

Bombay High Court

Zibarsingh Pilya Bhilal vs State Of Mah.Thr.Pso Amravati on 22 September, 2017

Bench: R. B. Deo

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apeal639.04

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,

NAGPUR BENCH, NAGPUR.

CRIMINAL APPEAL NO.639 OF 2004

Zabarsingh Pilya Bhilala,  
Aged about 32 years,  
R/o Molakheda, Tq. Dharni,  
District Amravati.  
Convict No.C-2767, Amravati  
Central Prison, Amravati.

.... APPELLANT

VERSUS

State of Maharashtra,  
through Police Station Dharni,  
Taluqa - Dharni, District - Amravati.

.... RESPONDENT

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None of the appellant,  
Shri N.B. Jawade, Addl.P.P. for the respondent.  
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CORAM : ROHIT B. DEO, J.

DATED : 22  
nd SEPTEMBER, 2017

ORAL JUDGMENT :

The appellant seeks to assail the judgment and order dated 05-5-2004, delivered by the III rd Ad hoc Assistant Sessions Judge, Achalpur in Sessions Trial 80/1997, by and under which the appellant (hereinafter referred to as the "accused") is convicted for offences punishable under Sections 363, 366 and 376 read with Section 34 of 2 apeal639.04 the Indian Penal Code and is sentenced to suffer rigorous imprisonment for five years, five years and seven years respectively for the aforesaid

offences in addition to payment of fine of Rs.500/- for each offence.

2. The accused faced trial alongwith Anarsingh Jagan More, Bhumsingh Chhotu Masniya and Mansingh Shekdya Waskalya. Anarsingh More absconded and at the instance of the other accused, the trial was separated. The other two accused Bhumsingh and Mansingh are convicted for offences punishable under Sections 363 and 366 of the Indian Penal Code.

3. The record reveals that the learned Counsel appointed to represent the accused has not collected the paper-book. The learned Counsel appointed to represent the accused is absent when the appeal is called out for hearing. Since the learned Counsel has not even collected the paper-book, it is obvious that this Court is not likely to have the benefit of the assistance of the learned Counsel appointed to represent the accused. Consistent with the dictum of the Hon'ble Supreme Court in the case in Bani Singh and others vs. State of Uttar Pradesh reported in (1996) 4 SCC 720, I intend to decide the 3 appeal639.04 appeal on merits.

4. I have carefully scrutinized the original record of the proceeding, with the able and fair assistance of the learned Additional Public Prosecutor Shri N.B. Jawade.

5. The first information report is lodged by the father of the prosecutrix on 11-1-1996 at 12-10 hours. The oral report is at Exhibit 31 and the printed first information report is at Exhibit 32.

6. The oral report Exhibit 31 states that on 10-1-1996 P.W.1 accompanied by his daughter (prosecutrix) and a relative Dhawalsingh (P.W.10) had gone to the field situated in jungle to cut grass. The grass was loaded in the bullock cart and while P.W.1, the prosecutrix (P.W.2) and P.W.10 were returning to the village, at 3'O clock in the afternoon, the accused forcibly took the prosecutrix to jungle. P.W.1 resisted, he was assaulted by the accused on the left leg with a wooden stick and suffered injuries. P.W.1 was assaulted on the ear with an axe by accused Bhumsingh. The daughter of P.W.1 sought the help of Dhawalsingh with the result that even Dhawalsingh (P.W.10) was assaulted by the accused. The accused physically assaulted the 4 appeal639.04 prosecutrix and kidnapped her. P.W.1 further states in the report that the accused wished to forcibly solemnized the marriage of the prosecutrix. On the basis of the said report, offence punishable under Sections 323, 363, 366 read with Section 34 of the Indian Penal Code were registered vide Crime No.6/1996 at the police station Dharni, District Amravati.

