Mukesh vs State Of Chhattisgarh on 25 September, 2014

Equivalent citations: 2014 AIR SCW 5618, (2015) 145 ALLINDCAS 143 (SC), AIR 2014 SC(CRI) 2122, (2015) 60 OCR 107, (2014) 4 CRILR(RAJ) 1092, (2014) 4 CURCRIR 208, (2015) 2 MH LJ (CRI) 67, (2015) 88 ALLCRIC 344, (2014) 4 ALLCRILR 979, (2014) 4 CRIMES 299, 2014 CRILR(SC MAH GUJ) 1092, 2014 CRILR(SC&MP) 1092, (2014) 4 RECCRIR 447, 2014 (10) SCC 327, (2014) 11 SCALE 418, 2015 CALCRILR 1 13, 2015 (1) SCC (CRI) 103

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Bench: Adarsh Kumar Goel, V.Gopala Gowda

IN THE SUPREME COURT OF INDIA CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1114 of 2011

MUKESH ……APPELLANT

VERSUS

STATE OF CHHATTISGARH …RESPONDENT

J U D G M E N T

V. GOPALA GOWDA, J.

This appeal is directed against the final judgment and order dated 10.08.2010, passed by the High Court of Chhattisgarh at Bilaspur, in Criminal Appeal No.342 of 1996 dismissing the appeal of the appellant and upholding the conviction and sentence passed by the Trial Court in Sessions Trial No. 79 of 1995, whereby the appellant was found guilty for the offence punishable under Section 376 of IPC and was sentenced to undergo rigorous imprisonment for seven years with a fine of Rs.500/- and in default, to undergo further simple imprisonment for 5 months.

2. For the purpose of considering the rival legal contentions urged in this appeal and with a view to find out whether this Court is required to interfere with the impugned judgment of the High Court,

the necessary facts are briefly stated hereunder:

> On 18.4.1994, at about 12.00 to 12.30 a.m. at night, the prosecutrix, Kumari Bai, had come out of her house to answer the call of nature near the mango tree in the courtyard, and the accused came from behind and caught hold of her hands and started dragging her in a bid to commit sexual intercourse with her. When she tried to run away in order to get out of his clutches, he again caught hold of her hair and threw her on the ground and caught hold of her legs, as a result of which the prosecutrix suffered injuries on the right side of her forehead. When the prosecutrix tried to shout, he inserted a piece of cloth (scarf) into her mouth to stifle her cries for help and committed forcible sexual intercourse with her. It is alleged that after the commission of the offence, the accused ran away and she went back to her house and informed about the incident to her sister-in- law, brother-in-law and other family members. The FIR was lodged with Bilaspur, Police Station, Chakarbhata. The case went for trial to the Trial Court.
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> As many as 12 prosecution witnesses were examined by the prosecution before the Trial Court in support of the case. The statement of the accused was also recorded under Section 313 of Cr.P.C. in which he denied the charges levelled against him and pleaded innocence and further stated that he has been falsely implicated in the case and therefore, he prayed for acquittal from the charge framed against him.
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> After hearing the learned counsel for the parties, the Trial Court by its judgment and order dated 15.02.1996 in Sessions Trial No. 79 of 1995, convicted and sentenced the appellant for the offence under Section 376 of the IPC.

3. On appeal, the High Court after going through the evidence on record and the statement of the witnesses held that though, there appears to be minor contradictions in the statement of the prosecutrix with respect to the timing of lodging the FIR, but considering her entire statement, it is held that the same is rendered insignificant. Thus, the factual aspect of the matter does not lead the court to disbelieve the testimony of the prosecutrix which has already been supported by other witnesses. The appeal was thus dismissed on the ground that it was without substance. Hence, this appeal.

4. It is the contention of the learned counsel for the accused/appellant that the story of the prosecutrix is absolutely marred by contradictions and omissions. Further, there was a delay in lodging the FIR and contradictions regarding the date of the incident. Hence, it is contended that there was no rape committed by the accused as alleged and he is innocent of the charge.

5. The learned counsel for the appellant has further contended that prima facie, it is a case of consent given by the prosecutrix, otherwise, it would not have been possible for the appellant to commit sexual intercourse with her, in the middle of the night as he was not aware that the prosecutrix would come out of her house in the middle of the night and he would get an opportunity to have intercourse with her and therefore, he has been falsely implicated.

