

Sukhna and anr. Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jan-04-2013

Appellant : Sukhna and anr.

Respondent : The State of M.P.

Advocate for Pet/Ap. : Shri. Amod Gupta, Shri. Alok Vagrecha

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SINGLE BENCH :
HONBLE MR. JUSTICE N.K.GUPTA, J.Criminal Appeal No.1713/1996 Sukhna &
another VERSUS State of Madhya Pradesh
----- Shri Amod Gupta,
counsel for the appellant No.1 duly appointed on behalf of the Legal Services
Authority. Shri Alok Vagrecha, counsel for the appellant No.2. Shri S.K.Kashyap,
Public Prosecutor for the State/ respondent.

JUDGMENT

(Delivered on the 4th day of January, 2013) The appellants have preferred this appeal against the judgment dated 23.9.1996 passed by the learned Fourth Additional Sessions Judge, Damoh in S.T.No.260/1991, whereby each of the appellants were convicted and sentenced as under:- Conviction Jail Sentence Sentence Default of Fine Sentence 366 of IPC R.I. for 2 years. Rs.500/- R.I. for 3

months. 376 of IPC R.I. for 3 years. Rs.500/- R.I. for 3 months. :- 2 :- Criminal Appeal No.1713 o

2. The prosecution's story, in short, is that, the complainant Birju (P.W.9) had submitted a written report on 18.10.1990 at out post Hirapur of Police Station Bakaswaha, District ChHattarpur that on 20.9.1990, he went to Meddeora bus stand to see off his wife the prosecutrix (P.W.5) and daughter Ram Devi. The appellant No.1 Sukhana who was Patwari in Sadhpur area was also going in the same bus and therefore, on the request of the complainant Birju, the appellant Sukhana accepted the liability of the prosecutrix that her comfort would be taken care of. Thereafter, on 5.10.1990 the complainant himself visited Katangi but, his in-laws informed that neither the prosecutrix, not her child reached their house and thereafter, the complainant tried to search his wife and ultimately, submitted a report Ex.P/6 dated 18.10.1990. After sometime, the complainant received an information from his wife that she was abducted and after her escape, she was with his maternal uncle Hallu (P.W.3), so the complainant went to the house of Hallu and brought his wife back to his house at village Agar. Thereafter, the prosecutrix had lodged a written complaint Ex.P/5 to the SHO, Police Station Bakaswaha that she was abducted by the appellant No.1 Sukhana and other accused persons namely Shankar and Karan. They kept her in a house of Hari Thakur and :- 3 :- Criminal Appeal No.1713 of 1996 they committed rape upon her from time to time. She had also conceived due to that rape. She could get an opportunity to escape and therefore, she went to her maternal uncle Hallu Yadav's house at village Pandajhir and intimated her husband. The officials of police station Bakaswaha registered an FIR, Ex.P/15 and the prosecutrix was sent for her medico legal examination. Dr. Usha Khare (P.W.1) examined the prosecutrix at District Hospital ChHattarpur and gave a report, Ex.P/1. No external or internal injury was found on her person but, a pregnancy of 16 to 18 weeks' was found. The appellants were also arrested and sent for their medico legal examination. After due investigation, a charge-sheet was filed before the JMFC, Bijawar, who committed the case to the Sessions Court, ChHattarpur and ultimately, it was transferred to the learned Fourth Additional Sessions Judge, ChHattarpur.

3. The appellants abjured their guilt. They took a specific plea that the complainant Birju requested the accused Shankar and Karan to search his wife but, they could not give any help to the complainant, therefore, they were also implicated with the main accused Sukhna. Similarly, the appellant Sukhna took a specific plea that on the particular day, he reported at the office of Assistant Officer, Land Records at Damoh and therefore, allegations :- 4 :- Criminal Appeal No.1713 of 1996 made by the prosecutrix are not correct. In defence, Nanhe Bhai (D.W.1) and Narayan (D.W.2) were examined.

4. After considering the evidence adduced by the parties, the learned Additional Sessions Judge, ChHattarpur, convicted the appellants for the offence punishable under sections 366 and 376 of IPC and sentenced them as mentioned above.

5. I have heard the learned counsel for the parties at length.

6. Since the appellant No.1 was not appearing before the Appellate Court and the appeal is pending since the year 1996, Shri Amod Gupta, Advocate from the panel of Legal Services Authority was appointed to defend the matter of the appellant No.1 Sukhna and to assist the Court.

