CASE NO.:
Appeal (crl.) 624 of 2005

PETITIONER:
Radhu

RESPONDENT:
State of Madhya Pradesh

DATE OF JUDGMENT: 14/09/2007

BENCH:
R. V. Raveendran & B. Sudershan Reddy

JUDGMENT:
J U D G M E N T

RAVEENDRAN, J.

In this appeal by special leave by the accused, the judgment of the High Court of Madhya Pradesh dated 12.9.2003 in Criminal Appeal No. 270 of 1993, affirming the judgment dated 25.5.1993 in Sessions Trial No.127/1991 passed by the II Additional Sessions Judge, Khargone, convicting and sentencing the accused under sections 376, 323 and 342/34, is under challenge.

2. In brief the prosecution case is as follows : On 28.1.1991 at about 8 p.m., prosecutrix Sumanbai, went to a shop for purchasing some groceries. On her way to the shop, Gyarsibai, a relative, invited her to come inside her house. When she entered Gyarsibai's house, her son Radhu who was in the room came out, dragged her inside the room and confined her in the room during the entire night. During the night, he sexually assaulted her by inserting his penis in her vagina twice. When she cried, Radhu gagged her mouth with a piece of cloth. Radhu freed her only the next day (Tuesday) morning. She went back to her house and told her mother Lalithabai (PW-4) about the incident. As her father Mangilal (PW-7) had gone out of town, her mother sent Dinesh to inform him about the incident. When her father returned on 30.1.1991, she along with her father went from their village Umarkhali to Barud where they met their relative Ram Lal and his wife and Gulabbai (PW-5) and she told Ramlal about the incident. Thereafter, they also accompanied her and her father to the Barud Police Station where her oral report was recorded by the officer in charge of the Police Station (PW9) as a First Information Report (Ex.P5).

3. Sumanbai was sent to Dr. Vandana (PW-8), a lady surgeon in the Main Hospital, Khargone for examination. She examined her and recorded her findings as per Ex. P8. She also advised x-ray to decide her age. On 1.2.1991 an x-ray was taken by Dr. Khan (PW-1) who gave a report (Ex.P-1) opining that Sumanbai was aged between 13 to 14 years. The Investigating Officer (PW-9) took up investigation and prepared a site plan P-10. Radhu was arrested on 19.2.1991 and sent to Khargone Hospital for medical examination. Dr. Sanjay Kumar Bhat (PW-2), examined him and opined that Radhu was aged about 19 years and capable of sexual intercourse. His mother Gyarsibai was also arrested. Radhu was charged to stand trial for offences under sections 342/34, 376 and 323 IPC. His mother was charged under section 342/34 and 376/34 IPC. Eleven witnesses were examined. After appreciating the evidence, the trial court by judgment dated 25.5.1993 found the accused 1 and 2 guilty and sentenced them to seven years imprisonment with fine of Rs.500 and in default to a further period of six months RI under, section 376 and 376/109 IPC respectively. They were also sentenced to six months RI under section 342/34 IPC. In addition, Radhu was sentenced to six months RI under section 323 IPC. All sentences were

to run concurrently.

4. Feeling aggrieved the two accused filed an appeal before the High Court. During the pendency of the appeal Gyarsibai died. The High Court by judgment dated 12.9.2003 dismissed the appeal, affirming the conviction and sentence of the first accused Radhu. In this appeal, challenging the said decision, the learned counsel for the appellant urged the following contentions:

(i) The accused were falsely implicated by Sumanbai at the instance of her father who was indebted to Radhu's father Nathu, to avoid repayment of the debt.

(ii) The medical evidence showed that there was no injury on the private parts of Sumanbai and that the rupture of hymen was old. The Doctor (PW-8) also stated that she could not express any opinion as to whether a rape had been committed or not.

(iii) The discrepancies in the evidence, absence of corroboration, the close relationship (the prosecutrix described Radhu as her maternal uncle, as Radhu's parents were Kaka and Baba of Sumanbai's mother) and the manner in which the incident is alleged to have taken place, clearly demonstrated that it was a false charge.

On the other hand, the learned counsel for the State submitted the concurrent findings recorded by the trial court and High Court were based on the evidence of the prosecutrix and that no corroboration was required when the testimony of the prosecutrix was clear and convincing. She also pointed out the prosecutrix (PW 3), her mother (PW4) and father (PW7) had denied any indebtedness to Radhu's faher and there was nothing to show that the prosecutrix had falsely implicated the accused. It was submitted that this Court while exercising jurisdiction under Article 136 of the Constitution will not interfere with the findings of fact recorded by the lower courts, unless the decision appealed from, shocked the judicial conscience of the court.

