

FIR – Prosecution brought forward school register, medical examination report and testimonies to establish the case. [Para 2-3]

Age Discrepancy – Conflict between school register and medical examination regarding prosecutrix’s age – Critical to ascertain whether consent for sexual intercourse could be considered – Lack of solid evidence and failure to conduct bone ossification test leaves age undetermined. [Para 4, 8-9]

Testimony of Prosecutrix – Delay in reporting the incident, improbabilities in narrative, and initial willingness for marriage settlement casts doubt on the credibility of the rape allegation – Sole testimony of prosecutrix requires cautious examination, especially when conflicting with other evidences. [Para 5-6]

Medical Examination – Medical report indicating no force used, and well-developed secondary sex characteristics – medical evidence not conclusively determining the age of the prosecutrix – Failure to conduct further tests to ascertain age leaves crucial gaps in prosecution’s case. [Para 7, 9]

Consensual Act Vs Rape – Uncertainty around prosecutrix’s age and circumstances suggesting possibility of consensual act – Absence of clear evidence establishing non-consensual sexual intercourse – Prosecution’s failure to prove beyond doubt the age and the non-consensual nature of act. [Para 10-11]

Decision – Supreme Court finds prosecution’s evidence inadequate in establishing the age of prosecutrix and the non-consensual act – Acquittal of appellant from charges of Section 376 IPC – Appeal allowed, previous judgments set aside, bail bonds of appellant discharged. [Para 12]

Referred Cases:

- Sadashiv Ramrao Hadbe v. State of Maharashtra and Another (2006) 10 SCC 92
- Raju and others v. State of Madhya Pradesh (2008) 15 SCC 133
- Birad Mal Singhvi v. Anand Purohit (1988) Supp SCC 604
- State of Punjab v. Gurmit Singh, (1996) 2 SCC 384

JUDGMENT

SUDHANSHU DHULIA, J.

1. The appellant before this Court has been convicted under Section 376 of the Indian Penal Code (hereinafter referred to as 'IPC') and has been sentenced for seven years of R.I. and Rs.1000/- as fine, with default stipulations. The order of the Trial Court dated 03.09.2001 has been upheld by the High Court of Punjab and Haryana as per judgment dated 19.02.2014 in appeal.
2. A First Information Report was lodged on 23.10.2000 by Gian Chand (complainant), who is the father-in-law of appellant's elder brother Pappu. It states that on 02.09.2000, Pappu requested the complainant to send his younger daughter (who is the present prosecutrix), to his house for taking care of her sister, who had just given birth to a girl child. It is alleged that the prosecutrix at the relevant time was 15 years of age. The prosecutrix was sent by her father to live for some time at her sister's matrimonial house. More than a month later, the prosecutrix returned to her house, tells her mother that while she was in the house of her sister, the present appellant Manak Chand @ Mani who is the younger brother of Pappu, raped her and thereafter repeated the same offence two to three times. Initially, considering the relations between the families, the matter was being "settled", and the two families had even agreed for the marriage of the prosecutrix with the appellant Manak Chand @ Mani. But it is alleged that the family of the appellant later turned down the offer on 23.10.2000, which led to the lodging of an FIR at Police Station City Dabwali under Sections 376, 342 and 506 of IPC. This in short is the case of the prosecution.
3. After investigation, charge sheet was filed on 02.11.2000 and the matter was committed to sessions where charges were framed against the appellant/accused under Sections 376 and 506 IPC. The prosecution examined 7 witnesses, including PW-5, who was the prosecutrix.

The prosecution's case is that the prosecutrix was a minor on the date of the incident. In order to prove this the prosecution relied upon the date of birth of the prosecutrix recorded as 04.04.1987 in the school register. PW-5 i.e., the prosecutrix in her examination-in-chief before the Trial Court on 17.04.2001 states that she had gone to live with her sister, when a request was made by her "Jija" (Brother-in-law) to send her to their house for help. On 12.09.2000, when her sister was away from the house and the prosecutrix

was alone, the appellant came to her room and closed the door from inside, showed a knife to her and threatened to kill her if she did not succumb to his carnal desires; and then raped her. She further states that after that incident, the appellant committed the same act on the prosecutrix on two or three different occasions. She then returns to her maternal house and tells her mother Sita Devi/Sito Bai about the incident, which is admittedly after more than a month from the incident of rape. Her father Gian Chand (PW-6), also supported her version. He states that on receiving this information he visited the house of his son-in-law Pappu and narrated the entire incident to him, as narrated to him by his daughter. He then gave a proposal before the parents of the appellant for marriage of the prosecutrix with the appellant Manak Chand @ Mani, but as no positive reply was given to him, he lodged the FIR on 23.10.2000.

