IN THE SUPREME COURT OF INDIA

Criminal Appeal Nos. 221 with 220 of 1986

Decided On: 18.01.1990

Appellants: **State of Maharashtra**
Vs.
Respondent:**Chandraprakash Kewalchand Jain**

With

Stree Atyachar Virodhi Parishad, Maharashtra State
Vs.
Respondent:**Chandraprakash Kewalchand Jain, Police-Sub-Inspector, Nagpur and another**

Chandraprakash Kewalchand Jain Summary

CORROBORATION - Evidence of Prosecsitrix against the accused who was a police officer charged for the offence of rape -- There is no necessity of corroboration to the evidence of prosecutrix--A prosecutrix of a sex offence cannot be put on par with an accomplice ~ Evidence Act nowhere save that her evidence cannot be accepted unless it is corroborated in material particulars and is a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured in case of physical violence, however, nature of the evidence required to lend assurance to the testimony of the Prosecutrix must necessarily depend on the facts and circumstances of each case.

Having regard to the increase in number of sex violence in the recent past particularly in cases of molestation and rape in custody, to remove the notion, if it perists, that the testimony of a woman who is a victim of sex violence must ordinarily be coroborated in material particulars except in rarest of rare cases. To insist on corroboration is to equate a woman who is a victim of lust of another with an accomplice to the crime and thereby insult to womanhood. It would be adding insult to inquiry to tell woman that her story of woe will not be believed unless it is corroborated in material particulars. Standard of decency and morality in public life in India is not the same as in western and European countries and it is rather unfortunate that respect of womanhood in India is on the decline. The standard of proof to be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Therefore, the courts must also realise thai ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

EVIDENCE - Sections 113,114, Illus. (b) and 118 -- Penal Code of India, I860, Section 376 -- Offence of Rape committed by a Police Officer -- Conviction can be relief upon on the basis of evidence of prosecutrix without any corroboration -- 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 to a crime 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 corroborated in material particulars as in the case of an accomplice to a crime.

Ours is a conservating society where it concerns sexual behaviour. Ours is not a permissible society as in some of the western and european countries and standard of decency and morality in public life is not the same as in those countries. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve leasing, from molestation to rape. The standard of proof should be expected by the court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. The prosecutrix is undoubtedly a competent witness under Section 118 of Evidence Act and must receive the same weight as is attached to an injured in case of physical violence. What is necessary is that court must be alive to and conscious of the fact that it is dealing with the evidence of a person interested in the outcome of the charge levelled by her. If the court keeps this is mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to Section 114 which requires it to look for corroboration. When such crime is committed by a personal authority e.g. a police officer, the approach of the court should not be the same as in other case involving a private citizen. If a police officer misuses his authority and power while dealing with the young helpless girl, her conduct and behaviour must be judged in the back drop of the situation in which she was placed. The court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suiters on being molested or raped. It must be realised that a woman who is subjected to sex violence would always be slow and hesitant about disclosing her plight and the court must evaluate the evidence in this background.

Hon'ble Judges:

A.M. Ahmadi and M. Fathima Beevi, JJ.

ORDER

Ahmadi, J.

1. This appeal by special leave is brought by the State of Maharashtra against the judgment of acquittal recorded by the Nagpur Bench of the High Court off Bombay (Maharashtra) reversing the conviction of the respondent Chandraprakash Kewalchand Jain, a Sub-Inspector of Police, under Section 376, I.P.C. for having committed rape on Shamimbanu, a girl aged about 19 or 20 years on 22nd August. 1981. The learned Additional Sessions Judge, Nagpur, came to the conclusion that the prosecution had brought home the charge under Section 376, I.P.C. and sentenced the respondent to suffer rigorous imprisonment for 5 years and to pay a fine of Rs. 1,000/-, in default to suffer rigorous imprisonment for6 months. He was, however, acquitted of the charge under Section 342. I.P.C. The respondent challenged his conviction in appeal to the High Court. The High Court set aside the order of convic-tion and sentence imposed by the trial Court and acquitted the respondent. The State feeling aggrieved sought special leave to appeal. On the same being granted this appeal is before us.

