

SATYAPAL
v.
STATE OF HARYANA
(Criminal Appeal No. 664 of 2009)

APRIL 8, 2009

[S.B. SINHA AND DR. MUKUNDAKAM SHARMA, JJ.]

Penal Code, 1860 – s. 376 – Rape – Prosecution case that accused sexually assaulted a minor girl – Part of the incident witnessed by aunt of prosecutrix – Conviction by courts below u/s. 376 – On appeal, held: Evidence of prosecutrix convincing and corroborated by her aunt – Even though prosecutrix was examined medically after 80 hours and evidence of doctor was wholly insufficient, the doctor testified that there had been an attempt to commit rape – Injury on the private parts of the prosecutrix was found – Absence of hymen also of some significance – Complete penetration was not necessary – Delay in lodging FIR in such case was natural – Thus, order of conviction does not call for interference.

Judicial notice – Offence of rape – Delay in lodging FIR in such case is natural – Generally family of victim would not intend to get stigma attached to victim.

The question which arose for consideration in this appeal was whether the courts below were justified in holding the appellant guilty of commission of offence under section 376 IPC.

Dismissing the appeal, the Court

HELD:1.1. A case of this nature should be viewed having regard to the materials brought on record in their entirety. Indisputably, the prosecutrix was examined medically after a long time. The explanation offered by

A PW 5-aunt of prosecutrix in this behalf, is clear and
sufficient. Not only the father of the prosecutrix was not
in the village, he had to be sent for and came back to the
village only on the next day. Evidently, for good reasons,
they did not want to lodge a First Information Report
B immediately. A panchayat was convened and only when
it did not yield any fruitful result, the First Information
Report was lodged. The evidence of the doctor appears
to be wholly insufficient. Even she could not complete
the medical examination. Despite passage of a long time,
C an injury on the private parts of the prosecutrix was
found. The doctor at least testified that there had been
an attempt to commit rape. While saying so, she found
the hymen absent which having regard to the medical
jurisprudence is of some significance. [Para 15] [586-B-
F] D

*Modi's Medical Jurisprudence, twenty-third edition, pp
897 and 928, referred to.*

E 1.2. The prosecution case must be considered having
regard to the evidence of PW 5. She detected the accused
while committing the offence. It was not complete.
Appellant is said to have fled away, hearing her voice. The
prosecutrix, therefore, may not be correct when she
made her statements that she did not change her
F garments which does not appear to be probable as
sufficient time had elapsed and it is unthinkable that a
little girl would continue to wear her cloth for 80 hours
or she would not wash herself. [Paras 17 and 18] [587-C-
D]

G 1.3. Fault in the judgment of the High Court could
have been found out if the prosecutrix was a major.
Having regard to the nature of medical evidence as also
the authorities, the conclusion arrived at by the High
Court, cannot be said to be perverse. Furthermore, for the
H purpose of satisfaction of the ingredients of rape, it is not

necessary that there should be complete penetration. A
[Para 19] [587-E-F]

*Aman Kumar and Another v. State of Haryana (2004) 4
SCC 379, referred to.*

1.4. This Court can take judicial notice of the fact that B
ordinarily the family of the victim would not intend to get
a stigma attached to the victim. Delay in lodging the First
Information Report in a case of this nature is a normal
phenomenon. Both the courts below apart from relying C
on a part of the testimony of the prosecutrix found the
evidence of PW-5 to be absolutely reliable. The medical
evidence itself being a part of the evidence is required to
be appreciated in the context of ocular evidence and
other circumstances surrounding thereto. There was D
some time gap between the occurrence and the
examination of the witnesses. Some lapse of memory on
the part of the child witness, therefore, is possible. The
impugned judgment does not warrant interference by
this Court. [Paras 20, 21 and 22] [587-G-H; 588-A-B]

Case Law Reference: E

(2004) 4 SCC 379 Relied on. Para 19

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 664 of 2009. F

From the Judgment & Order dated 21.02.2007 of the High
Court of Punjab and Haryana at Chandigarh in Criminal Appeal
No.211-SB of 1994.

