SHEIKH ZAKIR

v.

STATE OF BIHAR

June 2, 1983

[E. S. VENKATARAMIAH AND V. BALAKRISHNA ERADI, JJ.]

Evidence Act—s. 133 and illustration (b) to s. 114—Evidence of victim of rape—Whether an offender can be convicted on uncorroborated testimony of victim of rape—In what circumstances and to what extent does it need corroboration?

The appellant was convicted under s. 376, I.P.C., for raping a tribal woman mainly on the evidence of the victim who was the complainant, her husband and two other witnesses, one of whom had deposed that he had seen the appellant on the body of the victim while the other had stated that he had seen the appellant fleeing away from the scene of occurrence. The High Court dismissed the appeal and confirmed the conviction.

The appellant submitted that the local Mukhiya to whom the complainant and her husband were alleged to have gone to complain about the incident immediately after its occurrence, the police officer who was alleged to have refused to record the complaint and also two other witnesses mentioned in the complaint had not been examined by the prosecution and this, together with the absence of a medical examination report given by a doctor after examining the person of the complainant immediately after the occurrence, was fatal to the prosecution case.

The Mukhiya and one of the two other witnesses mentioned in the complaint who had not been examined earlier were examined pursuant to the orders made by the Court and they did not support the prosecution case.

Dismissing the appeal,

HELD: Even though a victim of rape cannot be treated as an accomplice, on account of a long line of judicial decisions the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration. Section 133 of the Evidence Act says that an accomplice 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. But the rule of practice is that it is prudent to look for corroboration of the evidence of an accomplice by other independent evidence. This rule is based on human experience and is incorporated in illustration (b) to s. 114 of the Act. There must be an indication in the course of the judgment that the judge had this rule in his mind when he prepared the judgment

and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown-up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but is not necessary that every part of the evidence of the victim should be confirmed in every detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both. [318 E-H; 319 A-D]

Rameshwar v. *State of Rajasthan*, [1952] S.C.R. 377; *Gurucharan Singh* v. *State of Haryana*, [1973] 2 S.C.R. 197; *Kishan Lal* v. *State of Haryona*, [1980] 3 S.C.R. 305; *King* v. *Baskerville* [1916] 2 K.B. 658, referred to.

In the instant case a reading of the deposition of the complainant shows that it has a ring of truth around it. Her evidence has been corroborated in material particulars by the evidence of her husband and the other two witnesses. The statement made by the complainant to her husband immediately after the incident is admissible under s. 157 of the Act and has a corroborative value. [319 F-H]

The Mukhiya has not given any version about the incident but has merely stated that the complainant and her husband had not gone to him to complain. It is significant that his name figured in the complaint as a witness. The complainant could not have taken the risk of including his name if he had not been actualy contacted by her. He was cited as a witness to show that immediately after the occurrence the complainant had made a statement regarding the crime before him which would be corroborating evidence. It has to be borne in mind that he was examined nearly 12 years after the incident and it is a sufficiently long period and particularly for persons of easy conscience to make half-hearted statements in courts. In the circumstances it is difficult to hold that the evidence of the other witnesses before the court is in any way affected by the evidence of the Mukhiya. The same criticism applies to the evidence of the other witness examined along with the Mukhiya. The non-examination of the police officer who declined to record the information said to have been given by the complainant is found to be not fatal to the prosecution. [317 C-H]

The complainant and her husband being persons belonging to backward community like the Santhal tribe living in a remote area could not be expected to know that they should rush to a doctor. The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistence she cannot be disbelieved. [318 B-D]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 440 of 1974.

Appeal by Special leave from the Judgment and Order dated the 17th September, 1974 of the Patna High Court in Crl. Appeal No. 579 of 1969.

Davendra N. Goburdhan & D. Goburdhan for the Appellant.

