

Subrati @ Imran vs.state

Subrati @ Imran vs.state

SooperKanoon Citation : sooperkanoon.com/1211358

Court : Delhi

Decided On : Dec-12-2017

Appellant : Subrati @ Imran

Respondent : State

Judgement :

\$~R-18 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Judgment Reserved on: December 06, 2017 Judgment Delivered on: December 12, 2017 CRL.A. No.537/2011 SUBRATI @ IMRAN Appellant Through: Mr.Siddharth Aggarwal and Ms.Jahanvi Dubey, Advocates. versus STATE Respondent Through: Ms.Rajni Gupta, APP for the State. CORAM: HON'BLE MS. JUSTICE PRATIBHA RANI JUDGMENT1 The appellant/convict has preferred this appeal assailing the judgment dated 15th January, 2011 and order on sentence dated 18th January, 2011 passed in SC No.101/2009 (pertaining to FIR No.47/2008 under Section 376 IPC, PS Vasant Kunj) whereby he has been convicted for committing the offence punishable under Section 376 IPC and sentenced to undergo RI for ten years with fine of 3000/- and in default of payment of fine to undergo SI for six months.

2. Briefly stating, the case of prosecution is that on 25th January, 2008 at about 1.55 pm an information was sent by Duty Constable CRL.A. No.537/2011 Page 1 of 10 Rajbir from Safdarjung Hospital that a girl aged about nine years was got admitted in injured condition in the hospital by her mother, which was reduced into writing vide DD No.21A. On receipt of DD No.21A, ASI Brahma Devi alongwith HC

Thawar Singh reached Safdarjung Hospital and collected the MLC No.24 Ex.PW5/A of R (name withheld to conceal her identity) wherein alleged history given was of rape by one Subrati i.e. the appellant on 20th January, 2008. Thereafter W/ASI Brahma Devi recorded the statement Ex.PW1/B of child victim R wherein she stated that she was residing with her parents in a Jhuggi in Israel Camp, Rangpuri and that she had joined her parents in Delhi just two months prior thereto. Earlier she was staying with her maternal grandparents and was studying in 2nd Standard. She was yet to seek admission in a school after shifting to Delhi. Her parents both used to go for work hence she was staying alone at home when her parents were away to work. She further stated that on 20th January, 2008 when her mother was away to work, the convict/appellant Subrati, whom she addressed as Mama (maternal uncle) entered her house and bolted the door from inside. Thereafter he removed his pant and also her pant. She started crying but was made to keep quite. She narrated the act of the convict as apni peshab ki jagah ko mere peshab ki jagah mein daal diya. The convict/appellant committed wrong act with her thrice. She was scared but after two days informed her mother about the incident. Her mother became nervous. On 25th January, 2018 her mother took her to Safdarjung Hospital for medical examination. CRL.A. No.537/2011 Page 2 of 10 3. On the basis of above statement Ex.PW1/B, FIR No.47/2008 under Section 376 IPC was recorded at PS Vasant Kunj. Accused was arrested and also got medically examined. The child victim was also got examined under Section 164 Cr PC before the learned Magistrate. School Leaving Certificate of the child victim recording her date of birth as 13th October, 1999 was also obtained. After completion of investigation, chargesheet was filed and case was committed to the Court of Session.

4. The appellant was charged for committing the offence punishable under Section 376 IPC to which he pleaded not guilty.

5. Prosecution examined 12 witnesses in all to prove its case. The plea of the appellant in the statement under Section 313 Cr.P.C. is of denial simplicitor and of false implication. He has not examined any witness in his defence.

6. After trial, relying on the testimony of PW-1 R the child victim which was duly corroborated by medical evidence, the learned Trial Court held the convict guilty of the offence punishable under Section 376 IPC and sentenced him in the manner stated above.

7. Mr.Siddharth Aggarwal, learned counsel for the convict has submitted that there is a delay of about 5 days in reporting the matter to the police without any explanation. He has further submitted that there are inconsistencies in the statement of the child victim i.e. PW-1 R and her mother PW-2 Smt.Reena. The statement of child victim being not corroborated by any oral or documentary evidence, was not sufficient to hold the convict guilty. Learned counsel for the appellant prayed for acquittal of the appellant. CRL.A. No.537/2011 Page 3 of 10

8. Ms.Rajni Gupta, learned APP for the State has contended that the child victim was just nine years old and by putting her under fear, rape was committed. The convict was well known to her as her neighbour and she also used to address him as Mama so the identity of the convict is also not in dispute. The child victim had no motive to falsely implicate the convict and her statement has been corroborated by her MLC which is sufficient to prove the guilt of the convict beyond reasonable doubt.

