

In Re: Boya Chinnappa

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Court : Chennai

Decided On : Nov-14-1950

Reported in : AIR1951Mad760; (1950)2MLJ766b

Judge : Somasundaram, J.

Acts : [Evidence Act, 1872](#) - Sections 8 and 157; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 297

Appeal No. : Criminal Appeal No. 352 of 1950

Appellant : In Re: Boya Chinnappa

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : O. Chinnappa Reddi and ;P. Ramakrishna, Advs.

Disposition : Appeal dismissed

Judgement :

Somasundaram, J.

1. The applt, in this case has been convicted of the offence of rape sentenced to seven years rigorous imprisonment & a fine of Rs. 600 by the Ses. J. of Anantapur.

2. The facts of the case are these : The victim of the rape is P. W. 1 aged about ten years. She was living with her mother P. W. 3 who was abandoned by her husband while P. W. 1 was a baby. P. W. 3 has been earning her livelihood by doing cooly work & sometimes by begging. They were both living in a village called Garladinne. There was also a brother of P. W. 3 living in the same village almost next to her house. Another brother of P. W. 3 lives at a place called Jambuladinne which is a hamlet of Garladinne & which is within a distance of about a mile from the latter place. The village Mag. of the place lives at Jambuladinne & the accused also lives in the same village as P. W. 3.

3. According to the evidence of P. w. 1, the victim, she left her village on 16-7-1949 at about 3 P. M. for Jambuladinne to fetch from her uncle's house Jaunapallu (milk got from a cow or buffalo within a few days after she calved). The milk was not available & her uncle P. W. 8 promised that; he would send it the next morning & she returned. While she was coming back to her village, she was met by the accused who was coming from Garladinne. He is said to have been in a tipsy condition with red eyes. After making enquiries as to where P. W. 1 was going, he is said to have caught her arm & dragged her into a pit which is by the side of the path, laid her down on her back, himself sat down in front of her and placed her legs on his thighs. P. W. 1 started weeping & shouting. The accused then gagged her mouth with her own cloth. She lost consciousness & the only thing she knew when she regained consciousness was that she found the accused tying her petticoat to her after washing it in water in a ditch nearby. She found blood on her petticoat & also found her vagina bleeding. The accused is said to have asked her not to tell any one of what happened threatening to kill her in case of disclosure. She was proceeding to her house weeping. On the way she met P. W. 6 who questioned her as to why she was weeping. She complained to him of what the accused did to her. He advised her to go home and inform her mother. P. W. 1 went home & informed her mother of what the accused did. The mother & daughter thereupon went to the house of the accused who was already known to P. W. 3 but did not find him there. P. W. 3 went to the place where he was alleged to be & questioned him. He is said to have challenged her to do what she liked. The mother & daughter then went to Jambuladinne for the purpose of giving a complaint to the village Mag. but he was not in the village. Thereupon, on the

advice of P. Ws. 7 & 8 they went to Anantpur to obtain a medical certificate. It is alleged that the doctor who examined P. W. 1 refused to give a certificate unless a fee was paid and as they were not in a position to pay, they came back without a certificate. After their return, they again went to the village Mag. & made a report orally which he reduced to writing & it is Ex. p. 2 in the case. On his sending the reports to the police, the investigation started & the accused was arrested. On the requisition of the police, on 18-7-1949 the lady doctor at Anantapur examined P. W. 1 & gave a certificate. Thereafter the charge sheet was laid against the applt.

4. The case against the accused rests mainly on the evidence of P. W. 1 & that of P. Ws. 3 and 6 who speak to the complaint made immediately after the occurrence. The fact that the girl was raped is not seriously disputed & the medical evidence shows that she must have been raped. The doctor found the following injuries : (1) contusion on the inner aspect of both thighs, (2) hymen torn & there was slight bloody discharge from the vagina, (3) swelling over the labia major, (4) vagina admits a finger easily. The doctor was of opinion that the girl was raped & that there was forced penetration but for which, for a girl of her age, the vagina would not admit a finger. Vaginal smears were sent to the Chemical Examiner but no trace of spermatozoa or gonococci was found. The doctor is positive & her evidence admits of no doubt that the girl was raped. The only question is as to who committed it whether it is the applt. or some one else committed it & it is falsely foisted on the applt.

