

Sovinda and Another Vs. State of M.P.

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Court : Madhya Pradesh

Decided On : Feb-15-2000

Reported in : 2001(1)MPHT14

Judge : A.K. Mishra, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 366, 376 and 457; Code of Criminal Procedure (CrPC) , 1974 - Sections 374(2); [Evidence Act, 1872](#) - Sections 114, 118 and 156

Appeal No. : Criminal Appeal Nol 377/89

Appellant : Sovinda and Another

Respondent : State of M.P.

Advocate for Def. : Shri P.S. Gaharwar, Adv.

Advocate for Pet/Ap. : Shri Sushil Tiwari and ;Shri S.L. Kochar, Advs.

Disposition : Appeal Dismissed

Judgement :

A.K. Mishra, J.

1. The two appellants, Sovinda and Govinda, have preferred this appeal aggrieved by their convictions and the sentences imposed. Sovinda has been convicted

under Sections 457 and 376/34, IPC and sentenced to undergo rigorous imprisonment for 5 years and 7 years respectively for the two offences whereas Govinda has been convicted under Sections 457 and 376, IPC and sentenced to R.I. for 5 years and 7 years respectively.

2. According to the prosecution case, in the intervening night of 21st and 22nd September, 1988 prosecutrix Kisnabai was sleeping in her house. She was a married woman and her husband Jiyalal, owing to Ganpati festival, had gone to the house of Bansingh situated in front of his house. The prosecutrix had not closed the door. She was sleeping on a cot and her husband was outside. At about 12-2 in the night, Jiyalal heard the cry of Kisnabai, the prosecutrix, and came running towards his house. He found the small door of the house open. Kisnabai narrated the incident of commission of the offence of rape. She told him that after entering into the house, Sovinda caught hold of her and Govinda committed forcible sexual intercourse.

3. The report of the incident was lodged on the next day i.e. 22-9-88 at 7,30 p.m. at Police Station, Waraseoni. Written report was given to Sub-Inspector G.N. Baghel, exhibited as Ex. P-1, On the basis of the report offence was registered vide Ex. P-3. Kisnabai was referred for medical examination to the hospital at Waraseoni. As there was no woman Assistant Surgeon at Waraseoni, she was thereafter shifted to District Hospital, Balaghat where Dr. Archana Shukla (P.W. 4) medically examined her and gave report Ex. P-4. However, as the prosecutrix was a married woman, no definite opinion about rape could be given. Sari of Kisnabai and vaginal slides which were prepared were sent to the chemical examiner. Accused Govinda was sent for medical examination on 29-9-88 at Government Hospital, Waraseoni. He was examined on 30-9-88. Vide report of his medical examination, he was found capable of performing sexual intercourse. Spot map (Ex. P-7) was prepared by Dasaram Patel (P.W. 6).

4. The prosecution has examined in all seven witnesses. Prosecutrix Kisnabai has been examined as P.W. 1 and her husband Jiyalal as P.W. 2. Other witnesses relate to the investigation part.

5. The learned Trial Court has convicted accused Govinda under Section 376, IPC for commission of the offence of rape and also under Section 457, IPC for committing house trespass. Sovinda has been convicted under Section 376, IPC with the aid of Section 34. He has also been convicted under Section 457, IPC.

6. The learned counsel appearing for the appellants has submitted that it is a case where commission of the offences has not been proved by the prosecution. Alternatively, he has submitted that it was a case of consent and as the husband had come all of a sudden the story of rape was concocted. He has further submitted that there were no injuries found on the body of the prosecutrix and hence it has to be inferred that it was a case of consent. The learned counsel appearing for the State submits that the prosecution has proved the offences against the appellants and the convictions and sentences call for no interference.

7. It may be seen that the incident was said to have taken place on 21st September, 1988 in the night and the report was lodged on 22nd September, 1988 at the police station. A written report was submitted by the prosecutrix Kisnabai at the police station which is Ex. P-1. In the report it was mentioned that both the accused persons took advantage of the open door, came inside the room where the prosecutrix was sleeping, removed her clothes, Sovinda shut her mouth and Govinda committed sexual intercourse. She cried owing to which her husband came running. On seeing him both the accused persons ran away. This FIR was reduced in writing by Sarpanch of the village, namely, Deendayal who has been examined on behalf of the accused as D.W. 1. His deposition would be referred to hereinafter. However, it may be seen that the prosecutrix Kisnabai (P.W. 1) in her deposition has stated that when she was sleeping in the night at about 12 O'clock both the accused persons came inside the house and removed her clothes. Sovinda had shut her mouth with his hand and Govinda performed sexual intercourse with her. On that she raised a hue and cry, hearing which her husband came running and both the accused left her and ran away. She further deposed that next day in the morning a Panchayat was convened but the accused persons did not turn up in the Panchayat. Thereafter, report was reduced in writing and was handed over at the police station which is Ex. P-1. She has further deposed that accused Govinda belongs to her caste and Sovinda is son of her uncle-in-law.