6. It was further contended by the learned counsel on behalf of the appellant that the medical report pleaded by the prosecution, does not support their case because neither internal nor external injuries were found on the private parts or the body of the prosecutrix by the doctor who had medically examined her, except for the scratch mark on her forehead.

7. It is further contended that the date of the incident in the FIR has been overwritten and manipulated, whereas as per the charge sheet the incident occurred on 18.04.1994, however, from the evidence of the prosecutrix and the other prosecution witnesses, it appears that the incident had occurred on the intervening night of the 16th and 17th of April 1994, hence the accused is entitled to the benefit of doubt and should be acquitted from the charge.

8. It is further contended that the case of the prosecution is highly improbable and full of omissions and contradictions as the prosecutrix did not raise any alarm or cried for help when the accused/appellant caught hold of her hand and further she did not even raise her voice, when she had freed herself from the clutches of the accused and ran towards the house to be again caught by the appellant.

Further the statements of PW-3, PW-8 and PW-11 cannot be relied upon as there are material omissions and contradictions in their statements.

9. It is further contended that even for the sake of argument, if the story of the prosecution is believed to be true, even then it is clear from the facts and circumstances of the case that the intercourse, if any, is consensual in nature.

10. On the other hand, it is contended by the prosecution that the case of the prosecutrix is true and strong as the complaint was lodged by her very promptly and the witnesses namely, Pardeshi, PW-3 and Bahra Bai, PW-4, to whom the prosecutrix narrated the incident, have also supported the case of the prosecution.

11. It has been further contended on behalf of the prosecution that the medical report of the prosecutrix (Ex.P.4), very much makes it clear that she had suffered external injuries on her forehead. Further, there is absolutely no evidence available on record to show that the prosecutrix was a consenting party as alleged by the accused/appellant. He has further not stated anything to this effect in his statement recorded under Section 313, Cr.P.C.

12. On the basis of the aforesaid rival legal contentions, evidence of the prosecution witnesses on record and the reasons assigned by the courts below, the following points would arise for consideration of this Court:

> Whether the High Court should have given the benefit of doubt to the appellant based on the contradictions regarding the date of the incident, the FIR, charge sheet and the statements of the prosecutrix and the prosecution witnesses?
>
> What order?

REASONS

13. To answer the first point, it is necessary for us to consider the following evidence:

The direct evidence of the prosecutrix.

Evidence of the witnesses and the medical evidence.

Circumstantial evidence on record.

We have perused the evidence of the prosecutrix on record. In her deposition she has clearly stated that the accused had come from behind and caught hold of her and closed her mouth with his hand and when the prosecutrix tried to run away, he again caught hold of her and pulled her down, thereby committed rape on her. Thereafter, the accused ran away and the prosecutrix narrated the incident to her sister-in-law, Bahorabai, and other family members, immediately after the incident. The corroboration of this fact is also found in the statements of the prosecution witnesses PW-3 and PW-11.

14. Further, the accused has taken the defence that the prosecutrix did not call out for help, despite the fact that she had managed to free herself. However, we hold that, in the situation, where the prosecutrix was under

the threat of being raped by the appellant/accused, we cannot expect her to be prudent and meticulous in her thought process. Hence, for her running away from the situation would have been the best possible thing to do at the time, therefore, not calling out for help does not mean that the appellant/accused did not commit the offence. The state of mind of the prosecutrix cannot be precisely analysed on the basis of speculation because each person reacts differently to a particular stressful situation.

15. Further, as has been repeatedly held by this Court in a catena of cases, the sole testimony of the witness is sufficient to establish the commission of rape even in the absence of corroborative evidence. Reliance has been placed on the decision of this Court in the case of Mohd. Iqbal v. State of Jharkhand[1], which states as under :-

“17. There is no prohibition in law to convict the accused of rape on the basis of sole testimony of the prosecutrix and the law does not require that her statement be corroborated by the statements of other witnesses.

18. In Narender Kumar v. State (NCT of Delhi) this Court has observed that even if a woman is of easy virtues or used to sexual intercourse, it cannot be a licence for any person to commit rape and it further held: (SCC p.

180, paras 30-31) "30. ... conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the Court has reason not to accept the version of the prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix's case becomes liable to be rejected.

31. The Court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtues/unchaste woman that itself cannot be a determinative factor and the Court is required to adjudicate whether the accused committed rape on the prosecutrix on the occasion complained of."

19. In the statements of the appellant-accused under Section 313 CrPC, only a bald statement had been made by both the appellant-accused that they were innocent. No explanation had been furnished by either of them as to why the prosecutrix had deposed against them and involved them in such a heinous crime."