7. The learned counsel for the appellant No.1 Shri Amod Gupta has submitted that the prosecutrix appears to be a consenting party. As per allegations, she remained with the appellant Sukhna for 8 months. She could not give a proper reason for her escape. It is pertinent to note that no appropriate marriage took place of the prosecutrix with the complainant Birju. Birju was the third man with whom, she was residing. The Rojnamacha was lodged by the complainant in the Police Station is an important document to show that the complainant did not tell anything to the :- 5 :- Criminal Appeal No.1713 of 1996 appellant Sukhna to look after his wife and he modified his story in the document, Ex.P/6. It was very strange that when the complainant visited the house of the parents of the prosecutrix then, he was the only person who took interest in search of the prosecutrix. There is no reaction of the parents that they tried to search the prosecutrix. Similarly, after her escape, the prosecutrix did not visit the house of her parents but, she went to the house of her maternal uncle Hallu, whereas Hallu (P.W.3) turned hostile. The reaction of the parents of the prosecutrix indicate that the prosecutrix was sent to a fourth person

to live as a wife by the parents of the prosecutrix and when the prosecutrix was not satisfied with that fourth marriage, she left the house of that person and contacted the complainant Birju and therefore, a named FIR was lodged against the Patwari Sukhna and other accused persons. The story told by the prosecutrix is highly doubtful and there is no evidence against the appellant No.1 Sukhna.

8. The learned counsel for the appellant No.2 has also submitted that looking to the discrepancies and material contradiction in the statement of the prosecutrix and her previous statement including the FIR, Ex.P/5, it is apparent that the appellant Karan is falsely implicated in the :- 6 :- Criminal Appeal No.1713 of 1996 matter. Therefore, it is prayed that the appellants be acquitted.

9. On the other hand, the learned Public Prosecutor has submitted that the conviction as well as the sentence directed by the trial Court appears to be appropriate. There is no ground for acceptance of this appeal.

10. After considering the submissions made by the learned counsel for the parties and looking to the facts and circumstances of the case, it is to be considered as to whether the appeal filed by the appellants can be accepted?. And whether the sentence directed against the appellants can be reduced?.

11. In the present case, it is apparent that the prosecutrix (P.W.5) was a major woman and there is no dispute about her age. The prosecutrix and her alleged husband Birju (P.W.9) have stated that the prosecutrix had boarded on the bus with help of her husband Birju on 20.9.1990, at about 9 a.m. and the appellant Sukhna was requested to look after the prosecutrix. The bus was stopped at Neem ka trivia due to some mechanical fault and therefore, the appellant Sukhna told her to take another bus but, instead of taking any bus, he took her in the jungle and committed rape with her. Thereafter, she was taken to the township of Hatta and kept in the house of Hari Thakur. :- 7 :- Criminal Appeal No.1713 of 1996 She was informed that there was a strike of motor operators and therefore, she was kept for 8 days in that house. In the meantime, all the appellants and co-accused Shankar had committed rape with her from time to time. After 8 months, the prosecutrix went to answer the call of nature and thereafter, escaped from the control of the appellants. She went to the house of her maternal uncle Hallu at

Pandajhir and then, she had sent a chit to her husband. Thereafter, her husband took her back to his house. The prosecutrix had lodged a written report, Ex.P/5 at Police Station Bakaswaha. There is no eye witness in the matter but, it is settled view of Hon'ble the Apex Court that in such cases, no corroboration is required and the evidence of the prosecutrix should be considered according to its own merits. The learned counsel for the appellant No.1 has placed his reliance on the judgment passed by Hon'ble the Apex Court in case of Suresh N. Bhusare and others Vs. State of Maharashtra., [(1999) (1) SCC 220]., in which it is held that if the evidence of the prosecutrix suffers from severe infirmities and inconsistencies with other material, the prosecutrix making deliberate improvement on material point with a view to rule out consent on her part and there being no injury on her person even though her version may be otherwise, no reliance can be placed upon her evidence. :- 8 :- Criminal Appeal No.1713 of 1996 Similarly, the reliance has been placed on the judgment passed by Hon'ble the Apex Court in case of Jai Krishna Mandal & Another Vs. State of Jharkhand., [(2010) 14 SCC 534]., in which it was held that the only evidence of rape was the statement of the prosecutrix herself and when this evidence was read in its totality, the story projected by the prosecutrix was so improper that it could not be believed. Similarly, in the case of Rajoo & Others Vs. State of Madhya Pradesh., [AIR 200.SC 858]., the Hon'ble Apex Court has observed that It cannot be lost sight of that rape causes the greatest distress and humiliation to the victim but at the same time a false allegation of rape can cause equal distress, humiliation and damage to the accused as well. The accused must also be protected against the possibility of false implication..... there is no presumption or any basis for assuming that the statement of such a witness is always correct or without any embellishment or exaggeration.. Hence, the testimony of the prosecutrix in the present case is to be considered with the help of aforesaid observations.