She has also deposed that she identified Govinda as soon as he touched her. Since Sovinda had shut her mouth, she could not speak, but as soon as rape was started she cried. She has denied the suggestion that she was having friendly relations with any of the accused persons.

8. Jiyalal, husband of the prosecutrix, was examined as P.W. 2. He has deposed that in the night at about 2 O'clock he heard the voice of hue and cry raised by his wife. He ran towards the house where his wife disclosed that Sovinda shut her mouth and Govinda performed forcible sexual intercourse. By the time he reached inside the house both the accused had ran away. On the subsequent day a Panchayat was convened, but the accused did not turn up to join the Panchayat. Thus, the husband has corroborated the version of the prosecutrix. Suggestion was put that Bansingh was having ill-will with Govinda and Sovinda and due to that they have been falsely implicated. This suggestion was denied by the witness. The said suggestion was denied by the prosecutrix also. She has categorically stated that Bansingh did not accompany her to the police station to lodge the report.

9. Learned counsel for the appellants submitted that the case of rape is not medically supported. As the prosecutrix is a married woman no definite opinion could be given by the doctor about rape. However, it may be seen that no signs of any injury was found on the person of the prosecutrix, but it is not the case of the prosecutrix that she was manhandled. She was lying on the cot and the rape was performed while she was still on the cot by catching hold of her. Thus, in such a case it is possible that no signs of physical resistance are available because she was not thrown on the ground. Therefore, absence of marks of resistance over the body does not make it a case of consent. It is apparent that as soon as sexual intercourse was started, she raised hue and cry owing to which her husband came running and report was lodged promptly.

10. As has been held by the Supreme Court in *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* (AIR 1983 SC 753), deposition of a prosecutrix stands on the same footing as that of an injured witness and it can be acted upon if otherwise reliable. Nothing new has been brought out in the deposition of the prosecutrix so

as to render her version untrustworthy. Learned counsel for the appellant has placed reliance on the decision in *Pratap Mishra v. State of Orissa* (AIR 1977 SC 1307) so as to contend that absence of injuries on the accused or the prosecutrix shows that she did not put any resistance to the alleged rape committed by the accused. However, in that case the facts are totally different. The prosecutrix was an experienced pregnant lady and three accused persons had committed forcible and violent sexual intercourse one after the other in quick succession resulting in her abortion four or five days thereafter. In this case only one accused has performed the sexual intercourse. The prosecutrix was sleeping at that time. The accused persons entered the house, Sovinda caught hold of her and Govinda committed forcible sexual intercourse. In such a case it may not be possible to find marks of injury.

11. The learned counsel for the appellant has further contended that there is no corroboration of the version of the prosecutrix and her husband by independent evidence. The Supreme Court has considered the aspect of corroboration in *State of Punjab v. Gurmit Singh* (AIR 1996 SC 1393). The relevant observations of the Supreme Court contained in Paragraph 7 of the said decision reads thus :

'... The Court 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 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 levelled 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 at 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 indicted, 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. Cor-roborative 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 a 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. In *State of Maharashtra v. Chandraprakash Kewalchand Jain* [1990 (1) SCC 550 : (AIR 1990 SC 658)], Ahmadi, J. (as he Lord Chief Justice then was) speaking for the Bench summarised the position in the following words :

'A prosecutrix of a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in case of physical violence. The same degree of care and caution must attach in the evaluation of her

evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction of her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence'.

Thus, corroborative evidence is not an imperative component of judicial credence in every case of rape. Here the version of the prosecutrix is probable and the view which has been adopted by the Trial Court cannot be said to be such that it could not be arrived at in the facts and circumstances of the case. The duty of a Court has been further considered by the Supreme Court in the case of Gurmit Singh (supra) in Paragraph 20 in the following terms :

'Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's right in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The

Court, therefore, shoulder a great responsibility while trying an accused on charge of rape. They must deal with such cases with utmost sensitivity. The Court should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the Trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.'

12. Learned counsel for the appellants has also placed reliance on the decision in *Kuldeep K. Mahato v. State of Bihar* (AIR 1998 SC 2694). In the said case, a girl below 18 years of age was abducted and sexual intercourse was committed with her. The Supreme Court upheld the conviction under Section 366, IPC as she was below 18 years, but considering the facts and circumstances of the case that she (the prosecutrix) did not run away in spite of having several opportunities, she appeared to be a consenting party for sexual intercourse.

