State Of Rajasthan vs Om Prakash on 3 May, 2002

Equivalent citations: AIR 2002 SUPREME COURT 2235, 2002 (5) SCC 745, 2002 AIR SCW 2346, 2002 (2) LRI 297, 2002 (6) SRJ 258, 2002 ALL MR(CRI) 2063, 2002 CRILR(SC MAH GUJ) 470, 2002 (1) JT (SUPP) 304, 2002 (4) SCALE 400, 2002 SCC(CRI) 1210, 2002 (3) SLT 484, 2002 CRILR(SC&MP) 470, 2002 (1) UJ (SC) 759, 2002 (2) BLJR 1228, 2002 BLJR 2 1228, (2002) 97 DLT 681, (2002) 2 EASTCRIC 191, (2002) 3 RAJ CRI C 643, (2002) 4 RAJ LW 567, (2002) 2 RECCRIR 764, (2002) 2 CURCRIR 184, (2002) 3 SUPREME 655, (2002) 3 ALLCRIR 2138, (2002) 4 SCALE 400, (2002) 2 UC 321, (2002) 45 ALLCRIC 130, (2002) 3 ALLCRILR 902, (2002) 2 CRIMES 386, 2002 (2) ANDHLT(CRI) 59 SC, (2002) 2 ANDHLT(CRI) 59

Author: B.P. Singh

Bench: B.P. Singh

CASE NO.:
Appeal (crl.) 1975 of 1996

PETITIONER:
STATE OF RAJASTHAN

Vs.

RESPONDENT:
OM PRAKASH

DATE OF JUDGMENT: 03/05/2002

BENCH:
Y.K. Sabharwal & B.P. Singh

JUDGMENT:

Y.K. Sabharwal, J.

It is necessary for the courts to have a sensitive approach when dealing with cases of child rape. The effect of such a crime on the mind of the child is likely to be lifelong. A special safeguard has been provided for children in the Constitution of India in Article 39 which, inter alia, stipulates that the

State shall, in particular, direct its policy towards securing that the tender age of the children is not abused and the children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that the childhood and youth are protected against exploitation and against moral and material abandonment. In the present case, the victim at the time of occurrence of rape was a child aged eight years. The accused was youth aged 18 years. The Additional District and Sessions Judge found him guilty for offence under Section 376, Indian Penal Code and imposed rigorous imprisonment for seven years and fine of Rs.1,000/- and in default of payment of fine to further undergo six months' rigorous imprisonment. The High Court by the impugned judgment dated 14th November, 1995 giving to the accused the benefit of doubt acquitted him. The State is in appeal on grant of special leave.

The house of the accused is quite close to that of the prosecutrix. The incident of rape is said to have taken place on 19th March, 1989 in a village. The FIR was registered on 20th March, 1989. The medical examination of the prosecutrix also took place on 20th March, 1989. The prosecution to bring home the charge against the accused examined 14 witnesses including the parents of the prosecutrix, her brother, aunt, four doctors, police officials besides the prosecutrix. The respondent-accused was held guilty of the offence by the trial court primarily relying upon the testimony of the father of prosecutrix (PW-1), mother (PW-2), the prosecutrix (PW-5) and Dr. Harsh Chand Jain (PW-11).

The testimony of PW-2 is that her daughter had gone to the house of Sita Singh to take therefrom butter milk. Accused is the son of Sita Singh. When she did not return for a long time, PW-2 went to see her in the said house. When she went to that house, the door was closed which she pressed open. There she found that her daughter was lying naked on a cot and the accused was lying over him penetrating his penis into her vagina. On seeing this she shouted. Whereupon leaving her daughter, the accused ran away. She found her daughter totally unconscious. She lifted her and brought her back home. At that time, husband and brother-in-law of PW-2 had gone to another village. Her daughter gained consciousness at the time of sunset. She deposed that Om Prakash, the respondent, was alone at home. Next day a report was lodged with the police. She also deposed in her cross-examination that earlier too her daughter used to bring butter milk from the house of Sita Singh.

