

CASE NO.:
Appeal (crl.) 582 of 2000

PETITIONER:
State of Tamil Nadu

RESPONDENT:
Ravi @ Nehru

DATE OF JUDGMENT: 04/07/2006

BENCH:
H.K. SEMA & A.K. MATHUR

JUDGMENT:
J U D G M E N T

H.K.SEMA, J

This appeal is preferred by the State of Tamil Nadu against the judgment and order dated 8.7.1999 passed by the High Court. The respondent-accused Ravi @ Nehru was convicted by the Trial Court for an offence under Section 376 IPC and sentenced to seven years rigorous imprisonment and a fine of Rs.2,500/- and in default to undergo rigorous imprisonment of 2 years. Aggrieved thereby he preferred Criminal Appeal No.768 of 1992 before the High Court. The High Court by the impugned judgment and order has set aside the order of conviction and acquitted the accused. Hence this appeal by special leave.

Briefly stated the prosecution's case is as follows:-

On 23.10.1989 at about 3.30 p.m. PW-2 Arthi (victim girl) aged about five years was going to her aunt's house along with other children. At about 4.00 p.m. she came running to her house and informed her mother PW-1 that the accused took her to the bed room of his house and after removing her underwear and his pant placed her on his lap and pressed his male organ on her female organ. She cried in pain. On hearing her cry, two persons who were watching television in the front room of the house came there and scolded the accused. PW-1 the mother of the victim girl removed all the clothes of PW-2, which according to her contained blood stains. She also washed her clothes and gave a bath to her daughter with the help of PWs 8 and 9. Thereafter, she took PW-2 along with PWs 8 and 9 to H.P.F. Hospital where PW-7 Dr.Gavaramma was working. PW-7 then advised them to take the victim girl to a nearby government hospital. After the arrival of the father of the victim girl at the house PW-2 was taken to the government Hospital, Udthagamandalam at about 10.30 p.m. She was then referred to children's hospital. PW-6 Dr.Radhabhai who was in charge of the government hospital examined PW-2 at about 11.00 P.M. PW-6 stated that at the time of examination, the victim girl was in a conscious state of mind, there were no external injuries, there were no blood stains on her dress, there was no injuries on her female organ but hymen was ruptured and there were no fresh bleedings from the female organ.

PW-5 Dr.Lakshmanan examined the accused on 24.10.1989 at about 12.30 p.m. and found the following injuries on him:-

"1. There were bloodstains both on the top portion and in the middle portion of the brief of the accused.

2. His penis was 3 inches in length and his

urinary opening was normal and there were no external injuries.

3. There was cut wound at the bottom portion of his penis. When pressed at the place of this cut wound, bloodstain was there. There was no sign of fresh semen. Except this cut wound on the penis, there is no injury anywhere around the penis. There were not bloodstains on the pubic hair, which were = inch long. Scrotum was normal. When the frontal portion was pressed, there was no oozing of blood. His penis was well-developed and he possesses virility. The certificate which I gave was the 4th documents. There is possibility for a cut wound of the above sort to cause when the penis is forced into the vagina. This cut wound might have caused before 12 hours of and within 24 hours of the medical test performed by me. The certificate which I gave this effect was document 5. As the blood sample of the accused has to be tested, I directed for the same. Test results showed that his blood group is PRH \026 Positive."

In re-examination he stated:

"Chances for causing such type of cut wounds are possible usually when the penis is in erect condition."

In the course of the Trial the prosecution examined as many as 14 witnesses. Exhibits P-1 to P-19 were marked and M.Os. 1 to 6 were also produced before the Court. No defense witness was examined on behalf of the accused. The plea of the accused was total denial. The Trial Court on appreciation of the evidence and documents on record found him guilty and sentenced him as aforestated.

PW-2, the prosecutrix has stated in examination in chief that she was studying in UKG and on the fateful day after the school was over she went to her aunt's house (father's sister's house) at about 2 p.m. On the way the accused accosted her and took her stating that they would watch TV. She further stated that there were two other persons watching TV and the accused took her to another room and made her sit on his lap. The accused then removed his pant and brief and also removed the prosecutrix's brief. The accused pressed his sexual organ on her sexual organ. Then she started weeping and the other two brothers scolded the accused. The accused then ran away by putting his pant and shirt. Thereafter, the prosecutrix after putting her brief went to the house sobbing. She narrated the story to her mother. She also stated that on seeing her coming sobbing her mother fainted and fell down and then PW-8 Kamalam and PW-9 Rani received her clothes and drenched them in water. She further stated that PWs 8 and 9 also washed her sexual organ. Her statement was well corroborated by PWs 1, 3, 6, 7, 8 and 9.

At this stage, we may notice the evidence of PW-7 Dr.Gavaramma before whom she was first taken by PW-1 and PW-8 Kamalam. PW-7 stated that when the prosecutrix was brought by PW-1 and one lady name Kamalam, her mother was weeping and the prosecutrix was also weeping. PW-7 advised them to go to Government Hospital. PW-7 further

stated that the small girl was crying due to pain. PW-7 further stated that the prosecutrix's vagina was reddened.

PW-6 Dr.Radhabahi was functioning as Asst.Civil Surgeon in the government maternity hospital. She examined the prosecutrix on 23.10.1989 at about 11.00 p.m. PW-6 found that there were no external injuries; there were no stains in her dresses. The skin-like tissue called hymen in her vagina was torn. There was no fresh oozing of blood. There was no oozing of blood around her vagina. PW-6 further stated that she did not know as to when the hymen was torn. She further stated that no external injury would be caused during the sexual intercourse. The doctor further opined that the penis would not have gone inside the girl's vagina.

