

Citation analysis
Offence under section 376 of the Indian Penal Code

State of Maharashtra vs ChandraprakashKewal Chand Jain AIR 1990 SC 658

Facts of the case as summarized by Honorable Supreme Court are under

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 PW 2 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 Kazi and returned to Nagpur by train on 20th August, 1981. They got down at Anjani 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, PW 8 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 PW 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 PW 5 Manohar Dhote, the Manager of the Lodge. Police Sub-Inspector Qureishi did not deem it necessary to take any steps against the couple.

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 Shamimbanu 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 rooms 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.

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.

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.

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 PW 7. Initially PW 4, 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. 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.

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 inter- course with her against her will. He repeated his threat before leaving.

On the other hand Mohmad Shaft was sent to Court on his arrest under Sections 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 Shaft 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 Shamimbanu Mohmad Shaft was asked to give a written account of the incident which he did. On the basis thereof an offence under section 376, I.P.C. was registered and the investigation was entrusted to Inspector Korpé of Crime Branch.

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.

Believing the evidence of the process prosecutrix the trial court convicted the accused for the offence punishable under section 376 of the Indian Penal Code. The high court in appeal acquitted the accused.

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. The high court found that the evidence of prosecutrix is full of contradictions and is not supported by medico legal evidence and attending circumstances.

The verdict of the supreme court in this case is material because it changed the view that the testimony of the prosecutrix generally be believed only when it is materially corroborated is entirely changed by the ratio laid down in this case. The supreme court reversed the findings of the High Court on following grounds,

1. What is necessary is that the Court must be alive 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 Section 114 which requires it to look for corroboration.

2.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.

3.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 shown to be infirm and not trustworthy.

4.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.

5.We have, therefore, no doubt in our minds that ordinarily the evidence of a prosecutrix who does not lack understanding must be accepted.

6.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.

7.Decency and morality in public life can be promoted and protected only if we deal strictly with those who violate the societal norms.

8.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 that ordinarily a woman, more so a young girl, will not stake her reputation by levelling a false charge concerning her chastity.

9.It must, therefore, be realised that a woman who is subjected to sex-violence would always be slow and hesitant about disclosing her plight. The Court must, therefore, evaluate her evidence in the above background. It is time to recall the observations of this Court made not so far back in *Bharwada Bhognibhai Hirjibhai*, [1983] 3 SCR 280: "In the Indian setting, refusal to act on the testimony of a victim of sexual assaults 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 spectacles 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 focused 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."

Note – The ratio in this case is of great use to prosecutors and judges. Testimony of a prosecutrix in case of sexual offence be evolved on the parameters of above ratio.

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