

**The State Vs. Rameshwar**

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**Court :** Rajasthan

**Decided On :** Oct-16-1950

**Reported in :** AIR1951Raj30

**Judge :** Nawal Kishore, C.J. and; Mehta, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 376; [Evidence Act, 1872](#) - Sections 157

**Appeal No. :** Criminal Appeal No. 63 of St. 2005

**Appellant :** The State

**Respondent :** Rameshwar

**Advocate for Def. :** J.K. Mathur and; D.M. Bhandari, Advs. and; Party-in-Person

**Advocate for Pet/Ap. :** R.K. Rastogi, Adv.

**Disposition :** Appeal allowed

**Judgement :**

Nawal Kishore, C.J.

1. This is an appeal by the State against the order of the learned Sessions Judge, Sawai Jaipur and Gangapur at Jaipur acquitting the accused Rameshwar of the offence a under Section 376/511, Penal Code.

2. The accused, it may be pointed out, was tried for this offence in the Court of the Assistant Sessions Judge who convicted and sentenced him to one year's rigorous imprisonment and a fine of Rs. 250 and in default, rigorous imprisonment for six months. On the grounds mentioned by the learned Sessions Judge in his judgment with which we will deal elsewhere, he did not agree with the view taken by the learned Assistant Sessions Judge. Accordingly to the prosecution story, Mt. Purni, a girl of eight years of age, was living with her mother, Mt. Ghisi, in a house which is situate in the sama locality as and opposite to that of the accused Rameshwar., On 23-10-1946, sometime in the afternoon, when the incident took place, Mt. Ghisi happened to be away, as she had left in the morning for the field which is situate at a distance of more than a mile from her house. Her father, Laxminarain, also was not in the village as he had gone to Assam sometime back. She was playing outside her house along with two other girl friends, namely, Mt. Rukmini, a girl of fourteen years of age and Mt. Shanti. The village in which the houses of the girl and Rameshwar are situate is known as Nangal Jesa Bhora within the jurisdiction of Police Station Bagru. It is stated that while these three girls were playing together, the accused Rameshwair, standing on the roof of his own house, called them. Out of the three girls, however, he took Mt. Purni to his room and sent the other two girls away. In the room, there was a cotton mattress (Gadda) on which Mt. Purni was made to lie and an attempt to ravish her was made by the accused. She tried to cry but her mouth was gagged and after the act was over, she was allowed to go away. As she came down, she met P. W. 3 Harinarain and described to him what Rameshwar had done to her. The learned Public Prosecutor has not relied upon the statement of Harinarain and, therefore, we will make no further reference to him in this judgment. After coming down from the house of Ramashwar, she went to the Chabutri of her house and was found lying there when her mother, Mt. Ghisi, returned from the field at about 4 P. M. Mt. Purni related to her what had happened. No step were taken in connection with the incident that evening, but next morning, that is, on 24-10 1946, Ghisi took the girl to Jaipur to her brother, Gyasilal, but found him absent from the house. He, however, returned in the evening and the story was repeated to him. On 25-10-1946, all these three persona went to the Jaipur Sadar Police Station and the matter was reported but since the case related to the Police Station, Bagru, the

report was forwarded there for necessary action and the girl was sent for medical examination to the doctor at Jaipur. The doctor, however, was not available and before the examination could take place, a constable took the girl and the mother to Bagru. From there, the girl was sent again to Jaipur for medical examination on 27th of October and a report to the following effect was made :

'Hymen not patent and abrasions 1/2' x 1/4' on the medial surface of each labia minora at the lateral the lateral margin of attachment of hymen of hymen on either side. The whole of the ostiura vagina slightly congested. Vaginal swab taken with slides. Dried and moist yellowish white discharge.'

3. During the investigation, the doctor was asked and stated in reply that penetration had not occurred. But he admitted in the witness box that if a person used force for the for the purpose of penetration, the injuries found on the person of Mt. Purni could be received. A slide of the discharge from the vagina was sent to the Chemical Examiner of Jaipur and according to his report (Ex. 10), she was found to be suffering from gonorrhoea, The ghayhra, which had been taken possession of by the police at Bagru, was also sent to the Chemical Examiner and it was found to be smeared with blood. The accused could not be arrested as he was reported to have absconded and on 17-12-1946, he surrendered himself. He was sent to the doctor and was also found to be suffering from gonorrhoea. Thereafter, the police took the investigation in hand and submitted the challan under Section 376/511 and Section 354, Penal Code and the case, on being committed, resulted in the conviction of the accused as stated above.