12. If the entire evidence of the prosecution and the prosecutrix is considered and appreciated then, the following discrepancies and inconsistencies emerged:- (i) The prosecutrix has stated that when there was a break down in the bus, the appellant Sukhna took her in the :- 9 :- Criminal Appeal No.1713 of 1996 jungle and kept her in the jungle for that complete day and also committed rape upon her. According to her version in report, Ex.P/6, the journey of the prosecutrix was

started from that particular place at about 9 a.m. and it was a bus of longer route, therefore, she should have reached Damoh within 2 hours and therefore, if a break down took place in the bus then, it must be at about 10 to 10.30 a.m. in the morning. In the broad daylight, the appellant No.1 could not take the prosecutrix in the jungle in such a forcible manner and he could not keep her for the entire 24 hours in the jungle. (ii) According to the prosecutrix, the appellant Sukhna took her in the jungle on the day of journey but, according to the report of her husband, Ex.P/6, journey had commenced on 20.9.1990. The prosecutrix has stated that the appellant Sukhna remained with her for the entire day but, according to the statement given by Shri Saligram Verma (P.W.8), the appellant Sukhna Patwari appeared before him in his office of Assistant Officer, Land Records, Damoh on 20.9.1990 at about 1.30 to 2 p.m.. If the appellant Sukhna did not leave the prosecutrix for a single moment then, how could he :- 10 :- Criminal Appeal No.1713 of 1996 appear before the Assistant Officer, Land Records at Damoh on that day. (iii) The Rojnamacha No.310 dated 10.10.1990 is annexed in the 'B' part of the file of the trial Court at page 11, in which the complainant Birju had lodged an FIR that his wife and daughter were missing. There is no fact mentioned in that Rojnamacha that he requested the appellant Sukhna Patwari to look after his wife, whereas in the FIR, Ex.P/6 lodged on 18.10.1990, he had mentioned that he had a suspicion on the appellant No.1 Sukhna and he directed the appellant Sukhna to look after his wife. If the complainant Birju had told the appellant No.1 Sukhna to look after his wife then, why such fact was not mentioned in the Rojnamacha dated 10.10.1990. The Rojnamacha is a document of the prosecution and therefore, though it is not proved, it can be read in favour of the accused. By such Rojnamacha, it would be apparent that the complainant improved his story and lodged an FIR, Ex.P/6, in which he implicated the appellant No.1 Sukhna Patwari. (iv) The prosecutrix has stated that the appellant No.1 took her in the jungle and thereafter, he took her to Hatta, whereas in her case diary statement, she has stated that the appellant No.1 took her by second bus to :- 11 :- Criminal Appeal No.1713 of 1996 village Bari. Hence, the statement of the prosecutrix appears to be an after thought that the appellant Sukhna took her in the jungle from Neem Tigeliya (Trivia). (v) The prosecutrix has stated that the appellant Sukhna took her to the house of Hari Thakur at Hatta and thereafter, other accused persons visited