2. Briefly the facts are that the parents of Shamimbanu were residing as tenants in a part of the building belonging to the father of Mohmad Shafi while the remaining portion was occupied by the owner's family. PW 1 Mohmad Shafi aged about 25 years fell in love with PW2 Shamimbanu aged about 19 years. The prosecution case is that although the parents of both knew about their love affair, for some reason or the other, they were) not married. Both of them left Nagpur and went to Bombay where they contracted a marriage through a Ka/i and returned to Nagpur by train on 20th August, 1981. They got down at Ajani Railway Station (a suburb of Nagpur) and went to a nearby Gurudeo Lodge and occupied Room No. 204. That night i.e. on the night of 20th/21st August, 1981, PW8 Police Sub-Inspector Qureishi checked the hotel and learnt that the couple was living in the said room in the assumed names of Mohmad Shabbir and Sultana. On being questioned P\V 1 Mohmad Shafi gave out the true facts and showed the Nikahnama Ex, 10. On being satisfied about the correctness of the version. Police Sub-Inspector Qureishi got their correct names substituted in the register of the Lodge as is evident from the entry Ex. 31. proved by PW5 Manohar Dhote, the Manager of the Lodge. Police Sub-Inspector Qureishi did not deem it necessary to take any steps against the couple.

3. On the next night between 21st and 22nd August, 1981 the respondent-accused went to the hotel room No. 204 occupied by the couple at the odd time of about 2.30 a.m. and knocked on the door. He was accompanied by PW 7 Constable Chandrabhan, When Mohmad Shafi opened the door the respondent questioned him on seeing Sha-mimbanu with him. Mohmad Shafi told him that she was his wife and gave their correct names. Notwithstanding their replies the respondent insisted that they accompany him to the police station, PW 5 requested the respondent to sign his visit book since he had inspected a few room of his Lodge including Room No. 204 but the respondent told him that he would do it later. So saying he left the Lodge with the couple.

4. On reaching the police station the respondent separated the couple. He took Shamimbanu to the first floor of the police station while her husband Mohmad Shafi was taken to another room by PW 7. Shamimbanu alleges that after she was taken to the first floor, the respondent flirted with her, slapped her when she refused to respond to his flirtation and demanded that she spend the night with him. The respondent also demanded

that she should give her age as 15 years so that Mohmad Shafi could be booked. On her refusing and protesting against his behaviour he threatened her with dire consequences.

5. In the other room Mohmad Shafi was subjected to beating by PW 7. After sometime both the boy and the girl were brought down to the main hall of the police station. By then it was around 5.00 or 5.30 a.m. Thereafter he sent Mohmad Shafi with a constable to fetch the girl's father. The girl's parents arrived at the police station shortly. The respondent asked the girl's parents if they were prepared to take back the girl who claimed to have married Mohmad Shafi. The girl's parents showed annoyance and left the police station refusing to take her with them, Mohmad Shafi's parents also adopted the same attitude.

6. The respondent then recorded an offence under Section 110 read with 117 of the Bombay Police Act against Mohmad Shafi on the allegation that he was found misbehaving on a public street uttering filthy abuses in front of Gujarat Lodge near Gurudeo Lodge. After putting Mohmad Shafi in the lock-up he sent the girl Shamimbanu to Anand Mahal Hotel with PW7. Initially PW4, the Hotel Manager refused to give a room to an unescorted girl but PW 7 told him that he had brought her on the directive of the respondent. Thereupon PW 4 allotted Room No. 36 to her. He made an entry in the hotel register to the effect 'Shamimbanu wife of Mohmad Shafi....as per instructions of Police Sub-Inspector Shri Jain.....' vide Ex.25. After leaving the girl in Room No. 36, PW 7 left the hotel. It is the prosecution case that after the girl was allotted the room, as per the usual practice, the hotel boy changed the bed-sheets, pillow covers and quilt cover. The rent was charged from the girl.

7. Having thus separated the couple and finding the girl thoroughly helpless, the respondent visited the girl's room and knocked on the door. The unsuspecting Shamimbanu opened the door. The respondent entered the room and shut the door behind him. Thereafter he asked the girl to undress but on the girl refusing he forcibly removed her 'kurta' and threw it away. He gagged the girl's mouth and threatened her with dire consequences if she did not submit. He then threw the girl on the cot, forcibly removed her 'salwar' and denuded her. He then had sexual intercourse with her, notwithstanding her protestations. After satisfying his lust, the respondent left threatening that he would bury both of them alive if she complained to anyone. He told her that he would now arrange to send back her husband.