The prosecutrix was medically examined by PW-1 Dr. Kulwinder Kaur on 28.10.2000 at 11.30 AM. PW-1 states that the age of the prosecutrix, as told to her by the mother of the prosecutrix, was 16 years and the details of the medical examination of the prosecutrix were as follows:

“GENERAL EXAMINATION: Well-built adult female, fully conscious, moderately nourished. There was no external mark of injury over breast, neck, face, abdomen & thigh.

LOCAL EXAMINATION: She had well developed public hairs; external genitalia were fully developed & normal. There was no external mark of injury.

PER VAGINAL EXAMINATION: Labia minora was hypertrophied, hymen was ruptured admitted 2 fingers. There was no sign of acute inflammation in & around vulva. There was discharge. Uterus non gravid, firm and mobile and fornix free. Her Vaginal swab not taken because pt had menstruated 5 days back & the history of assault is 1 ½ two months before. Ex.PB in the true copy of the MLR. Firstly, the age of the prosecutrix was recorded as 15 on the information of her mother which was later on corrected to 16 years. That was also done on the information of the mother of the prosecutrix.

At the time of medical examination of the patient, no force seems to have been used against her. I cannot opine about the age of the patient on the basis of development of her public hairs and genitalia

etc. The patient was habitual to sexual intercourse because her labia minora was hypertrophied and hymen admitted two fingers.”

4. At this stage, we must mention that at the relevant time i.e., in the year 2000 when the alleged offence of rape is said to have been committed, the age of consent was sixteen years and above. It was only vide an amendment made in the year 2013¹ that this has been increased to eighteen years. The school register which was produced in the court shows the date of birth of PW-5 is 04.04.1987, which would make the age of the prosecutrix at the time of the incident to be only 13½ years. However, as per her medical examination and in the doctor’s report, the prosecutrix is sixteen years of age. Moreover, the version of the mother of the prosecutrix herself is that the prosecutrix was sixteen years of age.
5. The evidence of a prosecutrix in a case of rape is of the same value as that of an injured witness. It is again true that conviction can be made on the basis of the sole testimony of the prosecutrix. All the same, when a conviction can be based on the sole testimony of the prosecutrix, the courts also have to be extremely careful while examining this sole testimony as cautioned in **State of Punjab v. Gurmit Singh, (1996) 2 SCC 384:**

“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.”

This was reiterated by this Court in **Sadashiv Ramrao Hadbe v. State of Maharashtra and Another (2006) 10 SCC 92:**

“It is true that in a rape case the accused could be convicted on the sole testimony of the prosecutrix, if it is capable of inspiring confidence in the mind of the court. If the version given by the prosecutrix is unsupported by any medical evidence or the whole

¹ Criminal Law (Amendment) Act No.13 of 2013 dated 03rd February, 2013.

surrounding circumstances are highly improbable and belie the case set up by the prosecutrix, the court shall not act on the solitary evidence of the prosecutrix.”

Both the prosecutrix as well as the accused have a right for a fair trial, and therefore when the statement of the prosecutrix does not inspire confidence and creates a doubt, the court must look for corroborative evidence. Relying upon the case of Gurmit Singh (supra) this court in **Raju and others v. State of Madhya Pradesh (2008) 15 SCC 133** held as under:

“10. The aforesaid judgments lay down the basic principle that ordinarily the evidence of a prosecutrix should not be suspected and should be believed, more so as her statement has to be evaluated on a par with that of an injured witness and if the evidence is reliable, no corroboration is necessary. Undoubtedly, the aforesaid observations must carry the greatest weight and we respectfully agree with them, but at the same time they cannot be universally and mechanically applied to the facts of every case of sexual assault which comes before the court.