Thus, offence under Section 376, IPC was found not proved. Under these circumstances significance was attached to the fact that there was no injuries on the person of the prosecutrix including private parts.

13. The learned counsel for the appellant has further submitted that the scribe of the FIR has not supported the version of the prosecutrix and, therefore, it should be taken that the FIR is concocted and was not recorded on the date on which it is stated to be lodged. The FIR is in the hand writing of Deendayal. He has been examined on behalf of the defence as D.W. 1. Close scrutiny of the deposition of this witness indicates that in the night in question at about 11.30 - 12.00 when he

was going on bicycle he found that certain persons had assembled on the road in front of the house of the prosecutrix. He was informed that accused Govinda had entered in the house of Kisnabai, the prosecutrix, and had taken away a sum of Rs. 225/-. This witness has further deposed that report (Ex. P-1) is in his hand writing. After 2-3 days when the police station in-charge had come to make an enquiry in the house of Bansingh he had reduced report (Ex. P-1) in writing as per instructions of Kisnabai and Kisnabai had put her thumb mark on it. He has further deposed that he was informed that police had come to investigate into the case of commission of offence of rape by Govinda on prosecutrix Kisnabai. Thus, what emerges from the deposition of Deendayal is that Govinda had entered into the house of Kisnabai, the prosecutrix, and police had come to the village in order to enquire about the offence of commission of rape by Govinda on the prosecutrix. Had it been a case that no report was lodged as per Ex. P-1, then there was no occasion for the police to come for enquiry of the offence of rape committed by Govinda. Thus, it is clear that the report was lodged on 22-9- 88 and pursuant to that police investigation was set in, but the witness (D.W. 1) has subsequently tried to conceal the truth. If he was aware that Govinda had committed the offence of theft of Rs. 225/- then there is no reason why he would have reduced report of rape in writing. In any case, the deposition of this witness lent credence to the version of the prosecutrix that Govinda had entered into the house. Thus, the commission of offence of rape is also supported by Deendayal (D.W. 1) to the extent that he came to know that Govinda had entered in the house of Kisnabai in the night in question. Learned counsel for the appellant by placing reliance on *Sevi and others v. State of Tamil Nadu* (AIR 1981 SC 1230) submitted that such FIR should be discarded. In the said decision the FIR was discarded on the ground that the original was suppressed by the police officer and substituted by another and in spite of direction of the Court original FIR was not produced, and further the general diary was also withheld. In such circumstances, inference was drawn that original FIR was suppressed. There is no such suppression in the present case.

14. Sub-Inspector G.N. Baghel, examined as P.W. 3, has deposed that on 22nd of September, 1988 and thereafter the prosecutrix was referred for medical examination and Dr. (Smt.) Archana Shukla had examined her on 23-9-88. This also goes to show that the FIR was lodged on 22-9-88 and not subsequently as

stated by Deendayal (D.W. 1). There is nothing to disbelieve the version of the doctor that she had examined the prosecutrix on 23-9-88. If there was no report of rape there was no occasion for the police to send the prosecutrix for medical examination. Thus, the evidence of Deendayal (D.W. 1) is totally unworthy of credence and has to be discarded.

15. The accused Govinda was also medically examined on 30th September, 1988 and was found capable of performing sexual intercourse as deposed by Dr. P.C. Rawat (P. W. 5). From the spot map Ex. P-7 it is clear that the place where the husband of the prosecutrix was sitting in connection with the Ganesh festival is visible from in front of the house of the prosecutrix. As such it was possible for him to have heard the hue and cry raised by the prosecutrix as he was at a distance of 100-120 feet at the relevant time.

16. The report of Chemical Examiner dated 30th January, 1989 is also on record which shows that over the particular portions of sari of prosecutrix (Art. A), vaginal slides (Arts. B1 and B2), underwear of accused Govinda (Art. C) and seminal slides (Articles D1 and D2) presence of human spermatozoa has been confirmed. On Article A which is the portion of sari of the prosecutrix and Article C which is underwear of Govinda, blood was also found. Thus, the presence of human spermatozoa also support the version of the prosecutrix.

17. Accused Govinda was one of the relatives of the prosecutrix and accused Govinda was of the same village. The non-examination of other persons who may have assembled on the spot does not cast any dent in the prosecution case. The Trial Court has rightly held the appellants guilty of the offences alleged against them.

18. In the result, there is no merit in the appeal. The convictions and sentences passed against the appellants are maintained and the appeal is dismissed.

19. Criminal Appeal dismissed.