the room one by one and committed rape upon her, whereas in her case diary statement, she has stated that in the jungle, the co-accused Shankar and Karan were present and they participated in the abduction of the prosecutrix. This is a material contradiction in the statement of the prosecutrix and her previous statement. (vi) Similarly, omnibus allegations are made that she was kept in a room and she was permitted to go out to answer the call of nature and to bath but, the accused persons were taking precautions, so that she could not escape. It was not possible for three persons to watch the prosecutrix who was accompanied by one girl child of 7 to 9 years and if it was so then, whether the prosecutrix could leave the place?. (vii) The prosecutrix has stated that one fine morning, she left the room to answer the call of nature and thereafter, she took a bus and escaped. She did No.-:- 12 -:- Criminal Appeal No.1713 of 1996 explain that whether she had paid any fare for her transportation from Hatta to Damoh and from Damoh to the village of her maternal uncle or not. She has refused her earlier version given in the case diary statement that she had earned a sum of Rs.40/- by doing a job of labour and with the availability of that money, she could escape. It is also a material contradiction, which does not confirm the fact of escape shown by the prosecutrix. (viii) There is no reason as to why the prosecutrix did not visit the house of her parents at Katangi. On the contrary, she visited the house of her maternal uncle Hallu and contacted her alleged husband Birju but, Hallu (P.W.3) did not support the story of the prosecutrix. The witness Hallu is a maternal uncle of the prosecutrix and there is no reason for him not to support the case of his own niece. Possibility cannot be ruled out that either the prosecutrix did not visit the house of her maternal uncle or she did not say anything to her maternal uncle about the appellants. (ix) As per the evidence given by Birju, he went to the house of the parents of the prosecutrix, after 15 days of the incident but, he could not find his wife and daughter in the house. Thereafter, he came back to his -:- 13 -:- Criminal Appeal No.1713 of 1996 house and lodged a Rojnamacha report, in Rojnamacha dated 10.10.1990. Thereafter, he lodged a written report, Ex.P/6 on 18.10.1990, showing his suspicion on the appellant Sukhna. In the present case, no reaction of the parents of the prosecutrix is visible. If a son-in-law comes to the house with an intimation that their daughter was sent to their house, 2 weeks' back and she did not reach to the house then, this intimation should be a matter of

anxiety to the parents but, parents did not show any reaction and it was only the complainant Birju, who was searching his wife. (x) It is also important to note that the prosecutrix was leaving the husbands one after another. The complainant was the third husband in that series. The possibility cannot be ruled out that she was sent to reside with a fourth man and after residing for 8 months with that man, the prosecutrix felt that she was not happy with that man and therefore, she went back to the complainant Birju after contacting him and thereafter, an FIR was prepared with due deliberation and report Ex.P/5 was lodged on 25.9.1991. (xi) There is also a material contradiction in the statements of the prosecutrix and the complainant Birju alongwith their case diary statements that the FIR, Ex.P/5 was :- 14 :- Criminal Appeal No.1713 of 1996 lodged by the prosecutrix at Police Station Bakaswaha when she was going back to her house with the complainant or she went to the house of the complainant and after 4-5 days, a written report was lodged. If time is computed according to the dates given by the complainant in the various reports then, it would be apparent that the prosecutrix left the house of Hari Thakur at Hatta and thereafter, she resided with her maternal uncle for two days and thereafter, she went with her husband. According to her case diary statement, she went to her house and after 5 days, the FIR, Ex.P/5 was lodged. No reason has been given by the prosecutrix as to why she did not lodge any report at the police station which was nearest to the house of her maternal uncle or soon after meeting her husband. No explanation was given for delay of 5 days in lodging a report, whereas in the statement, she took a somersault in the Court and she has stated that she has lodged the FIR, Ex.P/5 at Police Station Bakaswaha when she was going back to the house of the complainant i.e. a material contradiction in the statement of the prosecutrix and her previous statement that there was no explanation with her for delay of 5 days in lodging the FIR. The statements of :- 15 :- Criminal Appeal No.1713 of 1996 the prosecutrix is not satisfactory that she resided in the house of Hari Thakur for 8 months, without any resistance. The pressure of the appellants as mentioned by the prosecutrix appears to be unnatural. The appellant Sukhna was a Patwari and therefore, he must be every day attending his duty. Similarly, other appellants were also working persons. They could not stay in the house for the entire day. The prosecutrix has not stated that the other appellants were approaching her in

the day but, she had stated that they were coming to that room in the night to commit the rape.