16. Further, the evidence of the witnesses including the evidence of the medical report, makes it amply clear that the prosecution has firmly established the incident of rape. None of the witnesses in their deposition have deviated from their version. The fact that the prosecutrix narrated the incident of rape immediately to her family members after its commission is corroborated by the statements of PW-3 and PW-11. The fact that the prosecutrix had sustained injury on her forehead on the night of the incident is also verified by the statements of PW-3, PW-11 and her husband Alakhram (PW-10), who was not present in the village on the night of the incident, but had rushed back immediately in the evening on hearing about the rape. This fact is also proved from the evidence of PW-3.

17. Further, the untenable contention of the accused that he has been falsely implicated in the present case because he had seen the prosecutrix in a compromising position with her brother-in-law, is baseless and false and cannot be accepted by this Court. The witnesses, PW-3, who is the wife of the brother-in-law and PW-10, the husband of the prosecutrix, respectively, have specifically denied the allegation made by the accused against the prosecutrix in their evidence. Thus, the defence has failed to satisfy this Court with substantive evidence to prove the allegation against the prosecutrix.

18. So far as the Medical Report is concerned, Dr. (Smt.)Samdariya (PW-4), who has medically examined the prosecutrix has stated that she had observed a scratch mark on her forehead, that was 10 x ¼ c.m. in size and had further opined that since the prosecutrix was a married lady, no definite opinion regarding rape could be given. However, in our opinion, the absence of a conclusive opinion of the medical examiner regarding rape in case of a married woman, cannot be a ground for acquittal of the accused, having regard to the positive and substantive evidence of the prosecutrix and the other prosecution witnesses. In the case of State of U.P. v. Chhotey Lal[2], this Court held as under:-

> "32. Although the lady doctor, PW 5 did not find any injury on the external or internal part of the body of the prosecutrix and opined that the prosecutrix was habitual to sexual intercourse, we are afraid that does not make the testimony of the prosecutrix unreliable. The fact of the matter is that the prosecutrix was recovered almost after three weeks. Obviously the sign of forcible intercourse would not persist for that long a period. It is wrong to assume that in all cases of intercourse with the women against will or without consent, there would be some injury on the external or internal parts of the victim. The prosecutrix has clearly deposed that she was not in a position to put up any struggle as she was taken away from her village by two adult males. The absence of injuries on the person of the prosecutrix is not sufficient to discredit her evidence; she was a helpless victim. She did not and could not inform the neighbours where she was kept due to fear." (emphasis supplied)

19. Further, the external injury on the forehead of the prosecutrix cannot be disregarded. The fact that the prosecutrix was bleeding at the time of narrating the incident has been categorically stated in the evidence of PW- 3, PW-11 and PW-12 and in the FIR. The medical examination of the prosecutrix was not conducted just after the incident. In such a situation, it is not possible to get a clear and certain opinion with regard to the commission of rape. Thus, the version of the incident narrated by the prosecutrix and the injury on the forehead has been duly corroborated by the medical evidence on record.

20. Now, we come to the part of circumstantial evidence. The most important fact, that the prosecutrix had narrated the incident of rape immediately after its commission, gives us a strong reason to believe the version of the prosecution. Further, the conduct of the other witnesses including that of her husband is very natural. The evidence of PW-12, Ram Khilawan, who is the neighbour of the accused and as such has neither any enmity with the accused nor was he friend with Alakhram and others has also supported the case of the prosecution. Further, Nem Prasad Tondon, PW-1, is the Patwari who prepared the spot map and Devi Das, PW-2 have also supported the case of the prosecution. Further, Dr. V.D.Sonwani, PW-5, who had medically examined the accused, has stated in his report at Ex.P-6, that he was capable of having sex. Further, from the place of occurrence, broken bangles of the prosecutrix were recovered and seizure memo Ex.P-2, was prepared in this respect.

