

A.F.R.

Neutral Citation No. - 2024:AHC-LKO:32303

Court No. - 16

Case :- CRIMINAL APPEAL No. - 158 of 1986

Appellant :- Pasru @ Ismail

Respondent :- The State

Counsel for Appellant :- P.S. Mehra, Satish Chandra Sitapuri

Counsel for Respondent :- G.A.

Hon'ble Mohd. Faiz Alam Khan, J.

1. The instant criminal appeal, under section 374 CrPC, has been moved by sole appellant- Pasru @ Ismail against the judgment and order of date 3rd March, 1986 passed by the IInd Additional Sessions Judge, Lucknow in Sessions Trial No.240 of 1984 whereby the appellant and co-convict-Prakash Jamadar have been convicted for committing offence under section 376 IPC and sentenced to undergo 10 years rigorous imprisonment.

2. The prosecution story, as is reflected from the record available before this court, is to the tune that an FIR was lodged by the victim/prosecutrix herself on 22.01.1984 at about 11 p.m. at police station Hazratganj, Lucknow, alleging that she resides in servant quarters of bungalow of one Shri Lobo, Manager of Capital Cinema along with her husband- Munnalal, who was a rickshaw-puller. It is further alleged that on 22.01.1984 at about 7 p.m. she had gone towards Hazratganj crossing to say goodbye to *bhabhi* of one Rammu Shukla. When she (*bhabhi* of Rammu Shukla) had departed, at that point of time, appellant- Pasru @ Ismail and co-accused-Prakash Jamadar arrived at rickshaw of one Bhallar and forcibly abducted and taken her to Banarsibagh where one of their associate also joined them and all the four persons committed rape with her against her wish till 10. p.m. They also threatened to kill her and closed her mouth by tying cloth on her mouth. It is also alleged that she knew accused Pasru and Prakash by their names and remaining two accused persons were not known to her. On her making hue & cry, she

was allowed to go out of Banarsibagh and thereafter she went to police station Kotwali Hazratganj with her husband and lodged the FIR.

3. On the basis of aforesaid information, an FIR at Case Crime no.085 of 1984 under section 376 IPC was lodged and the investigation was entrusted to sub-inspector of police- Shri Akhlaq Ahmad Siddiqui, who got the medication examination of the victim/prosecutrix done and, also recorded statement of Rammu Shukla, husband of the victim/prosecutrix, namely, Munnalal as well as rickshaw puller- Bhallar and also inspected the scene of the crime on identification of the victim/prosecutrix and prepared site-map and site-plan of zoo (Banarsibagh) where the offence of rape is alleged to have been committed. He also arrested the appellant and other accused persons, collected inner garments of the victim, which were sent Agra for chemical examination.

The investigating officer, after finding sufficient evidence/material, submitted charge-sheet against appellant- Pasru @ Ismail, Prakash Jamadar, Hansram and Kishori under section 376 IPC. It is worthwhile to mention here that the undergarments of the appellant- Pasru @ Ismail, which were sent for forensic/chemical examination, were found stained with semen.

4. The victim/prosecutrix was medically examined by Dr. P. K. Mishra, Medical Officer, Civil Hospital, Lucknow on 23.01.1984 at about 12.45 a.m., however, no injury etc has been found on her person. She was referred to Dufferin Hospital for further opinion pertaining to sexual intercourse. On 23.01.1984, at about 2. p.m., the victim/prosecutrix was medically examined at Mahila Hospital, Lucknow by a lady doctor- Rekha Gaur, who also did not find any mark of external injury on any part of her body and, on her internal examination, she also opined that no opinion could be given pertaining to sexual assault allegedly committed on the victim/prosecutrix and her age was ascertained through ossification process as 17-18 years and vaginal smear, which was collected from the victim/prosecutrix, also showed no sperm etc.

5. Appellant- Pasru @ Ismail was also examined medically and three abrasions of minor nature had been found on the front of left knee joint of him and also on front of his left leg. Some semen stains were also noticed on his underwear, which was sealed and sent for chemical analysis.

6. After committal of the case, the trial court had framed charges against all the accused person, namely, Pasru @ Ismail, Prakash Jamadar, Hansram and Kishori under section 376 IPC to which they denied and claimed trial.

