

Rafiq vs State Of U.P on 14 August, 1980

Equivalent citations: 1981 AIR 559, 1981 SCR (1) 402, AIR 1981 SUPREME COURT 96, 1981 ALL. L. J. 139, 1980 SCC(CRI) 947, (1981) 7 ALL LR 120, 1981 (1) SCR 402, 1981 BLJR 101, 1981 MADLW (CRI) 41, 1981 SCC 559, (1981) ALLCRIR 95, 1980 (4) SCC 262, AIR 1981 SUPREME COURT 559, 1981 CRILR(SC MAH GUJ) 78, (1981) 1 SCR 402 (SC), (1981) CURLJ(CCR) 121, 1981 SCC(CRI) 947

Author: V.R. Krishnaiyer

Bench: V.R. Krishnaiyer, O. Chinnappa Reddy

PETITIONER:

RAFIQ

Vs.

RESPONDENT:

STATE OF U.P.

DATE OF JUDGMENT 14/08/1980

BENCH:

KRISHNAIYER, V.R.

BENCH:

KRISHNAIYER, V.R.

REDDY, O. CHINNAPPA (J)

CITATION:

1981 AIR 559

1981 SCR (1) 402

1980 SCC (4) 262

ACT:

Constitution of India 1950 Art. 136-Concurrent findings of fact Appeal by special leave against conviction for rape by Lower Courts-Supreme Court when would interfere.

HEADNOTE:

Indian Penal Code 1860, s. 376-Evidence and proof-Absence of injuries on prosecution-Whether fatal to the prosecution-Testimony of prosecutrix-Corroboation whether necessary.

The petitioner was convicted on the charge of committing rape on a middle aged Bal Sewika in a village

welfare organisation who was sleeping a girls school. The trial Court imposed a sentence of 7 years' rigorous imprisonment. The High Court, confirmed the conviction and sentence.

In the Special Leave Petition to this Court it was contended on behalf of the petitioner relying on the decision of this Court in Pratap Mishra & Ors. vs. State of Orissa, A.I.R. 1977 S.C. 1307 that absence of injuries on the person of the victim was fatal to the prosecution and that corroborating evidence was an imperative component of judicial credence in rape cases. It was also submitted that the sentence of 7 years was too severe.

Dismissing the petition;

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HELD: 1. No interference on the score of culpability or quantum of punishment is called for. 1405

2. Concurrent findings of fact ordinarily acquire a deterrent sanctity and tentative finality when challenged in this Court. The special jurisdiction under Article 136 of the Constitution which is meant mainly to correct manifest injustice or errors of law of great moment cannot be invoked in the instant case. [403 H]

3.(i) The facts and circumstances often vary from case to case, the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate, and so, rules of prudence relevant in one fact-situation may be inept in another. The argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases cannot be accepted. [404 D]

(ii) Pratap Misra's case laid down no inflexible axiom of law on either point. [404 C]

4. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. [404 E]

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In the instant case the testimony of the prosecutrix has commanded acceptance from two courts. A sensitized judge who sees the conspectus of circumstances in its totality hardly rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. There is none in this case. The confirmation of the conviction by the Courts below must therefore, be a matter of course. [404H, 405B]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Special Leave Petition (Criminal) No. 950 of 1980.

From the Judgment and order dated 21-9-1979 of the Allahabad High Court in Crl. A. No. 2305/74.

U. S. Prasad for the Petitioner.

The Judgment of the Court was delivered by, KRISHNA IYER, J.-This special Leave Petition relates to a conviction and sentence for an offence of rape. The escalation of such crimes has reached proportions to a degree that exposes the pretensions of the nation's spiritual leadership and celluloid censorship, puts to shame our ancient cultural heritage and - humane claims and betrays a vulgar masculine outrage on human rights of which woman's personal dignity is a sacred component. We refuse special leave and briefly state a few reasons for doing so.

Draupadi, a middle-aged Bal Sewika in a village welfare organization' was sleeping in a girls' school where she was allegedly raped by Rafiq, the petitioner, and three others. The offence took place around 2.30 a.m. On August 22/23, 1971, and the next morning the victim related the incident to the Mukhiya Sewika of the village. A report was made to the Police Station on August 23, 1971 at mid-day. The investigation that followed resulted in a charge-sheet, a trial and, eventually, in a conviction based substantially on the testimony of the victim. Although some of the witnesses. tell-tale fashion. shifted their loyalties and betrayed the prosecution case, the trial court' entered a finding of guilt against the appellant, giving the benefit of doubt to the other three obscurely. A 7-year sentence of rigorous imprisonment was awarded as justly merited. having regard to the circumstances. The appeal carried to the High Court proved unsuccessful but, undaunted, he petitioner has sought leave to appeal to this Court.

