Rajoo & Ors vs State Of M.P on 3 December, 2008

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Bench: Harjit Singh Bedi, Dalveer Bhandari

[REPORTABLE]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 1094-1098 OF 2000

Rajoo & Ors. .....Appellants

Vs.

State of M.P. .....Respondent

JUDGMENT

HARJIT SINGH BEDI,J.

1. These appeals by way of special leave arise out of the following facts.

2. On 28th December 1986, the prosecutrix PW9 along with her mother, Dukhni Bai PW8 were on their way to the bazaar for purchasing households items. While on the way, they met four of the accused Pyaru, Nandoo, Rajoo and Pentoo, who addressed the prosecutrix as a prostitute and then asked her to go with them to a hotel some distance away. The prosecutrix, however, refused to accept this order on which Nandoo and Pyaru put a towel on her face and after slapping her several times, made her sit on a scooter with Nandoo in front and Pyaru at the rear and the prosecuritx in the middle. The two accused then took the prosecutrix near the newly constructed quarters where the other accused were already present. It is the case of the prosecution that all the accused, first

Nandoo, and thereafter the others turn by turn committed rape on her, and after having satisfied their lust, she was dropped by some of them near the peepal tree in the bazaar. She then reported the matter to the police at about 10 p.m. the same evening in which she named Nandoo and Bindu as the two accused who had taken her on the Luna but also stated that as all the other accused were from Ruabandha, she would be able to recognize them. A case under sections 366 and 376 of the IPC was accordingly registered by Sub-Inspector P.N. Shukla PW10. The Police Officer also seized a saree and a petticoat which the prosecutrix had been wearing at the time of the commission of rape and also produced her before PW1 Dr. Smt. Christian for her medical examination. The Doctor observed no marks of injury visible on any part of her body other than a swelling on the lower jaw but opined that as she was habituated to sexual intercourse, she (the Doctor) was unable to give any opinion about the intercourse having been committed recently, though a foul smell was emanating from the vagina and slides were taken therefrom. Some of the accused were arrested on 29th December 1986 whereas the others were arrested on 2nd January 1987 and the underwear they were allegedly wearing at the time of incident were seized and thereafter sent to the laboratory and were subsequently found to be stained with semen. The accused were also produced before PW2 Dr. S.S. Dhillon and PW3 Dr. P. Srivastava, who opined that all the accused were capable of performing sexual intercourse. On 13th December 1986, 9 of the 13 accused were intermingled with 27 other persons and were subjected to an identification parade under the supervision of Sakharam Mahilong, Naib Tehsildar (PW5). As per the evidence of this officer, all the accused were duly identified by the prosecutrix by putting her hand over the head of each accused.

3. On the completion of the investigation, all 13 accused were charged for offences punishable under Sections 366/376 of the IPC and as they pleaded not guilty, they were brought to trial. The trial court in its judgment dated May 26, 1989 relying on the evidence of the prosecutrix, as corroborated by the statement of her mother PW8, and further relying on the fact that 9 of the accused had been identified in the test identification parade and that the medical evidence showed the presence of semen in her vagina, found the case against all the accused as partly proved, and while acquitting them of the offence under section 366 of the IPC convicted them for the offence under section 376 (2)(g) with a sentence of RI for 10 years and a fine of Rs.200/- and in default of fine to undergo RI for 6 months. Several appeals were thereafter filed by the accused in the High Court which observed that two of the accused appellants i.e. Ramaiya and Krishna had not been identified in the identification parade and were, thus, liable to acquittal. The other appeals were, however, dismissed with the modification in the sentence from 10 years to 8 years RI with an increase in the fine of Rs.200/- to Rs.5000/- to be made payable within 6 months failing which they would undergo RI for 10 years. The present appeals have been filed by 10 of the accused as Raju son of Billya chose not to file an appeal. It is in these circumstances that the matter is before us for final hearing.

4. Mr. Ranjit Kumar, the learned senior counsel for the accused-appellants has raised several arguments during the course of hearing. He has first emphasized that as the story projected by the prosecution witnesses i.e. the prosecutrix PW9 and her mother PW8 in so far as the offence under section 366 of the IPC was concerned, had been disbelieved, the conviction under section 376(2)(g) of the IPC on the same evidence was uncalled for. He has also pointed out that as there was no injury on the person of the prosecutrix, despite her claim of having been raped by 13 young men, falsified the entire story and the fact that she was apparently a girl of easy virtue was an additional

reason as to why her evidence should be examined with care. He has, however, especially emphasized that as a large number of persons had been involved, their identification beyond doubt was a sine qua non for conviction and as both the prosecutrix and her mother had at one stage stated that they knew the accused and 9 of them had been identified by the former in an identification parade in a procedure which was, to say the least, open to grave suspicion, the evidence of identification too was unacceptable.