7. In order to prove its case, the prosecution has examined victim/prosecutrix as PW-1, her husband - Munnalal as PW-2, Shiraj Ahmad as PW-3, Bhagauti Prasad as PW-4, Rammu Shukla as PW-5, Dr. P. K. Mishra as PW-6, Dr. Rekha Gaur as PW-7, Prem Prakash Sinha as PW-8, Ram Mohan Gupta as PW-9 and sub-inspector of police - Akhlaq Ahmad Siddiqui as PW-10 and apart from oral evidence, the prosecution has also relied on some documentary evidence e. g. *chik* FIR, GD entry, medical reports of the victim/prosecutrix, statement of the victim/prosecutrix recorded by the Magistrate under section 164 CrPC, forensic lab report pertaining to undergarments of appellant- Pasru alias Ismail and the charge-sheet.

8. After completion of the evidence by the prosecution, statements of the accused persons were recorded under section 313 CrPC wherein the accused persons denied the allegations of the prosecution and claimed that they have been falsely implicated. So far as appellant- Pasru alias Ismail is concerned, he stated that husband of the victim/prosecutrix had borrowed some money from him; they had a quarrel in respect of repayment of the same; the victim/prosecutrix is a lady of easy virtue and he had earlier complained to her husband to have a watch on her as she is indulged in immoral acts and, on this score also, the husband of the victim/prosecutrix had a quarrel with them. Pertaining to the undergarments of the appellant, it is stated that the appellant was forced to wear the said underwear by the police personnel at police station Hazratganj.

9. The accused persons, in their defence, have produced two defence witnesses, namely, Abdul Moin Siddiqui, resident of Narhi area, Lucknow as DW-1 and Sharif Ahmad, resident of village Ujariaon, Ghazipur as DW-2. DW-1- Abdul Moin Siddiqui is a witness pertaining to character of the victim/prosecutrix, as stated by the appellant in his statement recorded under section 313 CrPC, while DW-2- Sharif Ahmad is a witness of seeing the appellant being forcibly worn the underwear given to him by the police personnel at police station Hazratganj.

10. The trial court, after appreciating the evidence available on record, found the case of the prosecution proved beyond reasonable doubt pertaining to the instant appellant- Pasru alias Ismail and co-convict - Prakash Jamadar and convicted them in the manner described in the first paragraph of this judgment, while acquitting the other two accused persons. Co-convict- Prakash Jamadar has also preferred Criminal Appeal No.170 of 1986 against the judgment of conviction, however, having regard to the fact that he has died during the pendency of the said appeal, the criminal appeal filed by him has stood abated.

11. Heard Shri Satish Chandra Sitapuri, assisted by Shri Amitabh Shukla, learned counsel appearing for the appellant, as well as Shri Rajesh Kumar Singh, learned AGA-I, appearing for the State, and perused the entire record.

12. Shri Satish Chandra Sitapuri, learned counsel for the appellant, while drawing attention of this court towards the impugned judgment and order passed by the trial court, vehemently submits that the trial court has committed manifest illegality in appreciating the evidence available on record. The allegation of rape has been levelled against four accused persons, while only two accused persons, namely, Pasru alias Ismail (the present appellant) and Prakash Jamadar were named in the FIR and role of other accused persons, namely, Hansram and Kishori had surfaced in the statement of the victim/prosecutrix and other witnesses recorded under section 161 CrPC, however, the trial court has acquitted them, holding their identification doubtful. It is vehemently submitted that the husband of the victim/prosecutrix, who has been testified before the trial

court as PW-2, is not an eye-witness of the alleged crime and he has stated before the trial court what has been narrated to him by the victim/prosecutrix and other three prosecution witnesses, namely, Shiraj Ahmad (PW-3), Bhagauti Prasad (PW-4) and Rammu Shukla (PW-5), who were the witnesses of kidnapping/abduction of the victim/prosecutrix and shown as independent witnesses, have not supported the case of the prosecution before the trial court and have been declared hostile.

13. It is vehemently submitted that during the course of investigation statements of Mata Prasad and Bhallar (rickshaw puller) were recorded under section 164 CrPC before the Magistrate, who claimed to have seen the victim/prosecutrix, being taken away by the appellant and co-accused, Prakash Jamadar on a rickshaw, were produced before the trial court, which, *prima facie*, suggests that the whole prosecution story was based on biasness, as stated by the appellant in his statement before the trial court under section 313 CrPC. It is also stated that even if the case of the prosecution is believed as it is, it will emerge that the victim/prosecutrix was a consenting party and perhaps as her mischief was known to her husband, she had lodged the FIR. In this regard, learned counsel for the appellant has cited various instances, emerging in the testimony of the victim/prosecutrix in order to show that the victim/prosecutrix was having an opportunity/occasion to have raised an alarm as she was passing through one of the well crowded street of the city and her failure of not raising any alarm, *prima facie*, suggests that she was a consenting-party. It is also highlighted that the investigating officer of the case- Akhlaq Ahmad testified as PW-10 before the trial court has categorically denied to have seized any undergarment of the appellant and there is discrepancy in the forensic lab report pertaining to the finding of sperm and seminal stains on the undergarments of the appellant and victim/prosecutrix.

