WAHID KHAN

v.

STATE OF MADHYA PRADESH

(Criminal Appeal No. 1798 of 2008)

DECEMBER 01, 2009

[J.M. PANCHAL AND DEEPAK VERMA, JJ.]

Penal Code, 1860 – ss. 366 and 376 – Rape on 12 years old girl – Prosecution for – FIR lodged by prosecutrix immediately after the incident – A police official who found the accused red-handed, corroborating the evidence of prosecutrix – Medical report showing no rupture of hymen – Non-examination of doctor who examined the prosecutrix – Conviction u/s. 376 and acquittal u/s. 366 by Courts below – On appeal, Held: Accused liable to be convicted – Evidence of prosecutrix is consistent and corroborated by evidence of police officer – Non-examination of doctor not fatal – Even if hymen was not ruptured, the act of accused could constitute offence of rape – To make out an offence of rape, depth of penetration is immaterial.

Evidence – Corroboration – In rape cases – Need for – Evidentiary value of prosecutrix – Held: In rape cases testimony of prosecutrix stands at par with that of an injured eye-witness – Corroboration is not a sine qua non for conviction in a rape case – If evidence of prosecutrix inspires confidence, it needs no corroboration.

Appellant-accused was prosecuted u/ss. 366 and 376 IPC for committing rape of a minor girl. Co-accused was also prosecuted u/ss. 342 and 366 IPC. Trial Court acquitted the co-accused of all the charges. Appellant-accused was convicted u/s. 376 and acquitted of charges u/s. 366. High Court confirmed the order of trial court. Hence the present appeal.

A Dismissing the appeal, the Court

HELD: 1.1. The version of the prosecutrix right from lodging of the FIR, till her examination by the doctor and till she deposed in court, had been absolutely consistent. B Not only this, to corroborate further, the evidence of P.W.3 is also on record who had caught the appellant red-handed which fully establishes that it was the appellant who had committed offence of rape. [Para 30] [1217-E-F]

Radhu v. State of Madhya Pradesh (2007) 12 SCC 57, C distinguished.

1.2. Even if doctor had not been examined, it would not throw or completely discard the prosecution story. The evidence of prosecution witnesses is fully D trustworthy and there is no reason to doubt genuineness thereof. Corroboration is not the *sine qua non* for conviction in a rape case. In the instant case, even without the examination of doctor, the evidence of prosecutrix stands fully corroborated by the evidence of E P.W.3, Sub-inspector of the Police Station who had virtually caught the appellant red-handed. [Paras 19 and 23] [1214-E-F; 1215-E-F]

Rameshwar v. State of Rajasthan AIR 1952 SC 54, relied on. F

1.3. It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be G false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident H had taken place which is likely to reflect on her chastity.

She would also be conscious of the danger of being ostracized by the society. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. [Paras 21 and 22] [1215-B-D]

2. It is not correct to say that since hymen of the prosecutrix was found to be intact, offence of rape cannot be said to have been committed on her by the appellant. Even a slightest penetration is sufficient to make out an offence of rape and depth of penetration is immaterial. Hence, the act of the appellant would certainly constitute an offence of rape. [Paras 24, 25 and 28] [1215-G-H; 1216-A-B; 1217-A-B]

'Medical Jurisprudence and Toxicology' by Modi (Twenty SecondEdition) p. 495; Parikh's Textbook of Medical Jurisprudence andToxicology, 'sexual intercourse, **referred to.**

Case Law Reference:

AIR 1952 SC 54	**relied on**	**Para 20**
(2007) 12 SCC 57	**distinguished**	**Para 29**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1798 of 2008.

From the Judgment & Order dated 29.9.2006 of the High Court of Madhya Pradesh in Criminal Appeal No. 548 of 1991.

Fakruddin, Fizahi Hussain, Aftab Ali Khan, Karim Ansari, Rajkishore Chaudhary, R.C. Kaushik for the Appellant.

Siddhartha Dave, Jemtiben AO, Vibha Datta Makhija for the Respondent.

