

Equivalent citations: 1993 CriLJ 767

Bench: M Mirdhe

Chaya vs K.G. Channappa Gowda on 22/9/1992

ORDER

1. This Criminal Revision Petition is filed by the petitioner under section 397, Cr.P.C. against the order dated 25-10-1989 passed by the Prl. Sessions Judge, Shimoga in Cr.R.P. No. 12/89 setting aside the order dated 11-1-1989 passed by the Munsiff and J.M.F.C., Thirthahalli in C.Misc. No. 24/86.

2. I have heard the learned counsel for the petitioner and the learned counsel for the respondent fully and perused the records of the case.

3. The petitioner filed a petition under section 125, Cr.P.C. claiming maintenance for her minor child Chaya. The petitioner examined PWs. 1 to 4 on her behalf and got exhibited Exs. P1 and P2. The respondent got examined himself as PW 1 and closed his evidence. After hearing both sides the learned J.M.F.C., Thirthahalli allowed the petition of the petitioner and granted maintenance of Rs. 200/- to the minor child Chaya and he also directed that out of this amount. Rs. 100/- to be deposited by the guardian of the child in the bank. Being aggrieved by this order the respondent preferred Cr.R.P. 12/89 in the Court of Sessions Judge, Shimoga and the learned Sessions Judge, Shimoga after hearing both sides allowed that revision petition and set aside the order of the learned J.M.F.C. allowing the petition of the petitioner and dismissing the petition of the respondent. The petitioner is aggrieved by the said order and hence she has preferred this revision petition.

4. The case of the petitioner is as follows :- That she is coolie and she was going to the land of the respondent for coolie work. On one such occasion, the respondent took her to a nearby abandoned house and had sexual intercourse with her by force. Even subsequently also, the respondent had sexual intercourse with her. She did not bring it to the notice of any persons as the respondent told her that the disclosure of the incidents will bring dishonour to her. As a result of sexual intercourse with the petitioner, she conceived and she asked the respondent to do something in the matter. She convened a panchayat and in the panchayat the respondent denied that he had any sexual relationship with her. The panchayatdars gave a decision to the effect that respondent should pay Rs. 500/- to the child and some paddy, also. This decision was not accepted by the petitioner as well as by the respondent. She made representation to the Chief Minister and also filed complaint to the police and ultimately she filed a petition under section 125, Cr.P.C. in the trial Court. The defence of the respondent is that of total denial.

5. At the outset itself, the judgment of Sessions Judge cannot be said to be a proper judgment in the sense that he has not framed proper points for consideration and he has dealt with the matter in a very cursory and sketchy manner. He has relied on the ruling , which is to the effect that the mere statement on

oath of the mother regarding paternity of the child when the issue is whether a certain man is the father of that child or not, cannot be accepted without corroboration. The learned Sessions Judge has not cared at all to discuss the evidence of PWs 2 to 4. He has not cared even to refer to that evidence. It was expected of him to apply his mind to all the materials on record and thereafter to dispose of the Criminal revision petition. The learned Sessions Judge has not framed proper points for consideration. His reasons are very sketchy and he has not referred to the relevant evidence on record. Therefore that judgment cannot be sustainable in law. The next question is as to what should be the order to be passed by this court in this matter i.e. whether to restore the judgment of the trial Court or to remand the matter to the Sessions Judge, Shimoga for disposing of the appeal afresh. In my opinion, there is no necessity to remand the matter as the entire evidence that is required to be considered on the points involved in this case is on record and this Court can as well go through the evidence and find out whether the judgment of the trial Court is sustainable in law or not.

6. The evidence in this case is as follows :- P.W. 1 is the mother of the child Chaya and she has stated that she is a coolie and she was engaged as a coolie to bring manure from the land of one Basappa Pujari to the land of the petitioner and at that time the petitioner had sexual intercourse with her by force in an abandoned house and subsequently also he had sexual intercourse with her and as a result of which she conceived. She has also deposed that she told the respondent that she had become pregnant by his sexual intercourse. She has also stated that when she told the respondent would disclose about his having intercourse with her, the respondent told her that he has got wife and children and he would deny it and she would only face disgrace thereby. She has also stated even thereafter he having sexual intercourse with her and as a result of which she conceived and she informed about her having become pregnant by his having sexual intercourse. Then she was taken to Shimoga for getting the pregnancy aborted. She has also further deposed that she gave birth to the child Chaya and a panchayat was convened in which the panchayatdars directed the respondent to pay Rs. 500/- and paddy to the child. But that decision was accepted neither by the petitioner nor by the respondent. She has also deposed that she complained to the various authorities including the police and ultimately she filed a petition under section 125, Cr.P.C. PWs. 2 to 4 have deposed about the panchayat convened in which the panchayatdars gave a decision that the respondent should pay Rs. 500/- and 2 quintals of paddy to the child.