5. Mr. Chinnappa Eeddi who appears for the petnr. contends that the case has been falsely foisted on the accused at the instance of one Kamma Hanumappa on account of the ill-feeling between the said Hanumappa & his brother on the one side & the accused on the other. Advantage is taken of the statement made by P. Ws. 1, 3 and 7 that they met Hanumappa just at the time when P. Ws. 1 & 3 were proceeding to Anantapur during the night of 16-7-1949 for obtaining a medical certificate & it is urged that Hanumappa has instigated P. Ws. 1 & 3 to implicate the applt. The learned Ses. J. has given good reasons for rejecting the suggestion that this case has been falsely foisted at the instance of Hanumappa & I entirely agree with him.

6. Certain discrepancies were relied on by the learned advocate to show that the version given by P. W. 1 is not a true one. The learned Ses. J. has carefully considered every one of them & has pointed out how they do not affect the fundamental fact in this case that the accused committed rape on P. W. 1. There is no doubt one discrepancy which the learned Judge himself points out as inexplicable. In the committal Ct., P. W. 1 stated that by the time she regained consciousness, the accused was not present. But in the Sessions Ct. she stated that when she regained consciousness, the accused was present & that he washed her langa in water in a side ditch & had asked her not to tell anyone on pain of being thrown into a well. The evidence of the Circle Inspector shows that there was no water anywhere near the scene when he examined the scene of occurrence two days after, i. e., on 18-7-1949 & P. W. 6 also stated in the Sessions Ct. that he saw P. w. 1. wearing wet clothes when he saw her weeping which he did not state in the committal Ct. As the learned Judge points out, there is no doubt that there is this discrepancy but it does not affect the truth of the prosecution version. There seems to be no object in improving the version given in the committal Ct. & I agree with him. This does not affect the truth of the story given by P. W. 1.

7. The next contention of Mr. Chinnappa Eeddi is that the evidence of this girl should not be acted upon unless it is corroborated by independent testimony connecting the accused with the crime. As already stated, the commission of rape not being disputed, the only question is whether the accused committed it. It is urged that the evidence of P. W. 1 should not be acted upon without corroboration by independent testimony connecting the applt. with the crime. It is further contended that the corroboration of P. W. 1's story by P. Ws. 3 & 6 is not such a corroboration as their evidence is only corroboration of her own previous statements under Section 157, Evidence Act. Stress is laid that apart from her previous statements made immediately after the occurrence, there should be independent corroboration. No decision of this Ct. or authority of a binding nature has been cited before me either in support of or contrary to the proposition contended for by the learned advocate for the applt. But he relies on the decisions of other Cts. & they are Surendra Nath v. Emperor : AIR1933 Cal833 , Emperor v. Nur Ahmed, A.I.R. 1034 Cal. 7: 36 Cr. L. J. 796, Sikander Mian v. Emperor :

AIR1937 Cal321 , U Toe Sein v. The King, A.I.R.1939 Bang. 128 : 40 Cr. L. J. 552, Emperor v. Mahadeo' Tatya, A. I. R. 1942 Bom. 121 : 43 Cri. L. J. 621 and Nura v. Rex : AIR1949 All710 . In Surendra Nath v. Emperor : AIR1933 Cal833 , the medical evidence showed that the victim had lost her virginity at least three months before the occurrence & she had frequent intercourse prior to the occasion complained of. She was intimate with a prostitute who was connected with the accused & the learned Judge has found that there were other improbabilities in the story. In fact, the facts clearly show that the accused could not be convicted on the story of the victim. Being a jury case the learned Judges stated that the story of such a girl should not be accepted unless it is corroborated by independent evidence in material particulars connecting the accused & for corroboration they referred to the well known case of Emperor v. Nur Ahmed : AIR1934 Cal7 which is a case of an accomplice. In Hex v. Baskerville, (1916) 2 K. B. 658 ; 86 L. J. K. B. 28 which is also a jury case, Lord-Williams J. stated as follows :