S.N. Jha for the Respondent

The Judgment of the Court was delivered by

VENKATARAMIAH, J. This appeal by special leave is filed against the judgment dated September 17, 1974 passed in Criminal Appeal No. 579 of 1969 on the file of the High Court of Patna confirming the conviction of the appellant of the offence punishable under section 376 of the Indian Penal Code and the sentence of rigorous imprisonment for five years imposed on him on December 20,1969 in Sessions Trial No. 107 of 1968 on the file of the Assistant Sessions Judge at Purnea in the State of Bihar.

The appellant was committed to face the trial for an offence punishable under section 376 of the Indian Penal Code by the order of the Munsiff-Magistrate, 1st Class, Purnea on the basis of a complaint filed by the complainant Barki Devi (P.W. 3) before the Sub-Divisional Officer, Sadar, Purnea on August 9,1968 who took cognizance of the Offence and transferred the case to the file of the aforesaid Magistrate.

The allegations made in the complaint are briefly these: That on August 1, 1968 at about 5.00 P.M, the complainant, who was a married woman of about 25 years, was engaged in the work of uprooting of the paddy seedlings on her field situated on the southern side of her house in Dhumra Badh situated in Mouza Dhamdaha, Police Station Dhamdaha, District Purnea. There was a canal to the east of the field and there were no houses nearby. When she was working on her field the appellant came near her and started cutting jokes and suggested that she should have sexual intercourse with him. On the complainant protesing at his suggestion, the appellant suddenly caught hold of her, threw her down on the ground, removed her clothes and committed rape on her. On hearing her cry for help, some persons arrived at the place. The appellant immediately ran away. Thereafter the complainant went to her house and narrated the incident to her husband, Jitrai (P.W. 4). The complainant and her husband then went to the local Mukhiya who asked them to fiel

a complaint in the Court. Then they went to the police thana to give information about the crime but the police officer declined to record the information as the appellant was an influential person. Then the complainant went to the court on August 8, 1968 to lodge a complaint but as the time for lodging complaint was over by the time the complaint was drafted, she filed it on August 9, 1968 in the court. The complaint contained the names of some witnesses.

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At the trial the complainant was examined as P.W. 3. She belongs to the Santhal tribe. In her evidence she decribed the incident as disclosed in her complaint. She stated that the appellant forcibly had sexual intercourse with her against her will. She stated that on hearing her cry, Sheikh Lafid (P.W. 1) came there and on seeing him, the appellant ran away. She also stated that she narrated the incident to Juman Nadaf (P.W. 2), Chanda Kisku and Makbool who also came there and that she showed the stains of semen on her clothes and also the trampling marks on the ground to them. She also stated that she narrated the incident before her husband and the Mukhiya of the village. She further stated that when she and her husband went to the police station, they were threatened and driven away by the police officer there. She also told about her going to Purnea and lodging the complaint. Sheikh Lafid (P.W. 1) corroborated the evidence of the complainant by deposing that when he reached the scene of occurrence he saw the appellant lying on top of the body of the complainant. Juman Nadaf (P.W. 2) stated that when he went near the scene of occurrence he saw the appellant fleeing away from there. He stated that the complainant had narrated before him the details of the crime committed by the appellant. Jitrai (P.W. 4) the husband of the complainant stated that in the evening of the day of occurrence the complainant told him about the manner in which she had been ravished by the appellant and also gave evidence about his going to the Mukhiya and to the police station and what happened there as narrated by the complainant. Rama Kant Thakur (P.W. 5) was the lawyer who drafted the complaint. He has stated that the complaint had been prepared under the instructions of the complainant.

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The trial court on a consideration of the material before it found that the appellant was guilty of rape and accordingly convicted the appellant of the offence punishable under section 376 of the Indian Penal Code and imposed on him a sentence of rigorous imprisonment for five years. The High Court dismissed

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the appeal filed by the appellant. This appeal by special leave is filed against the judgment of the High Court. When the appeal was heard by this Court on March 6, 1980, it was ordered that the trial court should record the evidence of the Mukhiya, Makbool and Chanda Kisku and to submit the record to this Court. The evidence of the Mukhiya and of Makbool was accordingly recorded and has been submitted to this Court. Chanda Kisku is reported to be dead. The other two witnesses have not supported the prosecution case. It is apparent that these two witnesses who had been mentioned as witnesses in the complaint itself were not willing to support the prosecution even at the time of the trial as otherwise they would have been examined. It is not quite strange that some witnesses do turn hostile but that by itself would not prevent a court from finding an accused guilty if there is otherwise acceptable evidence in support of the prosecution. In the instant case, both the trial court and the High Court have believed evidence of the prosecutrix and the evidence of the other prosecution witnesses who had been examined at the trial.