The Judgment of the Court was delivered by

A **DEEPAK VERMA, J.** 1. A minor girl aged about 12 years was subjected to rape by the appellant on 14th October 1988. The appellant was charged and prosecuted for commission of offence under Sections 366 and 376 of the Indian Penal Code (for short, 'IPC') and the co-accused Sneh Lata was charged
B under Sections 342 and 366, IPC in the Court of III Additional Sessions Judge, Bhopal in Sessions Case No.53/89.

2. Judgment was pronounced in the said Sessions Case on 17th May 1991 wherein and whereby co-accused Sneh Lata
C was acquitted of the charges levelled against her, but the appellant was found guilty of commission of offence under Section 376, IPC and was awarded seven years' rigorous imprisonment. Insofar as the charge levelled against him under Section 366 was concerned, he was acquitted by the said court.

D 3. Feeling aggrieved by the said judgment of conviction, appellant preferred Criminal Appeal No.548 of 1991 in the High Court of Madhya Pradesh at Jabalpur. Learned Single Judge, after considering the matter from all angles, came to the conclusion that the findings recorded by the learned Sessions
E Judge were based on material evidence available on record, thus, proceeded to confirm the findings of guilt as also the punishment awarded to him by judgment dated 29th September 2006.

F 4. It is against this judgment, the present criminal appeal by special leave has been preferred by him.

5. Facts, which are in short compass, are mentioned hereinbelow.

G 6. Although the prosecutrix-P.W.1 was resident of Gadarwara, she had come to Bhopal about four months prior to the date of occurrence. In Bhopal, she was staying with her relative. She had gone to an Ayurvedic Hospital for treatment where she came in contact with acquitted co-accused Sneh
H Lata, who showered love and affection on her. Thus, she was

allured by Sneh Lata and went to stay with her. The record shows that she was kept in wrongful confinement at her house. She used to be beaten up and was not allowed to leave the house. Many boys and girls used to visit the said house of Sneh Lata. A

7. On 14th October 1988, she gave Rs.10/- to the prosecutrix, with which the prosecutrix went to Bhopal Talkies to watch the matinee show. After the movie, when she came out of the theatre, she found a few boys standing there who started teasing her. In the meanwhile, the appellant-accused Wahid came there in his auto who voluntarily offered to help her. She requested him to drop her to her relative's place but instead of taking her to the house of relative of the prosecutrix, he proceeded towards airport via Lal Ghati. She tried to stop the accused from proceeding in the wrong direction, but, he continued to ply the auto-rickshaw. In the darkness, near bushes he stopped the auto and used filthy language against her. He also threatened to kill her if she raised hue and cry. After gagging her mouth, he took her to the nearby bushes and removed her under-garments. He also removed his pants and under-garments and committed rape on her. At that very point of time, some sharp light came followed by two police personnel coming there and catching him red-handed while performing intercourse with the prosecutrix. B C D E

8. Both of them were taken to the Bairagarh Police Station where FIR (Exh. P-1) was lodged by the prosecutrix. She was sent for her medical examination and accused was also sent for his medical examination. F

9. After usual investigation, chargesheet was filed against appellant and co-accused Sneh Lata for commission of offences as mentioned hereinabove for which they were tried and upon completion of trial, the appellant was found guilty for commission of offence under Section 376 of the IPC. G

10. The conviction of the appellant is founded on the H

A evidence of P.W.1-prosecutrix as also the evidence of P.W.3-B.B. Subba Rao, Sub-inspector who had caught him red-handed while he was committing rape. Medical report dated 15th October 1988 of the prosecutrix is on record. It records that her hymen was found to be in tact whereas her private part B admitted only tip of little finger with difficulty. In the opinion of Dr. B. Biswas who had examined her, no intercourse was done with her. But, for determination of her age, she was sent to Forensic Department of Hamidia Hospital. Dr. B. Biswas has not been examined by the prosecution.

C 11. At the time of medical examination of the prosecutrix, her medical history was recorded, marked at Exh.P-9 which categorically records the manner in which the appellant had committed rape on her.