11. It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication, particularly where a large number of accused are involved. It must, further, be borne in mind that the broad principle is that an injured witness was present at the time when the incident happened and that ordinarily such a witness would not tell a lie as to the actual assailants, but there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.”

6. Does the testimony of the prosecutrix in the present case inspire confidence? We are afraid it does not. Let us appreciate the facts once again. Although, the first incident of rape is alleged to be of 12.09.2000, the prosecutrix does not disclose this to anyone immediately. She then alleges rape again on two or three different occasions later, though no date and time are disclosed. She only discloses it to her mother after one and half months. It has then come in the evidence led by none other but the prosecution (in the school register

submitted in the court by PW-2 i.e., Ram Sahay), that the prosecutrix had attended her classes in the school on 12.09.2000 at Dabwali, where she resides with her parents. We must note that she has alleged rape on the same day at village Sanwat Khera, where she was staying at the relevant time with her sister in her matrimonial house. This seems improbable, if not impossible. The other aspect is the admitted position of the prosecution itself that the FIR was ultimately filed as the initial proposal of marriage was then turned down. All these facts do cast a doubt on the story of the prosecution.

7. The prosecution then has also relied upon the medical report of the prosecutrix given by Dr. Kulwinder Kaur as PW-1 which states that the hymen of the prosecutrix was ruptured, and therefore she was raped. To the contrary when we examine the same medical report in detail an entirely different picture emerges. The Trial Court, however relied upon the evidence placed by the prosecution regarding the date of birth of the prosecutrix, which was recorded in the school register as 04.04.1987 and therefore at the time of the alleged offence she was only thirteen and half years of age and thus the finding of the Trial Court is that, even if it is assumed for the sake of argument that the prosecutrix was a consenting party to the sexual intercourse, her consent would be immaterial since she was less than sixteen years of age and therefore the offence of rape stands proved. The High Court in the appeal, however, even discards the presumption of the prosecutrix being a consenting party and has completely relied upon the testimony of the prosecutrix regarding rape and has dismissed the appeal.

The evidence, as to the age or even rape has not been examined properly by the Trial Court as well as the High Court. Courts must examine each evidence with open mind dispassionately as an accused is to be presumed innocent till proved guilty. In our adversarial system of criminal jurisprudence, the guiding principle shall always be the Blackstone ratio which holds that it is better that ten guilty persons escape than one innocent be punished.

8. There are two aspects which ought to have been considered by the Trial Court and the High Court in greater detail than what has been done. The first is the age of the prosecutrix. The age of the prosecutrix has an extremely crucial bearing in the case. The only evidence relied by the court for holding the prosecutrix as a minor (less than sixteen years of age), is the school register of Government Girls High School, which was placed in the Court by the clerk of the school, Ram Sahay (PW-2). Undoubtedly, the date of birth in the school register is 04.04.1987 which makes the prosecutrix less than

sixteen years of age at the time of the incident. But it has also come in the evidence of Ram Sahay (PW-2) that this date of birth was recorded not on the statement of the parents of the prosecutrix, but by some other person and more importantly, it was based on the transfer certificate of Government Primary School where the date of birth was recorded as 04.04.1987. All the same, this transfer certificate, on the basis of which the date of birth was recorded, was never produced in the Court. Yet, both the Trial Court and the High Court have relied upon the veracity of the school register. It is the same school register which marks the presence of the prosecutrix on 12.09.2000 in the school. This is also the date when the prosecutrix was allegedly raped for the first time, in the house of the appellant in village Sanwat Khera, whereas the school is at another place called Dabwali Mandi. The Trial Court discards the evidence in the same school register, as not being authentic, when the defence had raised the apparent contradictions on the prosecutrix being in school and at the Sanwat Khera village at the same time. This is not a fair appreciation of evidence, to say the least, as same school register is the only basis for the determination of the age of the prosecutrix!

9. This Court in ***Birad Mal Singhvi v. Anand Purohit (1988) Supp SCC 604*** had observed that the date of birth in the register of a school would not have any evidentiary value without the testimony of the person making the entry or the person who gave the date of birth.