PW-1, father of the prosecutrix, deposed that he had gone with his brother to his relatives in village Bateri and came back in the evening at about 7 o' clock when his wife told him as to what Om Prakash had done to their daughter. He did not go to the police station at night as there was no means of conveyance and reached the police station at 10/11 a.m. the next day and lodged the report. The police station is about 15 kms. away from their village.

PW-4 is the wife of brother of PW-1. Her testimony is that she saw PW-2 coming weeping and taking prosecutrix in her lap. She also deposed that her husband and younger brother-in-law had gone to the relatives in village Bateri on that date. She has supported the version given by PW-2.

PW-5 is the prosecutrix. Being a child witness, the learned Additional District and Sessions Judge before administering her oath asked general questions so as to satisfy that she is competent to

answer the questions and take oath. Her statement in court was recorded about four years after the date of the incident. Her deposition was that she had gone to the house of Om Prakash to bring butter milk on that date. At that time no other person was at his house. Om Prakash closed the door and asked her to come inside and he will put butter milk in the utensil; he incited her and carried her in room; took out her under garments, inserted cloth in her mouth and widened her both legs and put his body on her and penetrated his penis into her vagina as a result whereof vagina started bleeding and she became unconscious.

PW-11 is Dr. Harsh Chand Jain. His testimony is that, on 20th March, 1989 he was on duty in General Hospital, Alwar. On the request of the S.H.O. he examined prosecutrix. Externally there was no injury on her body but on the internal parts of both thighs and at the outer part of the left foot there were signs of blood. For internal examination she was referred to Family Incharge Hospital. The injury report exhibit P8 was in his handwriting. In Ex.P-8, the reports of Dr. Pushpa Gupta and Dr. V.P. Agarwal had been incorporated. PW-11 stated that "In my opinion, the intercourse was done with the girl i.e. the possibility of doing the intercourse cannot be ruled out". The tip of the finger in the whole of her uterus was passing easily. PW-11 deposed that "According to the opinion of the lady doctor, the opinion of the pathologist and my opinion of the examination, something was penetrated in her vagina." (Emphasis has been supplied by us). The only cross-examination of the witness was that "The main examination report by Doctor Rupa Gupta and Doctor V.P. Agarwal is not there before me. The seminal stains were not present on the clothes. After the sexual contact, the vagina remains in tact."

The aforesaid in brief is the evidence which resulted in judgment of conviction by the trial court and acquittal by the High Court.

There was delay of nearly 26 hours in lodging the FIR. The offence is alleged to have taken place at about 9 a.m. The FIR was registered at about 11.30 a.m. on the next day. It was contended by Mr. Bachawat, learned counsel for the respondent, that this delay had assumed importance and was fatal particularly when the brother of the prosecutrix , namely, Mam Raj (PW-6) was admittedly at the house. The delay, according to the counsel, has resulted in embellishments. Reliance has been placed on the decision in the case of Thulia Kali v. The State of Tamil Nadu [AIR 1973 SC 501] holding that the first information report in a criminal case is extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye witnesses present at the scene of occurrence. Delay in lodging the first information report quite often results in embellishment which is a creature of afterthought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. There can be no dispute about these principles relied upon by Mr. Bachawat but the real question in the present case is about the explanation for the delay. It is not at all unnatural for the family members to await the arrival of the elders in the family when the offence of this nature is committed before taking a decision to lodge a report with the police. The reputation and prestige of the family and the career

and life of a young child is involved in such cases. Therefore, the presence of the brother of the prosecutrix at home is not of much consequence. It has been established that the father of the girl along with his brother came back to their house at 7 o'clock in the evening. The girl was unconscious during the day. PW-2 told her husband as to what had happened to their daughter. The police station was at the distance of 15 kms. According to the testimony of PW-1 no mode of conveyance was available. The police was reported the next day morning and FIR was recorded at 11.30 a.m. The delay in reporting the matter to the police has thus been fully explained.

