CASE NO.:
Appeal (crl.) 589 of 1999

PETITIONER:
State of Himachal Pradesh

RESPONDENT:
Shree Kant Shekari

DATE OF JUDGMENT: 13/09/2004

BENCH:
ARIJIT PASAYAT & PRAKASH PRABHAKAR NAOLEKAR

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

The factual matrix of this appeal is unfortunately related to sordid and obnoxious incidents where the respondent (hereinafter referred to as 'accused') who at the relevant point of time was working as a teacher gratified his animated passions and sexual pleasures by having carnal knowledge of his student, a girl of tender age. The result was that the sacred relation of teacher and his pupil was besmirched. As observed by this Court in Madan Gopal Kakkad v. Narain Dubey and Anr. (1992 (2) Crimes 168) such offenders are menace to the civilized society.

The State of Himachal Pradesh is in appeal against the judgment of a learned Single Judge of the Himachal Pradesh High Court directing acquittal of the accused who faced trial for alleged commission of offences punishable under Sections 376 and 506 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial Court i.e. the Sessions Court, Kinnaur had convicted and sentenced him to undergo imprisonment for 7 years and a fine of Rs.2,000/- for the first offence and one year and a fine of Rs.2,000/- for the second offence. In addition, the accused was directed to pay compensation of Rs.10,000/- to the prosecutrix.

Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blo w to her supreme honour and offends her self-esteem and dignity \026 it degrades and humilia tes the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty (AIR 1996 SC 922), the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution') The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

We do not propose to mention name of the victim. Section 228-A of IPC makes disclosure of identity of victim of certain offences punishable. Printing or publishing name of any matter which may make known the identity of any person against whom an offence under Sections 376, 376-A, 376-B, 376-C or 376-D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by High Court or Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228-A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as 'victim' in the judgment. (See State of Karnataka v. Puttaraja (2003 (8) Supreme 364)

Prosecution version as unfolded during trial is essentially as follows:

On 28.5.1993 the accused Shree Kant asked the victim who was his student of class 4 to wait after school hours for solving a question, while he allowed other students to go. The victim remained in the class room when the accused bolted the door from inside and made the victim to lie on the floor and forcibly committed sexual intercourse with her. She kept refusing, wept and cried. However, since the doors of the room were closed, none could hear her cries. He then threatened her that if she dared to narrate the incident to anyone, he would throw her into the river. Being threatened she did not disclose this fact to any person.

Few days after the first incident the accused had taken her and three other students to Chuha Bagh for cleaning his room. The accused sent the other three students out of the room and kept her inside the room. He bolted the door of the room and made her lie on the floor and committed sexual intercourse with her again.

In September, 1993 the victim stopped going to school. As she regularly complained of stomach ache, her mother took her to Rampur Hospital where after examination by Doctor (PW-1), mother of the victim learnt that she was pregnant. On enquiry by her mother, the victim disclosed to her mother that her conception was due to sexual intercourse by the accused. After returning to the village, mother of the victim discussed the matter with her husband and then disclosed the incident to Krishna, a member of Gram Panchayat who suggested to report the matter to the police.

On 20.11.1993, the victim lodged a report at police station, Rampur. On the basis of such report a case under Section 376 and 506 IPC was registered vide FIR No.365/1993 (Ex.PW3/A).

During the course of investigation the victim (PW-3) was medically examined on 20.11.1993 at 4.00 p.m. Such medical examination was carried out by doctor (PW-1) of Refural Hospital, Rampur. In her opinion her period of gestation was 28 weeks.

On the completion of investigation, charge sheet was placed and matter was taken up for trial. Twelve witnesses were examined to further the prosecution version. The key witnesses were the victim herself who was examined as PW-3, her mother (PW-4), father (PW-5) and other witnesses who had spoken about the age of the victim. Placing reliance on the evidence of the victim the trial Court found the accused guilty, convicted and sentenced him as aforesaid.

The accused questioned his conviction and sentence imposed before the High Court. A learned Single Judge by the impugned judgment set aside the judgment of the trial Court and directed acquittal.

Learned counsel for the appellant-State submitted that the High Court has failed to analyse the factual and the legal position in the proper perspective and has kept out of consideration relevant matters and drawn the presumptuous conclusions and, therefore, the judgment is to be set aside. There is no appearance on behalf of the accused in spite of service of notice.

