IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 587 of 2007

Bhagbat Gorain
-Vs-
State of West Bengal

Amicus Curiae : Mr. Ramashis Mukherjee

For the State : Mr. Avishek Sinha

Heard on : 28.02.2023, 23.03.2023, 04.08.2023.

Judgment on : 28.11.2023.

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against Judgment and Order of conviction dated 06.06.07 passed by Learned Additional Sessions Judge, Fast track Court No. 3, Purulia, in connection with Sessions Trial No. 29/07 arising out of Sessions Case No. 22/07, thereby convicting the Appellant/Petitioner for an offence punishable under Sections 448/376 of the Indian Penal Code, 1860 in connection with Arsha Police Station Case No. 50/06 dated 20.11.2006 and sentencing him to suffer Rigorous Imprisonment for a period of one year and a fine of Rs. 1,000/- in default Rigorous Imprisonment for one month for the offence punishable under Section 448 of the Indian Penal Code,1860 and seven years Rigorous Imprisonment and fine of Rs. 7000/- in default

Rigorous Imprisonment for seven months for the offence punishable under section 376 of the Indian Penal Code,1860.

2. The prosecution case emanated out of a complaint filed by the victim lady, inter alia, stating that on 17.11.2006 at 3 p.m. she was alone in the house while the other inmates were engaged in harvesting the field. At the relevant time, the appellant who was her next door neighbour entered into her room, embraced her, laid her on the ground and forcibly ravished her. When she was about to shout, a piece of cloth was put into her mouth. After committing rape upon her, the appellant left her house. In the evening she disclosed the incident to the inmates of her house on their return. Later the matter was informed to the village representatives. Out of shame the complainant did not report the incident to the police in time and demanded legal action to be taken against the perpetrator.
3. Based on the aforesaid complaint, Arsha Police Station Case No. 50/2006 dated 20.11.2006 under Sections 486/376 of the Indian Penal Code was registered. Investigation ensued which culminated in the submission of charge-sheet. Charges were framed to which the appellant pleaded not guilty and claimed to be tried. The prosecution in order to prove its case examined 13 witnesses and exhibited certain documents.
4. Heard the rival contentions of the Learned Advocate who assisted as Amicus Curiae as well as the Learned Advocate for the State.
5. A circumspection of the evidence of prosecution witnesses reveals that :-
   i. PW-1 in her deposition stated that PW-1 identified PW-4 as her husband and PW 3 as her father-in-law. She narrated that on 'Sankranti of Kartik

last year" at 3 pm, she found herself alone in her room while her husband and parents-in-law were out harvesting paddy in the field. During this time, the appellant allegedly entered her room forcibly, causing her to fall to the floor. He proceeded to lift her sari and commit rape on her. She mentioned her attempts to cry out, but the appellant prevented her from doing so by placing a portion of her sari in her mouth. It was further revealed that she chose to inform her husband and in-laws about the incident later in the evening of the same day. Due to feelings of embarrassment or shyness, PW 1 delayed reporting the incident to the police station, doing so only after a lapse of 2 days. (This was corroborated by PW 2, PW 3, PW 4 and PW 9 but contradicts PW 13's deposition)

PW 1 mentioned that PW 3 wrote the F.I.R. Subsequently, she sought medical examination at a hospital for the purpose of documenting any physical evidence related to the incident.

ii. During her cross-examination PW-1 stated that PW-5 and PW-6 were present at the time of lodging the F.I.R. She stated that she had initially narrated the incident to her mother-in-law but did not narrate the incident to PW 5. She further stated that the appellant did not have a wife but had two children. She mentioned one Parsuram as the son of her uncle-in-law, who had previously initiated legal proceedings against the appellant. (Parsuram has not been examined)

PW-1 made a revelation that at the time of the incident, she was feeding her child, who had been temporarily taken away and placed on the floor, causing the child to cry. This particular detail had not been included in

her initial statement during the filing of the F.I.R. She also stated that the appellant is her 'Bhasur'.

iii. PW-2 in her deposition stated that PW-2 identified PW-1 as her daughter-in-law. PW 2 explained that she decided to file the complaint two days after the incident took place due to the fear of social ostracization.

