
**PREMASIRI
VS
ATTORNEY GENERAL**

COURT OF APPEAL,
BALAPATABENDI J., (P/CA),
BASNAYAKE J.,
C. A. NO. 59/2001.
HC 24/99.
APRIL 26, 2004.
AUGUST 31, 2004.
FEBRUARY 2, 2006.
MARCH 16, 2006.

Penal Code - Section 367 - Amended by Act No. 22 of 1995 - Section 364(2) - Corroboration - Rape - Is it necessary?—Is it dangerous to convict on the evidence of the prosecutrix alone?

HELD:

1. There is no rule that there must be corroboration in every case, before a conviction can be allowed to stand.
It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix, if it is reliable, unimpeachable and there is no infirmity;
2. If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. 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 molestation;
3. The rule is not that corroboration is essential before there can be a conviction in a case of rape but the necessity of corroboration as a matter of prudence except where the circumstances makes it unsafe to dispense with it, must be present to the mind of the judge.

Appeal from the judgment of the High Court.

Cases referred to:-

1. *Haramanis vs Somalatha (1998) 3 SLR 365*
2. *Raghutbgr Singh vs State - (1961) All Cri. R 163*
3. *Rameshwar Kalyan Singh vs State of Rajasthan - 1R 1952 S. C. 54*
4. *Bhola Ram vs State of Madhya Pradesh (1998) Cr LJ 2167 at 2169 (MP)*
5. *State of Punjab vs Gurmit Singh (1996) 1 Bom. Cr. 322 at 337*
6. *Schindra Nath Biswas vs State (1985) 1 Crimes 505 at 510 (Cal)*
7. *Sunil and another vs The Attorney General - (1986) 1 Sri LR 230*
8. *D.P.P vs Hester (1973) AC 296 at 315 (HL)*
9. *D.P.P vs Kilbourne (1973) A. C. 729 at 746 (H. L)*
10. *Rex vs Manning (1969) 53 Cr Appl. R 150 at 153*

*Mallika Prematilake with Punya Jayatilake for 1st Accused Appellant.
Mohan Seneviratne S. S. C. with R. Aslam, S. C., for Attorney General.*

Cur. adv. vult.

October 18, 2006

ERIC BASNAYAKE J.,

The accused appellant (accused) was indicted with two others for abducting Nadeeka Priyangani, punishable under Section 357 of the Penal Code, for committing the offence of rape, punishable under Section 364(2) of the Penal Code as amended by Act No.22 of 1995. The 3rd accused was charged for aiding and abetting. After trial the accused was convicted as charged and sentenced to two years rigorous imprisonment and a fine of Rs. 2000 was imposed on the first charge and ten years R. I. and a fine of Rs.2000 on the 2nd charge. He was also imposed a sum of Rs.15,000 as compensation for the victim. The 2nd accused was tried on a fiat. The 2nd accused was imposed a sentence of five years.

The 3rd accused was acquitted. The first accused appealed against the conviction and the sentence.

The learned counsel appearing for the accused submitted that :-

- * The prosecution had failed to prove beyond reasonable doubt the act of sexual intercourse.
- * The evidence of the prosecutrix was not corroborated with independent evidence
- * The complaint of rape is a fabrication and a belated one.

As it is evident by the birth certificate marked P1, the prosecutrix was born on 1.12.1981. The date of the incident is 23.08.1996. Accordingly the age of the prosecutrix was 14 years 9 months and 22 days at the time of the incident. The only question that has to be decided is whether the act of sexual intercourse was proved beyond reasonable doubt. Admittedly the prosecutrix had had a love affair with the accused. The accused is a close relation of the prosecutrix. The parents of the girl had objected to this affair. According to the evidence while the girl was returning home from school, she was taken in a three wheeler and thereafter on a motor bike by the accused to the 3rd accused house. There the girl had got into a change of clothes and slept with the accused in a room where they had engaged in sexual intercourse. Later the girl's father had arrived and taken the girl home. This was on 23.08.1996. On the 23rd itself a complaint of abduction was made to the police. A complaint of rape was made on 06.09.1996.

According to the medical evidence the girl's hymen was torn. This indicates the fact of having been engaged in sexual intercourse. Then why didn't the girl tell her mother about the incident on the 23rd itself? The girl would not have wanted to disclose the piece of information regarding sexual intercourse, as the accused was her boy friend. The girl had told the mother on 04.09.1996 that she had sex with the accused on 23rd August. Then what made her disclose this fact on 04.09.1996? the girl's parents had arranged for the girl to be taken to an aunt's place on 4th September, before that the accused had made an attempt to take the girl away by force. This did not materialize. Hence the girl came out with what happened on the 23rd of August.

The accused admitted to having taken the girl on the 23rd and also the incident as regards the 4th September, in his dock statement. The girl's mother said in evidence that a complaint of rape was not made on the 23rd, as the girl had not disclosed such fact at the time such complaint was made on the 23rd. She further said that considering that the accused is a relation and also the embarrassment that will be caused and the protracted trial, the complaint was not pursued. However a complaint of abduction was made on the 23rd. A complaint of rape was made after it was disclosed by the girl on the 4th. Soon thereafter she was examined by a doctor who confirmed that her hymen was torn to indicate that a sexual act had taken place.