7. The case of the prosecution is that the prosecutrix rescued herself from the clutches of the accused and returned to her house at 4-00 p.m. or thereabout on 11-1-1996. The prosecutrix disclosed that she was raped by the accused and on the basis of her statement, an offence punishable under Section 376 of the Indian Penal Code was additionally registered against the accused. The completion of investigation led to submission of the charge-sheet in the Court of the learned Judicial Magistrate First Class, Dharni, who committed the case to the Sessions Court. The learned Sessions Judge framed charge at Exhibit 22. The accused pleaded not guilty and claimed to be tried. The defence of the accused, as is evident from the trend and tenor of the cross-examination and the statement recorded under Section 313 of the Code of Criminal Procedure, is of total denial and false implication.

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8. The father of the prosecutrix who is the informant is examined as P.W.1. He has deposed that on the day of the incident, accompanied by the prosecutrix and P.W.10, he had gone to the field for cutting grass. The grass was loaded in the bullock-cart and on the way back at Awalaghat, they were accosted by the accused. The prosecutrix and P.W.1 were on foot following the bullock-cart. The accused caught the hands of the prosecutrix while the other accused started beating P.W.1. He has deposed that accused Bhumsingh dealt an axe blow on the left leg, accused Anarsingh dealt an axe blow near the ear and accused Mansingh assaulted the prosecutrix. The accused took the prosecutrix to Ahirkhed towards the jungle. P.W.1 reached his house and then went to Dharni Police Station to lodge the report. He states that on next day the prosecutrix returned and told him that she escaped from the clutches of the accused. In the cross-examination, P.W.1 is suggested that the prosecutrix and the accused were in love, which suggestion is denied. P.W.1, however, accepts that accused proposed to the prosecutrix and that P.W.1 declined the marriage proposal. P.W.1 denies the suggestion that the prosecutrix was willing to marry the accused. It is suggested to P.W.1 that there existed a land dispute between P.W.10 Dhawalsingh and one of the 6 apeal639.04 accused Anarsingh, which suggestion is denied. P.W.1 has denied the suggestion that prosecutrix reached Awalaghat before P.W.1 and P.W.10 and since P.W.1 and P.W.10 did not locate the prosecutrix, apprehending that the prosecutrix had eloped with the accused, a false report was lodged.

9. The cross-examination of P.W.1 reveals that the evidence of P.W.1 that the accused accosted P.W.1 the prosecutrix and P.W.10 and then the accused forcibly took the prosecutrix to the jungle, is not seriously challenged. The defence, as is evident from the trend and tenor of the cross-examination is that the prosecutrix and the accused were in love and that a false report was lodged since P.W.1 did not locate the prosecutrix and suspected that she had eloped with the accused. I find the evidence of P.W.1 to be broadly consistent with the first information report and even otherwise trustworthy.

10. Be it noted that, under the circumstances, although the incident occurred at 3-00 p.m., the first information report lodged at 12-00 noon the next day, is not unduly delayed. The police station is at a distance of 40 km. The informant reached his house on 10-1-1996 and went to the police station on the next day. The village is situated 7 apeal639.04 in a tribal area and the topography and the terrain is challenging to say the least. The informant was not expected to attempt to reach the police station in the evening considering that the police station is at a distance of 40 km. from the village and the lodging of the first information report the next day is, therefore, sufficiently explained by the prosecution.

11. The prosecutrix is examined as P.W.2. Her testimony is more or less consistent with the testimony of P.W.1. She states that on the day of the incident, she accompanied P.W.1 and P.W.10 to the field to cut the grass. The grass was cut till 2-00 p.m., was loaded in the bullock-cart and while returning to the village, the prosecutrix P.W.1 and P.W.10 were accosted by the accused. P.W.2 has deposed that the accused caught her hands and while the other accused were physically assaulting P.W.1 and P.W.10, the accused started forcibly taking her towards the jungle. She has deposed that since she refused to accompany the accused, she was beaten by stick. She has further narrated the

specific role played by the other accused Bhumsingh, Mansingh and Anarsingh. P.W.2 prosecutrix has deposed that she was raped by the accused twice. She states that she escaped from the clutches of the accused and returned home the next day at 4-00 p.m. 8 apeal639.04 She then deposes that she was medically examined at Amravati. It must be noted, that the prosecution version is that since lady doctor was not available at Dharni, the prosecutrix was examined at Dufferin Hospital, Amravati. The cross-examination has not shaken the credibility of the prosecutrix. While she admits that the accused proposed marriage and that her father P.W.1 rejected the proposal, she denies the suggestion that she was ready to marry the accused and that she was in love with the accused. A suggestion was given to the prosecutrix that since P.W.1 and P.W.10 did not locate her, they searched for her. This suggestion was given to the prosecutrix in the context of the defence that since P.W.1 and P.W.10 did not locate the prosecutrix, the report came to be lodged against the accused suspecting that the prosecutrix had eloped with the accused. The suggestion is, however, denied.