It will clearly appear from the testimony of PW-6 that the hymen of the prosecutrix was torn. PW-6, however, opined that the penis would not have gone inside the girl's vagina. We are totally at a loss as to how this opinion would have been recorded when the doctor categorically stated that hymen in the vagina of the prosecutrix was found torn.

It will be noticed that the statement of the prosecutrix was also well corroborated by PW-3 who was at the place of incident. PW-3 is Sundaram. He has stated that he along with the accused and another person Anand went to the house of the sister of accused to watch cricket match. At about 3.30 pm the accused went outside and came back with PW-2 (the prosecutrix). The accused took PW-2 to a room inside. On being questioned he told the girl's name was Arthi. After five minutes they heard crying sound from inside the room. He and Anand went inside the room and saw the accused without pant and underwear and the prosecutrix's underwear was also removed. The accused had made the prosecutrix to sit on his lap and on seeing their entry the accused released her. The High Court unfortunately disbelieves the creditworthy testimony of this witness as artificial and unnatural.

The High Court disbelieves the testimony of PW-2 the prosecutrix on the ground that her statement has not been corroborated by PW-6 Asst.Civil Surgeon who examined the prosecutrix in Govt. Maternity Hospital on 23.10.1989. According to the High Court, the statement of the prosecutrix is not corroborated by the evidence of PW-6 as there were no external injuries, there were no blood stains on her dress, there was no injury on her female organ, hymen was ruptured and there was no fresh bleeding from the private parts. The doctor admitted that she was not in a position to state as to how the hymen of the girl was torn. She further stated that the male organ would not have penetrated in a young girl's vagina. The doctor further opined that there was no sign of rape. In our view, the finding of the High Court is absolutely perverse and inconsistent with the evidence on record. First of all no opinion could be given by this doctor that there was no sign of rape. Regarding non presence of blood stains on her vaginal part and on her wearing apparel it is the categorical testimony of PWs 1, 8 and 9 that the prosecutrix was given bath, her vagina was washed and her wearing apparel was washed before taking her to doctor. PW-6 having recorded that hymen of the vagina was torn was not justified in giving an opinion that the male organ would not have penetrated into the young girl's vagina.

That apart, the High Court has completely overlooked the testimony of PW-5 Dr.Lakshmanan, Asstt. Medical Officer who conducted the medical test on the accused Ravi on 24.10.1989. On examination PW-5 found a cut wound at the bottom portion of his penis. When pressed at the place of this cut wound, bloodstain was present. The

doctor further opined that his penis was well developed and he possessed virility. The doctor further opined that there was a possibility for cut wound of the above sort to have been caused when the penis is forced into the vagina. Doctor further opined that this cut wound might have been caused before 12 hours of and within 24 hours of the medical test. In re-examination doctor clarified that chances for causing such type of cut wounds are possible usually when the penis is in erect position.

Facts on record established that the accused was 22 years old and the prosecutrix was about 4 to 5 years old. It is well-established principle that when a fully developed man has committed sexual assault with a minor girl aged about 4 or 5 years there is likelihood of an injury being caused on the penis. PW-5 found that there was cut wound at the bottom of penis of the accused. He further stated that when the cut wound was pressed bloodstain was there. He further stated that the penis of the accused was fully developed and he possessed virility. Doctor further opined that there was a possibility of cut wound of the kind of accused when the penis is forced into the vagina. It is unfortunate that this stark testimony of PW-5 against the accused for which he has no explanation, has escaped the notice of the High Court.

In the case of Madan Gopal Kakkad vs. Naval Dubey, (1992) 3 SCC 204, the accused was charged with the rape of minor girl of eight years. This Court held that even slightest penetration of penis into vagina without rupturing the hymen would constitute rape.

We may also notice the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty First Edition) at page 369 which reads thus:

"Thus to constitute the offence of rape it is not necessary that there should be complete penetration of penis with emission of semen and 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 the 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. In such a case the medical officer should mention the negative facts in his report, but should not give his opinion that no rape had been committed. Rape, is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is that there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one."

In Parikh's Textbook of Medical Jurisprudence and Toxicology, the following passage is found:

"Sexual intercourse: In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite possible to commit legally the offence of rape without producing any

injury to the genitals or leaving any seminal stains."

In Encyclopedia of Crime and Justice (Vol.4) at page 1356, it is stated:
"...even slight penetration is sufficient and emission is unnecessary."

It is now well-accepted principle of law that conviction can be founded on the testimony of the prosecutrix alone unless there are compelling reasons for seeking corroboration. It is also well accepted principle of law that corroboration as a condition for judicial reliance on the testimony of the prosecutrix is not a requirement of law but a guidance of prudence. The 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. [See State of Punjab vs. Gurmit Singh (1996) 2 SCC 384]

So also in the case of Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635, this Court observed that non-rupture of hymen or absence of injury on victim's private parts does not belie the testimony of the prosecutrix.

The evidence of a victim of sexual assault stands on par with evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offender is entitled to great weight, absence of corroboration notwithstanding. [See Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat, AIR 1983 SC 753]

Reverting back to the facts of the present case the evidence of PW-2 the prosecutrix remains unimpeached. There is no iota of evidence or even a suggestion that the accused has been falsely implicated because of animosity. Similarly, the evidence of PW-2 has been corroborated by the evidence of PWs-1, 3, 5, 6, 7, 8 and 9. In the present case, the ocular evidence of PWs is well corroborated with the medical evidence.

Thus, the High Court committed grave miscarriage of justice in recording acquittal by reversing the conviction recorded by the Trial Court. The impugned order of the High Court dated 8.7.1999 is accordingly set aside. The conviction recorded by the Trial Court is restored. This appeal is accordingly allowed. The respondent Ravi @ Nehru shall be taken back into custody forthwith to serve out the remaining part of the sentence. Compliance report within one month.