A contention was also urged on behalf of the accused before the High Court that his age was 15 years and not 18 years at the time of incident. The basis of this contention was an affidavit of the mother of the accused and certain school certificates. Both the courts relying upon the evidence of Dr. Raj Kumar Misra, PW-9, held otherwise and came to the conclusion that the accused was capable of doing intercourse.

The main reasons which prevailed with the High Court in reversing the conviction were two. First, the non-examination of other independent witnesses and second the rejection of medical evidence, i.e., testimony of Dr. Harsh Chand Jain (PW-

11).

As to non examination of other witnesses, the High Court has noticed that the incident had taken place in the environment of the village where there are other residential houses; the house of the prosecutrix from where the incident took place is 2-3 houses away and in the house of the accused his other brothers and sisters-in-law also live. The testimony of PW-2 is that seeing her the accused ran away. The High Court has held that in the light of these facts it was unnatural that PW-2 and PW-5 would not have shouted and others might not have gathered at the place of incidence and astonishingly except the family members no other witness has come forward to support the case of the prosecution. The High Court has also described as unnatural the statement of the mother that except her husband's brother's wife PW-4, not a single person of the village had come to her house. The approach of the High Court can be best described in the words of the High Court itself as follows:

> "It is not acceptable that on committing such type of heinous crime, not a single person might have come forward to give the statement. In such type of crime in which an innocent girl is the victim, not only the neighbour but other persons can come to give the evidence and doing such thing by them indicate their natural conduct."

The conviction for offence under Section 376 IPC can be based on the sole testimony of a rape victim is well settled proposition. In State of Punjab v. Gurmit Singh & Ors. [(1996) 2 SCC 384], referring to State of Maharashtra v. Chandraprakash Kewal Chand Jain [(1990) 1 SCC 550], this Court held that 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. It has also

been observed in the said decision by Dr. Justice A.S. Anand (as His Lordship then was), speaking for the court, that 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.

In State of H.P. v. Gian Chand [(2000) 1 SCC 71] Justice Lahoti speaking for the Bench observed that the Court has first to assess the trustworthy intention of the evidence adduced and available on record. If the court finds the evidence adduced worthy of being relied on, then the testimony has to be accepted and acted on though there may be other witnesses available who could have been examined but were not examined.

We have scanned and scrutinized very carefully the evidence on record in particular the evidence of the parents of the prosecutrix, her brother, prosecutrix and PW-11, Dr. Harsh Chand Jain with a view to satisfy our conscious to find out whether the verdict of conviction of the respondent that had been rendered by the learned Additional District and Sessions Judge could, in law, be upset by the High Court. The evidence has been found by us to be trustworthy, convincing and reliable. The High Court seems to have overlooked that it had been established on record that at the time of the incident Om Prakash was alone at home. When such an act is done, the natural tendency is not to talk about it to others but, to an extent possible, hide it. There was nothing unnatural for other villagers not visiting the house of PWs-1 and 2. Being a child witness, we have examined the testimony of PW-5 and that of her mother with utmost care and caution. The High Court has clearly committed a serious illegality in assuming that in natural course of events if rape had been committed, the young child girl and her mother would have shouted so as to collect others and they would have visited her house. The prosecutrix was unconscious. There was no question of prosecutrix shouting as assumed by the High Court. Too much was made by the High Court on account of non-examination of persons other than the family members. The aspect of the non-examination was given undue importance without having regard to the contextual facts. The cases involving sexual molestation and assault require a different approach a sensitive approach and not an approach which a court may adopt in dealing with a normal offence under penal laws. It was also sought to be suggested that there were some disputes between the accused and the father of the prosecutrix over exchange of some land and that is the reason for their implicating the accused. There is nothing reliable on the record to substantiate that aspect. No such suggestion was even put in the cross-examination of the father of the prosecutrix. On the facts in hand, we find it difficult to accept that the revenge on account of alleged dispute regarding exchange of land would be taken by the father of the prosecutrix by foisting on the accused a false case of rape involving his young daughter particularly in the setting of a village environment. The conviction could not be set aside for the non-examination of independent witness.

