

§d

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO. 2109 OF 2008

ASLAM
APPELLANT
VERSUS
STATE OF UTTAR PRADESH
RESPONDENT

WITH
CRIMINAL APPEAL NO.2110 OF 2008

GALLI
APPELLANT
VERSUS
STATE OF UTTAR PRADESH
RESPONDENT

O R D E R

1. These appeals are directed against the judgment and order passed by the High Court of Judicature at Allahabad, Lucknow Bench in Criminal Appeal Nos. 51 and 92 of 1996, dated 06.07.2007. By the impugned judgment and order, the High Court has confirmed the judgment and order, dated 18.01.1996, passed by the Trial Court in S.T. No. 557 of 1992 whereby and whereunder the Trial Court has convicted the appellants for offence punishable under Sections 376 read with 34 of the Indian Penal Code, 1860 ("the IPC" for short) and sentenced them to undergo rigorous imprisonment for a period of seven years.

2. The prosecution case in brief is as under: The prosecutrix, aged about 19 years was married and had an infant daughter at the time of the incident. On 16.01.1992, at 5:00 P.M., the accused persons, Aslam and Galli, upon finding the prosecutrix (PW-1) working alone in her field, had gagged her and committed rape on her in turns. After the accused persons had left, the prosecutrix returned home crying and immediately narrated the incident to PW-2, Pradhan of the village. Since it was dark, PW-2 suggested to PW-1 to lodge the report in the police station next morning. On 17.01.1992, PW-1's complaint was scribed by PW-2 and FIR NO.2 of 1992 was registered against the accused persons.

3. After due investigation, the accused persons were charged for the offence punishable under Section 376 read with Section 34 of the IPC and the case was committed to trial.

4. The Trial Court, after marshalling the facts and through scrutiny of evidence on record including the testimony of PW-1, has reached the conclusion that the testimony of PW-1 inspires confidence and accordingly rejected the case of defence, pleading acquittal on grounds of delay in filing of FIR, no injuries being caused to PW-1 or the accused persons and PW-1 being a woman of loose morals, in its entirety. The Trial Court has convicted the accused persons for the aforesaid offence relying upon the testimony of PW-1 corroborated by the evidence of PW-2 and elimination of the possibility of any injuries having being caused since the place of incident was Barsin field.

5. The accused persons, aggrieved by the aforesaid, had preferred appeals before the High Court. The High Court, after re-appreciation of entire evidence on record, has concurred with the findings and conclusions reached by the Trial Court and therefore, affirmed the judgment and order passed by the Trial Court convicting the accused persons for offence under Section 376 read with Section 34 of the IPC.

6. It is the correctness or otherwise of the aforesaid judgment and order passed by the High Court which is called in question in these appeals.

7. We have heard the learned counsel appearing for the parties. Shri J.P. Dhanda, learned counsel appearing for the appellants, would submit that the absence of injuries on the person of PW-1 and non-examination of the Doctor who conducted medical examination of PW-1 punch holes in the prosecution case inasmuch as casting a shadow of doubt in respect of commission of rape. He would submit that, in the aforesaid background, the sole testimony of PW-1 is not sufficient to sustain the conviction of the appellants. In aid of his submission, he would place reliance on the decision of this Court in the case of Rai Sandeep v. State (NCT of Delhi), (2012) 8 SCC 21 amongst others. Per contra, Shri C.D. Singh, learned counsel appearing for the State of Uttar Pradesh would justify the findings and conclusions reached by Courts below. He would submit that the testimony of PW-1 is trustworthy and reliable and thus eliminates the necessity of any corroboration by other evidence on record. He would further submit that neither the absence of corroborative testimony by the Doctor who conducted medical examination of PW-1 nor the absence of injuries would render the judgment and order of conviction passed by the Courts below perverse, if the testimony of PW-1 inspires confidence and reliable. He would place reliance upon the decision of this Court in Vijay v. State of M.P., (2010) 8 SCC 191.

8. With the able assistance of both the learned counsel, we have carefully perused and analyzed the evidence of the Prosecution Witnesses and, in particular, the evidence of PW-1. In our opinion, the evidence of the said witnesses is not only reliable but also trustworthy.

9. This Court has held that if, upon consideration of the prosecution case in its entirety, the testimony of the prosecutrix inspires confidence in the mind of the Court, the necessity of corroboration of her evidence may be excluded. This Court in Rajinder v. State of Himachal Pradesh, (2009) 16 SCC 69 has observed as under:

"18. This Court, in State of Punjab v. Gurmit Singh, (1996) 2 SCC 384 made the following weighty observations in respect of evidence of a victim of sexual assault: (SCC pp. 395-96, para 8)

"8. ... The courts 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 on a 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-inflicted, 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. Corroborative 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 an 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."

(emphasis in original)

19. In the context of Indian culture, a woman-victim of sexual aggression-would rather suffer silently than to falsely implicate somebody. Any statement of rape is an extremely humiliating experience for a woman and until she is a victim of sex crime, she would not blame anyone but the real culprit. While appreciating the evidence of the prosecutrix, the courts must always keep in mind that no self-respecting woman would put her honour at stake by falsely alleging commission of rape on her and therefore, ordinarily a look for corroboration of her testimony is unnecessary and uncalled for. But for high improbability in the prosecution case, the conviction in the case of sex crime may be based on the sole testimony of the prosecutrix. It has been rightly said that corroborative evidence is not an imperative component of judicial credence in every case of rape nor the absence of injuries on the private parts of the victim can be construed as evidence of consent."

10. The Trial Court, keeping in view the evidence of PW-1, has come to the conclusion that the accused persons have committed the offence falling within the parameters of Section 376 read with Section 34 of the IPC. This view of the Trial Court is affirmed by the High Court once again after re-appreciating the entire evidence on record. In our considered view, neither the Trial Court nor the High Court has committed any error, whatsoever, which would call for our interference in these appeals. Accordingly, the appeals stand dismissed.

Ordered accordingly.

.....J.
(H.L. DATTU)

.....J.
(RANJAN GOGOI)

NEW DELHI;

FEBRUARY 13, 2013

ITEM NO.101(P.H.)

COURT NO.6

SECTION II

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL NO(s). 2109 OF 2008

ASLAM

Appellant (s)

VERSUS

STATE OF U.P.

Respondent(s)

WITH CRL.APPEAL NO. 2110 of 2008
(With office report)

Date: 13/02/2013 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE H.L. DATTU
HON'BLE MR. JUSTICE RANJAN GOGOI

For Appellant(s) Mr. J.P. Dhanda, Adv.
Puneet Danda, Adv.

For Respondent(s) Mr. C.D. Singh, Adv.
Ms. Ayesha Chowdhry, Adv.
Mr. Ameet Singh, Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeals are dismissed, in terms of the signed order.

(G.V.Ramana)
Court Master
(signed order is placed on the file)

(Vinod Kulvi)
Court Master