14. While drawing attention of this court towards statements of Dr. P. K. Mishra and Dr. Rekha Gaur, who have examined the victim/prosecutrix and did not find any injury or any abnormality on her person, it is

submitted by the learned counsel for the appellant that it is impossible for victim/prosecutrix not to sustain even any scratch when she was being raped by the four accused persons and no opinion with regard to the rape has been given by these doctors. It is further submitted that there are material contradictions in statement of the victim/prosecutrix so far as threatening to her by showing knife is alleged and the victim/prosecutrix has also admitted in her statement that she has narrated what has been told to her by the investigating officer. It is further submitted that the duty of the trial court was to ascertain as to whether the case of the prosecution has been proved beyond reasonable doubt and, if there was any doubt or lacuna in the evidence of the prosecution, the benefit of the same should have been given to the present appellant and the trial court has failed in its duty to appreciate evidence of the prosecution witnesses in right perspective.

15. Learned AGA, on the other hand, submits that the trial court has not committed any illegality or to say any irregularity in passing the impugned judgment and order. The appellant was named in the FIR. He was known to the victim/prosecutrix. The testimony of the victim/prosecutrix of sexual assault is akin to the evidence of an injured person and the same has been corroborated by the forensic lab report as seminal stains and sperm have been found on the undergarments of the victim/prosecutrix and the appellant.

16. Having heard learned counsel for the parties and having perused the record, it is reflected that the prosecution has produced before the trial court five witnesses of fact in order to prove the first part of the occurrence. It is stated by the victim/prosecutrix in the FIR lodged by herself as well as in her statements recorded before the investigating officer and the trial court that she was abducted by the appellant and co-convict- Prakash Jamadar on a rickshaw from Hazratganj crossing near Ambedkar statue, which was being pulled by one Bhallar. It appears to be an admitted case of the prosecution that PW-2, who is the husband of the victim/prosecutrix, was not an eye-witness of any of the incident e.g. of kidnapping as well as of sexual assault and his evidence is immaterial so

far as the allegation of abduction, kidnapping or commission of sexual assault is concerned as the same is relevant only with regard to lodging of the FIR and the events which had occurred thereafter. It also appears to be an admitted situation that PW-3- Shiraj Ahmad, PW4- Bhagauti Prasad and PW-5- Rammu Shukla have not supported the version of the prosecution and have been declared hostile. PW-3- Shiraj Ahmad had earlier claimed to be on duty at the gate of Banarsibagh at the time when the victim/prosecutrix was allegedly taken into the orchard by the accused persons. PW-4 - Bhagauti Prasad was another gate man who had categorically stated to have not seen any person at the relevant point of time, while he earlier claimed to have seen the victim/prosecutrix and other accused persons going into Banarsibagh. Similarly, PW5- Rammu Shukla, pertaining to his *Bhabhi*, it was stated by the victim/prosecutrix that she had gone to Hazratganj crossing to say goodbye to her, has also not supported this part of the story of the prosecution and, thus, so far as the story of the prosecution with regard to abduction/kidnapping and commission of rape is concerned, the evidence of only victim/prosecutrix is available. Thus, the case of the prosecution before the trial court was based on the testimony of the victim/prosecutrix. The law with regard to the manner in which the evidence of sole witness is to be appreciated is now no more *res integra* and the same has been set at rest by catena of judgments rendered by the Hon'ble Supreme Court.