8. Not fully satisfied the respondent returned to the hotel room after about half an hour and knocked on the door. Shamimbanu opened the door thinking that her husband had returned. When she saw the respondent she tried to shut the door but the respondent forced his way into the room and shut the door from within. He once again had sexual intercourse with her against her will. He repeated his threat before leaving.

9. On the other hand Mohmad Shafi was sent to Court on his arrest under Ss. 110/117 of the Bombay Police Act. He was released on bail, He returned to the police station by about 5.00 p.m. and enquired about the whereabouts of his wife. PW 7 told him she was in Room No. 36 of Anand Mahal Hotel. He immediately went to his wife. On seeing him

she was in tears. She narrated to him what she had gone through at the hands of the respondent. Enraged Mohmad Shafi went back to the police station and informed PW 14 Inspector Pathak about the commission of assault and rape on his wife by the respondent. PW 14 recorded the same in the station diary at 6.35 p.m. and informed his superiors about the same presumably because a police officer was involved. Thereupon Deputy Commissioner of Police Parassis and Assistant Commissioner of Police Gupta arrived at the police station. The Assistant Commissioner of Police asked Inspector Pathak to accompany Mohmad Shafi and fetch Shamimbanu. On their return with Sharnimbanu Mohmad Shafi was asked to give a written account of the incident which he did. On the basis thereof an offence under S. 376, I.P.C. was registered and the investigation was entrusted to Inspector Korpe of Crime Branch.

10. In the course of investigation a spot panchnama of Room No. 36 was drawn up and certain articles such as bed-sheet, quilt cover, mattress, etc. which had semen-like stains were attached. The hotel register containing the relevant entry (Ex. 25) was also seized and statements of witnesses were recorded. Both the respondent and Shamimbanu were sent for medical examination and their blood samples were taken along with that of Mohmad Shafi to determine their blood groups. Similarly the garments of the respondent and Shamimbanu were attached and sent for chemical examination along with the articles seized from the hotel room. On the conclusion of the investigation the respondent charge-sheeted and put up for trial before the Additional Sessions Judge, Nagpur.

11. The respondent pleaded not guilty to the charge and denied the accusation made against him. His defence was that he arrested Mohmad Shafi on the charge under Sections 110/117, Bombay Police Act, and took him to Gurudeo Lodge and from there he took him and Shamimbanu to the police station. Since the parents of both the boy and the girl disowned them he had no alternative but to place Mohmad Shafi in the lock-up and allow Shamimbanu to leave the police station as a free citizen since she was not accused of any crime. It was his say that after Shamimbanu left the police station she went to Anand Mahal Hotel and stayed in Room No. 36 awaiting Mohmad Shafi. According to him as Mohmad Shafi was annoyed because of his detention in the lock-up, he had, with the assistance of Shamimbanu, falsely involved him on the charge of rape.

12. The trial Court found that the respondent had visited Room No. 204 at an odd hour and had taken the couple to the police station where he had misbehaved with the girl. It also found that he had booked the boy on a false charge and had lodged the girl in Room No. 36 after their parents disowned them. It lastly held that the evidence of the prosecutrix clearly established that the respondent had raped her twice in that room. The trial Court convicted the respondent under Section 376, I.P.C.

13. The respondent preferred an appeal to the High Court. A learned single Judge of the High Court allowed the appeal and acquitted the respondent. The High Court took the view that the oral information Ex. 50 furnished by Mohmad Shafi to Inspector Pathak at 6.35 p.m. constituted the First Information Report and the subsequent written information Ex. 7 given at 8.30 p.m., was inadmissible in evidence as hit by S. 162 of the Code. The High Court then took the view that except in the 'rarest of the rare cases' where the

testimony of the prosecutrix is found to be so trustworthy, truthful and reliable that no corroboration is necessary, the Court should ordinarily look for corroboration. According to it as Ex. 50 did not unfold two successive acts of rape, this was not a ease where it would be safe to base a conviction on the sole testimony of the prosecutrix, more so because both the girl and the boy had reason to entertain a grudge against the respondent who had booked the latter. Lastly the High Court pointed out that the version of the prosecutrix is full of contradictions and is not corroborated by medical evidence, in that, the medical evidence regarding the examination of the prosecutrix is negative and does not show marks of violence. These contradictions and inconsistencies have been dealt with in paragraphs 24 to 31 of the judgment. The High Court also noticed certain infirmities in the evidence of PW 1 Mohmad Shafi in paragraphs 32to 34 of its judgment. The High Court, therefore, concluded that the prosecution had miserably failed to prove the guilt of the accused and accordingly acquitted him. It is against this order of the High Court that the State has preferred this appeal by special leave.

