

Ranjit Hazarika vs State Of Assam on 28 February, 1996

Equivalent citations: (1998)8SCC635, AIRONLINE 1996 SC 91, 1992 (1) SCC 397, 1998 (8) SCC 635, (1999) 16 OCR 274, 1998 SCC (CRI) 1725, (1991) 4 JT 535 (SC), (1992) 1 CHANDCRIC 100, (1992) 1 CRIMES 2, (1992) 1 SCJ 346, 1992 CRILR(SC MAH GUJ) 139, (1992) MAD LJ(CRI) 508

Author: S.B. Majmudar

Bench: S.B. Majmudar

ORDER

1. Through this appeal by special leave, the appellant has called in question his conviction and sentence for the offence under Section 376 IPC as recorded by the trial court and upheld by the High Court of Assam.

2. According to the prosecution case, the prosecutrix, a young girl of 14 years of age (according to the medical evidence, the age was clinically found to be between 13-17 years) was subjected to rape by the appellant on 18-5-1987. The prosecutrix was witnessing a performance along with her girl friends at Dhanaising Chapori which finished at about 3.30 a.m. As she was leaving for her home, the appellant offered to walk with her to her house but on the way, subjected her to sexual intercourse without her consent and threatened her not to inform anybody about the occurrence. The prosecutrix, after having been subjected to rape, rushed to her house and informed her parents about the occurrence. The FIR was lodged at Teok Police Station. The investigation was taken in hand. The prosecutrix was sent up for medical examination and after completion of investigation, the appellant was tried for the offence under Section 376 IPC.

3. The prosecution, in support of its case, examined apart from the prosecutrix, her parents, besides the doctor and the investigation officer. The appellant, in his statement under Section 313 CrPC, denied the prosecution allegations.

4. The prosecutrix has, in her statement recorded at the trial as also her earlier statement recorded under Section 164 CrPC, clearly narrated the manner in which the appellant forcibly performed sexual intercourse with her without her consent on the roadside after taking the prosecutrix forcibly in his arms and removing her panties. Her statement has remained virtually unchallenged in the cross-examination. The statement of the prosecutrix has been amply corroborated by her mother and her father, PW 2 and PW 3 respectively, who are the two persons to whom the prosecutrix immediately narrated the story about the occurrence. Their evidence was not challenged in the cross-examination at all.

5. The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was

found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix. Besides, the opinion of the doctor appears to be based on "no reasons".

6. The evidence of the prosecutrix in this case inspires confidence. Nothing has been suggested by the defence as to why she should not be believed or why she would falsely implicate the appellant. We are unable to agree with the learned counsel for the appellant that in the absence of corroboration of the statement of the prosecutrix by the medical opinion, the conviction of the appellant is bad. The prosecutrix of a sex offence is a victim of a crime and there is no requirement of law which requires that her testimony cannot be accepted unless corroborated. In *State of Punjab v. Gurmit Singh*, to which one of us (Anand, J.) was a party, while dealing with this aspect observed:

"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 leveled 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."

We are in agreement with the aforesaid view.

7. Both the courts have considered the evidence of the prosecutrix and relied upon the same. We see no reason to take a different view. Even though no corroboration of her testimony was essential to record the conviction of the appellant, we find that in this case there is sufficient corroboration of her testimony available from the evidence of her parents, PW 2 and PW 3. The conviction and sentence of the appellant are well merited and have been recorded on a proper appreciation of evidence. This appeal has no merits. It fails and is dismissed.