5. It is now well settled that a finding of guilt in a case of rape, can be based on the uncorroborated evidence of the prosecutrix. The very nature of offence makes it difficult to get direct corroborating evidence. The evidence of the prosecutrix should not be rejected on the basis of minor discrepancies and contradictions. If the victim of rape states on oath that she was forcibly subjected to sexual intercourse, her statement will normally be accepted, even if it is uncorroborated, unless the material on record requires drawing of an inference that there was consent or that the entire incident was improbable or imaginary. Even if there is consent, the act will still be a 'rape', if the girl is under 16 years of age. It is also well settled that absence of injuries on the private parts of the victim will not by itself falsify the case of rape, nor construed as evidence of consent. Similarly, the opinion of a doctor that there was no evidence of any sexual intercourse or rape, may not be sufficient to disbelieve the accusation of rape by the victim. Bruises, abrasions and scratches on the victim especially on the forearms, writs, face, breast, thighs and back are indicative of struggle and will support the allegation of sexual assault. The courts should, at the same time, bear in mind that false charges of rape are not uncommon. There have also been rare instances where a parent has persuaded a gullible or obedient daughter to make a false charge of a rape either to take revenge or extort money or to get rid of financial liability. Whether there was rape or not would depend ultimately on the facts and circumstances of each case.

6. Sumanbai (PW-3) stated in her evidence that when she entered the hut of Gyarsibai responding to her invitation, Radhu who was inside the hut, shut the door and forcibly committed rape by inserting his penis twice; that when she started crying, Radhu gagged her with cloth and kept her confined in the room during the night and released her only the next day morning; and that thereafter she went and informed her mother as to what happened. This

version is in consonance with her report of the incident recorded in the FIR (Ex.P5) which was read over and accepted by her in her evidence. Lalithabai (PW-4) stated that when her daughter returned on Tuesday morning and told her that Radhu had raped her by force the whole night. Significantly, the prosecutrix, in her cross-examination, has given a completely different version. She stated that when Radhu committed the 'bad' act by inserting his penis twice, she fainted and remained unconscious throughout the night; that she came back to her senses only the next day morning; that she did not know what happened during the night; that when she regained consciousness and walked out of the place, Radhu was present but Gyarsibai was elsewhere. She also asserted that she told the police that she had become unconscious when the 'bad' act was committed. If she lost consciousness when the alleged act was committed, and if she regained consciousness only the next morning and left the house of Gyarsibai without any obstruction, the prosecution case that the prosecutrix was gagged by Radhu, that the prosecutrix was confined in his house during the entire night by use of force by Radhu, that she was freed by Radhu only the next morning, becomes false.

7. In her examination-in-chief, Sumanbai categorically stated that Gyarsibai called her to her house when she was going to the shop of Sony for buying sugar and tea. In her oral report of the incident registered as FIR (Ex.P5), she had stated that she went to Gyarsibai's house, while on the way to the shop. But in the cross-examination, she stated that Gyarsibai called her when she was coming back from the shop after purchasing tea and sugar. She also stated that she could not tell the value of the goods purchased by her at that time. Thus, the prosecution case that the incident occurred when she was going to the shop to purchase tea and sugar is not proved.

8. Sumanbai stated that the incident took place on Monday night, that she returned on Tuesday morning and her father returned on Wednesday, that she and her father went to the house of Gulabbai and Ram Lal at Barud and she narrated the incident to Ramlal, that Ramlal also accompanied them to the Barud Police Station. Sumanbai's mother Lalita Bai (PW4) also stated that on Wednesday her husband took their daughter Sumanbai to Barud Police Station, and that after returning from the Police Station, her husband told her that they had also taken her brother Ram Lal, who resided at Barud, to the Police Station. Mangilal (PW-7) father of Sumanbai, did not mention about Ram Lal or his wife Gulabbai in his examination in chief. However, in his cross-examination, he stated that he went to the house of his relative Ramlal at Barud and Ramlal accompanied them to the police station. But, Ram Lal was not examined. Ram Lal's wife Gulab Bai, examined as PW-5, was declared hostile and she denied that Mangilal and Sumanbai visited their house and informed them about the incident. She also stated that neither she nor her husband accompanied Sumanbai to the Police Station. Therefore the prosecution case that Sumanbai and her father informed Ramlal about the incident on 30.1.1991 appears to be doubtful.