14. The learned counsel for the appellant-State submitted that the entire approach of the High Court in the matter of appreciation of evidence of the prosecution witnesses, particularly PW 2, betrays total ignorance of the psychology of an Indian woman belonging to the traditional orthodox society. He submitted that the prosecutrix of this case came from an orthodox muslim family, was semi-literate having studied up to the VII Standard and whose parents considered it a shame to take her back to their fold because she had eloped and married a boy of her own choice. He submitted that the statement of law in the High Court judgment that implicit reliance cannot be placed on a prosecutrix except in the rarest of rare cases runs counter to the law laid down by this Court in Bharwada Bhoyinbhai Hirjibhai v. State of Gujarat (1983) 3 SCR 280 : (AIR 1983 SC 753). He also submitted that the evidence of the prosecutrix has been rejected on unsustainable grounds which do not touch the substratum of the prosecution case and which can be attributed to nervousness and passage of time. According to him this approach of the High Court has resulted in gross miscarriage of justice which this Court must correct in exercise of its jurisdiction under Art. 136 of the Constitution. The learned counsel for the respondent, however, supported the High Court judgment.

15. It is necessary at the outset to state what the approach of the Court should be while evaluating the prosecution evidence, particularly the evidence of the prosecutrix, in sex-offences. Is it essential that the evidence of the prosecutrix should be corroborated in material particulars before the Court bases a conviction on her testimony? Does the rule of prudence demand that in all cases save the rarest of rare the Court should look for corroboration before acting on the evidence of the prosecutrix? Let us see if the Evidence Act provides the clue. Under the said statute 'Evidence' means and includes all statements which the Court permits or requires to be made before it by witnesses, in relation to the matters of fact under inquiry. Under S. 59 all facts, except the contents of documents, may be proved by oral evidence. Section 118 then tells us who may give oral evidence. According to that section all persons are competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind. Even in the case of an accomplice S.

133 provides that he shall be a competent witness against an accused person; and aconviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice. However, illustration (b) to S. 114, which lays down a rule of practice, says that the Court 'may' presume that an accomplice is unworthy of credit, unless he is corroborated in material particulars. Thus under S. 133, which lays down a rule of law, an accomplice is a competent witness and a conviction based solely on his uncorroborated evidence is not illegal although in view of S. 114, illustration (b), Courts do not as a matter of practice do so and look for corroboration in material particulars. This is the conjoint effect of Ss. 133 and 114, illustration (b).

16. A prosecutrix of a sex-offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under S. 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the Court must be alhe to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the Court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix. there is no rule of law or practice incorporated in the Evidence Act similar to illustration (b) to S. 114 which requires it to look for corroboration. If for some reason the Court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding the Court is entitled to base a conviction on her evidence unless the same is ow n to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclose that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court should ordinarily have no hesitation in accepting her evidence. We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted. The degree of proof required must not be higher than is expected of an injured witness. For the above reasons we think that exception has rightly been taken to the approach of the High Court as is reflected in the following passage:

"It is only in the rarest of rare cases if the Court finds that the testimony of the prosecutrix is so trustworthy, truthful and reliable that other corroboration may not be necessary."

With respect, the law is not correctly stated. If we may say so, it is just the reverse. Ordinarily the evidence of a prosecutrix must carry the same weight as is attached to an injured person who is a victim of violence, unless there are special circumstances which call for greater caution, in which case it would be safe to act on her testimony if there is independent evidence lending assurance to her accusation.

17. We think it proper, having regard to the increase in the number of sex-violation cases in the recent past, particularly cases of molestation and rape in custody, to remove the notion, if it persists, that the testimony of a woman who is a victim of sexual violence must ordinarily be corroborated in material particulars except in the rarest of rare cases. 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 to a crime 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 a crime. Ours is a conservative society where it concerns sexual behaviour. Ours is not a permissive society as in some of the Western and European countries. Our standard of decency and morality in public life is not the same as in those countries. It is, however, unfortunate that respect for womanhood in our country is on the decline and cases of molestation and rape are steadily growing. An Indian woman is now required to suffer indignities in different forms, from lewd remarks to eve-teasing, from molestation to rape. Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms. The standard of proof to be expected by the Court in such cases must take into account the fact that such crimes are generally committed on the sly and very rarely direct evidence of a person other than the prosecutrix is available. Courts must also realise thai ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

