

Sensitivity

2012 (4) SCC 59 : 2012 (7) SCC 171 : 2012 (4) Supreme 59

Before :- B.S.Chauhan : Dipak Misra : J J

Narender Kumar

Versus

State (NCT of Delhi)

**22. In view of the provisions of Sections 53 and 54 of the Evidence Act, 1872, unless the character of the prosecutrix itself is in issue, her character is not a relevant factor to be taken into consideration at all.**

**23. The courts while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character.**

However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the

weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt. (Vide: *Tukaram & Anr. v. The State of Maharashtra*, AIR 1979 SC 185; and *Uday v. State of Karnataka*, AIR 2003 SC 1639).

24. Prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to record the conviction of the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. Even if the prosecutrix is of easy virtue/unchaste woman that itself cannot be a determinative factor and the court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.

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2010 (8) SCC 191 : 2010 (5) Supreme 582

Before :- P.Sathasivam : B.S.Chauhan : J J

Vijay @ Chinee

Versus

State of Madhya Pradesh

**11. In State of Punjab v. Gurmit Singh & Ors., AIR 1996 SC 1393, this Court held that in cases involving sexual harassment, molestation etc. the court is duty bound to deal with such cases with utmost sensitivity. Minor contradictions or insignificant discrepancies in the statement of a prosecutrix should not be a ground for throwing out an otherwise reliable prosecution case. Evidence of the victim of sexual assault is enough for conviction and it does not require any corroboration unless there are compelling reasons for seeking corroboration. The court may look for some assurances of her statement to satisfy judicial conscience. The statement of the prosecutrix is more reliable than that of an injured witness as she is not an accomplice. The Court further held that the delay in filing FIR for sexual offence may not be even properly explained, but if found natural, the accused cannot be given any benefit thereof. The Court observed as under :-**

2012 (9) Scale 441

Before :- H.L.Dattu : Chandramauli Kr.Prasad : J J

Pushpanjali Sahu

Versus

State of Orissa & Anr.

13. Before parting, we wish to reflect upon the dehumanizing act of physical violence on women escalating in the society. **Sexual violence is not only an unlawful invasion of the right of privacy and sanctity of a woman but also a serious blow to her honour. It leaves a traumatic and humiliating impression on her conscience-offending her self-esteem and dignity.** This Court in *State of H.P. v. Shree Kant Shekari*, (2004) 8 SCC 153 has viewed rape as not only a crime against the person of a woman, but a crime against the entire society. **It indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity.** It destroys, as noted by this Court in *Bodhisattwa Gautam v. Subhra Chakraborty*,(1996) 1 SCC 490 the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the Constitution. The courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely.

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2006 AIR(SC) 1267 : 2006 AIR(SCW) 1123 : 2006 (3) JT 66 : 2006 (2) Scale 734 : 2006 (3) SCC 771 : 2006 (2) Supreme 363

**Before :- Arijit Pasayat : S.H.Kapadia : J J**

**Dinesh @ Buddha**

**Versus**

**State of Rajasthan**

6. Sexual violence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity it degrades and humiliates the victim and where the victim is a helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but more indelibly leaves a scar on the most cherished possession of a woman i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman, it is a crime against the entire society. It destroys, as noted by this Court in *Shri Bodhisattwa Gautam v. Miss Subhra Chakraborty* (AIR 1996 SC 922), the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21 of the Constitution of India, 1950 (in short the 'Constitution') The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized judge, in our opinion, is a better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

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Appellants: State of Rajasthan

Vs.

Respondent: Om Prakash

Hon'ble Judges:

Y. K. Sabharwal and B. P. Singh, JJ. AIR 2002 SC 2235

**1. 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.

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 life-long.

**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.**

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 P.Ws. 1 and 2. Being a child witness, we have examined the testimony of P.W. 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.

**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 modes of sexual abuse. These factors point towards a

different approach required to be adopted. The overturning of a well considered and well analysed 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.

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State of Himichal Pradesh

vs.

Respondent:Gian Chand AIR 2001 SC 2075

“A murderer destroys the physical body of his victim, a rapist degrades the very soul of the helpless female. The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case”.