4. On appeal to the Court of the learned Sessions Judge, the conviction was set aside and the accused was acquitted. The learned Judge disbelieved the evidence of P. W. 3 Harinarain and also the statement of Mt. Purni as supported by that of Mt. Ghisi on the ground that narration of the incident to a third person did not constitute corroboration. He found there were a few discrepancies in the statement of Mt. Purni but brushed them aside on the ground that they were bound to occur in the statement of a true witness and although he otherwise believed it to be a correct statement, he did not choose to rely upon it in view of the rule of prudence that a conviction could not be based in rape cases on the uncorroborated

testimony of the victim. The corroboration, the learned Sessions Judge was of the view, must be by independent evidence, that is to say, by some additional evidence coming from another person than the one to whom the incident has been related by the victim. He found that Mt. Purni was suffering from gonorrhoea and also the accused., But since according to Taylor, discharge could not appear within twenty-four hours of the offence, it could not be held that the disease was contracted by Mt. Purni from the accused. The Ghaghra was found to be stained with blood but the Sessions Judge was of the view that since it had not been properly packed and sealed soon after it had been recovered, it might have been substituted. On all these grounds, he differed from the view taken by the learned Assistant Sessions Judge and acquitted the accused.

5. So far as the fact of Mt. Purni having been the victim of the heinous offence is concerned, there appears to be absolutely no doubt on the record. Beyond the fact that there is her own statement made very shortly after the incident to her mother, there is also the medical evidence that the injuries on her private parts were of four or five days' duration. The finding of the learned Sessions Judge is also to the effect that Mt. Purni had been subjected to sexual intercourse. The learned counsel for the accused also does not argue that there had been no attempt to commit rape, but contends that on the evidence the accused cannot be connected with it. The important question, therefore, is whether this heinous offence can be ascribed to the accused Rameshwar. The prosecution evidence consists of the direct testimony of P. W. 4 Mt Purni and also of the statement of P. W. 7 Mt. Ghisi which consists of a repetition of what had been narrated to her by Mt. Purni soon after her return to the house. The learned counsel for the respondent has drawn our attention to the various points in the statements both of Mt. Purni and Mt. Ghisi bringing out a few contradictions and discrepancies but who are definitely of the opinion that they do not relate to material particulars and are therefore of no significance or importance in the case.

6. So far as the principal incident is concerned, the statement of Mt. Purni is forthright and coming as it does from a girl of eight years of age carries conviction. It is in evidence that the accused who is a Jagirdar occupies a position of importance in the village, and there is absolutely nothing to show that the relations

between him and Mt. Purni and her mother were unhappy. The accused had stated in the Committing Magistrate's Court that there was enmity between him and the family of the prosecutrix. He adhered to this statement in the Court of the learned sessions judge and also Judge and also produced two witnesses in defence. The learned counsel appearing on his behalf has not referred to their testimony in support of the allegation of the accused that the relations were unhappy. We have, however, scrutinized their statements and have no hesitation in rejecting them inasmuch as they are vague and only show, if at all, that the accused did not belong to the party of Mt. Ghisi. These witnesses were subjected to a cross-examination but they failed to give any details. In the circumstances, so far as the statement of Mt. Purni herself is concerned, we do not and any reason to discard it on its face value. Being only eight years of age, she was at a stage of life when it was not possible for her to invent facts and at any rate, if she had been tutored, it would not have been difficult for the counsel for the accused to smash her statement in cross-examination. She knew Rameshwar very well as they were next door neighbours and inasmuch as the incident had taken place in broad day light, there was no occasion for her to mistake the identity of the accused. The learned Sessions Judge himself held her to be a witness of truth but did not base the conviction of the accused on her statement on the ground that according to the rule of prudence, it was dangerous to convict a person of the offence of rape or attempt to rape on the uncorroborated testimony of the victim. There was the statement of Mt. Ghisi to whom Mt. Purni had repeated the entire incident shortly after taken place but the learned Sessions Judge took the view that this did not constitute corroboration in law corroboration

7. The question, therefore, is whether in law a corroboration of the statement of the victim is necessary and also whether the statement of Mt. Ghisi, which is a narration of the facts recited to her by Mt. Purni is sufficient to constitute corroboration. The learned Public Prosecutor has drawn our attention to *Bishram Bahorik v. Emperor*, A. I. R. (30) 1944 Nag. 363 : (46 Cr. L.J. 371) and *Soosalal Bania v. Emperor*, A. I. R. (12) 1925 Nag. 74: (25 Cr. L.J. 1214) and while he admitted that in the case of a grown up woman, corroboration was undoubtedly the rule of prudence, relying upon these authorities, he contended, it was not at all necessary to insist upon it in the case of a child witness. The contention of the