“14. ...The date of birth mentioned in the scholar’s register has no evidentiary value unless the person who made the entry or who gave the date of birth is examined. The entry contained in the admission form or in the scholar’s register must be shown to be made on the basis of information given by the parents or a person having special knowledge about the date of birth of the person concerned. If the entry in the scholar’s register regarding date of birth is made on the basis of information given by parents, the entry would have evidentiary value but if it is given by a stranger or by someone else who had no special means of knowledge of the date of birth, such an entry will have no evidentiary value.”

In our opinion, the proof submitted by the prosecution with regard to the age of the prosecutrix in the form of the school register was not sufficient to arrive at a finding that the prosecutrix was less than sixteen years of age, especially when there were contradictory evidences before the Trial Court as

to the age of the prosecutrix. It was neither safe nor fair to convict the accused, particularly when the age of the prosecutrix was such a crucial factor in the case.

Secondly, we cannot lose sight of the fact that since age was such a crucial factor in the present case, the prosecution should have done a bone ossification test for determination of the age of the prosecutrix. This has not been done in the present case. On the other hand, as per the clinical examination of the prosecutrix which was done by PW-1, Dr. Kulwinder Kaur on 28.10.2000 and which has also been referred to in the preceding paragraph of the present judgment, we find that the secondary sex characteristics of the prosecutrix were well developed. The doctor in her report mentions that the prosecutrix is a “well built adult female”. At another place it mentions “well developed pubic hair” and “external genitalia were fully developed and normal”. It then records her age as sixteen years as told to her by the mother of the prosecutrix. The report records that there were no external marks of injury over her breast, neck, face, abdomen and thigh. The report then concludes, *inter alia*, about her age as under:

“At the time of medical examination of the patient, no force seems to have been used against her. I cannot opine about the age of the patient on the basis of development of her pubic hairs and genitalia etc. The patient was habitual to sexual intercourse because her labia minora was hypertrophied and hymen admitted two fingers.”

The doctor has refrained from giving an opinion herself as to the age, but in the same report the age is recorded as sixteen years. Under the facts and circumstances of the case, what was required to be done was a bone ossification test in order to come to some reliable conclusion as to the age of the prosecutrix. This has evidently not been done. Moreover, it has also come in evidence that the mother of the prosecutrix too had said that her daughter was sixteen years of age.

10. We must also keep another relevant factor into consideration. This would be the relative age of the prosecutrix and the accused. The accused at the relevant time was less than 20 years of age, or about 20 years of age, as his age is mentioned as 20 years at the time of recording of his statement under Section 313, which is months later to the alleged incident. The fact that the prosecution has a case that initially the proposal of the marriage of

prosecutrix with the appellant was accepted by the family of the appellant and only when the appellant refused the offer of marriage that the FIR was finally lodged. All these factors point out towards the fact that what was alleged as rape was not rape but could be a consensual act. The only factor which could have made the consensual aspect immaterial and made it a case of 'rape' was the age of the prosecutrix. The medical evidence, however, points out that she is more than 16 years of age. The only evidence placed by the prosecution for establishing the DOB as 04.04.1987 i.e., the school register has not been conclusively proved.

11. Under these facts, and on the weight of the evidence placed before the Trial Court, we are of the considered opinion that as regarding the age of the prosecutrix, no definite conclusion could have been made. The prosecution has not successfully proved that the prosecutrix was less than sixteen years of age at the time of the alleged commission of the crime, and therefore the benefit ought to have been given to the appellant. Secondly, as to the factum of rape itself, we are not convinced that an offence of rape is made out in this case as it does not meet the ingredients of Rape as defined under Section 375 of the IPC, as we do not find any evidence which may suggest that the appellant, even though had sexual intercourse with the prosecutrix, it was against her will or without her consent.
12. Consequently, we allow this appeal and set aside the order dated 19.02.2014 of the High Court and the order dated 03.09.2001 of the Trial Court. Accordingly, the appellant is acquitted of the charges of Section 376 IPC. The appellant, who is on bail, need not surrender. His bail bonds stand discharged.

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