The accused in the dock statement said that the girl slept at night with the wife of the 3rd accused in the room. This is to indicate although she was with him, there was no sexual activity. The girl gave evidence to the effect of having had sexual intercourse in the room with the accused. She was cross examined by a counsel appearing for the accused. She was not questioned on the basis that she slept with the wife of the 3rd accused. Therefore the evidence that the girl did not sleep with the accused was not believed by the learned High Court judge. If the accused admitted that he slept with the girl in the room, and that he did not have sex with her, no one would have believed him. This may be the reason why he denied to having slept with her in the room. If the accused said the truth that he slept in the room with the girl that would have sealed his fate (*Haramanis vs. Somalatha*)⁽¹⁾

This case was filed on the basis that the accused had sexual intercourse with the prosecutrix. The prosecutrix being under aged there is no issue with regard to her giving consent. The only issue therefore is whether there was sexual intercourse. There is no dispute with regard to the following facts namely :-

- * The fact of the accused having a love affair with the prosecutrix
- * The fact of the accused taking the girl to the 3rd accused's place
- * The girl was brought by the father of the prosecutrix while she was with the accused in the 3rd accused's house.

- * The fact that the accused made a futile attempt to take the girl by force with him on 04.09.1996.
Thereafter the girl revealing to the mother of her having had sexual intercourse with the accused on the 23rd August.
This leading to the making of a complaint of rape to the police.
- * The girl's hymen was found torn.
- * The girl was 14 years and 9 months and 22 days on 23rd August.

The defence of the accused is that he did not have sexual intercourse. The defence is that there was no possibility of having sexual intercourse with her that night as the girl slept with the 3rd accused's wife in the room while the accused slept in the hall with the 3rd accused. If that was the case the accused could have easily demolished the prosecution case by questioning the girl. Not a single question was put to the girl on that basis. It was not even suggested to the girl that she slept with the wife of the 3rd accused. When the girl said in evidence that she slept with the accused in the room that night and that she had sexual intercourse with the accused, the only suggestion that was made in cross examination was that sexual intercourse might have taken place either before or after the 23rd but that the accused did not have sexual intercourse with her on the 23rd night. The fact of the girl sleeping with the wife of the 3rd accused therefore appears to be on an afterthought.

Requirement of Corroboration

The learned counsel complained that the accused was convicted on uncorroborated evidence. There is no rule that there must in every case, be corroboration before a conviction can be allowed to stand. (Gour on Penal Law of India 11th Edition page 2657 quoting *Raghobgr Singhe vs. State*⁽²⁾; *Rameshwar, Kalyan Singh vs. State of Rajasthan*⁽³⁾). It is well settled law that a conviction for the offence of rape can be based on the sole testimony of the prosecutrix if it is reliable, unimpeachable and there is no infirmity. (*Bhola Ram vs. State of Madhya Pradesh*)⁽⁴⁾. If the evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particular. 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 molestation. *State of Punjab vs. Gurmit Singhe*⁽⁵⁾

The rule is not that corroboration is essential before there can be a conviction in a case of rape, but the necessity of corroboration as a matter of prudence, except where the circumstances make it unsafe to dispense with it, must be present to the mind of the judge. (*Schindra Nath Biswas vs. State*⁽⁶⁾). In *Sunil and another vs. the Attorney - General Dheeraratne J. with H. A. G. De Silva and Ramanathan JJ* agreeing held that "if the evidence of the complainant is so convincing, they could act on that evidence alone, even in the absence of her evidence being corroborated".

"The essence of corroboration is that one creditworthy witness confirms what another creditworthy witness has said. Any risk of conviction of an innocent person is lessened if conviction is based upon the testimony of more than one acceptable witness. Corroborative evidence in the sense of some other material evidence in support implicating the accused furnishes a safeguard which makes a conclusion more sure than it would be without such evidence.... The purpose of corroborating is not to give validity or credence to evidence which is deficient or suspect or incredible but only to confirm and support that which as evidence is sufficient and satisfactory and credible; and corroborative evidence will only fill its role if it self is completely credible evidence" (Lord Morris of Borth - Y-Gest in *DPP vs Hester*⁽⁸⁾) cited with approval by Dheeraratne J in *Sunil Vs. A. G. (supra)*

"Corroboration is only required or afforded if the witness requiring corroboration or giving it is otherwise credible. If his evidence is not credible, a witness's testimony should be rejected and the accused acquitted, even if there could be found evidence capable of being corroborated in other testimony. Corroboration can only be afforded to or by a witness who is otherwise to be believed. If a witness's testimony falls of his own inanity the question of his needing, or being capable of giving corroboration does not arise. Lord Hailsham in *D. P. P. vs. Kilbourne*) cited in *Sunil's Case (supra)*⁽⁹⁾

"In cases of sexual offences it is really dangerous to convict on the evidence of the woman or girl alone. This is dangerous because human experience has shown that in these courts girls and women do sometimes tell an entirely false story which is very easy to fabricate, but extremely difficult to refute. Such stories are fabricated for all sorts of reasons... and for sometimes for no reason at all. The Judge... having given full weight to the warning... comes to the conclusion that in the particular case the woman or girl without any real doubt is speaking the truth, then the fact that there is no corroboration matters not at all" Salmon LJ *Rex vs. Manning*⁽¹⁰⁾.

The Learned judge had believed the evidence of the prosecutrix as her evidence was convincing. However I find that there is corroboration in this case. The fact of taking the girl after school without the consent of the parents to the 3rd accused house, the fact of finding the accused with the girl in the dead of night at the 3rd accused' house quite a distance away from where the girl lived, the fact that the accused tried to take the girl away again about ten days after the first incident have been corroborated. Thus I find no merit in this appeal and therefore the appeal is dismissed.

On considering the facts of this case I am of the view that the conviction could be allowed to take effect from the date of the conviction, namely on 26.10.2001. The other sentences stand.

BALAPATABENDI, J. — I agree.

Appeal dismissed.