learned counsel is no doubt supported by these authorities but there are a host of decided cases of various Courts where while it has been held over and over again that the evidence of the victim of the rape must be corroborated, a distinction between the statements of a child victim and a grown up woman has not been drawn. *Muhammad Afzal v. The Crown*, Pak. L.R. 1950 Lah. 294: (A. I. R. (37) 1950 Lah. 151: 51 Cr. L. J. 968), has gone to the extent of holding that the victim's statement did not require any Corroboration at all, but in *Bechu v. The King*, A. I. R. (36) 1949 Cal. 613: (51 Cr. L. J. 153), it was held that the rule of prudence requiring corroboration was too well established to be attacked. We respectfully agree with this view and are not prepared to hold that if the victim of the rape in a child of tender age, her statement should be received and accepted as true without any corroboration. What is the nature of this corroboration cannot possibly be stated as it will always depend upon the facts of each case. . The question which now remains is whether the statement of Mt. Ghisi can be taken to be corroboration in law. The learned counsel for the respondent has placed before us *Baldeo Mahato v. Emperor*, 48 Cr. L. J. 227: (A. I. R. (33) 1946 pat. 426) and *Emperor v. Mahadeo Tatyia*, 43 Cr. L J 621: (A. I. R. (29) 1942 Bom. 121) where it was held that the girl's own statement to other witnesses could not be held to be corroboration in law and that the latter must consist of independent evidence. The view in these cases is based upon the English law according to which a witness cannot corroborate himself, for corroboration, in its true sense, must come from an independent source, but this law is of no assistance, as in India S, 157, Evidence Act is a provision to the contrary. The learned Public Prosecutor referred to Section 8, Evidence Act and illus. (j) where the question proposed is whether A was ravished and the answer given is that .the facts that, shortly after the alleged rape, A made a complaint relating to the crime, the circumstances under which, and the terms in which, the complaint was made are relevant. As it appears from the question itself, it is indeed relevant to show whether A was ravished but it is a totally different matter from proving who ravished her and accordingly, the section and the illustration are of no help. The learned Public Prosecutor next relied upon Section 157, Evidence Act which runs as follows :

'157. 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 be proved.

8. Now, according to this section, the statement of Mt, Ghisi, consisting as it does of what had been narrated to her. by her daughter, Mt. Purai, shortly after the incident, amounts to Corroboration and there seems to be no escape from this position in view of the express language of the above section of the Evidence Act. We are aware of a large number of authorities where a different view has prevailed but in none of them, there was a reference to Section 157, Evidence Act. This matter came in for important observations in *Benchu v. The King*. A. I. R. (38) 1949 Cal. 613: (51 or. L, J 153), referred to already and a large number of authorities of that very Court were cited and in one of them, it was held that if a previous statement made by the prosecutrix were held to be corroboration, instead of regarding it as a rule of prudence, it would be regarded as a rule of folly. The Honourable Judges in *Benchu v. The King*, A, I. R.(36) 1949 Cal. 613. (51 Cr. L. J. 153), did not follow the authorities of their own Court on the ground that the plain words of the Statute could not be disregarded and that the Statute must be followed in preference to any opinion of the learned Judges. Harries C. J. went to the extent of holding that in India such statements were corroboration by Section 157, Evidence Act, and that as long as that section remained, the cases cited before them could not possibly be regarded good law. We respectfully agree with the view which prevailed in this case. What weight should be attached to the evidence is entirely a different matter. As observed by Harries C. J., it may be valuable corroboration and on the other hand, the evidence may be worth very little. In the circumstances, the only question which remains is whether the corroboration should be considered sufficient in this case. We have stated already that there seems to be no reason whatsoever to disbelieve the girl and since Mt. Ghisi Simply repeats what was stated to her by the girl, we consider this has sufficient corroborative value and that the case against the accused is established on its basis. Mt. Purni no doubt stated that the accused had committed sexual inter-course but a girl of 8 years of age could not possibly apprehend the significance of the act . That is why the medical evidence has been relied upon by the trial Court and the accused has been convicted under Section 376/511, Penal Code which is a lesser offence.

9. The learned counsel for the respondent wanted to throw some doubt on the correctness of the prosecution story on the ground that first information report had been made after considerable delay and that accordingly, it must be held that the facts, as stated there, had been invented during the period which elapsed between the commission of the crime and its report to the police. The learned counsel has contended that, Mt. Ghisi's own brother Kalyan was present at the house when Mt. Purni reported the matter to her mother but this is not established and even if it were, Mt. Ghisi should have been asked why did she not send Kalyan to make the report. It has been mentioned elsewhere in this judgment that Mt. Ghisi rushed to Jaipur with Mt. Purni as soon as possible in order to meet her brother and that the report was lodged on 25th of October in the Police Station at Jaipur. In the circumstances explained by Mt. Ghisi, we are of the view that the report could not be said to have been made after undue delay.

10. The result is that this appeal succeeds and is hereby accepted and the order of acquittal passed by the learned Sessions Judge set aside. The accused Rameshwar is present in person and shall be taken in custody forthwith and shall undergo the unexpired portion of the imprisonment. The sentence of fine shall stand.

**Mehta, J.**

11. I agree.

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