17. In the case of **Jaikam Khan vs. The State of Uttar Pradesh**, *MANU/SC/1259/2021* the Hon'ble Supreme Court has held as under:-

“30. We may also refer to the following observations of this Court in the case of Anil Phukan v. State of Assam MANU/SC/0228/1993 : (1993) 3 SCC 282:

3. This case primarily hinges on the testimony of a single eyewitness Ajoy PW 3. Indeed, conviction can be based on the testimony of a single eyewitness and there is no Rule of law or evidence which says to the contrary provided the sole witness passes the test of reliability. So long as the single eyewitness is a wholly reliable witness the courts have no difficulty in basing conviction on his testimony alone. However, where the single eyewitness is not found to be a wholly reliable witness, in the sense that there are some circumstances which may show that he could have an interest in the prosecution, then the courts

generally insist upon some independent corroboration of his testimony, in material particulars, before recording conviction. It is only when the courts find that the single eyewitness is a wholly unreliable witness that his testimony is discarded in toto and no amount of corroboration can cure that defect. It is in the light of these settled principles that we shall examine the testimony of PW 3 Ajoy.

18. In the case of **Amar Singh and Ors. vs. The State (NCT of Delhi)**, **MANU/SC/0752/2020** the Hon'ble Supreme Court has held as under:-

“16. Thus the finding of guilt of the two Accused Appellants recorded by the two Courts below is based on sole testimony of eye witness PW-1. As a general Rule the Court can and may act on the testimony of single eye witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Evidence Act, 1872. But if there are doubts about the testimony Courts will insist on corroboration. It is not the number, the quantity but quality that is material. The time honoured principle is that evidence has to be weighed and not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise (see Sunil Kumar v. State Government of NCT of Delhi) MANU/SC/0815/2003 : (2003) 11 SCC 367.

17. This case primarily hinges on the testimony of sole eye witness, Parminder Singh PW-1, brother of the deceased. As already discussed above conviction can be based on the testimony of a single eye witness so long he is found to be wholly reliable. In the light of the settled legal principles we proceed to examine the testimony of Parminder Singh PW-1 and also his conduct at the time of the incident.

32. The conviction of the Appellants rests on the oral testimony of PW-1 who was produced as eye witness of the murder of the deceased. Both the Learned Sessions Judge, as well as High Court have placed reliance on the evidence of PW-1 and ordinarily this Court could be reluctant to disturb the concurrent view but since there are inherent improbabilities in the prosecution story and the conduct of eye witness is inconsistent with ordinary course of human nature we do not think it would be safe to convict the Appellants upon the incorroborated testimony of the sole eye witness. Similar view has been taken by a Three Judge Bench of this Court in the case of Selvaraj v. The State of Tamil Nadu MANU/SC/0170/1976 : (1976) 4 SCC 343. Wherein on an appreciation of evidence the prosecution story was found highly improbable and inconsistent of ordinary course of human nature concurrent findings of guilt recorded by the two Courts below was set aside.”

19. In the case of **State of Maharashtra v. Dinesh, (2018) 15 SCC 161**, the Hon'ble Supreme Court has held as under:-

“7. Undoubtedly, out of 23 prosecution witnesses, the evidence of PW 7 Pushpabai is crucial in this case as she was presented as the sole eyewitness who had seen Accused 2 along with Accused 1, cutting the corpse of the deceased into pieces. Apparently, there was no other witness who had last seen the accused in the company of the deceased prior to the place and time of occurrence. When the entire case hinges on the evidence of a sole witness, a paramount duty is cast on the Court to carefully scrutinise such evidence and find out whether such evidence is worth credence or not. Before assessing the evidence of PW 7, we find it appropriate to note some of the views expressed by this Court on this aspect.

8. In Joseph v. State of Kerala [Joseph v. State of Kerala, (2003) 1 SCC 465 : 2003 SCC (Cri) 356] , this Court has observed that where there is a sole witness, his evidence has to be accepted with an amount of caution and after testing it on the touchstone of other material on record. In State of Haryana v. Inder Singh [State of Haryana v. Inder Singh, (2002) 9 SCC 537 : 2003 SCC (Cri) 1239] , this Court has laid down that the testimony of a sole witness must be confidence inspiring and beyond suspicion, thus, leaving no doubt in the mind of the Court. In Ramnaresh v. State of Chhattisgarh [Ramnaresh v. State of Chhattisgarh, (2012) 4 SCC 257 : (2012) 2 SCC (Cri) 382] , this Court, after taking note of the aforementioned two judgments, observed that “the principles stated in these judgments are indisputable. None of these judgments say that the testimony of the sole eyewitness cannot be relied upon or conviction of an accused cannot be based upon the statement of the sole eyewitness to the crime. All that is needed is that the statement of the sole eyewitness should be reliable, should not leave any doubt in the mind of the Court and has to be corroborated by other evidence produced by the prosecution in relation to commission of the crime and involvement of the accused in committing such a crime”. It is well settled that it is the quality of the evidence and not the quantity of the evidence which is required to be judged by the court to place credence on the statement (Seeman v. State [Seeman v. State, (2005) 11 SCC 142 : 2005 SCC (Cri) 1893]).”