9. Sumanbai's mother Lalithabai states that when Sumanbai did not return on Monday night, she and her son-in-law Ramesh searched for her up to 3 a.m. on Tuesday morning. In her cross-examination, she stated that she searched for Sumanbai in the village, and that she also asked Gyarsibai about Sumanbai. In the cross-examination, she stated that she did not remember whose houses she went to enquire about her daughter, and that she did not remember whether she had gone to anyone's house at all. Lalithabai further stated that she told her son-in-law Ramesh about the incident and asked him to go to Chacharia to inform her husband about the incident and to bring him back. Mangilal also said his son-in-law came and informed him about the incident. Sumanbai stated that her brother-in-law was sent to bring back her father; that her brother-in-law's name is Ramesh but the SHO wrongly wrote his name as Dinesh in the FIR. Significantly, Dinesh or Ramesh, brother-in- law of Sumanbai was not examined to corroborate that there was a search for Sumanbai on the night of 28.1.1991 or that he was appraised about the incident by his mother-in-law on 29.1.1991 and that he went and informed his father-in-law about the

incident.

10. Thus the two persons (other than the parents) who were allegedly informed about the incident namely Ramesh (on 29.1.1991) and Ramlal (on 30.1.1991) were not examined and consequently there is no corroboration.

11. Dr. Vandana (PW-8) stated that on examination of Sumanbai, she found that her menstrual cycle had not started and pubic hair had not developed, and that her hymen was ruptured but the rupture was old. She stated that there were no injuries on her private parts and she could not give any opinion as to whether any rape had been committed. These were also recorded in the examination Report (Ex. P8). She, however, referred to an abrasion on the left elbow and a small abrasion on the arm and a contusion on the right leg, of Sumanbai. She further stated that she prepared two vaginal swabs for examination and handed it over along with the petticoat of Sumanbai to the police constable, for being sent for examination. But no evidence is placed about the results of the examination of the vaginal swabs and petticoat. Thus, the medical evidence does not corroborate the case of sexual intercourse or rape.

12. We are thus left with the sole testimony of the prosecutrix and the medical evidence that Sumanbai had an abrasion on the left elbow, an abrasion on her arm and a contusion on her leg. But these marks of injuries, by themselves, are not sufficient to establish rape, wrongful confinement or hurt, if the evidence of the prosecutrix is found to be not trustworthy and there is no corroboration.

13. Lalithabai says that when Sumanbai did not return, she enquired with Gyarsibai. Sumanbai also says that she used to often visit the house of Gyarsibai. She says that Radhu's parents are kaka and baba of her mother and Radhu was her maternal uncle. The families were closely related and their relationship was cordial. In the circumstances, the case of the prosecution that Gyarsibai would have invited Sumanbai to her house to abet her son Radhu to rape Sumanbai and that Gyarsibai was present in the small house during the entire night when the rape was committed, appears to be highly improbable in the light of the evidence and circumstances.

14. The FIR states that one Dinesh was sent by Lalithabai to fetch her husband. Lalitabai and Mangilal have stated that they did not know anyone by the name Dinesh. Sumanbai stated in her evidence that on 29.1.1991, as her father was away, her brother-in-law went to bring back her father, that the name of her brother-in-law is Ramesh, but the SHO wrongly wrote his name as 'Dinesh'. But none else mentioned about such a mistake. Neither Ramesh nor Dinesh was examined.

15. The evidence of the prosecutrix when read as a whole, is full of discrepancies and does not inspire confidence. The gaps in the evidence, the several discrepancies in the evidence and other circumstances make it highly improbable that such an incident ever took place. The learned counsel for the respondent submitted that defence had failed to prove that Mangilal, father of prosecutrix was indebted to Radhu's father Nathu and consequently, defence of false implication of accused should be rejected. Attention was invited to the denial by the mother and father of the prosecutrix, of the suggestion made on behalf of the defence, that Sumanbai's father Mangilal was indebted to Radhu's father Nathu and because Nathu was demanding money, they had made the false charge of rape, to avoid repayment. The fact that the defence had failed to prove the indebtedness of Mangilal or any motive for false implication, does not have much relevance, as the prosecution miserably failed to prove the charges. We are satisfied that the evidence does not warrant a finding of guilt at all, and the Trial Court and High Court erred in returning a finding of guilt.

16. We, therefore, allow the appeal, set aside the judgments of the courts below and acquit the accused of all charges.