7. On behalf of the respondent, he has examined himself as PW 1. He has denied about his having any sexual intercourse with the petitioner but he admits that she is a cooli and she maintains herself by doing cooli work and he also admits about the panchayat convened in the village. This case involves a very important question of law as to whether the evidence of a woman to the effect that a particular person is the father of the child born to her should be accepted without corroboration when the paternity of the child is disputed. The learned counsel for the petitioner relied on , (Bharwada Bhoginbhai Hirjibhai v. State of Gujarat) wherein it has been held that at page 1099 of Cri LJ :-

"Corroboration is not the sine qua non for a conviction in a rape case. 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 spectacles fitted with lenses tinged with doubt, disbelief or suspicious ? To do so is to justify the charge of male chauvinism in a male dominated society. , Rel. on."

It was further held that :-

"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. She would be conscious of the danger of being ostracized by the society or being looked down by the society including by her own family members, relatives, friends and neighbours. 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. 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. In view of these and similar factors the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated."

He relied on 1990 SC Judgments Cri p 18 (State of Maharashtra v. Chandra Prakash) wherein their Lordships of the Supreme Court have referred to this ruling and reiterated the principle that the testimony of a prosecutrix in case of rape can be acted upon without corroboration. But the rulings of the Supreme Court relied upon by the learned counsel for the petitioner are in respect of the case of a rape where the sexual intercourse takes place without consent and against the wishes of the victim. If it were to be a case where the child is conceived as a result of the sexual intercourse committed by rape, these rulings may come to the aid of the woman claiming maintenance for the child born out of such sexual intercourse by rape. But in a case where the child is born due to the sexual intercourse not by rape but with consent of both sides, these rulings will have no application.

8. In a case where the child is alleged to have been conceived due to the sexual intercourse between a man and a woman with the consent of both sides, the woman will be a party to that sexual intercourse with consent. In view of this position, her evidence will be that of an accomplice. Therefore it will not be safe to rely on the evidence of a woman who alleges that a particular man is the father of a child borne by her due to the sexual intercourse with her without proper corroboration when the paternity of the child itself is in issue.

9. In , (Thakur Prasad v. Mt. Godavari Devi), the Patna High Court has held as follows at page 684; of Cri LJ :-

Where the question at issue is whether a certain man is the father of certain child, it is prima facie improper to accept without corroboration, the mere statement on oath of the mother who asserts the paternity. Her evidence in such a case cannot but be highly interested, and it would be unreasonable and improper for any Court to act merely on her own statement without some independent corroboration thereof. Such corroborative evidence may be circumstantial but it must be such as to corroborate the evidence of the woman that the child was born of the alleged father. The fact of improper association after the child was born would not be sufficient to corroborate her evidence."

His Lordship has referred to the observations of Lord Reading in *Thomas v. Jones* (1920) 2 KB 399 wherein his Lordship has said that corroborative evidence was required in such cases in order to protect men against wicked or unfounded charges which might be so easily made if the evidence of the woman without corroborative testimony was sufficient. But while discussing as to what kind of evidence is necessary to corroborate, his Lordship has held as follows :-

"But it would be in a high degree dangerous to attempt to formulate the kind of evidence which would be regarded as corroboration, except to say that corroborative evidence was evidence which shews or tends to shew that the woman's story was true."

10. In 1970 Mad LJ 573 (*Ummini Kunjuraman v. Meenakshi Syamala*) their Lordships have held as follows :-

"The burden is upon the woman to establish the paternity of the child and to show that the person from whom she claims maintenance for the child is the father of the child. It is prima facie improper to accept without corroboration mere statement on oath by the mother who asserted that the opposite party is the father of the child. The evidence of the wife shall be corroborated either by direct or some circumstantial evidence to establish that during the period when the wife could have conceived the child, the wife and the alleged father had some access to each other."

10A. In , (*Bhaskaran v. Kunhipennu*) the Magistrate had passed an order for maintenance on the testimony of the mother of the child to bring paternity which was not corroborated. His Lordship of the Kerala High Court held relying on AIR 1951 Patna quoted above that the trial Court was wrong in relying on the uncorroborated testimony of mother to hold that the child was born to that particular man.

11. In 1992 Criminal Law Journal 493, (*Smt. Ahalya Bariha alias Barihani v. Chhelia Padhan*) the Orissa High Court held that at page 495 :-

"While deciding of the case of entitlement of a child, paternity and not legitimacy has to be seen. Where maintenance is claimed for an illegitimate child from an alleged father, it is not enough that defendant would have been the father, but the court has to find out that in all reasonability no one else could have been the father."

12. In 1981 Cri LJ NOC 40 (Ker) (*Muhammed v. Sulekha*), the Kerala High Court has held that as a matter of prudence, the Court must see oral testimony of the mother before acting upon the said evidence. His Lordship also held that the courts cannot in all cases insist on the person, who is alleged to be the father of the child, to

allege and prove any motive for the woman to put forward such a case.