iv. During her cross-examination PW-2 stated that PW 2 identified PW-4, PW-9 and PW-10 as her sons. PW 2 recounted the events of the day of the incident, mentioning that they returned from the paddy field at 6 pm, at which time she observed PW 1 cooking food. (This statement is corroborated by PW 4 in substance)

Subsequently, PW 2 noted that they had dinner between 8 pm and 10 pm. During this time, PW 1 confided in PW 2, informing her that there had been a scuffle, and the appellant had forced her into a room. PW 2 further revealed that she relayed this information to PW 5 but did not share the details of the incident with PW 6. Additionally, PW 2 disclosed that efforts for a settlement had been made involving PW 5, PW 6, and others. She suggested that the case was initiated because the appellant did not admit his guilt.

v. PW-3 in his deposition stated that PW-3 identified PW-1 as his daughter-in-law. He was the scribe of the complaint. He mentioned that the appellant was the son of his elder brother, to whom he had reported the incident. However, he refused to acknowledge the incident. PW 3 revealed that the F.I.R. was written at home after 2 days from the date of the incident.

vi. PW-4 in his deposition stated that PW 4 identified PW 1 to be his wife. He mentioned that the police had seized the sari and 'peti coat' of PW 1 under a seizure list marked as Ext. 2.

vii. During his cross-examination PW 4 recounted that upon returning home with PW 2, he observed PW 1 in a distressed state, weeping. After resting for a while, PW 1 attempted to cook for the household but was unable to complete her tasks. PW 4 then revealed that PW 1 narrated the incident to him the day after it occurred. Following this disclosure, PW 4 visited the appellant's house, where he inquired about the appellant's whereabouts. It was relayed to him by the appellant's parents that he was not at home during that time.

viii. PW-5 in his deposition stated that PW 5 was declared hostile.

ix. During his cross-examination PW-5 stated that a quarrel had erupted between the appellant's son and his elder brother's daughter when PW 1 intervened to separate them. During this altercation, the appellant's son fell down, and the appellant himself intervened by touching PW 1. PW 1 interjected by saying that 'bhasur' cannot touch PW 1. This incident was reported to PW 5 by PW 1, PW 4 and PW 3. The appellant informed PW 5 that he had not touch PW 1 with any mischievous intention. During this incident, PW 1, PW 4 and PW 3 did not raise complaints of rape. However, PW 3 did demand Rs 1000 from the appellant in connection with his touching of PW 1. It was suggested that if the demanded sum was paid, they would not have initiated legal proceedings. (This was corroborated by PW 6)

x. PW-6 in his deposition stated that PW-6 was declared hostile. He stated that, despite being acquainted with PW 1, he had no knowledge of rape being committed upon her. PW 6 acknowledged that the appellant and PW 4 are cousins. He further stated that the incident was informed to him by PW 1, PW 4 and PW 3.

xi. PW-7 in his deposition stated that PW-7 identified as a gynecologist attached to Sadar Hospital, Purulia on 22/11/06. He stated that he had examined PW 1 aged 22 years brought by Arsha P.S. He further stated that PW 1 disclosed that her brother-in-law, the appellant, had engaged in forceful sexual intercourse with her on 17/11/06 at 2 pm. PW 7 made a report marked as Ext. 3, where he did not explicitly mention the term ‘rape’.

xii. PW-8 in his deposition stated that he was a surgeon attached to Sadar Hospital, Purulia on 27/11/06. He had examined the appellant and opined that he possessed normal sexual organ and sexual characteristics, indicating his capability for sexual intercourse. The report written by PW 8 was marked as Ext. 4.

xiii. PW-9 in his deposition stated that PW-9 aged 17 years and PW-1 was his ‘boudi’, sister-in-law.

xiv. PW-10 in his deposition stated that PW-1 was his ‘boudi’. He explained that he had been summoned to PW 1's house, where he arrived three days after the incident occurred, with the purpose of being informed about the incident.

xv. PW-11 in his deposition stated that he was a Judicial Magistrate who recorded the statement of PW-1 as per order, marked as Ext.5.