The evidence of the prosecutrix is implicitly reliable and confidence inspiring. The cross-examination has not seriously challenged the version of the prosecutrix. Not a single omission partaking the character of contradiction or improvement or embellishment is brought on record.

12. The other eyewitness to the incident is Dhawalsingh who 9 apeal639.04 is examined as P.W.10. The evidence of P.W.10 is substantially and broadly consistent with the evidence of P.W.1 and P.W.2. An omission or two is brought on record. However, the omission is too insignificant to cause any damage to the credibility to the testimony of P.W.10.

13. The evidence of the prosecutrix is more than amply corroborated by the medical evidence. The medical examination reports are at Exhibits 63 and 64 and the medical practitioner who has examined the prosecutrix is examined as P.W.8. The medical examination report Exhibit 63 refers the following injuries on the person of the prosecutrix:

- i) Abrasion size 2 cm. x 1/2 cm. over the back of right elbow joint.
- ii) Lenier contusion 4 cm. x 1/2 cm. over the left scapula region. It was tender.
- iii) Lenier contusion 3 cm. x 1/2 cm. over the middle part of back. It was also tender.
- iv) Abrasion of 1/2 x 1/2 cm. over back side of the lower legs.  
over calf.
- v) Contusion with haematoma, 4 cm. x 3 cm. over the left buttock.
- vi) Contusion 4 cm. x 2 cm. with abrasion over right buttock.

10 apeal639.04 The examination of the genitalia and private part of the prosecutrix was separately conducted and the report of the said examination is at Exhibit 64. The

following findings and injuries are recorded in Exhibit 64 :

- i) Abrasion 1½ x ½ cm. over the lower side of labia majora,
- ii) Multiple small abrasion on the vagina orifices,
- iii) Vagina admits two fingers with difficulty. Uterus ante generated small size abrasion about 1 cm. near introitus no fresh bleeding,
- iv) lacerated wound 1/2cm. X ½ cm. inside the introitus lower side of vagina.

14. The medical officer P.W.8 has opined that the prosecutrix was raped. In the cross-examination, P.W.8 states that although Exhibit 64 does not specifically mention that the hymen was torn, the fact that vagina admits two fingers with difficulty would imply that the hymen was torn. The cross-examination has failed to impeach the evidence of P.W.8.

15. Be it noted, that in all fairness, the learned Additional Public Prosecutor Shri N.B. Jawade has stated that in so far as the injuries suffered by P.W.1 and P.W.10 are concerned, although the 11 appeal 639.04 respective requisitions to the medical officer are proved as Exhibits 41 and 42, the injury certificates are not proved since the medical practitioner who has issued the injury certificates is not examined. Learned Additional Public Prosecutor fairly states that the fact that P.W.1 and P.W.10 suffered injuries may not be held as proved only on the basis of their testimonies in view of the failure of the prosecution to prove the injury certificates.

16. The learned Additional Public Prosecutor Shri N.B. Jawade invites my attention to the articulation of the Hon'ble Supreme Court in State of Maharashtra vs. Chandrapraksh Kewalchand Jain reported in (1990) 1 SCC 550 and in particular to paragraphs 15 to 17 & 19 which read thus :

"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 12 appeal 639.04 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 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 13 appeal639.04 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 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 14 appeal639.04 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 realize that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

18. ....

19. It is time to recall the observations of this Court made not so far back in *Bharwada Bhognibhai Hirjibhai*: (SCC p.224, para 9) "In the Indian setting, refusal to act on the testimony of a victim of sexual assaults 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 15 appeal639.04 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 focused 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."