13. If all the aforesaid infirmities are considered simultaneously and the silent reaction of the parents of the prosecutrix is also considered alongwith the fact that on the first day of the incident, the appellant Sukhna attended the office of the Assistant Officer, Land Records at Damoh in the noon. It appears that neither the appellant Sukhna was directed to look after the wife of the complainant, nor he took the prosecutrix from the bus in the transit. He attended the office of Assistant Officer, Land Records in the noon and therefore, he was not there with the prosecutrix at that time. He did not take the prosecutrix in the jungle. It appears that when the prosecutrix and her daughter reached the house of :- 16 :- Criminal Appeal No.1713 of 1996 her parents, she was again sent to a fourth man and she resided with the fourth man for 8 months. It is possible that fourth man could be the appellant Sukhna because when the complainant Birju lodged a report dated 10.10.1990, he did not make any suspicion on the appellant Sukhna but, in the report Ex.P/6 dated 18.10.1990, he placed his suspicion on the appellant Sukhna because he would have received an information that the prosecutrix was residing with Patwari Sukhna. Hence, the prosecutrix is sure that she got pregnancy due to Patwari Sukhna. If it was a case of gang rape then, how the prosecutrix could be so sure that she got pregnancy through Patwari Sukhna. It is possible that the prosecutrix wanted to reside back with the complainant Birju and therefore, to show her innocence it was necessary for her to tell a cooked story. If other accused persons had committed rape upon the prosecutrix then, she could not be sure that her pregnancy was caused due to the appellant Sukhna and therefore, the appellant Karan could not be convicted for the offence punishable under section 376 of IPC. Similarly, according to the evidence given by the prosecutrix she was taken by the Patwari Sukhna and the remaining accused persons met her in the house of Hari Thakur and committed rape upon her and therefore, there is no overt-act of the appellant Karan told by the prosecutrix :- 17 :- Criminal Appeal No.1713 of 1996 about her abduction. Therefore, the appellant Karan could not be convicted for the offence punishable under section 366 of IPC. The learned Additional Sessions Judge has committed an error in convicting the appellant Karan for the offence punishable under sections 366 and 376 of IPC.

14. As discussed above, it is proved beyond doubt that the appellant Sukhna did not take the prosecutrix to the jungle and committed rape upon her. On the contrary, on that particular day, he appeared before the office of Assistant Officer, Land Records, Damoh at Damoh and therefore, story told by the prosecutrix about her abduction cannot be believed. However, the possibility cannot be ruled out that the prosecutrix was residing with the appellant Sukhna for more than 8 months and she got herself pregnant due to cohabitation done by Patwari Sukhna. As discussed above, there was no genuine case of gang rape with the prosecutrix and therefore, her story cannot be accepted that she was kept in lock and key. The possibility cannot be ruled out that the prosecutrix was kept by her parents with Patwari Sukhna and she resided as his wife for 8 months at any unknown place and her story is not at all confirmed by her own maternal uncle Hallu (P.W.3).

15. In the light of law laid by Hon'ble the Apex Court in the aforesaid cases, there is a lot of contradiction between :- 18 :- Criminal Appeal No.1713 of 1996 the version of the prosecutrix and her previous statement. There were several infirmities in her statement to show that she is not telling a truth. Under such circumstances, the testimony of the prosecutrix is not at all believable. It appears that either she resided with the fourth husband in the period of 8 months and got herself pregnant or she was kept with the appellant Sukhna by her parents and therefore, she resided with him for 8 months. Hence, it would be apparent that either the prosecutrix was a consenting party in case of the appellant Sukhna or the appellant Sukhna is falsely implicated in the matter. FIR was cooked by the prosecutrix and her husband, after their meeting. It was necessary for the prosecutrix to tell such a story to her husband Birju, so that her innocence could be established. Under such circumstances, the appellant Sukhna could not be convicted for the offence punishable under sections 376 of IPC. As discussed above, it is apparent that the appellant Sukhna appeared before the Assistant Officer, Land Records, Damoh on that particular day when it was alleged that he abducted the prosecutrix and therefore, it is not proved beyond doubt that the appellant Sukhna abducted the prosecutrix and therefore, he could not be convicted for the offence punishable under section 366 of IPC. :- 19 :- Criminal Appeal No.1713 o

16. On the basis of the aforesaid discussion, the testimony of the prosecutrix and her husband, cannot be believed. The appellants cannot be convicted for either the offence punishable under section 376 or 366 of IPC. Hence, the appeal filed by the appellants can be accepted. Consequently, the appeal filed by the appellants is hereby allowed. The conviction as well as the sentence directed by the trial Court against the appellants for the offence punishable under sections 376 and 366 of IPC is hereby set aside. The appellants are acquitted from the aforesaid charges. They would be entitled to get the fine amount back, if they have deposited the same.

17. The appellant Karan is on bail. His presence is no more required before this Court and therefore, it is directed that his bail bonds shall stand discharged. Presence of the appellant Sukhna is also no more required before this Court and therefore, it is directed that if any perpetual warrant of arrest is issued against the appellant Sukhna then, it may be called back unserved.

18. Before concluding the judgment, it is my humble duty to extend special thanks to Shri Amod Gupta, Advocate, who assisted this Court in a nice manner as amicus curie. :- 20 :- Criminal Appeal No.1713 o

19. A copy of the judgment be sent to the trial Court along with its record for information and compliance. (N.K.GUPTA) JUDGE 4 1/2013 Pushpendra

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