20. The Hon'ble Supreme Court in the case of **Mohd. Ali @ Guddu Vs State of Uttar Pradesh (2015) 7 SCC 272** has held that in cases of rape order of conviction may be passed on the testimony of victim alone, if the same is unimpeachable.

21. In the case of **Gulam Sarbar vs. State of Bihar** MANU/SC/1033/2013 the Hon'ble Supreme Court has held as under:-

*“14. In the matter of appreciation of evidence of witnesses, it is not the number of witnesses but quality of their evidence which is important, as there is no requirement under the Law of Evidence that any particular number of witnesses is to be examined to prove/disprove a fact. It is a time-honoured principle that evidence must be weighed and not counted. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy or otherwise. The legal system has laid emphasis on value provided by each witness, rather than the multiplicity or plurality of witnesses. It is quality and not quantity, which determines the adequacy of evidence as has been provided by Section 134 of the Evidence Act. Even in Probate cases, where the law requires the examination of at least one attesting witness, it has been held that production of more witnesses does not carry any weight. Thus, conviction can even be based on the testimony of a sole eye witness, if the same inspires confidence. (Vide: **Vadivelu Thevar and Anr. v. State of Madras** MANU/SC/0039/1957 : AIR 1957 SC 614; **Kunju @ Balachandran v. State of Tamil Nadu** MANU/SC/7065/2008 : AIR 2008 SC 1381; **Bipin Kumar Mondal v. State of West Bengal** MANU/SC/0509/2010 : AIR 2010 SC 3638; **Mahesh and Anr. v. State of Madhya Pradesh** MANU/SC/1125/2011 : (2011) 9 SCC 626; **Prithipal Singh and Ors. v. State of Punjab and Anr.** MANU/SC/1292/2011 : (2012) 1 SCC 10; and **Kishan Chand v. State of Haryana** MANU/SC/1120/2012 : JT 2013 (1) SC 222)”*

22. In the case of **Sunil Kumar vs. The State Govt of NCT of Delhi** MANU/SC/0815/2003 the Hon'ble Supreme Court has held as under:-

*“8. Vadivelu Thevar's case (supra) was referred to with approval in the case of **Jagdish Prasad and Ors. v. State of M.P.** MANU/SC/0282/1994 : 1994CriLJ1106 . This Court held that as a general rule the court can and may act on the testimony of a single witness provided he is wholly reliable. There is no legal impediment in convicting a person on the sole testimony of a single witness. That is the logic of Section 134 of the Indian Evidence Act, 1872 (in short the 'Evidence Act'). But, if there are doubts about the testimony the courts will insist for corroboration. It is for the Court to act upon the testimony of witnesses. It is not the number, the quantity, but the quality that is material. The time honoured principle is that evidence has to be weighed and, not counted. On this principle stands the edifice of Section 134 of the Evidence Act. The test is whether the evidence has a ring of truth, is cogent, credible and trustworthy, or otherwise.”*

23. In the case of **Lallu Manjhi and Ors. vs. State of Jharkhand** MANU/SC/0004/2003 the Hon'ble Supreme Court has held as under:-

“10. The Law of Evidence does not require any particular number of witnesses to be examined in proof of a given fact. However, faced with the testimony of a single witness, the Court may classify the oral testimony into three categories, namely (i) wholly reliable, (ii) wholly unreliable, and (iii) neither wholly reliable nor wholly unreliable. In the first two categories there may be no difficulty in accepting or discarding the testimony of the single witness. The difficulty arises in the third category of cases. The court has to be circumspect and has to look for corroboration in material particulars by reliable testimony, direct or circumstantial, before acting upon testimony of a single witness. {See - Vadivelu Thevan etc. v. State of Madras, MANU/SC/0039/1957}.”

24. In the case of **State of Haryana v. Inder Singh and others (2002) 9 SCC 537** the Hon’ble Supreme Court has held as under:-

“5. There is no denial of the fact that it is not the quantity but the quality of the witnesses which matters for determining the guilt or innocence of the accused in criminal cases. However, it is equally true that when a case is based upon the testimony of the only witness, his statement must be confidence-inspiring leaving no doubt in the mind of the court, being above all suspicion, particularly, when one of the courts on facts has held that his testimony is not reliable.”

