

Kewalchand Jain: An Eye-opener on Corroboration

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Rape is the most aggravated offence that a man inflicts on a woman, for, it is a satisfaction of male sexual urges through a complete erosion of the woman's right to control her sexuality.

That a very high degree of proof is required by the Judiciary in a rape case is not an overstatement; that such a degree of proof is very seldom satisfied by the prosecution is not an understatement either. Whether or not the testimony of the prosecutrix necessarily needs to be corroborated for the valid conviction of the accused has been a subject of controversy.

There are no provisions in the Indian Evidence Act, 1872, that directly deal with this issue. For many years now, the Judiciary has shown great reluctance in convicting the accused based on the testimony of the prosecutrix alone in order that there are safeguards to protect the accused in cases where a woman may make a false allegation of rape. Courts have often stated that it is highly unsafe to convict the accused based on the testimony of the prosecutrix alone¹ on the ground that it is easy to make a charge of rape but very difficult to refute it². This Judicial trend started undergoing a metamorphosis in the 1980s, with Courts questioning the treatment of the prosecutrix in rape cases on par with that of an accomplice³. According to the Evidence Act, the testimony of the accomplice needs to be corroborated in material particulars, more as a rule of practice than of law. However, the Supreme Court took a consolidated stand on this issue only in 1990 in the landmark judgment of *State of Maharashtra v. Chandraprakash Kewalchand Jain*⁴.

The facts of the case are as follows: The prosecutrix eloped with her lover to Bombay from Nagpur, married him as per the Muslim rites, and they occupied a room at a lodge on their way back to Nagpur. The accused—a police officer—along with another constable, checked the lodge and insisted that the couple accompany him to the police station, though they showed him the *Nikahnama*. At the police station, they were separated, and the prosecutrix alleged that the accused flirted with her and demanded that she spend the night with him. When she refused, he threatened her with dire consequences, booked her husband on a false charge in order that he be retained at the police station and thereby placing the prosecutrix in a vulnerable situation. Thereafter, the couple's parents were called to the police

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1. 1977 Cri LJ (NOC) 107, 1977 Cri LJ (NOC) 108, 1978 Cri LJ (NOC) 17.

2. 1982 W L N (U C) 60 (67) Raj

3. The trend can be seen in 1980 Cri L J 265 Cal, 1983 Cri L J 1096 and 1984 Cri L J (NOC) 74 Raj.

4. 1990 Cri L J 889.

station to take the girl back, but annoyed at the marriage, they left the station without her. So she was put up at a lodge under the direction of the accused, after which, he allegedly raped her twice in her room at the lodge. The next day, the husband was released and he filed in the FIR for the offence of rape committed on his wife by the police officer.

When the case was heard by the Trial Court, it was held that rape had been proved and the accused was convicted. When the accused appealed to the High Court, it reversed the Trial Court's decision on the ground that the testimony of the prosecutrix needs to be corroborated and that there was no corroborative evidence in the case. On the same set of facts and circumstances, the Supreme Court convicted the accused.

The High Court had opined that except in the rarest of rare cases where the testimony of the prosecutrix is found to be so trustworthy that no corroboration is necessary, the Court should ordinarily look for corroboration. However, the Supreme Court held a diametrically opposite view and said that corroboration should be insisted upon only in the rarest of rare cases.

The reasons for the Supreme Court judgment are as follows:

1. The Evidence Act does not have a provision stating that the testimony of the prosecutrix is to be corroborated in material particulars. She is to be placed on par with an injured person who is a victim of violence and not on par with an accomplice of a crime.
2. The standard of proof expected by the Court is to take account of the fact that these crimes are often committed in seclusion and direct evidence of the prosecutrix alone is available.
3. The Court is also to take account of the fact that in Indian society, a woman will not stake her reputation by levelling a false charge concerning her chastity.
4. Crime committed by a person in authority such as the police officer, is not to be treated on par with crime by a citizen, as violation of the rights of women by the investigating agency is thus perpetuated.
5. Court must take into account the social and psychological factors that work on the prosecutrix such as the emotional turmoil, fear of being shunned by the society coupled with the awe of office carried by a police officer in evaluating her evidence, analysing her reactions, her actions and inactions.

The case would not have been worth mentioning if it had plainly laid down a blanket rule that corroboration should be dispensed with in all rape cases, for then, it would be open to criticisms that the case renders an unfair advantage to the woman. However, the case is to be valued for laying down a general rule that corroboration is not to be looked at in every case of rape, and qualified it by saying that in cases where the testimony of the prosecutrix is suspicious as when it is

riddled with contradictions, the Court can and should go for corroboration. The case is also an eye-opener for laying down guidelines for the Judiciary in evaluating the evidence placed before it, highlighting the psychological and social factors operating on the prosecutrix as well as on the evidence adduced.

It is pertinent to note that the Supreme Court has shown sensitivity in upholding the honour of a woman when she has been raped and reaches the threshold of the Court, by opining as follows:

“To insist on corroboration except in the rarest of rare cases is to equate a woman who is a victim of the lust of another with an accomplice and thereby insult womanhood. It would be adding insult to injury to tell a woman that her story of woe will not be believed unless it is corroborated in material particulars as in the case of an accomplice to crime.”⁵

Every acquittal in a rape case indicates, by implication, that the prosecutrix had lied, that her testimony is not to be believed and that her experience was not that of rape but of ordinary sexual intercourse. Such a situation, where women would be deterred from seeking justice at the Courts, is sought to be remedied by the Supreme Court by its firm stand that the woman's testimony is not to be looked at with suspicion and a preconceived notion that she is making a false allegation.

The myth that law is neutral and that justice is consistent has been exploded in this case. The appreciation of evidence by the High Court and Supreme Court in this case highlight the extent to which subjectivity comes to play in an interpretation of a set of facts. Rigidity and liberalism of the Courts causes such subjectivity. Table I illustrates the diametrically opposite interpretations of the Courts that resulted in totally contradictory judgments.

The table illustrates the fact that where a Court evaluates evidence, bearing in mind the sociological and psychological factors that come into play, it can render justice in rape cases after all. If one has criticised the Judiciary for sitting in an ivory tower and deciding on rape cases, totally divorced from social reality, *Kewalchand's* case would perhaps give an iota of hope that such a phenomenon may not be rife today.

A word of caution for those who fight for the rights of the accused in rape cases: the Supreme Court has not laid down that the prosecutrix is to be believed totally in every case and that based on her deposition, the accused is to be convicted in every case. It prudently states that corroboration is to be resorted to where the Court is suspicious of the woman's testimony but is not to be insisted upon in each and every case.

Ultimately, the discretion lies solely with the Judiciary. It can either revert to looking at the testimony with the aid of “spectacles fitted with lenses tinged with

5. *Ibid* at 895

doubt, disbelief or suspicion"⁶ or discard the spectacles totally and render justice with the eye of prudence.

It is pertinent to note that it may not have been a mere coincidence that the landmark judgment that shows sensitivity to the plight of the raped women seeking justice against all social odds was rendered by a Bench consisting of a woman judge, namely, Fathima Beevi.J.

6. Quoted from *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* 1983 Cri L J 1096 At 1100.