9. I have considered the rival contentions and carefully gone through the record.

10. The child victim R when examined as PW-1 before the Court, has narrated the incident as under:-

"One year ago, on 20th January, Subrati Mama, who is present in the Court (correctly identified) used to visit our house at Rangpuri Pahari. Now we have vacated that room. Accused came to my house. Nobody was present in the house usne apni peshab karni wali jagah mere peshab karne wali jagah mein dala. Phir main behosh ho gayi. Accused Subrati did wrong act with me thrice on 20th, 21st and 23rd. As I was scared, I did not tell my mother but later on, I told my mother about the same. 2-3 days after, we went to PS. Thereafter, police caught Subrati. I was taken to the hospital for check up. I was also called to the Court about one month later, where I gave my statement. 11. In her statement under Section 164 Cr PC Ex.PW1/A also the child victim R has stated: Usne apni peshab karne wali

meri peshab karne wali jagah mein dal diya. Usne mera muh chap ke rakh diya tha. Dard Hua. Phir wo karke mujhe dhamki dekar CRL.A. No.537/2011 Page 4 of 10 chala gaya. Phir meri mummy aayi. Main dar gayi thi. Maine mummy ko nahi bataya. Subah maine mummy ko saari baat bata di. 12. The statement of PW-1 R the child victim finds due corroboration from her MLC Ex.PW5/A which records: Baby R accompanied with her mother Rina giving alleged history of rape by a man named Subrati for three days at their own home when parents were away from home for work. Last day when she was raped was on 20.1.08. After that baby has bathed, changed her clothes and washed them. L/E No marks of injury on perineum Hymen is ruptured. Introitus is as wide as tip of finger. No injury marks around the anus. 13. The contention raised on behalf of the appellant about the discrepancy appearing in the statement of the child victim R; and her mother PW-2 Smt.Meena about the date of incident is not sufficient to extend the benefit of doubt to the convict. The identity of the convict is duly established. The act attributed to him by the child victim has been explained clearly not only at the stage of registration of FIR but also during her deposition before the Court. The child victim with her family was staying in a Jhuggi belonging to labour class and cannot be expected to remember details like date and time of occurrence with precision. CRL.A. No.537/2011 Page 5 of 10 14. In the decision reported as Vijay @ Chinee Vs. State of Madhya Pradesh, (2010) 8 SCC191 while discussing the evidence adduced by rustic/illiterate villager held as under:-

"31. In Dimple Gupta (minor) Vs. Rajiv Gupta, (2007) 10 SCC30 this Court held that a person coming from altogether different background and having no education may not be able to give a precise account of the incident. However, that cannot be a ground to reject his testimony. The court observed that in a case like rape, "it is impossible to lay down with precision the chain of events, more particularly, when illiterate villagers with no sense of time are involved."

It is settled legal position that the statement of prosecutrix, if 15. found to be worthy of credence and reliable, requires no corroboration and the Court may convict the accused on the sole testimony of the prosecutrix. The victim of the lust of convict in this case is a small girl aged about 9 years and not even attained the age of menarche.

16. The statement of the child victim has been duly corroborated by her MLC as well by her mother. This is a case wherein the child victim after being subjected to sexual assault remained under fear and could not disclose the incident even to her mother. When she mustered the courage to confide in her mother i.e. PW-2 Smt.Reena, she immediately took her to the hospital on her own without even informing the PCR. It shows that she had no intention to falsely implicate the convict.

17. Although the statement of the child victim being trustworthy does not require any corroboration, apart from her MLC Ex.PW5/A, testimony of her mother i.e. PW-2 Smt. Reena has to be considered as CRL.A. No.537/2011 Page 6 of 10 corroborative piece of evidence as held in the decision reported as Rameshwar vs. The State of Rajasthan AIR 1952 SC54 the Apex Court as under :-

"the corroboration must come 28. Thirdly, from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another. But of course the circumstances may be such as to make it safe to dispense with the necessity of corroboration and in those special circumstances a conviction so based would not be illegal. I say this because it was contended that the mother in this case was not an independent source.

29. Fourthly, the corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime. Were it otherwise, "many crimes which between accomplices in secret, such as incest, offences with females" (or unnatural offences) "could never be brought to justice."

committed are usually 30. Next, I turn to another aspect of the case. The learned High Court Judges have used Mst. Purni's statement to her mother as corroboration of her statement. The question arises, can the previous statement of an accomplice, or a complainant, be accepted as corroboration?.

