

LALLIRAM AND ANR.

v.

STATE OF M.P.

(Criminal Appeal No. 791 of 2006)

SEPTEMBER 15, 2008.

**[DR. ARIJIT PASAYAT AND DR. MUKUNDKAM
SHARMA, JJ.]**

Penal Code, 1860:

ss: 342 and 376 – Wrongful confinement and rape – Husband of prosecutrix stated to have been beaten and locked in a room – Prosecutrix alleged to have been dragged and repeatedly raped by accused persons in the night and released the next morning – Trial court noticing in medical evidence absence of any injury on body of prosecutrix and inconsistencies and discrepancies in prosecution evidence, ordering acquittal – Conviction by High Court – HELD: Where allegation is of rape by many persons and several times but no injury is noticed, that certainly is an important factor – If version of prosecutrix is credible then no corroboration is required, but if her version is not credible, then there would be need for corroboration – In view of factual position, trial court was justified in directing acquittal – Judgment of High Court set aside.

Precedent:

HELD: In criminal cases, question of precedent relating to appreciation of evidence is of no consequence.

Two appellants along with another accused were prosecuted for commission of offences punishable u/ss 376, 342, 392 and 506 IPC, on the allegations that in the evening of 23.9.1985 they way-laid the prosecutrix (PW-2) and her husband (PW-1), beat PW-1 and locked him in a room and dragged PW-2 to another room, repeatedly

A raped her in the night and released her the next morning.
PW-2 was medically examined on 25.9.1985 but no external injuries were found on her body. The trial court acquitted the accused of all the charges, but the high Court convicted the accused u/ss 376 and 342 IPC. Aggrieved,
B two of the accused filed the instant appeal.

Allowing the appeal, the Court

C HELD: 1. Where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor; if the version of prosecutrix is credible, then no corroboration is necessary. But if the version of prosecutrix is not credible then there would be need for corroboration. In the instant case, the trial Court noted that though the prosecutrix claimed that she
D was raped by several persons at several times, there was no injury noticed and the doctor has categorically stated that there was no sign of rape. [para 8-9] [400-A-B; 399-G]

E *Pratap Misra and Ors. v. State of Orissa* 1977 (3) SCC 41; *Aman Kumar & Ors. v. State of Haryana* 2004 (4) SCC 379 – relied on.

F 2. A decision has to be considered in the background of the factual scenario. In criminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. [para 10] [400-C]

G 3.1 There is no rule of law that testimony of a victim of rape cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. However, if the court finds it difficult to accept the version of a prosecutrix on the face value, it may search for evidence direct or circumstantial. [para 10] [400-D-E]

H 3.2 So far as testimony of the victim in the instant case is concerned, the High Court has found that she stated to have suffered injuries. But no such injury was

found in the first medical examination. She also deposed differently as to the accused who committed rape first and also as to the place of rape. Another significant factor which was noticed by the trial Court but not by the High Court was that PW-1 stated that the prosecutrix was 4 months pregnant at the time of occurrence. But this was not supported by the medical evidence. [para 11-13] [400-E-H; 401-A]

3.3 In view of the factual position the trial Court was justified in directing acquittal. The judgment of the High Court upsetting the acquittal is clearly unsustainable and is set aside. [para 15]

Case Law Reference

1977 (3) SCC 41 relied on para 9

2004 (4) SCC 379 relied on para 9

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 791 of 2006

From the Judgment dated 23.3.2006 of the High Court of Madhya Pradesh, Jabalpur Bench at Gwalior in CrI. Appeal No. 81 of 1990

Rajesh R. Dubey, Pawan Upadhyay, Anisha Upadhyay, Santosh Mishra and Sharmila Upadhyay for the Appellants.

Vikas Upadhyay and B.S. Banthia for the Respondent.

The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Challenge in this appeal is to the judgment of a Division Bench of the Madhya Pradesh High Court, Gwalior Bench, upsetting the acquittal as recorded by learned Additional Sessions Judge, Ashok Nagar, in Sessions Trial No.12/86. Three accused persons namely the present appellants and one Chaturbhuj faced trial for alleged commission of offence punishable under Sections 376, 392, 342 and 506 of the Indian Penal Code, 1860 (in short the 'IPC'). The trial

A Court directed acquittal of all the three accused persons. In appeal filed by the State under Section 378 of the Code of Criminal Procedure, 1973 (in short the 'Code') the order of acquittal was set aside and accused persons were found guilty of offence punishable under Sections 342 and 376 of IPC. But it upheld the acquittal for offence relating to Section 392 and 506 (II) IPC. The appellants were sentenced to undergo seven years and six months custodial sentence and fine with default stipulation for offences relating to Sections 376 and 342 IPC.

