

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 570 of 2013

Sunil Soren

-Vs-

The State of West Bengal

For the Appellant : Mr. Mukul Biswas
(Amicus Curiae)

For the State : Ms. Faria Hossain
Mr. Anand Keshari

Heard on : 28.02.2024, 29.02.2024

Judgment on : 05.08.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against the judgment dated 17th June, 2013 and an order of conviction dated 18th June, 2013 passed by the Learned Additional Sessions Judge, 2nd Court, Malda in Sessions Case No. 60/2012 (Sessions Trial No. 09/2012) sentencing the appellant to suffer rigorous imprisonment for 7 (seven) years and to pay a fine of Rs.20,000/-, in default, to suffer rigorous imprisonment for a further period of 1 (one) year for commission of offence punishable under Section 448/376 of the Indian Penal Code.
2. The prosecution case narrated on 31.08.2011 in the morning around 02:30 P.M., while the victim's husband went to the field, the accused person entered in her house and caught hold of her and ravished her at the threat

of a 'bhojali'. The prosecutrix disclosed the fact to her husband who intimated the incident to the 'Morol' and other villagers. The accused fled with the assistance of his father.

3. Based on the complaint, Gazole Police Station vide Case No. 316 of 2011 was instituted against the accused person under Section 448/376 of the Indian Penal Code, 1860.
4. On completion of the investigation, a charge-sheet being no. 30 of 2012 dated 26.02.2012 under Sections 448/376 of the Indian Penal Code was submitted.
5. Charges under Sections 448/376 of the Indian Penal Code, 1860 was framed against the accused person to which he pleaded not guilty and claimed to be tried.
6. The prosecution examined as many as 12 witnesses and exhibited certain documents.
7. Considered the rival contentions of the Learned Advocate as Amicus Curiae for the appellant as well as the State.
8. In ***Raju and Others vs. State of Madhya Pradesh***¹, the Hon'ble Supreme Court held as follows:

“9. The observations in Gurmit Singh's case were reiterated in Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635 in the following terms: “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

¹ (2008) 15 SCC 133

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 leveled 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.”

10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at 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.”

9. In **Sadashiv Ramrao Hadbe vs. State of Maharashtra and Anr.**², the Hon’ble Supreme Court held as follows:

² (2006) 10 SCC 92

“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 of 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.”

10. In State of **Rajasthan vs. Babu Meena**³, the Hon’ble Supreme Court held as follows:

“9. We do not have the slightest hesitation in accepting the broad submission of Mr. Jain that the conviction can be based on the sole testimony of the prosecutrix, if found to be worthy of credence and reliable and for that no corroboration is required. It has often been said that oral testimony can be classified into three categories, namely (i) wholly reliable, (ii) wholly unreliable and (iii) neither wholly reliable nor wholly unreliable. In case of wholly reliable testimony of a single witness, the conviction can be founded without corroboration. This principle applies with greater vigour in case the nature of offence is such that it is committed in seclusion. In case prosecution is based on wholly unreliable testimony of a single witness, the court has no option than to acquit the accused.”

11. The assessment of the prosecution evidence, primarily the evidence of the prosecutrix being PW-3 to have been raped by the appellant when she was alone in the house at the threat of a knife or ‘bhojali’ could not be disbelieved since there was no reason of false implication of the appellant. The victim lady did not deviate from her statements recorded under Section 164 of the

³ (2013) 4 SCC 206

Code of Criminal Procedure as well as her deposition before the Court. The medical document marked as Exhibit-5 mentioned “*nail scratch mark and brownish crush were found over frontal part of the neck and left side of the cheek. Bruise over left leg found.*” The victim stated to have been forced to have intercourse with a person on 31.08.2011 at about 03:00 P.M. as per the document marked as Exhibit-5 though she did not mention the name of the offender. The complaint was lodged at 02:30 P.M. on 01.09.2011. Though the delay was not explained in the complaint however there was a probability of a village ‘salish’ which was not attended by the appellant who alleged to have escaped. Though the evidence of the husband was exaggerated and the evidence of other prosecution witness was based on hearsay, the version of the prosecutrix though solitary could not be shaken during cross-examination and was devoid of any plausible reason to falsely implicate the appellant.

12. A mother of three children will not entangle, qualify and disrepute herself with a stigma of being ravished by a person which would definitely have an impact in the society as well as the upbringing and future of her children.
13. In the instant case, the evidence of the victim had been corroborated by the medical evidence. A married woman with three children to have ravished under threat may not reflect injuries to her private parts. However, absence of such injury in the private parts does not negate the possibility of being ravished or subjected to sexual molestation by the perpetrator. The sole testimony of the prosecutrix in the instant case does not improbabilize the incident of sexual assault inflicted upon her.

14. In view of the above discussions, the instant criminal appeal being CRA 570 of 2013 is dismissed.
15. There is no order as to costs.
16. I record my appreciation for the able assistance rendered by Mr. Mukul Biswas, Learned Advocate as *Amicus Curiae* in disposing of the appeal.
17. Lower court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
18. 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.)