'The accused being Mahammadans & the girl a Hindu it is unfortunate that the Jury was composed as it was' (the jury consisted of three Hindus and two Muhammadans. The verdict was guilty by a majority of three to two) 'It is obvious from the reference which I have made to the evidence that this case is unsatisfactory from many points of view apart from the direction given by the Judge to the jury.'

The learned Judge then found that there has been a miscarriage of justice. It is clear in this case, therefore, that the learned Judge was satisfied that the evidence was not acceptable & they even characterised the composition of the jury as unfortunate as is clear from the observations referred to above. They followed the principle laid down in Surendranath v. Emperor : AIR1933 Cal833 that the evidence of the prosecutrix must be corroborated by independent evidence & they put the prosecutrix in a rape case on the same footing as an accomplice in other cases.

8. In Sikander Mian v. Emperor : AIR1937 Cal321 , the learned Judges were dealing with a case where there was independent evidence which was not put to the jury. It must be mentioned here that they refer to the case in Surendranath v.

Emperor : AIR1933 Cal833 & Henderson J. who was a party to the judgment in that case states as follows :

'I do not think that any useful purpose would be served by taking the individual words of Lort-Williams J. & weighing them in a balance in view of the fact that his judgment was delivered *ex tempore* as far as I remember, I do not think he intended to lay down any more than what was laid down by my learned brother in *Surat Ckandra v. Emperor* : AIR1937 Cal463 .'

Referring to the previous statement he laid down that the corroboration of a previous statement though admissible under Section 157, Evidence Act, is not the kind of corroboration expected in such a case. He states that the rule is a rule of prudence & lays down the proposition that a previous statement made by the prosecutrix cannot possibly be corroboration within the meaning of this rule. In *U Toe Sein v. The King*, A.I.R. 1939 Bang. 128 : 40 Cr. L. J. 652, Sharpe J. follows the decisions in *Emperor v. Nur Ahmed* : AIR1934 Cal7 and he seems to think that the corroboration that is sought for is of the same kind as that of an accomplice. In *Emperor v. Mahadeo Tatya*, A. I. R. 1942 Bom. 121: 43 Cri. L. J. 621 KB., the facts were found against the rape. On the medical evidence no injuries were discovered on the private parts of the victim & the judgment seems to indicate that the offence of rape has not been committed. But in dealing with this point of corroboration, Beaumont C. J. states :

'I do not think that I am prepared to go as far as the Calcutta H. C. went in *Surendranath v. Emperor* : AIR1933 Cal833 in saying that the corroboration of the complainant's evidence in a rape case must be dealt with on the same footing as the corroboration of an accomplice's evidence.'

The subsequent conduct of the complainant in a rape case is the type of corroboration which has no application in the case of an accomplice. It is of course obvious as pointed out by the Calcutta H. C. in *Harendra Prasad v. Emperor* : AIR1940 Cal461 that a prosecutrix in rape cases is not an accomplice. In *Nura v. Hex* : AIR1949 All710 the facts showed that there was no rape at all. The learned Judge finds that the girl appears to have had some previous experience of sexual life & the fact that there was no mark of injury in any portion of her body clearly

suggested that there had been no tussle between her & the other person alleged. In fact they seem to hold that no rape has been committed on her.