As to the second reason, we find that the evidence of PW-11, Dr.Harsh Chand Jain, is clear and specific. He was the author of the report. Though ideally Dr. Pushpa Gupta could have been

examined or her absence explained but that does not destroy the prosecution case which otherwise stands proved. The High Court was clearly in error in coming to the conclusion that in the absence of evidence of Dr. Pushpa Gupta, there was no support from any medical evidence. PW-11 had also examined her. He had referred the prosecutrix to Dr.Pushpa Gupta. Dr. Pushpa Gupta had reported to PW-11 who categorically stated that in his opinion on examination something had been penetrated in the vagina of the prosecutrix and that intercourse was done with the girl i.e. the possibility of doing the intercourse cannot be ruled out. For no valid reason the High Court discarded the evidence of the doctor.

The evidence of a child witness is required to be evaluated carefully as the child may be swayed by what others may tell him or her as the child is an easy pray to tutoring. Wisdom requires that the evidence of child witness must find adequate corroboration before it is relied on {State of U.P. v. Ashok Dixit & Anr. [JT 2000 (2) SC 107]}. We have already held that in the present case we have carefully examined the evidence of the child and the other evidence. We find the reasons given by the High Court for rejecting the said evidence wholly unconvincing. It is unfortunate that what to talk of considering, the High Court has not even noticed the testimony of the prosecutrix in the judgment under appeal Learned counsel for the respondent contended that if there was any forcible sexual intercourse, it would have resulted in some injuries upon the prosecutrix and in support relied upon Joseph s/o Kooveli Poulo v. State of Kerala [JT 2000 (6) SC 195]. This decision has no relevance. As observed therein, the injuries are not always a sine qua non to prove a charge of rape. Let it not be forgotten that we are considering the case of a rape on a girl child aged eight years and not on a grown up woman.

Child rape cases are cases of perverse lust for sex where even innocent children are not spared in pursuit of the sexual pleasure. There cannot be anything more obscene than this. It is a crime against humanity. Many such cases are not even brought to light because of social stigma attached thereto. According to some surveys, there has been steep rise in the child rape cases. Children need special care and protection. In such cases, responsibility on the shoulders of the courts is more onerous so as to provide proper legal protection to these children. Their physical and mental immobility call for such protection. Children are the natural resource of our country. They are country's future. Hope of tomorrow rests on them. In our country, a girl child is in a very vulnerable position and one of the modes of her exploitation is rape besides other mode of sexual abuse. These factors point towards a different approach required to be adopted. The overturning of a well considered and well analyzed judgment of the trial court on the grounds like non- examination of other witnesses, when the case against the respondent otherwise stood established, beyond any reasonable doubt was not called for. The minor contradiction of recovery of one or two underwear was wholly insignificant. Lastly, it was contended on behalf of the respondent that the incident took place about 13 years back and by now the accused has matured and would be around 31 years of age and having already undergone nearly three years of sentence, the same may be treated by this Court as sufficient punishment to him and, therefore, taking a sympathetic view, the sentence already undergone be imposed. We are unable to accept the contention. The trial court imposed on the respondent sentence of seven years' rigorous imprisonment besides fine, as earlier noticed. Having played with the life of a child, the respondent does not deserve any leniency and for him sympathy on the ground sought for will be wholly uncalled for. The respondent deserves to undergo the

remaining part of the sentence awarded by the learned Additional District and Sessions Judge.

For the aforesaid reasons, we allow the appeal and set aside the judgment of the High Court and restore that of the trial court. Bail bonds of the respondent shall be cancelled and respondent be taken into custody forthwith to undergo the remaining sentence.

.....,J.

[Y.K. Sabharwal] .....,J.

[B.P. Singh] May 3, 2002.