Brijender Chahar, K.R. Anand and Devashish Bharuka for G
the Appellant.

Rajeev Gaur Naseem, Naresh Bakshi and T.V. George for
the Respondent.

A The Order of the Court was delivered:

S.B. SINHA, J. 1. Leave granted.

B 2. Appellant was accused of a charge of commission of an offence under Section 376 of the Indian Penal Code. He was sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs. 20,000/-. In default of payment of fine, he was directed to undergo further rigorous imprisonment for two years.

C 3. The prosecution case is as under:

D The prosecutrix was a minor. She was aged about 11 years. Appellant was a co-villager. As per the First Information Report, on 5.02.1993 at about 8.00 a.m., she went to the fields to bring fodder. When she reached near the fields of one Nihala, the appellant came near her and forcibly lifted her. She raised an alarm but the appellant gagged her mouth and started sexually assaulting her. After hearing the voice of her aunt, the appellant left her and ran away.

E The learned trial Judge found the appellant guilty of commission of the offence under Section 376 of the Indian Penal Code. Aggrieved thereby and dissatisfied therewith, the appellant filed an appeal before the Punjab and Haryana High Court, which has also been dismissed by reason of the
F impugned judgment.

4. Mr. Brijender Chahar, learned senior counsel would, in support of the appeal, raise the following contentions:

G (i) Having regard to the evidence of prosecutrix (PW-4), the courts below committed a serious error in rejecting the medical evidence as also the report of the Forensic Science Laboratory.

H (ii) The materials brought on record, even if given face

value, would clearly establish that the appellant who had land dispute with the family of the prosecutrix had been falsely implicated.

- (iii) The ingredients of Section 376 of the Indian Penal Code having not been established, the impugned judgments are liable to be set aside.

5. Mr. Rajeev Gaur 'Naseem', learned counsel appearing on behalf of the respondent, on the other hand, would urge:

- (i) The land dispute between the parties cannot be a ground for false implication of a relation for commission of an offence of this nature.

- (ii) The evidence of the prosecutrix, who is a child witness, having been found to be convincing and her evidence having been corroborated by her aunt Khazani (PW-5), no interference with the impugned judgments is warranted.

- (iii) The prosecutrix having been examined after 80 hours, the medical report as also the evidence must be considered in the factual context brought on record.

6. The occurrence took place on 5.02.1993 at about 8 a.m. The prosecutrix went to the field to bring fodder. She was admittedly a minor. The learned Judge was satisfied that she was competent to depose. In her examination-in-chief, she supported the accusations made against the appellant in the First Information Report.

7. Our attention, however, was drawn to the following statements made by her in her cross-examination:

"There was no string of cloth of my underwear. My underwear was that of elastic and it was not broken. I was wearing the same underwear and salwar, which were

A smeared with blood, after reaching home. My underwear
and salwar were got changed in Bhiwani after reaching the
hospital. The accused got discharged when performed the
sexual intercourse and that discharged material had
smeared my body at the relevant place. I had not taken a
B bath when I was brought to Civil Hospital, Bhiwani. Some
blood had fallen on the ground where the accused had
performed the sexual intercourse with me..."

8. Khazani, her aunt (PW-5) witnessed a part of the
C occurrence. She, in her deposition, stated:

"Nirmala prosecutrix P.W. is my real sister's daughter. She
resides in Khaparwas. About six months and a week ago,
I had gone to bring grass in the fields at about 8.00 or 8.30
a.m. When I reached in the field of Nihala, Satyapal
D accused had removed salwar and underwear of Nirmala
and had shut her mouth and the accused was performing
sexual intercourse with Nirmala and while Nirmala had
been laid down in the crop of gram in the side of a Tibbi
(sand dune). Nirmala was weeping and on seeing me, the
E accused ran away. There was swelling on the vagina of
Nirmala. Nirmala was also bleeding and I got Nirmala to
wear her underwear and salwar and brought her home..."