Concurrent findings of fact ordinarily acquire a deterrent sanctity and tentative finality when challenged in this Court and we rarely invoke the special jurisdiction under Art. 136 of the Constitution which is meant mainly to correct manifest injustice or errors of law of great moment. By these substantial canons the present petition for leave has not even a dog's chance.

Counsel contended that there was absence of corroboration of the testimony of the prosecutrix, that there was absence of injuries on the person of the woman and so the conviction was unsustainable, tested on the touchstone of case-law. None of these submissions has any substance and we should, in the ordinary course, have desisted from making even a speaking order but counsel cited a decision of this Court in Pratap Misra & Ors. v. State of Orissa and urged that absence of injuries on the person of the victim was fatal to the prosecution and that corroborative evidence was an imperative component of judicial credence in rape cases.

We do not agree. For one thing, Pratap Misra's case (supra) laid down no inflexible axiom of law on either point. The facts and circumstances often vary from case to case. the crime situation and the myriad psychic factors, social conditions and people's life-styles may fluctuate, and so, rules of prudence relevant in one fact-situation may be inept in another. We cannot accept the argument that regardless of the specific circumstances of a crime and criminal milieu, some strands of probative reasoning which appealed to a Bench in one reported decision must mechanically be extended to other cases. Corroboration as a condition for judicial reliance on the testimony of a prosecutrix is not a matter of law, but a guidance of prudence under given circumstances. Indeed,

from place to place, from age to age. from varying life-styles and behavioural complexes, inferences from a given set of facts, oral and circumstantial, may have to be drawn not with dead uniformity but realistic diversity lest rigidity in the shape of rule of law in this area be introduced through a new type of precedential tyranny. The same observation holds good regarding the presence or absence of injuries on the person of the aggressor or the aggressed.

There are several "sacred cows" of the criminal law in Indo-Anglian jurisprudence which are superstitious survivals and need to be re-examined. When rapists are revelling in their promiscuous pursuits and half of humankind-womankind- is protesting against its hapless lot, when no woman of honour will accuse another of rape since she sacrifices thereby what is dearest to her, we cannot cling to a fossil formula and insist on corroborative testimony, even if taken as a whole, the case spoken to by the victim strikes a judicial mind as probable. In this case, the testimony has commanded acceptance from two courts. When a woman is ravished what is inflicted is not merely physical injury. but 'the deep sense of some deathless shame'.

"A rape! a rape!.....

Yes, you have ravish'd justice;

Forced her to do your pleasure.

Hardly a sensitized judge who sees the conspectus of circumstances in its totality and rejects the testimony of a rape victim unless there are very strong circumstances militating against its veracity. None we see in his case, and confirmation of the conviction by the courts below must, therefore, be a matter of course. Judicial response to human rights cannot be blunted by legal bigotry.

The case before us occurred in 1971 and is drawing to a close in 1980. What a pity ! Now that there is considerable public and parliamentary attention to the violent frequency of rape cases it is time that the court reminds the nation that deterrence comes more effectively from quick investigations, prompt prosecutions and urgent finality, including special rules of evidence and specialised agencies for trial. Mechanical increase of punitive severity, without more, may yield poor dividends for women victims. In Dr. Johnson's time public hanging for pick-pocketing was prevalent in England but as Dr. Johnson sardonically noted pick-pockets were busy plying their trade among crowds gathered to see some pick-pocket being publicly executed. Dr. Johnson's wit is our wisdom. The strategy for a crime- free society is not draconian severity in sentence but institutional sensitivity, processual celerity and prompt publicity among the concerned community. "Lawlessness is abetted by a laggard, long-lived, lacunose and legalistic litigative syndrome rather than by less harsh provisions in the Penal Code". The focus must be on the evil, not its neighbourhood.

Counsel submitted that a 7-year sentence was too severe. No, because, as we have stated earlier, rape for a woman is deathless shame and must be dealt with as the gravest crime against human dignity. No interference on the score of culpability or quantum of punishment is called for in the circumstances.

We refuse special leave.

N.V.K.

Petition dismissed.