25. In the case of **Vadivelu Thevar vs. The State of Madras MANU/SC/0039/1957**

*“12. The decision of this Court in the case of Vemireddy Satyanarayan Reddy and three others v. The State of Hyderabad MANU/SC/0025/1956 : [1956] S.C.R. 247 was also relied upon in support of the contention that in a murder case the court insists on corroboration of the testimony of a single witness. In the said reported decision of this Court, P.W. 14 has been described as "a dhobi boy named Gopai." He was the only person who had witnessed the murder and his testimony had been assailed on the ground that he was an accomplice. Though this Court repelled the contention that he was an accomplice, it held that his position was analogous to that of an accomplice. **This Court insisted on corroboration of the testimony of the single witness not on the ground that his was the only evidence on which the conviction could be based, but on the ground that though he was not an accomplice, his evidence was analogous to that of an accomplice, in the peculiar circumstances of that case as would be clear from the following observations at p. 252 :***

".....Though he was not an accomplice, we would still want corroboration on material particulars in this particular case, as he is the only witness to the crime and as it would be unsafe to hang four people on his sole testimony unless we feel convinced that he is speaking the truth. Such corroboration need not, however, be on the

question of the actual commission of the offence; if this was the requirement, then we would have independent testimony on which to act and there would be no need to rely on the evidence of one whose position may, in this particular case, be said to be somewhat analogous to that of an accomplice, though not exactly the same."

13. It is not necessary specifically to notice the other decisions of the different High Courts in India in which the court insisted on corroboration of the testimony of a single witness, not as a proposition of law, but in view of the circumstances of those cases. On a consideration of the relevant authorities and the provisions of the Indian Evidence Act, the following propositions may be safely stated as firmly established :

(1) As a general rule, a court can and may act on the testimony of a single witness though uncorroborated. One credible witness outweighs the testimony of a number of other witnesses of indifferent character.

(2) Unless corroboration is insisted upon by statute, courts should not insist on corroboration except in cases where the nature of the testimony of the single witness itself requires as a rule of prudence, that corroboration should be insisted upon, for example in the case of a child witness, or of a witness whose evidence is that of an accomplice or of an analogous character.

(3) Whether corroboration of the testimony of a single witness is or is not necessary, must depend upon facts and circumstances of each case and no general rule can be laid down in a matter like this and much depends upon the judicial discretion of the Judge before whom the case comes.

(Emphasis Mine)

14. In view of these considerations, we have no hesitation in holding that the contention that in a murder case, the court should insist upon plurality of witnesses, is much too broadly stated. Section 134 of the Indian Evidence Act has categorically laid it down that "no particular number of witnesses shall in any case be required for the proof of any fact."

The legislature determined, as long ago as 1872, presumably after due consideration of the pros and cons, that it shall not be necessary for proof or disproof of a fact, to call any particular number of witnesses. In England, both before and after the passing of the Indian Evidence Act, 1872, there have been a number of statutes as set out in Sarkar's 'Law of Evidence' - 9th Edition, at pp. 1100 and 1101, forbidding convictions on the testimony of a single witness. The Indian Legislature has not insisted on laying down any such exceptions to the general rule recognized in s. 134 quoted above. The section enshrines the well recognized maxim that "Evidence has to be weighed and not counted". Our Legislature has given statutory recognition to the fact that administration of justice may be hampered if a particular number of witnesses were to be insisted upon. It is not seldom that a crime had been committed in the presence of only one witness, leaving aside those cases which

are not of uncommon occurrence, where determination of guilt depends entirely on circumstantial evidence. If the Legislature were to insist upon plurality of witnesses, cases where the testimony of a single witness only could be available in proof of the crime, would go unpunished. It is here that the discretion of the presiding judge comes into play. The matter thus must depend upon the circumstances of each case and the quality of the evidence of the single witness whose testimony has to be either accepted or rejected. If such a testimony is found by the court to be entirely reliable, there is no legal impediment to the conviction of the accused person on such proof. Even as the guilt of an accused person may be proved by the testimony of a single witness, the innocence of an accused person may be established on the testimony of a single witness, even though a considerable number of witnesses may be forthcoming to testify to the truth of the case for the prosecution. Hence, in our opinion, it is a sound and well-established rule of law that the court is concerned with the quality and not with the quantity of the evidence necessary for proving or disproving a fact. Generally speaking, oral testimony in this context may be classified into three categories, namely :

- (1) Wholly reliable.*
- (2) Wholly unreliable.*
- (3) Neither wholly reliable nor wholly unreliable.”*

26. The above legal position would clearly demonstrate that if the prosecution is seeking conviction of an accused person on the basis of testimony of single witness, the character of the testimony of that witness must be of the nature of wholly reliable and unimpeachable.