D 12. P.W.1-prosecutrix had initially not supported prosecution case and was declared hostile. But, on being confronted with her statement recorded under Section 161, Code of Criminal Procedure, she narrated the true and correct story and the manner in which rape was committed on her. She E has categorically deposed that the appellant removed her underwear, lied on her, put his male organ into her private part and was moving up and down. According to her, he committed bad act with her. It is mentioned by her that on account of rape having been committed by the appellant, she was not being F called by her parents. She has also proved her FIR which was recorded on 14th October 1988.

13. To corroborate the evidence of prosecutrix, prosecution has examined I.O. (P.W.3-B.B. Subba Rao), Sub-inspector of Police Station Bairagarh. According to him, on 14th October G 1988 he was on field duty with regard to investigation of some other case and he received an information that an auto driver was going in an auto at about 3 O'clock in the evening with a girl towards airport road. According to him, on search, auto was found in abandoned condition on a secluded road. The police H officer has stated that he suspected some foul-play and went

in search of the owner of the same. What is mentioned by him is that near the bushes, he found the auto-rickshaw parked by the side of the road and appellant committing rape on the prosecutrix. According to him, the appellant was caught red-handed. A

14. In his cross-examination conducted by learned counsel for the appellant, which is more suicidal, he has deposed that both of them were found to be in compromising position and were naked below the waist. It is mentioned by him that the appellant was lying on the prosecutrix and was indulging in sexual intercourse and he had seen the incident in the light of the vehicle in which he was travelling. According to him, the site of incident was 2-3 furlongs away from the main road and as soon as the appellant was caught, stood up and was found in a perplexed condition. He has further stated that they thereafter put on their clothes and were brought to the police station, where FIR was lodged by the prosecutrix. According to him, his auto-rickshaw was seized on the same day and he was apprehended on next day. B C D

15. Perusal of the record would show that Exh.P-1 (FIR) was lodged by the prosecutrix herself on the date of the incident on 14th October 1988 at the police station soon after the incident. When she was sent for medical examination, she again narrated rape on her by the appellant before the medical officer which finds place in her medical report Exh.P-9. Thus, the testimony of the prosecutrix stands corroborated by her FIR and contents of Exh.P-9. To further corroborate aforesaid evidence, the statement of P.W.3-B.B. Subba Rao fully establishes that it was Wahid Khan who had committed rape on the prosecutrix. As mentioned hereinabove, whatever little lacunae was there in the prosecution story, has been cured in his cross-examination. E F G

16. Cumulative reading of the aforesaid would prove beyond shadow of doubt that it was the appellant who had H

committed offence of rape on minor girl and had completely ravished her.

17. Shri Fakhruddin, learned senior counsel appearing for the appellant strenuously contended before us that keeping in mind the medical report of the prosecutrix reflecting her hymen was still in-tact, would be indicative of the fact that no intercourse was at all committed on her. According to him, looking to the totality of the facts and features of the case and the evidence available on record, at best, it would establish a case wherein the appellant could have been convicted only under Section 354 of IPC but no case was made out for his conviction under Section 376 thereof.

18. On the other hand, Shri Sidhartha Dave, learned counsel appearing along with Ms. Vibha Datta Makhija for the respondent-State contended that even if full penetration had not been there, slight penetration itself is sufficient and would complete the offence of rape as contemplated under Section 375 of the IPC and thus both the courts below were justified in finding him guilty under Section 376 of IPC and awarding him punishment accordingly.

19. The law on the point is now too well settled. No doubt, it is true that Dr. B. Biswas, who had initially conducted the medical examination of the prosecutrix, has not appeared on behalf of the prosecution to depose. But, that alone is not sufficient to discard the prosecution story. Corroboration is not the *sine qua non* for conviction in a rape case.