The point for consideration in this case is whether the approach adopted by the High Court and the trial court to the case is correct and whether the material is sufficient to warrant the conviction recorded by them.

In the case before us the complainant has given her version of the incident in her deposition and the High Court and the trial court have not found it to be unreliable. The case of the appellant, however, was that on account of a land dispute between one Mohamed Halim and Mohamed Naiyeem on the one hand and himself on the other which ultimately had ended in his favour this false case had been got filed by them through the complainant and her husband Jitrai who were working as servauts under them. The non examination of the Mukhiya and the police officer who had declined to record the information alleged to have been given by the complainant and her husband is stated to be fatal to the prosecution. It is further stated that in the absence of a medical examination report given by a doctor after examining the person of the complainant immediately after the occurrence it was not possible to conclude whether the complainant had been raped.

The trial court has negatived the contentions of the appellant. The trial court held that it had not been established that the complainant and her husband were under the thumb of Mohamed Halim and

Mohamed Naiyeem. The husband of the complainant owned some lands and the complainant and her husband were also working as labourers. The trial court was of opinion that the complainant had not given a false complaint in order to oblige Mohamed Halim and Mohamed Naiyeem. It further held that the proceeding relating to land filed by Mohamed Halim and Mohamed Naiyeem was one instituted in the year 1964 nearly four years before the incident and that there was no immediate provocation for them to engineer the filing of a false case against the appellant. The High Court has concurred with the conclusions of the trial court. As regards the non-examination at the trial of the Mukhiya who is now examined pursuant to the order of this Court it is to be observed that it has turned out to be inconsequential. The Mukhiya has now stated that the complainant and her husband had not gone to him to complain about the incident. He does not give any version about the incident. It has to be borne in mind that he was examined nearly twelve years after the incident. It is significant that his name figured in the complaint as a witness. The complainant could not have taken the risk of including his name if he had not been actually contacted by her. The complainant and her husband have stated in their depositions that they had gone to him on the date of occurrence. He was cited as a witness to show that immediately after the occurrence the complainant had made a statement regarding the crime before him which would be corroborating evidence. An interval of twelve years is a sufficiently long period and particularly for persons of easy conscience to make half-hearted statements in courts. In the circumstances it is difficult to hold that the evidence of the other witnesses before the court is in any way affected by the evidence of the Mukhiya. The same criticism applies to the evidence of Makbool who is the other witness examined in the year 1980 along with the Mukhiya. Makbool's evidence is that he did not go near the scene of occurrence on the date on which it is alleged to have taken place. As regards the non-examination of the policeman who declined to record the information said to have been given by the complainant, it has to be stated that it would be asking the complainant to do something which would be almost impossible to perform. How many police officers who have in fact not performed their duty would come before court as witnesses and admit that they had failed to discharge their duty ? The court may safely presume that notwithstanding the allegation of the complainant being true she would not have even able to secure the evidence of such a negligent police official. The fact remains the the complainant has referred to

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this in her complaint on the very next day and she and her husband ran a grave risk in making such an allegation of dereliction of duty against the police in the complaint. Nothing however turns on the non-examination of the said police official in this case. In so far as non-production of a medical examination report and the clothes which contained semen, the trial courts has observed that the complainant being a woman who had given birth to four childern it was likely that there would not have been any injuries on her private parts. The complainant and her husband being persons belonging to a backward community like the Santhal tribe living in a remote area could not be expected to know that they should rush to a doctor. In fact the complainant has deposed that she had taken bath and washed her clothes after the incident. The absence of any injuries on the person of the complainant may not by itself discredit the statement of the complainant. Merely because the complainant was a helpless victim who was by force prevented from offering serious physical resistance she cannot be disbelieved. In this situation the non-production of a medical report would not be of much consequence if the other evidence on record is believable. It is, however, nobody's case that there was such a report and it had been withheld.