21. Further, the delay in lodging the FIR has been well explained by the prosecution and thus, it cannot be considered a ground for acquittal of the accused. It is clear from the facts and circumstances of the case that the prosecutrix, being a married lady, could not have lodged the FIR on her own, especially in case of Indian circumstances. As stated in the facts on record, her husband was not in the village and returned on the following evening of the incident. Further, the incidence had occurred late in the night and there was no elder person of the family present to go to the Police Station and lodge the complaint regarding the incident. Hence, it is natural for her to wait for her husband to return. This fact is verified by the statements of PW-11 and PW-2. Further, the distance of the police station from the place of residence is shown to be 20 k.m. Thus, the conduct of the prosecutrix and the witnesses was natural and logical and the accused cannot get the benefit of delay in the filing of complaint. In this regard reliance has been placed on the decision of this Court in the

case of Sri Narayan Saha v. State of Tripura[3], which states as under:-

> "5.We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR is really of no consequence, if the reason is explained. In the instant case, the evidence of PW 3, the victim and that of her husband, PW 4, clearly shows that there was initial reluctance to report the matter to the police by PW 4. He, in fact, had taken his wife to task for the incident and had slapped her. In Karnel Singh v. State of M.P. it was observed that a woman who was a victim of sexual violence, is not an accomplice to the crime but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of a culprit. Therefore, the rule of prudence that her evidence must be corroborated in material particulars, has no application. At the most, the Court may look for some evidence which lends assurance.
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> 10. There was no reason as to why a woman, more particularly a married woman, would falsely implicate the two accused persons. Minor discrepancies in the testimony of PWs 3 and 4 were sought to be highlighted. Taking into account the fact that the evidence was recorded in Court after about seven years of the occurrence, these have been rightly held to be of no consequence by both the Trial Court and the High Court." (emphasis supplied) Further, in the case of State of Rajasthan v. N.K.[4], the accused, this Court has held as under:-
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> "14. It is true that the incident dated 1-10-1993 was reported to the police on 5-10-1993. The prosecutrix was a married woman. Her muklana ceremony had not taken place. Muklana ceremony is a rural custom prevalent in Rajasthan, whereunder the bride is left with the parents after marriage having been performed and is taken away by the husband and/or the in-laws to live with them only after a lapse of time. The origin of the custom owes its existence to performance of child-marriages which are widely prevalent there. The muklana was yet to take place. The prosecutrix was a virgin prior to the commission of the crime and this fact finds support from the medical evidence. The parents of such a prosecutrix would obviously be chary to such an incident gaining publicity because it would have serious implications for the reputation of the family and also on the married life of the victim. The husband and the in-laws having become aware of the incident may even refuse to carry the girl to reside with them. The incident if publicised may have been an end to the marriage of the prosecutrix. Added to this is the communal tinge which was sought to be given by the community of the [pic]accused. PW 10, the father of the prosecutrix, the prosecutrix, PW 2 and other witnesses have stated that while they were about to move to the police station they were prevented from doing so by the community fellows of the accused who persuaded them not to lodge a report with the police and instead to have the matter settled by convening a panchayat of the village people.

After all the family of the victim had to live in the village in spite of the incident having taken place. The explanation is not an afterthought. An indication thereof is to be found in the FIR itself where the complainant has stated — "the delay in lodging the report is due to village panchayat, insult and social disrepute". Nothing has been brought out in the cross-examination of the witnesses to doubt the truth and reasonableness of the explanation so offered.

15. We may however state that a mere delay in lodging the FIR cannot be a ground by itself for throwing the entire prosecution case overboard. The Court has to seek an explanation for delay and test the truthfulness and plausibility of the reason assigned. If the delay is explained to the satisfaction of the Court it cannot be counted against the prosecution. In State of Rajasthan v. Narayan this Court observed: (SCC p. 623, para 6) "True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police...."

16. In State of Punjab v. Gurmeet Singh this Court has held: (SCC p. 394, para 8) "The Courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. "

17. So are the observations made by this Court in Karnel Singh v. State of M.P. repelling the defence contention based on delay in lodging the FIR. In the present case, in our opinion the delay in lodging the FIR has been satisfactorily explained." (emphasis supplied)

22. With regard to the alleged discrepancy regarding the date of the occurrence of the incident is also disregarded by this Court in the light of the facts and circumstance of the case. The evidence on record is sufficient to affirm the guilt of the accused on the charge framed against him. Hence, the accused is not entitled to the benefit of doubt as pleaded by him before this Court.

23. Thus, after considering the entirety of the case, we do not see any cogent reason to interfere with the findings of fact recorded by the courts below. The appeal lacks merit and is, accordingly, dismissed.

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

……J.

[ADARSH KUMAR GOEL]

New Delhi, September 25, 2014

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[2] (2013) 14 SCC 481

[4] (2011) 2 SCC 550

[6] (2004) 7 SCC 775

[8] (2000) 5 SCC 30

NON REPORTABLE