13. In view of the fact that in a case where a woman comes forward saying that a child is born due to the sexual intercourse by her with a particular man with her consent, the position of that woman will be that of an accomplice. She will be a party to the sexual intercourse which according to her has led to the birth of the illegitimate child for whom she is claiming maintenance from the man who she alleges is the father of the child. In view of this position, the law insists that before the evidence of such a woman can be accepted, it must be corroborated. Corroboration is insisted by the court not as a rule of law but as a rule of prudence to satisfy the conscience of the Court.

14. I agree with the principles laid down by various High Courts referred to above in which it is said that it will not be safe to accept the evidence of the mother of a child without proper corroboration in a case where the paternity of the child is disputed. But what is the kind of evidence which should be recorded as corroboration ? There is no hard and fast rule as such. To quote, his Lordship of the Patna High Court has said that it will be highly dangerous to formulate the kind of evidence which will be regarded as corroborative except to say that corroborative evidence must be such which will tend to show that the woman's story is true. There is no hard and fast rule of law which lays down that a particular type of corroboration is necessary in all cases. What will be the corroborative evidence which will be acceptable will depend on the facts and circumstances of each case. If woman is of a loose character and easy virtue and having antecedents of her association with more than one man, then the Court would accept a corroboration which is of a higher order than a corroboration in a case of a woman of a good character and who had no antecedents of any moral lapses on her part. Therefore what should be corroborative evidence will differ from case to case.

15. The evidence of PW 1 is to the effect that Chaya is born to the petitioner due to sexual intercourse of the respondent with her. Petitioner is coolie. She is not married. There are no allegations by the respondent that she is a woman of bad character. He has also not alleged that she was having any connections or any association with any other persons in the village or society. The respondent has come up with the defence that due to instigation of one Yogendra the petitioner has filed the false case against him. If enmity is between Bhupendara Gowda and the respondent, why the petitioner should become a tool in the hand of Yogendra so as to tarnish her own character in that process ? No woman will come forward with such a claim at the instigation of others and that too to satisfy some individual who wants to have his vendetta against the respondent. The respondent is not a big business tycoon or a great leader or a very rich man so that he could be involved falsely by the petitioner at the instance of his enmity to ruin him in his reputation and career and cause him damage in the eyes of the society. Therefore the defence taken by the respondent that the petitioner has filed this case at the instance of Yogendra has no substance in it. But the Court cannot accept the evidence of PW 1 merely on the ground that the defence set up by the respondent appears to be not genuine and true. The Court will have to see whether there is any corroboration for accepting or acting on the evidence of PW. 1. As I have already pointed out, PW. 1 is a poor coolie woman and she is not married and yet she was given birth to a child Chaya and it is her claim that the child is born due to sexual intercourse the respondent had with her. The respondent has not whispered a word about the character of the petitioner. He has not stated either in his evidence or in his objections that the petitioner is a woman of bad character or that she had any such antecedents of her having association with different men. If PW 1 were to be a woman without character and having antecedents of moral lapses, court would have insisted on a corroborative evidence which would have been of a higher type than the evidence which is required for corroboration in the case of a woman against whom there are no allegations regarding any moral lapses on her part. Now the court will have to see whether the evidence of PWs. 2 to 4 can be considered as the evidence that corroborates the evidence of PW. 1. The learned counsel for the respondent submitted that the evidence of panchas is nothing but the repetition of the allegations made by the petitioner against the respondent. It is not disputed by the respondent himself that such a panchayat was convened and in that panchayat he appeared once. The respondent has avoided to give as to what was the decision of the panchas. That we get it in the evidence of PWs. 1 to 4. In my opinion, the evidence of panchas cannot be brushed aside on the ground that it is nothing but the repetition of the evidence of the petitioner. The respondent himself has admitted in his evidence that petitioner was even

questioning him on the streets and, therefore, he was constrained to request for the convening of the panchayat. The conduct of the petitioner, respondent and the panchayatdars is a relevant factor. It will be very dangerous to say that a particular type of corroboration is required in all the cases irrespective of the facts and circumstances of the case. The very fact that the panchayat was convened in the village which was attended by the respondent himself and in which the panchayatdars ordered the respondent to pay Rs. 500/- and 2 quintals of paddy is a circumstance which corroborates the evidence of PW. 1. Therefore I am of the opinion that the evidence of PW. 1 was rightly accepted by the trial Court as it is corroborated by the evidence of Pws. 2 to 4.

16. For the reasons discussed above. I make the following :-

ORDER

The Criminal Revision Petition is allowed. The impugned order passed by the Sessions Judge, Shimoga is set aside and the order of the Munsiff and J.M.F.C., Thirthahalli in C. Misc. No. 24/86 is restored.

17. Petition allowed.