31. That the evidence is legally admissible as evidence of conduct is indisputable because of Illustration (j) to section 8 of the Evidence Act which is in these terms :

"The question is whether A was ravished. The facts that shortly after the alleged rape, she made a complaint relating to the crime, the CRL.A. No.537/2011 Page 7 of 10 circumstances under which, and the terms in which, the complaint was made are relevant."

32. But that is not the whole problem for we are concerned here not only with its legal admissibility and relevancy as to conduct but as to its admissibility for a particular purpose, namely corroboration. The answer to that is to be found in section 157 of the Evidence Act which lays down the law for India.

33. Section 157 states that - "In order to corroborate the testimony of a witness, any former statement made by such witness relating to the same fact at or about the time when the fact took place, or before any authority legally competent to investigate the fact, may be proved."

34. The section makes no exceptions, therefore, provided the condition prescribed that is to say, "at or about the time etc."

are fulfilled there can be no doubt that such a statement is legally admissible in India as corroboration. The weight to be attached to it is, of course, another matter and it may be that in some cases the evidentiary value of two statements emanating from the same tainted source may not be high, but in view of section 118 its legal admissibility as cannot be questioned. To state this is, however, no more than to emphasise, that there is no rule of thumb in these cases. When corroborative evidence is produced it also has to be weighed and in a given case, as with other evidence, even though it is legally admissible for the purpose on hand its weight may be nil. On the other hand, seeing that corroboration is not essential to a conviction, conduct of this kind may be more than enough in itself to justify acceptance of the complainant's story. It all depends on the facts of the case. corroboration CRL.A. No.537/2011 Page 8 of 10 35. In the present case, Mst. Purni told her mother about the incident about four hours after it occurred. The reason for the delay was that her mother was not at home when she went there. She says that when she went home she lay down and went to sleep and that when her mother returned she asked her why she was sleeping and then she told her mother what had happened. Her mother tells much the same story. She

says she had gone out to her field in the morning and did not return till about 4 p.m. When she reach home she found her daughter lying there weeping. She has been believed by the learned trial Judge as also by the High Court and has not been disbelieved by the learned Sessions Judge. All he says is that she is not an "independent" witness and is therefore not sufficient for corroboration.

36. The first question is whether this delay fulfills the "at or about" condition. In my opinion, here also there can be no hard and fast rule. The main test is whether the statement was made as early as can reasonably be expected in the circumstances of the case and before there was opportunity for tutoring or concoction. It was suggested that the child could have complained to some women who were working in the neighbourhood, but that would not be natural in a child. She would be frightened and her first instinct would be to run home to her mother. The High Court was satisfied on these points and so am I. Consequently, the matter does fall within the ambit of section 157 read with Section 8, Illustration (j).

37. The next question is whether the mother can be regarded as an "independent" witness. So far as this case is concerned, I have no doubt on that score. It may be that all mothers may not be sufficiently independent to fulfill the requirements of the corroboration rule but there is no legal bar to exclude them from its operation merely on the ground of their relationship. Independent CRL.A. No.537/2011 Page 9 of 10 18. merely means independent of sources which are likely to be tainted. In the absence of enmity against the accused there is no reason why she should implicate him falsely. It is true the accused suggested that they were on bad terms but that has not been believed by anyone.

38. The third question is whether there is independent corroboration connecting the accused with the crime. The only corroboration relied on for that is the previous statement of the child to her mother. That might not always be enough but this rule can be waived in a given case just as much as the necessity for any corroboration at all. In the present case, the learned High Court Judges would have acted on the uncorroborated testimony of the girl had they not felt pressed by the corroboration rule. Viewing all the circumstances I am satisfied that the High Court was right. I am satisfied that in this case, considering the conduct of the girl

and her mother from start to finish, no corroboration beyond the statement of the child to her mother was necessary. I am satisfied that the High Court was right in holding that that was enough to make it safe to act on her testimony. In view of above, the conviction of the appellant under 376 IPC and sentence awarded thereunder is upheld.

19. The appeal is dismissed.

20. LCR be sent back alongwith copy of this order.

21. A copy of this order be sent to the concerned Jail Superintendent for information. PRATIBHA RANI (JUDGE) DECEMBER12 2017 st CRL.A. No.537/2011 Page 10 of 10

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com