18. But when such a crime is committed by a person in authority, e.g. a police officer, should the Court's approach be the same as in any other case involving a private citizen? By our criminal laws wide powers are conferred on police officers investigating cognizable offences. The infrastructure of our criminal investigaion system recognises and indeed protects the right of a woman to decent and dignified treatment at the hands of the investigating agency. This is evident from the proviso to sub-sec. (2) of S. 47 of the Code which obliges the police officer desiring to effect entry to give an opportunity to the woman in occupation to withdraw from the building. So also sub-sec. (2} of S. 53 requires that whenever a female accused is to be medically examined such examination must be under the supervision of a female medical practitioner. The proviso to S. 160 stipulates that whenever the presence of a woman is required as a witness the investigating officer will record her statement at her own residence. These are just a few provisions which reflect the concern of the legislature to prevent harassment and exploitation of women and preserve their dignity. Notwithstanding this concern, if a police officer misuses his authority and power while dealing with a young helpless girl aged about 19 or 20 years, her conduct and behaviour must be judged in the backdrop of the situation in which she was placed. The purpose and setting, the person and his position, the misuse or abuse of office and the despair of ihe victim which led to her surrender are all relevant factors which must be present in the mind of the Court while evaluating the conduct-evidence of the prosecutrix. A person in authority, such as a police officer, carries with him the awe of office which is bound to condition the behaviour of his victim. The Court must not be oblivious of the emotional turmoil and the psychological injury that a prosecutrix suffers on being molested or raped. She suffers a tremendous sense of shame and the fear of being shunned by society and her near

relatives, including her husband. Instead of treating her with compassion and understanding as one who is an injured victim of a crime, she is, more often than not, treated as a sinner and shunned. It must, therefore, be realised that a woman who is subjected to sex-violence would always be slow and hesitant about disclosing per plight. The Court must, therefore, evaluate her evidence in the above background.

19. It is time to recall the observations of this Court made not so far back in Bharwada Bhognibhari Hirjibhai (AIR 1983 SC 753) (supra) (Para 9):

"In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectatcles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society. We must analyse the argument in support of the need for corroboration and subject it to relentless and remorseless cross-examination. And we must do so with a logical, and not an opinionated, eye in the light of probabilities with our feet firmly planted on the soil of India and with our eyes focussed on the Indian horizon. We must not be swept off the feet by the approach made in the Western world which has its own social milieu, its own social mores, its own' permissive values, and its own code of life. Corroboration may be considered essential to establish a sexual offence in the backdrop of the social ecology of the Western world. It is wholly unnecessary to import the said concept on a turn-key basis and to transplate it on the Indian soil regardless of the altogether different atmosphere, attitudes, mores, responses of the Indian Society, and its profile. The identities of the two worlds are different. The solution of problems cannot therefore be identical."

Proceeding further this Court said (para 10):

"Without the fear of making too wide a statement, or of overstating the case, it can be said that rarely will a girl or woman in India make false allegations of sexual assault..... The statement is generally true in the context of the urban as also rural society. It is also by and large irue in the context of the sophisticated, not so sophisticated, and unsophisticated society. Only very rarely can one conceivably come across an exception or two and that too possibly from amongst the urban elites. Because : (1) A girl or a woman in the tradition bound non-permissive Society of India would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. (2) She would be conscious of the danger of being ostracised by the Society or being looked down by the society including by her own family members, relatives, friends and neighbours. (3) She would have to brave the whole world. (4) She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. (5) If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or an acceptable family. (6) It would almost inevitably and almost invariably result in mental torture and suffering to herself. (7) The fear of being taunted by others will always haunt her. (8) She would feel extremely embarrassed in relating the incident

to others being overpowered by a feeling of shame on account of the upbringing in a tradition bound society where by and large sex is taboo. (9) The natural inclination would be to avoid giving publicity to the incident lest the family name and family honour is brought into controversy. (10) The parents of an unmarried girl as "also the husband and members of the husband's family of a married woman would also more often than not want to avoid publicity on account of the fear of social stigma on the family name and family honour. (11) The fear of the victim herself being considered to be promiscuous or in some way responsible for the incident regardless of her innocence. (12) The reluctance to face interrogation by the investigating agency, to face the Court, to face the cross-examination by counsel for the culprit, and the risk of being disbelieved, act as deterrent."