Now the evidence, which was available before the trial court, is to be appreciated in order so assess as to whether the evidence of the sole witness (victim/prosecutrix) is of the nature of wholly reliable and unimpeachable or there are some dents in her testimony in order to assess as to whether the appellant was entitled for the benefit of reasonable doubt, emerging in her testimony. A perusal of the impugned judgment and order of the trial court would reveal that the trial court has relied on the testimony of the victim/prosecutrix so far as the appellant and co-convict- Prakash Jamadar (since died) is concerned and was of the view that as the prosecutrix was/is an illiterate lady, she might have been misguided or confused during the cross examination. Thus, the admitted fact appears to be that the victim/prosecutrix has levelled allegation of rape against four accused persons and the story, as narrated by her, has

not been found truthful by the trial court with regard to two other accused persons who have been acquitted by the trial court and the said judgment appears to have not been challenged either by the informant/victim/prosecutrix or by the State by filing appeal either under section 372 CrPC or under section 378 CrPC.

27. The perusal of statement of the victim/prosecutrix recorded before the trial court would reveal that the victim/prosecutrix has stated to have been abducted by the appellant and and co-convict- Prakash Jamadar (since died) at 7 p.m. on 22.01.1984 from Hazratganj crossing, a judicial notice may be taken having regard to the established fact on record that Hazratganj crossing is one of the crowded crossings of the city and it could not be denied that at the time of the incident (occurred in 1984), this crossing would have been a busy place. In her cross-examination, the victim/prosecutrix appears to have taken contradictory stands as to why she did not raise any alarm. At first, she had stated that one of the accused, namely, the appellant was having a knife with him which contradicts her earlier statement recorded under section 161 CrPC as she has not alleged possession of knife by the appellant in her statement given to the investigating officer. Significantly, in the next breath, she has admitted that she was confined on rickshaw by the accused persons at 7 p.m. and remained on rickshaw till 7.30 p.m. and she did not have any talk with rickshaw puller- Bhallar, who was known to her from before the incident as Bhallar is her neighbour. She further admitted in her cross-examination that neither she sought any help from any person nor has raised any alarm as she was not allowed to do so. She has stated that cloth was inserted in her mouth when she was near Ambedkar statue (Hazratganj crossing) and though she made all attempts and struggle to get herself free, however, she did not get success. She also admitted that there were some persons in the street but nobody came to her rescue and even Bhallar- rickshaw puller did not render any help to her.

28. Perusal of her statement recorded before the trial court would also reveal that she stated that when she arrived at the gate of zoo, rickshaw puller- Bhallar, after dropping her and accused persons at the gate of the

zoo, fled away from the scene and when she entered into the zoo, her mouth, which was earlier gagged with cloth, was opened. She has been contradicted in her cross-examination in terms that there is no averment of placing cloth on her mouth either in the FIR or in her statement recorded under section 161 CrPC. Significantly, she admitted in her cross-examination that she was wearing sari, blouse and petticoat which were not torn but she had taken off the same herself. At a significant place she has admitted that Rammu Shukla had also come with his *bhabhi* to her home on the relevant day and time and before the incident, either Rammu Shukla or any relative of him had never come to her house and it is for the very first time she had met with *bhabhi* of Rammu Shukla. It is strange that the victim/prosecutrix was meeting for the very first time with the *bhabhi* of Rammu Shukla, who was accompanied by her *dever* Rammu Shukla, and had gone to say goodbye to her to Hazratganj crossing. She has also admitted that when she reached at the Ambedkar statue (Hazratganj crossing), mother of Rammu Shukla had met her, however, she did not have any talk with them.