A reading of the deposition of the complainant shows that it has a ring of truth around it. Section 133 of the Indian Evidence Act says that an accomplice shall be a competent witness against an accused person and a conviction is not illegal merely beecause it proceeds upon the uncorroborated testimony of an accomplice. But the rule of practice is that it is purudent to look for corroboration of the evidence of an accomplice by other independent evidence. This rule of practice is based on human experience and is incorporated in illustration (b) to section 114 of the Indian Evidence Act which says that an accomplice is unworthy of credit unless he is corroborated in material particulars. Even though a victim of rape cannot be treated as an accomplice, on account of a long line of judicial decision rendered in our country over a number of years, the evidence of the victim in a rape case is treated almost like the evidence of an accomplice requiring corroboration. (Vide *Rameshwar* v. *The State of Rajasthan*,(1) *Gurucharan Singh* v. *State of Haryana*(2) and *Kishan Lal* v. *State of Haryana*).(3) It is accepted by the Indian courts

(1) [1952] S.C.R. 377.
(2) [1973] 2 S.C.R. 197.
(3) [1980] 3 S.C.R. 305.

that the rule of corroboration in such cases ought to be as enunciated by Lord Reading C.J. in *King* v. *Baskerville.*(4) Where the case is tried with the aid of a jury as in England it is necessary that a Judge should draw the attention of the jury to the above rule of practice regarding corroboration wherever such corroboration is needed. But where a case is tried by a judge alone, as it is now being done in India, there must be an indication in the course of the judgment that the judge had this rule in his mind when he prepared the judgment and if in a given case the judge finds that there is no need for such corroboration he should give reasons for dispensing with the necessity for such corroboration. But if a conviction is based on the evidence of a prosecutrix without any corroboration it will not be illegal on that sole ground. In the case of a grown up and married woman it is always safe to insist on such corroboration. Wherever corroboration is necessary it should be from an independent source but it is not necessary that every part of the evidence of the victim should be confirmed in very detail by independent evidence. Such corroboration can be sought from either direct evidence or circumstantial evidence or from both. The trial court has in the case before us found that the evidence of the complainant had been corroborated in material particulars by the evidence of Sheikh Lafid (P.W. 1), Juman Nadaf (P.W. 2) and Jitrai (P.W. 4) the husband of the complainant. The High Court also has acted on the evidence of these witnesses. Sheikh Lafid (P.W. 1) has stated that he saw the appellant on the body of the complainant and that the complainant had also told him about the crime. Juman Nadaf (P.W. 2) has stated that when he heard the cry of the complainant at the time of occurrence, he saw the appellant fleeing away from that place. The trial court and the High Court have not found any good ground to discard their testimony. Jitrai (P.W. 4) has told the court that the complainant had mentioned to him all the details of the incident within a short while after it took place. Rama Kant Thakur (P.W 5.), the lawyer who drafted the complaint has stated that he had prepared the complaint which contains all the particulars of the offence under the instructions of the complainant. Apart from the evidence of Sheikh Lafid (P.W. 1) and Juman Nadaf (P.W. 2) about what they saw, the statement made by the complainant to her husband immediately after the incident is admissible under section 157 of the Indian Evidence Act and has a corroborative value. After considering carefully the entire material

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(1) [1916] 2 K.B, 658.

before us including the evidence of the witnesses examined pursuant to the order made by this Court earlier in the light of the submissions made at the Bar we are of the view that the judgment of the High Court does not call for any interference under Article 136 of the Constitution.

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The appeal therefore, fails and it is dismissed. The appellant who is on bail is directed to surrender and to undergo the remaning part of the sentence imposed on him.

H.L.C. *Appeal dismissed.*