20. We are in complete agreement with these observations.

21. We now proceed to examine if the High Court was justified in upturning the order of conviction passed by the trial Court. The High Court refused to confirm the conviction of the respondent as it found the evidence of the prosecutrix full of contradictions and not consistent with medical evidence as well as the findings recorded by the Chemical Analyst. We may first indicate the contradictions which prompted the High Court to look for corroboration. They are:

(i) the version that the respondent had misbehaved with her in the police station and had molested her could not be believed because she did not complain about the same to the other police officers who were present in the police station.main hall on the ground floor or to her relatives who were called to the police station:

(ii) the conduct of the respondent in calling her parents and in giving them an opportunity to take her with them does not smack of an evil mind;

(iii) the evidence of the prosecutrix that the respondent was instrumental in lodging her in Anand Mahal Hotel room is not supported by any evidence;

(iv) the conduct of the prosecutrix in not informing and seeking assistance from the hotel management after the first incident arid even after the second incident of rape in the hotel room is unnatural and surprising;

(v) the find of semen-stains on the 'salwar' and 'kurta' of the prosecutrix runs counter to her evidence that on both the occasions she was completely denuded before she was ravished;

(vi) the absence of marks of physical violence also runs counter to her version that when she tried to raise an alarm she was slapped by the respondent;

(vii) the evidence of PW 3 Dr. Vijaya and the medical report Ex. 17 do not lend corroboration to the evidence of the prosecutrix that the respondent had sexual intercourse with her notwithstanding the resistance offerred by her;

(viii) the report of the Assistant Chemical Analyst Ex. 71 shows that neither semen nor spermatozoa were detected from the vaginal smear and slides that were forwarded for analysis; and

(ix) the evidence of PW 12 Dr. More and his report Ex.41 show that no physical injuries were found on the person of the respondent to indicate that he had forcible Sexual intercourse shortly before his examination.

22. Before we proceed to deal with these discrepancies we think it is necessary to clear the ground on the question whether the prosecutrix had a sufficiently strong motive to falsely involve the respondent and that too a police officer. It is possible that she may have felt annoyed at being dragged out of the hotel room at dead of night after they had satisfied Police Sub-Inspector Qureishi that they were legally wedded only a few hours back. PW 1 may also have felt offended at being wrongly booked under Ss. 110/117, Bombay Police Act. The question is whether on account of this annoyance both PW 1 Mohmad Shafi and PW 2 Shamimbanu would be prepared to stake the reputation of the latter? As pointed out earlier ordinarily an Indian woman would be most reluctant to level false accusation of rape involving her own reputation unless she has a very strong bias or reason to do so. In the present case although the couple had reason to be annoyed with the conduct of the respondent, the Teason was not strong enough for Mohmad Shafi to involve his wife and soil her reputation nor for Shamimbanu to do so. An Indian woman attaches maximum importance to her chastity and would not easily be a party to any move which would jeopardise her reputation and lower her in the esteem of others. There are, therefore, no such strong circumstances which would make the court view her evidence with suspicion.

23. The next question is whether the High Court was justified in refusing to place reliance on her evidence in view of the discrepancies and inconsistencies indicated above. It is.not in dispute that the respondent had taken both PW 1 and PW 2 to the police station at dead of night. At the police station both of them were separated. She was all alone with the respondent till about 5.00 a.m. This was her first encounter with the police. She must have been nervous and considerably shaken. She must have felt helpless as she was all alone. She must be terribly worried not only about her own fate but also that of her husband. It is during the time she was alone with the respondent that the latter is alleged to have misbehaved with her. How could she complain to the other police officers in the police station about the behaviour of their colleague unless she be sure of their response? Having seen the behaviour of one of them, how could she place confidence in others belonging to the same clan? She may rather prefer to ignore such behaviour than speak of it to unknown persons. Ordinarily an Indian woman is ashamed to speak about such violations of her person, more so to total strangers about whose response she is not sure. There was no point in speaking to her parents who had disowned her. She, however, claims to have informed ner husband about the same on his return. The omission on the part of her husband to make a mention about the same cannot discredit her. Even if we assume that she omitted to mention it, the said omission cannot weaken her evidence as obviously she would attach more importance to what happened thereafter in the hotel room. The respondent's behaviour in the police station had paled into insignificance in

view of his subsequent misdeeds. No wonder she would attack greater importance to the subsequent events rather than dwell on advances made earlier. We, therefore, cannot agree with the High Court's observation that "the prosecutrix is not only prone to make improvements and exaggerations, but is also a liar disclosing a new story altogether to serve her interest". This is a harsh comment which, we think, is totally unwarranted.