Proceeding further this Court said: (SCC pp. 225-26, para 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 16 appeal639.04 alliance with a suitable match from a respectable of 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 embarrassed in relating the incident to others being over powered 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."

17. The facts of Chandrapraksh Kewalchand Jain were that the State challenged the judgment of this Court by and under which the judgment of the learned Sessions judge was reversed and the accused was acquitted of offence punishable under Section 376 of the Indian Penal Code. This Court was pleased to observe that it is only in the rarest of rare cases and if the Court finds that the testimony of the prosecutrix is so trustworthy truthful and reliable, that other corroboration may not be necessary. The Hon'ble Apex Court, 17 appeal639.04 however, held that the law was not correctly



stated by this Court and the law is just the reverse.

18. The learned Additional Public Prosecutor has also relied on the judgment of the Hon'ble Supreme Court in the case of In Vijay alias Chinees vs. State of Madhya Pradesh reported in (2010) 8 SCC 191 the Hon'ble Supreme Court observes thus:

"9. In State of Maharashtra v. Chandraprakash Kewalchand Jain this Court held that a woman, who is the victim of sexual assault, 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 an accomplice. The Court observed as under:

"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."

10. In State of U.P. Vs. Pappu this Court held that even in a case where it is shown that the girl is a girl of easy virtue or a girl habituated to sexual intercourse, it may not be a ground to absolve the accused from the charge of rape. It has to be established that there was consent by her for that particular occasion. Absence of injury on the prosecutrix may not be a factor that leads the court to absolve the accused. This Court further held that there can be conviction on the sole testimony of the prosecutrix and in case, the court is not satisfied with the version of the prosecutrix, it can seek other evidence, direct or circumstantial, by which it may get assurance of her testimony. The Court held as under: (SCC p. 597, para 12) "12. It is well settled that a prosecutrix complaining of having been a victim of the offence of

rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted without corroboration in material particulars. She stands at a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would do."

11. In *State of Punjab v. Gurmit Singh* this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under: (SCC pp. 394-96 & 403, paras 8 & 21) "8. .... The court overlooked the situation in which a poor helpless minor girl had found herself in the company of three desperate young men who were threatening her and preventing her from raising any alarm. Again, if the investigating officer did not conduct the investigation properly or was negligent in not being able to trace out the driver or the car, how can that become a ground to discredit the testimony of the prosecutrix? The prosecutrix had no control over the investigating agency and the negligence of an investigating officer could not affect the credibility of the statement of the prosecutrix..... 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... Seeking corroboration of her statement before replying upon the same, as a rule, in such cases amounts to adding insult to injury..... 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. ....

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21. .... 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."

(emphasis in original)

12. In State of Orissa v. Thakara Besra this Court held that rape is not mere a physical assault, rather it often distracts (sic destroys) the whole personality of the victim. The rapist degrades the very soul of the helpless female and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, non-examination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence.

13. In State of H.P. v. Raghubir Singh this Court held 21 appeal639.04 that there is no legal compulsion to look for any other evidence to corroborate the evidence of the prosecutrix before recording an order of conviction. Evidence has to be weighed and not counted. Conviction can be recorded on the sole testimony of the prosecutrix, if her evidence inspires confidence and there is absence of circumstances which militate against her veracity. A similar view has been reiterated by this Court in Wahid Khan v. State of M.P. placing reliance on earlier judgment in Rameshwar v. State of Rajasthan.

14. Thus, the law that emerges on the issue is to the effect that statement of the prosecutrix, if found to be worthy of credence and reliable, requires no corroboration. The court may convict the accused on the sole testimony of the prosecutrix."

19. The evidence of the prosecutrix is implicitly reliable and trustworthy. In the factual matrix, her evidence is more than amply corroborated by the testimonies of P.W.1, P.W.8 and P.W.10 and the medical evidence on record. The prosecution evidence, tested on the touchstone of law enunciated by the Hon'ble Supreme Court in the judgments referred to supra proves the offence under Section 376 of the Indian Penal Code beyond reasonable doubt.

20. The appeal is sans merit and is dismissed. Bail bond of the accused shall stand cancelled. The accused be taken into custody forthwith to serve the sentence.

The appeal is disposed of accordingly.

JUDGE

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