9. Indisputably, the father of the prosecutrix was not in the
F village. Rajesh, elder brother of the prosecutrix had gone to
village Devrala to inform him. After he came back, a panchayat
was convened. Evidently, the family keeping in view the
reputation of a minor girl did not intend to lodge a First
Information Report straightway. PW-5, in this connection, in her
deposition stated:

G "My father-in-law was Man Singh and he had two brothers,
namely, Ganpat and Mohar Lal. Mohar Lal was issueless.
Mohar Lal had given his entire land to the sons of Ganpat
and no land was given to the sons of Man Singh. I do not
H know if this land was distributed as such at the instance

of Sultan, father of the accused. It is incorrect that there was a water dispute from a Nali with the accused. We have a separate water channel. I do not know if my husband was committing thefts. I do not know if he was killed because of any thefts. It is incorrect that I killed my husband. I have no interest in visiting the police. However, I am pursuing her case, as she is my real sister's daughter. It is incorrect that I got the accused falsely implicated. Rajesh, elder brother of Nirmala P.W., had gone to village Devrala to inform her father. There is a chowk in the heart of the village where the panchayat was convened. Sarpanch and others were with us in the panchayat. Member-Panchayats were also in that panchayat in the village. We wanted that at least the accused should have apologized, but he did not agree. Since it was a question of a stigma on the career of the girl, we did not want to come to the court initially..."

10. We may at this juncture notice the evidence of Dr. Savita Bansal (PW-6). In her deposition, she stated:

"On external examination, there was no bleeding or discharge on thigh or labia majora. Labia majora and minora were not properly developed. Posterior commissure and fourchette were intact. Hymen was absent and represented by slightly swollen edges.

Per speculum examination was not possible. On her vaginal examination, it admitted only little finger easily. Two fingers were not possible to be admitted. So properly her vaginal examination was not possible. Vaginal rugosities were not well maintained."

She, in her cross-examination, clarified as to why she had reported that there was a possibility of an attempt, stating:

"I cannot say definitely with the aforesaid observation whether there was actually any attempt to commit sexual intercourse. Therefore, I cannot say whether there was a

A penetration or not. Since the edges of the vagina were swollen, therefore, I say that there could be a possibility of attempt and, therefore, I have said that possibility of the attempt to commit sexual intercourse cannot be ruled out.

B Possibility of such a swelling, as in this case, may be due to other reasons also. It is not necessary that other signs are also available besides swelling if an attempt to rape is made. In this case, since the girl is minor, therefore, the other signs were not possible. As I have mentioned that hymen was absent, I mean that it was not freshly bleeding. There was no bleeding of the hymen at all. This amounts to absence of the hymen...

C

11. Before proceeding to discuss further, we may also notice that in the report of the Chemical Examiner, it was stated that no semen was detected on any of the exhibits sent to it.

D

12. The learned Trial Judge while recording the judgment of conviction held:

E "20. In my view, the entire version of prosecutrix Nirmala, aged about 10 years, is convincing, consistent and truthful. It is not necessary for her to explain where the blood had gone from her private parts at the scene of occurrence. She might have washed her private parts after urinating or after going for toilet etc. It is not the case that she did not go to toilet and did not pass any urine till she was medico-legally examined. It is not necessary that blood had fallen on her salwar..."

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It was concluded:

G "21. So, such cases of rape, molestations and other offences against the women are quite common and are not unusual. Therefore, I over-rule the contentions of the learned counsel for the defence. I uphold the arguments of the learned Prosecutor, who has urged that the

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statements of the prosecutrix and Smt. Khazani are truthful A
and with the help of medical evidence, they have been able
to prove the guilt of the accused and I am convinced that
this is a case of rape and the prosecutrix has clearly
stated in her statement that the accused took out his penis
and inserted the same in her private parts. This part of the B
evidence proves the case against the accused clearly
without any doubt."