20. In this regard, the most celebrated observations of Justice Vivian Bose in the case of *Rameshwar v. State of Rajasthan* AIR 1952 SC 54 may be quoted :

> "The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the

circumstances make it safe to dispense with it, must be present to the mind of the judge...." A

21. It is also a matter of common law that in Indian society any girl or woman would not make such allegations against a person as she is fully aware of the repercussions flowing therefrom. If she is found to be false, she would be looked by the society with contempt throughout her life. For an unmarried girl, it will be difficult to find a suitable groom. Therefore, unless an offence has really been committed, a girl or a woman would be extremely reluctant even to admit that any such incident had taken place which is likely to reflect on her chastity. She would also be conscious of the danger of being ostracized by the society. It would indeed be difficult for her to survive in Indian society which is, of course, not as forward looking as the western countries are. B C D

22. Thus, in a case of rape, testimony of a prosecutrix stands at par with that of an injured witness. It is really not necessary to insist for corroboration if the evidence of the prosecutrix inspires confidence and appears to be credible. E

23. However, in the case in hand, even without the examination of doctor, the evidence of prosecutrix stands fully corroborated by the evidence of P.W.3-B.B. Subba Rao, Sub-inspector of the police station who had virtually caught the appellant red-handed. Thus, even if doctor had not been examined it would not throw or completely discard the prosecution story. The evidence of prosecution witnesses is fully trustworthy and there is no reason to doubt genuineness thereof. F

24. It was also contended by learned counsel for the appellant that since hymen of the prosecutrix was found to be in tact, therefore, it cannot be said that an offence of rape was committed on her by the appellant. This contention cannot be accepted as offence of rape has been defined in Section 375 of the IPC. Explanation to Section 375 reads thus : G H

A *"Explanation.* - Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape."

25. It has been a consistent view of this Court that even a slightest penetration is sufficient to make out an offence of rape
B and depth of penetration is immaterial.

26. It is appropriate in this context to reproduce the opinion expressed by Modi in Medical Jurisprudence and Toxicology (Twenty Second Edition) at page 495 which reads thus :

C "Thus, to constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis within the Labia majora or the vulva or pudenda with or without emission of semen or even an
D attempt at penetration is quite sufficient for the purpose of the law. It is therefore quite possible to commit legally, the offence of rape without producing any injury to the genitals or leaving any seminal stains. In such a case, the medical officer should mention the negative facts in his report, but
E should not give his opinion that no rape had been committed. *Rape is crime and not a medical condition. Rape is a legal term and not a diagnosis to be made by the medical officer treating the victim. The only statement that can be made by the medical officer is to the effect*
F *whether there is evidence of recent sexual activity. Whether the rape has occurred or not is a legal conclusion, not a medical one.*"

[Emphasis supplied]

G 27. Similarly in Parikh's Textbook of Medical Jurisprudence and Toxicology, 'sexual intercourse' has been defined as under:

"*Sexual intercourse.*- In law, this term is held to mean the slightest degree of penetration of the vulva by the penis with or without emission of semen. It is therefore quite
H possible to commit legally the offence of rape without

producing any injury to the genitals or leaving any seminal stains." A

28. If the aforesaid facts are kept in mind, it cannot be disputed that the act of the appellant would certainly constitute an offence of rape and leaves no amount of doubt in our mind. B

29.Learned counsel for the appellant placed reliance on a recent judgment of this Court reported in (2007) 12 SCC 57 *Radhu v. State of Madhya Pradesh* to contend that since evidence of prosecutrix was not corroborated, the appellant should be extended benefit of doubt. Even after going through C the said judgment critically we do not find that any benefit can be extended to the appellant. In the said case, there were several serious discrepancies in the evidence of the prosecutrix which prompted the Court to call for corroboration. In the present case, there is consistency in the evidence of D prosecutrix, which stands corroborated by the evidence of P.W.3-B.B. Subba Rao. He had no axe to grind against the appellant.

30. In this case, the version of the prosecutrix right from E lodging of the FIR, till her examination by the doctor and till she deposed in court, had been absolutely consistent. Not only this, to corroborate further, the evidence of P.W.3-B.B. Subba Rao is also on record who had caught the appellant red-handed which fully establishes that it was the appellant who had committed offence of rape. F

31. Thus, looking to the matter from all angles, we are of the opinion that there is no merit or substance in this appeal. The same is accordingly hereby dismissed.

G

K.K.T. Appeal dismissed.