The factors which seem to have weighed with the High Court are (i) the age of the victim, which according to the High Court was more than 16 years; (ii) no evidence has been placed by the prosecution to show that the victim had not consented to the act; and (iii) the time of alleged rape as given by the victim and her mother was improbabilised by the medical evidence. A particular reference was made to the fact that a child was born on 10.4.1979 and if the alleged rape has been committed during the period indicated by the victim and her mother the same would have been altogether different periods. The delay in lodging the first information report was also highlighted to attach vulnerability to the prosecution case.

We shall first deal with the question of age. The radiological test indicated age of the victim between 15 to 16= years. The school records were produced to establish that her date of birth was 10.4.1979. The relevant documents are Ex.PW6/A to PW6/C. The High Court was of the view that these documents were not sufficient to establish age of the victim because there was another document Ex.PW7/A which according to the High Court did not relate to the victim. Merely because one document which was produced by the prosecution did not, according to the High Court relate to the victim that was not sufficient to ignore the evidentiary value of Ex.PW6/A to Ex.PW6/C. These were records regarding admission of the victim to the school and her period of study. These documents unerringly prove that the date of birth of the victim as per official records was 10.4.1979. Therefore, on the date of occurrence and even when the FIR was lodged on 20.11.1993 she was about 14 years of age. Therefore, the question of consent was really of no consequence.

Even otherwise the High Court seems to have fallen in grave error in coming to the conclusion that the victim has not shown that the act was not done with her consent. It was not for the victim to show that there was no consent. Factually also the conclusion is erroneous right from the beginning that is from the stage when the FIR was lodged and in her evidence there was a categorical statement that the rape was forcibly done notwithstanding protest by the victim. The High Court was therefore wrong in putting burden on the victim to show that there was no consent. The question of consent is really a matter of defence by the accused and it was for him to place materials to show that there was consent. It is significant to note that during cross examination and the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code') plea of consent was not taken or pleaded. In fact in the statement under Section 313 of the Code the plea was complete denial and false implication.

The High Court has also committed error in making hypothetical calculations regarding dates to doubt the testimony of the victim and her mother. What the witnesses had stated were approximate dates or periods and not that they were to be reckoned with exactitude. The victim is not an intelligent girl as the evidence on record shows. She passed out Class 3 on the third attempt. Her mother, a rustic woman is practically illiterate. To examine their evidence with microscopic approach would be an insult to justice oriented judicial system. It would be totally detached from the realities of life.

The High Court has also disbelieved the prosecution version for the so-called delay in lodging the FIR. The prosecution has not only explained the reasons but also led cogent evidence to substantiate the stand as to why there was delay. The trial Court in fact analysed the position in great detail and had come to a right conclusion that the reasons for the delay in lodging the FIR have been clearly explained.

The unusual circumstances satisfactorily explained the delay in lodging of the first information report. In any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of first information report does not in any way render prosecution version brittle. These aspects were highlighted in Tulshidas Kanolkar v. State of Goa (2003 (8) SCC 590).

The High Court by hypothetical calculations has concluded that there were discrepancies and has come to the presumptuous conclusion on mere surmises and conjectures that there was unexplained delay in lodging the FIR. In view of the above, conclusions of the High Court are not to be sustained.

It was also pleaded by the accused before the High Court which seems to have weighed regarding absence of any corroboration to the victim’s evidence.

It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is physical as well as psychological and emotional. However, if the court on facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice would suffice.

The victim has categorically stated that she was afraid of the accused who was her teacher and the threats given by him to the extent that she would be put to physical harm if she spoke about the incident to anybody. The stand of the accused that he was falsely implicated because brother of the victim was not successful in the examination and therefore, his family had grudge against the accused is too swallow to be accepted. The incident which involved the accused and mother and brother of the victim took place about a decade back. There is not even remote possibility of the same being the foundation for false implication. In any event no girl of a tender age and her parents would like to jeopardize her entire future by falsely implicating a person alleging forcible sexual intercourse.

Looked at from any angle, judgment of the High Court is indefensible and the same is accordingly set aside. The order of the trial Court is restored. Accused shall surrender to custody forthwith

to serve remainder of sentence. The appeal is allowed.