13. The High Court, in its judgment, opined:

- (i) "Hymen was found to be absent when the C
prosecutrix was medico-legally examined by Dr.
Savita Bansal. Said doctor further noticed that the
same was represented by slightly swollen edges.
Although, the doctor could not say definitely whether D
there was actually any attempt to commit sexual
intercourse or not, yet since the edges of the vagina
were swollen, therefore, an opinion was given that
there could be a possibility of attempt and,
accordingly, the possibility of the attempt to commit
sexual intercourse could not be ruled out." E
- (ii) "Coming to the report of the FSL, as per which
semen could not be detected on the clothes of the
prosecutrix and the vaginal swabs, it may be noted
that complete penetration of the penis with emission F
of semen is not necessary to constitute the offence
of rape. Even partial penetration was sufficient to
constitute the offence of rape. Absence of hymen
is clear indication of the fact that there was
penetration. It may be that the penetration was G
partial or that there was no emission of semen by
the appellant."
- (iii) "The prosecutrix has clearly stated in her deposition
before the Court that the accused had inserted his
male organ in her vagina. Moreover, the absence H

A of hymen cannot be explained by any other circumstance than the sexual intercourse committed by the appellant with the prosecutrix."

B 14. Mr. Chahar would contend that whereas the learned Trial Judge failed to take into consideration the medical evidence, the opinion of the High court is clearly contrary to the prosecution case.

C 15. A case of this nature should be viewed having regard to the materials brought on record in their entirety. We have noticed hereinbefore the prosecution case. Indisputably, the prosecutrix was examined medically after a long time. The explanation offered by PW-5 in this behalf, in our opinion, is clear and sufficient. Not only the father of the prosecutrix was not in the village, he had to be sent for and came back to the village only on the next day. Evidently, for good reasons, they did not want to lodge a First Information Report immediately. A panchayat was convened and only when it did not yield any fruitful result, the First Information Report was lodged.

E The evidence of the doctor appears to be wholly insufficient. Even she could not complete the medical examination.

F Despite passage of a long time, an injury on the private parts of the prosecutrix was found. The doctor at least testified that there had been an attempt to commit rape. While saying so, she found the hymen absent which having regard to the medical jurisprudence is of some significance.

G 16. In Modi's Medical Jurisprudence, twenty-third edition, at pages 897 and 928, it is stated:

H "At page 897: To constitute the offence of rape, it is not necessary that there would be complete penetration of the penis with emission of semen and the rupture of hymen. Partial penetration of the penis within the labia majora or the vulva or pudenda with or without emission of semen

or even an attempt at penetration is quite sufficient for the purpose of law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury to the genitals or leaving any seminal stains. A

At page 928: In small children, the hymen is not usually ruptured, but may become red and congested along with the inflammation and bruising of the labia. If considerable violence is used, there is often laceration of the fourchette and perineum." B

17. The prosecution case must be considered having regard to the evidence of PW-5. She detected the accused while committing the offence. It was not complete. Appellant is said to have fled away, hearing her voice. C

18. The prosecutrix, therefore, may not be correct when she made her statements that she did not change her garments which does not appear to be probable as sufficient time had elapsed and it is unthinkable that a little girl would continue to wear her cloth for 80 hours or she would not wash herself. D

19. Fault in the judgment of the High Court could have been found out if the prosecutrix was a major. Having regard to the nature of medical evidence as also the authorities noticed hereinbefore the conclusion arrived at by the High court, in our considered opinion, cannot be said to be perverse. Furthermore, for the purpose of satisfaction of the ingredients of rape, it is not necessary that there should be complete penetration. [See *Aman Kumar and Another v. State of Haryana* (2004) 4 SCC 379] E F

20. This Court can take judicial notice of the fact that ordinarily the family of the victim would not intend to get a stigma attached to the victim. Delay in lodging the First Information Report in a case of this nature is a normal phenomenon. Both the courts below apart from relying on a part of the testimony of the prosecutrix found the evidence of PW-5 G H

A to be absolutely reliable. The medical evidence itself being a part of the evidence is required to be appreciated in the context of ocular evidence and other circumstances surrounding thereto.

B 21. There was some time gap between the occurrence and the examination of the witnesses. Some lapse of memory on the part of the child witness, therefore, is possible.

22. We are, therefore, of the opinion that the impugned judgment does not warrant any interference by this Court.

C 23. For the reasons aforementioned, there is no merit in this appeal, which is dismissed accordingly.

N.J.

Appeal dismissed

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