the facts and circumstances, the prosecution has failed to establish its case beyond reasonable doubt and as such the criminal appeal is allowed.
23. Accordingly, the instant criminal appeal being CRA 56 of 1990 is disposed of.
24. There is no order as to costs.
25. I record my appreciation for the able assistance rendered by Ms. Afreen Begum, Learned Advocate as *Amicus Curiae* in disposing of the appeal.
26. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
27. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)