9. As against these decisions, the Public Prosecutor relies on *Harendra Prasad v. Emperor* : AIR1940 Cal461 which has been referred to in the judgment of Beaumont C. J. in *Emperor v. Mahadeo Tatya*, A. I. R. 1941 Bom. 121 :43 Cri. L. J. 621 . In the above Calcutta case which is also a decision of a Bench, Sen J. who delivered the judgment referring to *Surendranath v. Emperor* : AIR1933 Cal833 observes as follows :

'There the girl was older & used to sexual intercourse before the occurrence. No signs of rape were found on medical examination. On the contrary, the doctor said that the indications were that no force had been used. The Ct. found that the evidence indicates clearly that she had consented & that she told untruths in many matters. In such a case a warning to the Jury of the kind referred to by the learned Judge would be necessary & I agree that the omission to give the jury such a warning on the facts of that case rendered the charge bad. But if the learned Judge was expressing the view that in every case of rape the Judge must direct the Jury that they should not convict the accused on the testimony of the prosecutrix unless it was corroborated in material particulars to the same extent as is required in the case of an accomplice evidence, then I would most respectfully & emphatically dissent from it. The laying down of such a rule would be tantamount to saying that every prosecutrix in a rape case should be treated as if she were an accomplice so far as her credibility is concerned. Reference was made to certain observations of Judges in England in regard to this matter. The manners, customs & mode of life of women in this country are very different from those of women in England. A rule or practice which appropriately may be of general application there would not necessarily have the same utility or application here. If this be the English rule or practice, I do not think that it is desirable in cases of this description to import it without qualification here. The Indian Law of evidence nowhere suggests such an inflexible rule, & conditions here do not, in my opinion, warrant the engrafting of such a rule in our system.'

10. In *Soosal Bania v. Emperor*, A. I. R. 1925 Nag. 74 : 25 Cri. L. J. 1214 which is not referred to in any of the decisions above nor cited by either side the learned Judge says that where a tender girl was alleged to have been raped, a statement made by her, stating that she was raped & uttered immediately after the rape, crying & weeping is admissible as explaining her act of crying under Section 8 & by way of corroboration under Section 157, Evidence Act. When the victim of an offence of rape is an innocent girl of tender age, her evidence will carry great weight. A statement made by her by way of disclosure immediately after the occasion will strongly corroborate her credibility & go to prove the consistency of her conduct & also her want of consent.

11. It is clear from the above decisions that the view of Lort-Williams J. that the evidence of a prosecutrix in a rape case requires corroboration in the same manner as that of an accomplice though it is shared by Ghosh J. in *Emperor v. Nur Ahmed* : AIR1934 Cal7 is not shared by Henderson J. who was a party to the judgment in *Surendranath v. Emperor* : AIR1933 Cal833 as is clear from his remarks in *Sikander Mian v. Emperor* : AIR1937 Cal321 . At any rate such a view is dissented from in the later decision of the Calcutta H. C. in *Harendra Prasad v. Emperor* : AIR1940 Cal461 . The view of Sen J. in the above case has been approved by Beaumont C. J. in *Emperor v. Makadeo Tatya* A. I. R. 1942 Bom. 121 :43 Cri. L. J. 621 . The Rangoon & Allahabad decisions specifically do not refer to this aspect.

12. As stated already no decision of this Ct. or any authority of a binding nature has been cited before me in support of the view that the evidence of a prosecutrix in a rape case is on the same footing as that of an accomplice. An accomplice is a person who voluntarily participates in the commission of the crime along with others. In fact, he is as much an offender as the accused in the dock except that he is taken as a witness against the others. In the case of a prosecutrix for rape she is a victim of the offence & not an offender. If she is a consenting party it ceases to be an offence except in the case of those who are below a certain age & in such cases, the falsity is not so common as in the other cases. The case of an accomplice, therefore, materially differs from that of a prosecutrix for rape and the evidence of both cannot be placed on the same footing. I agree with the view

expressed in Harendra Prasad v. Emperor : AIR1940 Cal461 which is approved in Emperor v. Mahadeo Tatya A. I. R. 1942 Bom. 121 : 43 Cri. L. J. 621 . In law, therefore, the evidence of a prosecutrix does not require corroboration like that of an accomplice.