24. The High Court has argued that the conduct of the respondent in sending for her parents and in permitting her to go with them shows that the respondent's intentions were not evil. In the first place it must be mentioned that the suggestion to call the parents came from PW 1. Secondly the evil thought may have taken concrete shape after the parents refused to take her with them. It was then that the respondent realised the helplessness of the girl and chalked out a plan to satisfy his lust. As a pan of that design he falsely booked Mohmad Shafi and made arrangements to lodged the girl in a hotel of his choice. The evidence of P W 4 Suresh Trivedi read with the entry in the hotel register and the contradiction brought on record from his police statement leave no room for doubt that the girl was lodged in his hotel at the instance of the respondent. PW 6 and PW 7 have also resiled from their earlier versions to help the respondent. But notwithstanding their denial we see no reason to disbelieve Shamimbanu on the point of PW 7 having lodged her in Room No. 36 of Anand Mahal Hotel as the same is corroborated not only by the remark in the entry Exh. 25 of the hotel register but also by the fact that it was PW 7 who informed Mohmad Shafi that she was in Room No, 36, We are. therefore, of the view that her evidence in this behalf is supported by not only oral but also documentary evidence. How then could she seek help or assistance from the hotel staff which was under the thumb of the respondent? The hotel was situate within the jurisdiction of the respondent's police station. It was at the behest of the respondent that she was kept in that room. She must have realised the futility of complaining to them. Failure to complain to the hotel staff in the above circumstances cannot be described as unnatural conduct,

25. It is true that the prosecutrix had deposed that on both the occasions she was completely denuded before the respondent raped her. On the first occasion he had removed her 'kurta' before she was laid on the cot. Her 'salwar' was removed while she was lying on the cot. Therefore, the 'salwar' may by lying on the cot itself when the act was committed. It is, therefore, not at all surprising to find semen stains on the 'salwar'. She was wearing the same clothes when she was ravished the second time. On the second occasion he first threw her on the cot and then undressed her. Therefore, both the 'kurta'and the 'salwar' may be lying on the cot at the time of sexual intercourse. Besides she had worn the same clothes without washing herself immediately after the act on each occasion. It is, therefore, quite possible that her clothes were stained with semen. It must also be remembered that this is not a case where the proecuting agency can be charged of having concocted evidence since the respondent is a member of their own force. If at all the investigating agency would try to help the respondent. There is, therefore, nothing surprising that both these garments bore semen stains. Besides, there was no time or occasion to manipulate semen stains on her clothes and that too of the respondent's group. Her clothes were sent along with the other articles attached from Room No. 36 for chemical analysis under the requisition Ex. 67. The report of the Assistant Chemical Analyser, Ex. 69 shows that her clothes were stained with human blood and semen. The

semen found on one of her garments and on the bed sheet attached from the room was of group A which is the group of the respondent, vide Ex. 70. Of course the other articles, viz., the mattress and the underwear of the respondent bore no stains. On the contrary the find of semen lends corroboration, if corroboration is at all needed to the version of the prosecutrix. The possibility of the semen stains being of Mohmad Shafi is ruled out as his group was found to be 'B' and not 'A'. In the circumstances the absence of semen or spermatozoa in the vaginal smear and slides, vide report Ex. 71, cannot cast doubts on the creditworthiness of the prosecutrix. The evidence of PW 3 Dr. Vijaya Lele shows that she had taken the vaginal smear and the slides on 23rd August, 1981 at about 1.30 p.m. i.e., almost after 24 hours. The witness says that spermatozoa can be found if the woman is examined within 12 hours after intercourse, thereafter they may be found between 48 and 72 hours but in dead form. Shamimbanu may have washed herself by then. Therefore absence spermatozoa cannot discredit her evidence.