xvi. PW-12 in his deposition stated that PW-12 was posted as the O.C at Arsha P.S. on 20/11/06. Following the receipt of the complaint from PW 1, he endorsed the complaint, and this endorsement was marked as Ext. 1/1. Subsequently, he proceeded to complete the F.I.R marked as Ext. 6.

xvii. PW-13 in his deposition stated that PW-13 was posted as the S.I. of Police at Arsha P.S. on 20/11/06. He stated that he had examined the witnesses and recorded their statements. He collected the medical reports of the victim and the appellant. He arrested the appellant and prepared a sketch map of the place of occurrence, which was marked as Ext. 7. He deposited the wearing apparels of the victim at the P.S. marked as Ext. 2/1. He seized the semen of the appellant marked as Ext. 8. Furthermore, PW 13 mentioned that PW 5 and PW 6 had narrated the incident to him during the course of the investigation.

xviii. During his cross-examination PW-13 stated that he had arrived at the place of occurrence at 5:05pm on 20/11/06 where PW 2, PW 3, Bahadur Rewani, etc., were also present. During his visit, PW 1 identified and explained the place of occurrence to him. PW 13 further stated that PW 1 mentioned that she had refrained from narrating the incident to PW 2 and PW 4 on the day of the incident due to feelings of shame. Instead, she had disclosed the incident to them the following day. PW 13 verified and confirmed this claim with the other prosecution witnesses, PW 2, PW 3 and PW 4.

6. The victim lady in her written complaint as well as her deposition before the Court explained the course of delay to lodge the written complaint due to lodge written due to shame and shyness. In her written complaint the victim lady stated to be present alone in the house and did not mention about breast feeding of her child. She did not mention the same during her examination-in-chief.

7. In her statement recorded under Section 164 of Cr.P.C. she stated while she was breast feeding of her female child, the appellant being her brother-in-law entered the room, through away the child on the floor and tied a cloth around her mouth. Thereafter the appellant laid her on cot and ravished her. After some time he fled.

8. In her cross-examination PW-1, the victim lady stated Parsuram to be the son of her uncle-in-law, who have filed a case against the appellant. She further stated that *"at the relevant time I was milking my child with bosom and when the child was taken away to the floor she was crying. I did not stated about it in the FIR and before the Magistrate."* She further stated that none of the elder members of the extended family were present but the children were at home. Bhagbat and his elder brother child are almost of the same age.

9. On suggestion PW-1 denied that Bhagbat and his elder brother's son were quarreling and separated them and Bhagbat's son fell on the ground and thereafter a quarrel ensured between Bhagbat and the victim lady.

10. During his cross-examination PW-5 who had been declared hostile by the prosecution stated a quarrel to have been occasioned between Bhagbat's son

and Bhagbat's elder brother daughter. When PW-1 separated them and Bhagbat's son fell down on which Bhagbat intervened and separated PW-1 by touching her hand and accusation was made that as bhasur, he could not touch PW-1 and the same was reported to me by PW-1 and her husband and father-in-law. Bhagbat said that he did not do any mischief intentionally. Neither PW-1 nor her husband or her father-in-law complained of rape. Dulal Gorain demanded Rs. 1000/- from Bhagbat due to such touching by the accused on PW-1 being bhasur and demand was made, there would have been no case.

11. PW-6 during his cross-examination stated that accused and Goutam are cousins. He also belong to the same community. Dulal is uncle by social relation. It was complained by Dulal that as bhasur (accused) touched PW-1 when his son and his elder brother's daughter were separated by PW-1 and Dulal demanded Rs. 1000/- for such act on the part of bhasur, otherwise there would have been a rape case against him and for that this false case. PW-1 and her husband also told me as Dulal told.