5. The learned State counsel has, however, submitted that the prosecutrix and her mother had no reason to falsely implicate the accused and in the light of the fact that they were illiterate and belonged to a backward area, some indulgence was to be shown to them with respect to the minor inconsistencies in their statements inter-se. He has also pointed out that the accused had been identified in the light of an electric pole at the place of incident and as Nandoo, Bindoo and Pyaru who had first accosted the prosecutrix were known to her, their involvement was in any case virtually proved. He has finally urged that the chemical examiner's report had revealed the presence of semen stains on the underwear which the accused had been wearing, showed that rape had indeed been committed.

6. We have heard the learned counsel for the parties and gone, through the record. It is true that rape is one of the most heinous and reprehensible of crimes that can be committed on a woman and it is for this reason that courts have leaned heavily in favour of such a victim. [See: State of Punjab vs. Gurmit Singh & Ors. (1996) 2 SCC 384]. In this matter this Court allowed the State appeal against acquittal and while convicting the accused under section 376 of the IPC, observed thus:

> "Of late, crime against women in general and rape in particular is on the increase. It is an irony that while we are celebrating women's rights in all spheres, we show little or no concern for her honour. It is a sad reflection on the attitude of indifference of the society towards the violation of human dignity of the victims of sex crimes. We must remember that a rapist not only violates the victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. Rape is not merely a physical assault - it is often destructive of the whole personality of the victim. A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

7. The Court also observed that the alarming frequency of crimes against women had led Parliament to make some special laws in the background that rape was a very serious offence and that this was another factor which was to be kept in mind while appreciating the evidence in such matters.

8. The observations in Gurmit Singh's case were reiterated in Ranjit Hazarika vs. State of Assam (1998) 8 SCC 635 in the following terms:

> "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."

9. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspect and should be believed, the more so as her statement has to be evaluated at par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the Court. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration. Reference has been made in Gurmit Singh's case to the amendments in 1983 to Sections 375 and 376 of the India Penal Code making the penal provisions relating to rape more stringent, and also to Section 114A of the Evidence Act with respect to a presumption to be raised with regard to allegations of consensual sex in a case of alleged rape. It is however significant that Sections 113A and 113B too were inserted in the Evidence Act by the same amendment by which certain presumptions in cases of abetment of suicide and dowry death have been raised against the accused. These two Sections, thus, raise a clear presumption in favour of the prosecution but no similar presumption with respect to rape is visualized as the presumption under Section 114A is extremely restricted in its applicability. This clearly shows that in so far as allegations of rape are concerned, the evidence of a prosecutrix must be examined as that of an injured witness whose presence at the spot is probable but it can never be presumed that her statement should, without exception, be taken as the gospel truth. Additionally her statement can, at best, be adjudged on the principle that ordinarily no injured witness would tell a lie or implicate a person falsely. We believe that it is under these principles that this case, and others such as this one, need to be examined.

10. Undoubtedly, the charge under section 366 of the IPC has not been made out as per the findings of the courts below. We, however, find that the evidence of rape is distinct from the other charge and the matter should be examined in that background. We are, accordingly, of the opinion that merely because the accused have been acquitted for the offence punishable under Section 366 of the IPC is ipso-facto no reason to disbelieve the entire prosecution story on this solitary ground.

11. The veracity of the story projected by the prosecution qua allegations of rape must, thus, be examined. It has come in the evidence of PW8 that the prosecutrix had been married while a child but her gauna had not been performed as her husband, had, in the meanwhile, taken a second wife. The Doctor PW1 Dr. Smt. Christian has, however, opined that the prosecutrix was so habituated to sexual intercourse that it was not possible to ascertain as to when she had last been subjected to it. It has also come in the evidence of PW8 that the police had often questioned the prosecutrix as to why she was indulging in prostitution. The prosecutrix herself also admitted that she had once been arrested in the Ajanta Hotel case but had been bailed out by Shri Bansal, Advocate. It is indeed

surprising that though, as per her allegations, all 13 accused had assaulted her one after the other, but the doctor did not find even a scratch on her person. The trial court and the High Court have not accepted the plea raised by the accused as to the adverse character of the prosecutrix as the evidence on this score was not conclusive. We are of the opinion, however, that in the light of the facts mentioned above, it is probable that the prosecutrix was indeed involved in some kind of improper activity.