26. The absence of marks of physical violence on the prosecutrix is not surprising. According to her the respondent had slapped her and threatened her with dire consequences when she tried to resist him on both occasions. Since she was examined almost 24 hours after the event it would be too much to expect slap marks on her person. It is. however, true that according to PW 12 Dr. More there were no marks of injury on the body of the respondent when he was examined on the 22nd itself at about 8.45 p.m. While it is true that the version of the prosecutrix is that she had tried to resist him. it must be realised that the respondent being a strong man was able to overpower her and take her by force. Besides, he was a man in authority in police uniform. The prosecutrix was alone and helpless. In the circumstances as pointed out earlier the resistance would be considerably dampened. But the evidence of PW 12 Dr. More who examined the respondent on the 22nd at 8.45 p.m. reveals that he had noticed (i) absence of smegma around the glans penis and (ii) the frenum tortuous and edematous, indicative of the respondent having had sexual intercourse within the preceding 24 hours. However, absence of marks of violence and absence of matting of pubic hair led the witness to state that no definite opinion could be given whether or not the respondent had sexual intercourse in the last 24 hours. In cross-examination an attempt was made to show that smegma may be absent in a man with clean habits; that the frenum may be edematous if there is friction with rough cloth and tortuousness of the frenum could be due to anything that causes swelling of the skin. The witness, however, said that he had not seen marks of itching thereby negativing the suggestion. Be that as it may, the evidence of this witness does show that there was evidence Suggesting the possibility of the respondent having had sexual intercourse within the preceding 24 hours although the witness could not hazard a definite opinion. Therefore, the non-committal opinion of this witness cannot be said to run counter to the evidence of the prosecutrix. It may be that the evidence as to resistance may have been overstated, a tendency which is geneally noticed in such cases arising out a fear of being misunderstood by the society. That is not to say that she was in any way a consenting party. She was the victim of brute force and the lust of the respondent.

27. PW 1 Mohmad Shafi's evidence is also brushed aside on account of so-called contradictions set out in paragraphs 32 to 34 of the High Court judgment. The first reason

is the non-disclosure of details in the first oral statement which was reduced to writing at Ex. 50. That was skelaton information. That is why the need to record a detailed version Ex. 7 was felt. Therefore, merely because the details are not set out in Ex. 50 it cannot be said that the prosecutrix had not narrated the details. We have treated Ex. 50 as FIR for deciding this case. The previous involvement of PW 1 in a couple of cases is not at all relevant because the decision of the case mainly rests on his wife's evidence. But even Ex. 50 shows that his w'ife had told him that the respondent had raped her. We, therefore, do not see how the evidence of PW 1 can be said to be unacceptable.

28. The fact that the respondent had gone to Gurudeo Lodge at an odd hour and had taken the prosecutrix and her husband to the police station at dead of night is not disputed. The fact that the respondent refused to sign the police visit book of the Lodge, though requested by the Manager PW 5 Manohar Dhote, on the pretext that he was in a hurry and would sign it later, which he never did, speaks for itself. Then the respondent booked Md. Shafi under a false charge and put him behind the bars thereby isolating the prosecutrix. We say that the charge was false not merely because it is so found on evidence but also because of the report Ex.46 dated 21st September, i981 seeking withdrawal of prosecution for want of material to sustain the charge. Having successfully isolated the prosecutrix he sent her to Anand Mahal Hotel with PW 7 who lodged her in Room No. 36. The respondent, therefore, had planned the whole thing to satisfy his lust. The subsequent attempt on the part of the respondent to commit suicide on being prosecuted as evidenced by the FIR Ex. 56 betrays a guilty conscience. We are, therefore, of the opinion that if the prosecution evidence is appreciated in the correct perspective, which we are afraid the High Court failed to do, there can be no hesitation in concluding that the prosecution has succeeded in proving the respondent's guilt. Unfortunately the High Court stigmatised the prosecutrix on a thoroughly erroneous appreciation of her evidence thereby adding to her woes. If the two views were reasonably possible we would have refrained from interfering with the High Court's order of acquittal. In our opinion the trial Court had adopted a correct approach and had properly evaluated the evidence and the High Court was not justified in interfering with the trial Court's order of conviction.

29. On the question of sentence we can only say that when a person in uniform commits such a serious crime of rape on a young girl in her late teens, there is no room for sympathy or pity. The punishment must in such cases be exemplary. We, therefore, do not think we would be justified in reducing the sentence awarded by the trial Court which is not harsh.

30. In the result we allow this appeal, set aside the order of the High Court acquitting the respondent and restore the order of conviction and sentence passed on the respondent by the trial Court. The respondent will surrender forthwith and serve out his sentence in accordance with law. His bail bond will thereupon stand cancelled.

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In view of the order passed in the State's appeal, we need not pass separate orders in this appeal. The appeal will, therefore, stand disposed of in view of the order passed in the above appeal.

31. Appeal allowed.