12. PW-13, the Investigating Officer during his cross-examination stated that he did not note any house on the north of the kuli road and also on the eastern side, for which he noted the vacant space. But after that no residence of people was mentioned. He did not note any house except the houses of the complaint and the accused near the kuli road. He did not ascertain the number of brothers of the complainant and also the number of brothers of her husband and her father-in-law. There is no note that there has been a land dispute in between father-in-law of the complainant and the

father of the accused. He did not examine Gram Panchayat member. The house of the complainant is in compact block along with those of other brothers and her father-in-law. He did not ascertain about any minor children in the household. He examined the only female witness of her mother-in-law. Complainant did not say to me that she was breast-feeding her child. She did not tell me that first of all she told the incident to her mother-in-law on her return from field. She told me that when her husband returned back, she did not divulge the incident to him or to her mother-in-law out of shame and on the next morning, she narrated the incident to them. Nonibala Gorai did not tell me that Saraswati told her that there was a scuffling and the accused forced her getting inside the room. She told me that Saraswati did not tell anything of the incident on that evening. As per statement of Dulal Gorai, Saraswati narrated the incident to him on the next morning. Goutam Gorai told me that on the next morning (18.11.06), Saraswati told everything to his mother and that she did not say anything about the incident on the relevant date. He set the wearing apparels to FSL under Memo No. C.M.R. 76/06 dt. 12.12.06, but did not receive the report. He also did not get the report of the semen. He did not examine Gita Mahali.

13. 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:*
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> > *"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*

[1] (2008) 15 SCC 133

honour such as is involved in the commission of rape on her. In cases involving sexual molestation, supposed considerations which have no material 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."

10. In ***Sadashiv Ramrao Hadbe vs. State of Maharashtra and Anr.***[2], the Hon'ble Supreme Court held as follows:

"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."

11. 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."*

[2] (2006) 10 SCC 92
[3] (2013) 4 SCC 206

12. The victim lady who has been subjected to physical torture and mental trauma being ravished by the perpetrator is genuinely considered to be a truthful witness and her evidence before the Court is constituted to be bereft of probabilities and presumptions. Victim of rape being an injured witness is exclusively categorized as “a sterling witness”. A woman is generally believed to be pristine and non-pretentious considering her body including her mind and mental status. In a conservative society a woman will not deceitfully display or exhibit moral turpitude to deprecate or denigrate herself either in the family or in the society. However, such a situation cannot be considered to be universal. There have been instances where offences under Section 376 IPC, 354 IPC along with Section 511 IPC have been framed for malicious intent, false implication and revengetic consideration. In the instant case, enmity between the parties is not in dispute. It was queer and uncanny that the child was thrown away by the appellant on the floor and the victim instantly did not raise an alarm and waited for the appellant to tie her mouth with a piece of cloth. She did not endeavor to free herself from the clutches of the appellant. The prosecution did not examine any of the minor children present in the house at the time of incident who could have seen the appellant to enter the room of the victim. PW-1 did not mention about breastfeeding of the child to the investigating agency and in the written complaint. Though, written complaint is not an encyclopedia, however, the same is utilized to create a link to complete the chain of corroborative evidence. There are deviations in the versions of the other prosecution

witnesses. The appellant is a family member presumably to be at loggerheads with the family of the victim. The appellant did not agree to a negotiation and/or compromise in the presence of the villagers which triggered the institution of a criminal case against him. The medical report in view of the recent child birth did not specifically mention commission of rape on the victim. The report of forensic examination of the wearing apparels of the victim was not on record. Lapses on the part of the investigating agency does not affect the crux of the prosecution case in case of substantial evidence to prove its authenticity and credibility otherwise. The victim being a married lady can easily be a pawn to avenge family disputes. This case is no exception. The lack of proper evidence and reliability does not give rise to preponderance of probability.

13. In view of the above discussions, the prosecution cannot be said to have proved its case beyond reasonable doubt and accordingly the instant criminal appeal is allowed.

14. The judgment and order of conviction dated 06.06.07 passed by Learned Additional Sessions Judge, Fast track Court No. 3, Purulia, in connection with Sessions Trial No. 29/07 arising out of Sessions Case No. 22/07, thereby convicting the Appellant/Petitioner for an offence punishable under Sections 448/376 of the Indian Penal Code, 1860 in connection with Arsha Police Station Case No. 50/06 dated 20.11.2006 is set aside.

15. Accordingly, the instant criminal appeal stands disposed of.

16. There is no order as to cost.

17. I record my appreciation for the able assistance rendered by Mr. Ramashis Mukherjee, Learned Advocate, as *Amicus Curiae* in disposing of the appeal.

18. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

19. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)