29. During her cross-examination, the victim/prosecutrix has admitted that there were many persons on the street in front of the zoo, who were walking on feet, cycles and rickshaw. She has admitted that neither Rammu Shukla nor Bhallar (rickshaw puller) had raised any alarm. The victim/prosecutrix was also contradicted with regard to her statement that co-convict- Prakash Jamadar was holding a knife, had not been stated by her in her statement recorded under section 164 CrPC. At one place, in her cross-examination, she has stated that she also requested for help from the traffic police men who were in the police uniform but they had also not rendered any help to her. She has stated to have made all attempts of rescue while on rickshaw but she did not get any injury. One of the instances, which is reflecting the statement of the prosecutrix/victim and her husband as suspicious, is that she has admitted in cross examination that she had gone to police station with Rammu Shukla and her husband and Rammu Shukla was in knowledge of names of all the four accused persons and he (Rammu Shukla) had also told the

names of all the four accused persons and it is on that basis the FIR was lodged, however, in the FIR only the names of appellant- Pasru alias Ismail and Prakash Jamadar had been mentioned. Significantly, she admitted in her cross-examination that it is right that she was scolded by accused – Hansram when she was with Bhallar and Ramu alias Rammu Shukla and he (Hansram) asked them to leave immediately and they had all gone to their homes and when she reached her home, her husband became angry as to where she was for such a long time and he (husband of the victim/prosecutrix) also assaulted her, however, it was Ramu alias Rammu Shukla who intervened and saved her and it was thereafter she told her husband about the incident. She has also admitted that she was married two years before the incident and was having a child of four months.

30. In this regard the evidence of husband of the victim/prosecutrix, who has been testified as PW-2, is also relevant, who has admitted in his cross-examination that his wife used to go outside and he did not like her absence and used to scold her and also used to assault her physically and many times when he was scolding his wife, it was Ramu alias Rammu Shukla, who had intervened. It is to be highlighted that the victim/prosecutrix, in her statement, has earlier admitted to have seen Ramu alias Rammu Shukla at the relevant day for the very first time.

31. The testimony of the victim/prosecutrix, which has been highlighted herein before, in the considered opinion of this court, is not of the character which may be classified as 'wholly reliable' or 'unimpeachable' and is not trustworthy. There are various major contradictions in her evidence and overall perusal of her evidence, as recorded before the trial court, would give an impression that perhaps she had accompanied the accused persons of her own. Her age has been assessed as 17-18 years at the time of alleged incident through ossification process and she has admitted to have married two years before the alleged incident and was also having a child of four months at that point of time. Thus, having regard to the two years variable either side, the victim appears to be major at the time of the alleged incident. The independent witnesses,

namely, Shiraj Ahmad (PW-3), Bhagauti Prasad (PW-4) and Rammu Shukla (PW-5), who could prove the story of abduction, have also not supported the case of the prosecution and having regard to the fact that the victim/prosecutrix appears to be a consenting party, the report of the forensic lab, with regard to finding of seminal stains on the inner garments of the appellant and the prosecutrix/victim, in the considered opinion of this court, would not be of any significance.

32. In the overall assessment of evidence of the victim/prosecutrix adduced before the trial court, it may safely be inferred that the trial court has committed manifest illegality in appreciating the evidence of the prosecutrix. At the cost of repetition, it is to be emphasized that to convict an accused in the case on the basis of testimony of single/sole witness, his/her testimony should be of the character of wholly reliable and unimpeachable, however, the testimony of the victim/prosecutrix recorded before the trial court in this case is having major dents and contradictions, rendering her testimony 'unreliable' and, therefore, the same should not have been acted upon. Thus, the trial court appears to have committed patent illegality in accepting the unreliable testimony of the victim/prosecutrix of the instant case and since she appears to be a consenting party and major at the date and time of the alleged incident, the judgment of the trial court may not be sustained and is liable to be set-aside and the appellant is entitled for benefit of doubts, emerging in the case of the prosecution.

33. In result the instant criminal appeal filed by appellant- Pasru @ Ismail is having force and, for the reasons mentioned herein above, is **allowed**. The impugned judgment and order dated 3rd March, 1986 passed by the IInd Additional Sessions Judge, Lucknow in Sessions Trial No.240 of 1984 is hereby **set-aside**. The appellant is acquitted of the charges framed against him under section 376 IPC. He will remain at liberty as he is on bail. Having regard to the provisions contained under Section 437-A CrPC, the appellant within 30 days from today shall appear and file personal bond and two sureties of Rs.50,000/- before the trial court for ensuring his presence before the Hon'ble Supreme Court, if

the judgment of this court is assailed by filing special leave to appeal or criminal appeal, as the case may be.

34. Let a copy of this judgment, along with record of the trial court, be transmitted to the trial court for compliance.

[Mohd. Faiz Alam Khan,J.]

Order Date :-25th April, 2024

MVS/-