2. Prosecution version which led to the trial of the accused persons is as follows:

On 23.9.1985 in the evening prosecutrix along with her husband Dayaram went to Khajuria. On the way near the field of Mangal, appellants met them and started to abuse prosecutrix. Appellants also started beating husband of prosecutrix and took the prosecutrix near the well of Kamal Singh where accused Pooran Singh and Lalliram talked to Chaturbhuj. Dayaram was locked in a room. Then appellants took away the prosecutrix to the upper room of the house and committed rape repeatedly in the night. In the next morning they released prosecutrix and warned her not to report to anybody. Then she brought Dayaram from the room and at that time Latura, Gyarasa, Bharo Singh, Kamal Singh and Harihar reached there. They were informed about the incident. Appellants also snatched a bag from the prosecutrix containing Rs.25/- and identity card of Dayaram. Prosecutrix lodged the report in Police Station Madhogarh out post which is Ex.P1. Investigation was undertaken. Spot map was prepared which is Ex.P2. Prosecutrix was sent for medical examination vide Ex.P6 and she was examined by the lady doctor, Smt. C.P. Jain (PW-11) twice, first time on 25.9.1985 and then on 5.10.1985. Ex.P6 is the report pertaining to medical examination dated 25.9.1985. As per report Ex.P6 she gave opinion that no definite opinion can be given about rape. In the report it was stated that no external injuries were found on her body. The trial Court found that the evidence of Latura (PW-3) who is father of PW-2, Bharosa (PW-4) and Puliabai (PW-5) was inconsistent and the defence witness Maya probalised the defence taken

by the trial Court. Doctor also categorically stated that she was not pregnant on the alleged date of occurrence. A

3. The High Court referred to the evidence of PWs. 1 and 2 i.e. the prosecutrix and Dayaram respectively and observed that the version of the prosecutrix was sufficient to fasten the guilt on the accused. Circumstances highlighted by the trial Court were not sufficient to warrant acquittal. Though the version as indicated in the First Information Report (in short the 'FIR') and the evidence in court were discrepant in certain aspects, it was held to be of no consequence. B

4. Stand of the State before the High Court was that the evidence of prosecutrix and her husband was cogent and there was no scope for directing acquittal. C

5. It is to be noted that the trial Court had found the discrepancy in the version of the witnesses. D

6. In support of the appeal learned counsel for the appellants submitted that the High Court relied on several decisions without indicating as to how the trial Court's view was not justified. It is in essence submitted that the parameters relating to appeal against acquittal have not been kept in view. It is stated that the High Court relied on decisions in a mechanical manner overlooking the improvements made by the prosecutrix and the contradictory statements made by her which as rightly observed by the trial Court corroded the credibility of the prosecution version. E

7. Learned counsel for the State on the other hand submitted that the judgment of the High Court does not suffer from any infirmity to warrant interference. F

8. The trial Court noted that though the prosecutrix claimed that she was raped by several persons at several times there was no injury noticed and doctor has categorically stated that there was no sign of rape and in fact there was no injury. G

9. It is true that injury is not a sine qua non for deciding whether rape has been committed. But it has to be decided on H

- A the factual matrix of each case. As was observed by this Court in *Pratap Misra and Ors. v. State of Orissa* (1977 (3) SCC 41) where allegation is of rape by many persons and several times but no injury is noticed that certainly is an important factor if the prosecutrix's version is credible, then no corroboration is necessary. But if the prosecutrix's version is not credible then there would be need for corroboration. (See *Aman Kumar & Ors. v. State of Haryana* (2004 (4) SCC 379).

10. As rightly contended by learned counsel for the appellants a decision has to be considered in the background of the factual scenario. In criminal cases the question of a precedent particularly relating to appreciation of evidence is really of no consequence. In *Aman Kumar's* case (supra) it was observed that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than the injured witness. In the latter case there is injury in the physical form while in the former both physical as well as psychological and emotional. However, if the court finds it difficult to accept the version of a prosecutrix on the face value it may search for evidence direct or circumstantial.

11. So far as testimony of the victim is concerned the High Court has found that PW-2 stated about injuries on the cheek and back of the prosecutrix. But no such injury was found in the first medical examination. PW-2 had stated that she had suffered injuries on her legs. But such injuries were also not noticed.

12. In the cross-examination, the prosecutrix stated that it was Lalliram who committed the rape first. But in her earlier statement she had stated that it was accused Pooran who first committed the rape on her. Interestingly, she had also deposed differently as to the place of rape. This aspect was noticed by the trial Court. Another significant factor which was noticed by the trial Court but not by the High Court was that PW-1 stated that there was miscarriage. PW-1 stated that she was 4 months

pregnant at the time of occurrence. But the doctor stated that she was actually on menstruation period. A

13. Another interesting statement of the prosecutrix was that accused Lalliram had dragged her by catching her bunch of hair for a considerable distance. The trial Court noticed that if that was so there would have been injuries and interestingly she had not stated about this part in the FIR. As noted above, she had spoken about scratches on her back due to dragging and other parts of the body and that blood had also oozed out. But the medical evidence is clearly to the contrary. In her statement she had deposed that her husband Daya Ram was also dragged by Pooran and Lalliram and he had also suffered several injuries. This part is also belied by the medical evidence. In cross-examination PW-1 admitted that accused persons harassed her and tried to kill her. She had admitted that she was assaulted by her husband. Those are relatable to the injuries which were fresh at the time of examination by the doctor on 5.10.1985. B C D

14. It is to be noted that Smt. C.P. Jain (PW-11) examined her twice i.e. first on 25.9.1985 and then on 5.10.1985. At the time of first examination, no injury was found on her body. It is also to be noted that PW-3 stated that after PW-1 regained consciousness she told about the incident. This is contrary to what PW-2 stated. He has stated that he was tied by the accused persons and in the morning he was untied by PW-1. By that time obviously PW-3 and PW-4 had not arrived. In fact PW-4 says that when he and PW-3 went to the place of occurrence the victim was lying unconscious. E F

15. In view of the aforesaid factual position the trial Court was justified in directing acquittal and the High Court's judgment upsetting the acquittal is clearly unsustainable.

16. The appeal is allowed. The conviction recorded by the High Court is set aside. The accused persons who are in custody shall be released forthwith unless required to be in custody in connection with any other case. G