12. The other evidence in the matter would have to be examined in this background. Primary emphasis has been placed by Mr. Ranjit Kumar on the identification of the accused. It has been submitted that the identification itself was faulty whereas the State Counsel has argued to the contrary and submitted that as the accused were known to the prosecutrix she had been in a position to identify them. The question of identification is, to our mind, the determining factor in this case. In the FIR the prosecutrix has named four of the accused as having committed rape on her, they being Nandoo, Bindu, Pintoo and Raju. PW8, who was unsure, as to the identity of the accused, however, stated that she knew Nandoo, Pyaru, Pawan, Pintoo and Raju but conceded that she had not known any of the accused at the time of the incident but after the police had enquired about the names of the boys in her presence, she had come to know who they were. It is also significant that the Court had recorded a note that even after she had named the five accused she had been able to identify only Pawan and she had not been able to identify any of the other accused. She also stated that some of the boys had been arrested on the day of the incident and that she had been called to visit the police station several times to identify them and that the police had often threatened her and her daughter that if they did not come to the police station they would file a case against them. In the last paragraph of her examination-in-chief PW8 clearly stated that she was not in a position to identify the boys at the time of incident or even in Court. It is significant that the prosecutrix, her mother and all the accused were residents of Ruabandha and as per the prosecutrix's evidence she was aware of the identity of only a few of them whom she had named in the FIR. It is also significant that in her examination-in-chief the prosecutrix stated that at the time when she had been taken away on the Luna she did not know the names of the accused who were taking her away and that she was not personally acquainted with any of the boys at the time of incident and did not know their names and was not in a position to recognize them. In paragraph 46 of the evidence, this is what she had to say:

> "Police personnel had taken me to Police Station at about 2.30 O'clock in the night. Immediately after lodging the report there, they came at the place of occurrence taking me there and had got identified the accused persons having taken them out of their houses. Then the police personnel had taken the accused persons also at the Police Station. In that night nine boys had been brought having arrested. Remaining five boys had been brought by the police on the second day. I had identified those also in the Police Station.
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> After arrest of nine-ten boys, they had taken near the house where incident had taken place and they had asked to identify the remaining boys. Then I had identified 4-5 boys from that crowd. I had gone to the Police Station having sit in Daga with all those boys. Witness now states that 2-3 boys had been arrested from the houses,

> remaining 6-7 boys had been arrested from Dance site, remaining 4-5 boys had been brought having arrested on the second day.
>
> I had not gone to the houses of the boys for identification. Police personals had called them in the hotel and I used to identify them there."

We are of the opinion that in the light of the categorical statements of the two main prosecution witnesses, the identification of the accused is extremely doubtful.

13. The test identification parade conducted by PW5 Sakharam Mahilong, Naib Tehsildar is equally farcical. This witness stated that 36 persons in all, including 9 of the accused, had been associated with the parade held by him on 30th December 1986 but he also admitted that the 9 accused had been covered with black and brown coloured blankets. To our mind the only inference that can be drawn from this admission is that similar and distinctive blankets had been provided so as to facilitate the identification of the accused. Moreover, in the light of the fact that the witness had been shown to the prosecutrix not once but several times while they were in police custody, the identification parade held by PW5 is even otherwise meaningless.

14. The learned State counsel has, however, placed special emphasis on the fact that the underwear handed over by the accused to the investigating officer were found by the chemical examiner to be stained with semen which corroborated the prosecution story. In the light of the fact that we have found the identification of the accused to be doubtful, the recovery of the underwear becomes meaningless. But we have nevertheless chosen to examine this submission as well. In this connection, we have gone through the evidence of Durga Prasad Shukla PW10, the investigating officer. We notice that the underwear of some of the accused had been produced by them on 29th December 1986 whereas the remaining accused had likewise produced their underwear on the 2nd of January 1987. We find it some what difficult to believe that the accused had themselves provided the evidence of having committed rape soon after the incident, and even more surprising, that some of them had done so three days after the incident. The recovery of the stained underwear is a factor which, by itself, cannot support a case of rape against the accused.

15. On an examination of the entire evidence, we are of the opinion that it would be difficult to conclusively show the involvement of each of the accused beyond reasonable doubt. To our mind the truth and falsehood are so inextricably intertwined, that it is impossible to discern where one ends and the other begins.

16. As already noted above Raju, son of M. Billya did not file an appeal in this court. In the light of the fact that we have found the prosecution story to be doubtful, Raju too must be given the benefit of doubt in the light of the judgments in Raja Ram & Ors. Vs. State of M.P. (1994) 2 SCC 568, Arokia Thomas vs. State of T.N. (2006) 10 SCC 542 and Suresh Chaudhary etc. vs. State of Bihar (2003) 4 SCC 128. We, accordingly allow the appeals and acquit the present appellants, as also Raju son of M. Billya.

.....J. (DALVEER BHANDARI) .....J. (HARJIT SINGH BEDI)
New Delhi, Dated: December 3, 2008