13. The next question is whether the rule of prudence requires that there should be corroboration. Henderson J. in Sikander Mian v. Emperor : AIR1937 Cal321 states that the rule of prudence requires that the evidence of a prosecutrix in a rape case must be in material particulars by independent testimony connecting the accused with the crime & he further states that the previous statement of the prosecutrix though corroboration under Section 157, Evidence Act, is not the kind of corroboration sought in such cases. He even states that it is not a rule of prudence but is a rule of folly to depend upon such former statements as corroborative evidence. There is no doubt that in sexual offences utmost caution & scrutiny of the evidence of the prosecutrix are necessary before it is acted upon. It will be clear from the decisions which lay down the rule as to the necessity for corroboration the facts are such that either no offence of rape can be inferred or the accusation against the accused is based on a background of enmity and ill-feeling & the cases--many of them--were tried with the aid of a jury who returned a verdict of guilty in circumstances in which the Ct. would not find the accused guilty. It was natural, therefore, that Judges who had to deal with such cases should express themselves strongly in favour of corroboration. Beaumont C. J. also has expressed himself strongly in favour of corroboration in Emperor v. Mahadeo Tatya A. I. R. 1942 Bom. 121 : 43 Cri. L. J. 621 . There also the facts of the case throw considerable doubt whether rape was committed. The case was tried with the aid of a jury who found the accused guilty. In my opinion, even the rule of prudence is enunciated on account of the peculiar facts of the case which normally would not end in a conviction but the jury, however, returned a verdict of guilty. I have yet to see a case where as in the present case, a young girl of immature years & tender age has been raped & who has made a disclosure of it at the earliest possible opportunity to her mother & another, the Ct. still insisted upon corroboration by independent testimony connecting the accused with the crime. Each case depends upon its facts & if after taking all the circumstances into consideration the evidence of the prosecutrix could be believed, then the accused

could be convicted on her evidence alone, although there is no corroboration by independent testimony connecting the accused with the crime. Section 114(b), Evidence Act, says that 'an accomplice is unworthy of credit unless he is corroborated in material particular'. There is no such provision for a prosecutrix in a rape case. This shows that neither law nor prudence requires such corroboration. As stated already each case depends on its facts & on the credibility or otherwise of the prosecutrix. If she is proved to be a credible and a satisfactory witness, no corroboration in my opinion is necessary.

14. In assessing the value of her evidence her conduct immediately after the offence is committed is of great value. Such a conduct is relevant under Section 8. The clause itself makes a distinction as to what is relevant under Section 8 & what may be relevant under Section 157. A complaint relating to the crime in circumstances under which it was made & the terms of it are relevant whereas a mere statement that she was ravished is not relevant under Section 8 though it may be under Section 157 or Section 32(1). The complaint in the section does not mean complaint to Ct. as denned in the Cr. P. C. It means merely an allegation against a person who has committed the outrage on the prosecutrix. Such a complaint has been held to be admissible even under English law--vide Reg. v. Lillyman, 1896-2 Q. B. 167 : 65 L. J. M. C. 195. It has been pointed out by Hawkins J. in the above case that not only the fact that the complaint was made by the prosecutrix shortly after the alleged occurrence but also the particulars of such a complaint may be given in evidence not as being evidence of the facts complained of but as evidence of the consistency of the conduct of a prosecutrix with the story told by her in the witness box. In this case, there is the evidence of P. W. 6 who saw her weeping immediately after the occurrence & to whom she told what happened & this was followed by what she told her mother P. W. 3 as soon as she reached the village. Their evidence shows that her conduct was consistent with the story given in the witness box. There is, therefore, no reason to disbelieve her story that it was the applt. who committed the outrage on her. I agree with the learned Ses. J. in the appreciation of her evidence & find the accused guilty of the offence of rape. The conviction is accordingly confirmed. As regards the sentence, a sentence of five years rigorous imprisonment & the fine imposed by the lower Ct. will meet the ends of justice. The sentence of

imprisonment is, therefore, reduced to five years rigorous imprisonment & the fine is confirmed. The order of the compensation will stand. With this modification the appeal is dismissed.

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