# Munna vs State Of M.P on 16 September, 2014

## Author: Adarsh Kumar Goel

## Bench: Adarsh Kumar Goel, V. Gopala Gowda

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.2358 of 2010

MUNNA ... APPELLANT

VERSUS

STATE OF M.P. ... RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. This appeal has been preferred against the conviction and sentence of the appellant for offences under Sections 450 and 376 of the Indian Penal Code (IPC) for which the appellant stands sentenced to undergo rigorous imprisonment for seven years under both heads but the sentences are to run concurrently, apart from being sentenced to pay fine.

2. Case of the prosecution as per FIR is that on 19th April, 1993, when the prosecutrix (PW 1) was sleeping in her house at 1.00 A.M., the appellant along with co-accused Sahab Singh @ Mutta entered the house of the prosecutrix and both of them committed rape on the prosecutrix and then fled away. They were carrying knife which was shown to the prosecutrix to threaten her if she raised alarm. The prosecutrix narrated the incident to her husband and lodged First Information Report at the Police Station on the next day. After investigation both the accused were sent up for trial. The prosecutrix did not support the version against co-accused Sahab Singh @ Mutta. Accordingly, he was acquitted by the trial Court. Relying upon her version supported by her husband Balkishan (PW 2) and Kotwar of the village Manaklal (PW 3), the trial Court convicted and sentenced the appellant which has been confirmed by the High Court.

3. We have heard learned counsel for the parties.

4. Learned counsel for the appellant has pointed out that there are major discrepancies in the version of the prosecution which create doubt about the veracity of the prosecution case against the appellant. The discrepancies pointed out are as follows :

(i) Though initially, two persons were named and it was alleged that both threatened the prosecutrix with a knife, version at the trial was different and only the appellant has been named.

(ii) The prosecutrix gave affidavit dated 23th April, 1993 three days after the lodging of the FIR, disowning the version and exonerating the appellant. The said affidavit was duly acted upon by the trial Court, as the prosecutrix appeared in Court and supported the contents of the affidavit, for granting the accused anticipatory bail vide Order dated 29th April, 1993. The order of anticipatory bail reads as under:

"Affidavit of the complainant perused. According to which Village Patel Shiv Kumar had put pressure upon the complainant and got a false report registered. Additional Public Prosecutor has not objected the bail application.

Bail of accused Mutta is already granted on this ground hence this accused is also being granted benefit of bail and it is ordered that if in this case applicant is arrested then he should be released on bail bond of Rs.5,000/- and surety."

(iii) PW 3 has admitted that husband of the prosecutrix had enmity with the appellant. The medical report inter alia read as follows :

".....No signs of injury anywhere..... One cream color petticoat on which there no stains of looking like Semenal stains present....."

(iv) The statement of the prosecutrix has also contradictions, as at one place she states that she had seen the accused only when he was escaping and not before, while at the other place she gave a different statement.

Similarly her husband PW 2 has contradicted the prosecutrix about the presence of the accused when PW 2 arrived. According to PW 2, accused was still at the house and ran away only when he opened the door while according to prosecutrix the accused had ran away before arrival of her husband.

5. We find that the above discrepancies are supported by the record.

6. We are conscious that testimony of the prosecutrix is almost at par with an injured witness and can be acted upon without corroboration as held in various decisions of this Court. Reference may be made to some of the leading judgments.

In Bharwada Bhoginbhai Hirjibhai vs. State of Gujarat.[1], this Court held as under :

"9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be

viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyze the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the western world which has its own social milieu, its own social mores, its own permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the western world. It is wholly unnecessary to import the said concept on a turnkey basis and to transplant it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical.

10. Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or a woman in India make false allegations of sexual assault ..... The statement is generally true in the context of the urban as also rural society. It is also by and large true in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because (1) A girl or a woman in the tradition-bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends, and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a [pic]suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarassed in relating the incident to others being overpowered by a feeling of shame on account of the upbringing in a tradition-bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as also the husband and members of the husband's family of a married woman, would also more often than not, want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, acts as a deterrent." In State of Maharashtra vs. Chandraprakash

Kewalchand Jain[2], this Court held as under :

"15. It is necessary at the outset to state what the approach of the court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the court bases a conviction on her testimony ? Does the rule of prudence demand that in all cases save the rarest of rare the court should look for corroboration before acting on the evidence of the prosecutrix ? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under Section 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice Section 133 provides that he shall be a competent witness against an accused person; and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to Section 114, which lays down a rule of practice, says that the court 'may' presume that an accomplice is [pic]unworthy of credit, unless he is corroborated in material particulars. Thus under Section 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of Section 114, illustration (b), courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Sections 133 and 114, illustration (b).

16. A prosecutrix of a sex offence cannot be put on par with an accomplice.

She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the court is

entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

> "It is only in the rarest of rare cases if the court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary." With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in [pic]which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.
>
> 17. We think it proper, having regard to the increase in the number of sex violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice to a crime and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity." Similar observations were made in State of Punjab vs. Gurmit Singh[3], as under :
>
> ".....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. [pic]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."

7. Thus, while absence of injuries or absence of raising alarm or delay in FIR may not by itself be enough to disbelieve the version of prosecutrix in view of the statutory presumption under Section 114A of the Evidence Act but if such statement has inherent infirmities, creating doubt about its veracity, the same may not be acted upon. We are conscious of the sensitivity with which heinous offence under Section 376, IPC has to be treated but in the present case the circumstances taken as a whole create doubt about the correctness of the prosecution version. We are, thus, of the opinion that a case is made out for giving benefit of doubt to the accused.

8. Accordingly, we allow this appeal, set aside the conviction of the appellant and acquit him of the charge.

.....J.
[ V. GOPALA GOWDA ]

.....J.
[ ADARSH KUMAR GOEL ]

NEW DELHI
September 16, 2014

ITEM NO.1C-For Judgment COURT NO.14 SECTION IIA

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). 2358/2010

MUNNA Appellant(s)

VERSUS

STATE OF M.P. Respondent(s)

Date : 16/09/2014 This appeal was called on for JUDGMENT today.

For Appellant(s) Mr. C.D. Singh, Adv.

Ms. Sakshi Kakkar, Adv.

Ms. Pragati Neekhra, Adv.

For Respondent(s) Mr. Mishra Saurabh,Adv.

Ms. Vanshaja Shukla, Adv.

Mr. Ankit Kr.Lal, Adv.

Hon'ble Mr. Justice Adarsh Kumar Goel pronounced the judgment of the Bench comprising Hon'ble Mr. Justice V.Gopala Gowda and His Lordship.

The appeal is allowed in terms of the signed order.

(VINOD KUMAR)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed Reportable judgment is placed on the file)

---

[1] (1983) 3 SCC 217
[2] (1990) 1 SCC 550
[3] (1996) 2 SCC 384