

Hari Krishna @ Krishna Vs. the State of M.P.

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Court : Madhya Pradesh

Decided On : Jul-26-2012

Appellant : Hari Krishna @ Krishna

Respondent : The State of M.P.

Judgement :

IN THE HIGH COURT OF MADHYA PRADESH, JABALPUR SB: Honble Shri Justice N.K.Gupta, J.Criminal Appeal No.2283/1996 Harikrishna Vs. State of Madhya Pradesh

Shri Manish Datt, Senior Advocate with Shri Ajay Mishra, for the appellant. Shri G. S. Thakur, Panel Lawyer for the respondent/State.

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JUDGMENT

(Delivered on the 26th day of July, 2012)) The appellant has preferred this appeal against the judgment dated 11.12.1996 passed by the Additional Sessions Judge, Khurai in Sessions Trial No.101/1996 whereby the appellant was convicted for offences punishable under Sections 376(1) and 457 of I.P.C and sentenced for seven years rigorous imprisonment with fine of Rs.1000/- and two years rigorous imprisonment with fine of Rs.500/-, in default of payment of fine he was to undergo for two months rigorous imprisonment and one months imprisonment respectively in addition.

2. Prosecutions case, in short, is that the prosecutrix (PW4) was sleeping in her house in the night of 18th and 19th January 1996 at Village Jharvas, Police Station Khurai. At 2 Criminal Appeal No.2283/1996 about 12.00 in the night the appellant Harikrishna @ Krishna entered in her room by opening the door and by showing a knife and putting some clothes in her mouth, he committed rape upon the prosecutrix. Thereafter, he ran away from the spot. When the prosecutrix went behind him, she saw the co- accused Gangaram was standing in the courtyard. She started shouting then Harikrishna and Gangaram climbed the wall and went in the house of Gangaram. The prosecutrix immediately rushed to the house of her mother-in-law Jhunari (PW3) and informed her about the incident. Jhunari kept her daughter-in-law in her room till morning. Nanhu (PW2), husband of the prosecutrix, went to do some labour work and therefore, he went back on the next day at about 3.00 p.m. Thereafter, prosecutrix informed him about the incident and he took the prosecutrix to the Police Station, Khurai where she lodged FIR Ex.P/2 at 5.30 p.m. She was directed for her medico legal examination. Dr. Usha Saina (PW5) examined the prosecutrix and submitted a report Ex.P/3. No external or internal injury was found on her person. The petticoat was taken from the prosecutrix and a slide of vaginal swab was prepared by Dr. Saina and she handed over such things to the concerned Policeman after sealing. Such articles were seized by SHO Rajbir Singh Yadav (PW7) and prepared a memo Ex.P/1. The appellant was arrested and he was also directed for his medico legal examination. His semen slide was also prepared by Dr. D.B.S. Chouhan (P.W.6) and handed over to 3 Criminal Appeal No.2283/1996 the concerned Policeman after sealing it. That slide was also seized by SHO Rajbir Singh Yadav and a memo Ex.P/8 was prepared. All the seized articles were sent for Forensic Science Analysis and Forensic Science Laboratory had submitted a report Ex.P/9, by which it was mentioned that there was no any stain of blood or semen was found on the petticoat but, semen was found on the slides of the appellant as well as the prosecutrix. After due investigation a charge sheet was filed before JMFC Khurai who committed the case to the Sessions Judge, Sagar and ultimately it was transferred to the Additional Sessions Judge, Khurai for trial.

3. The appellant abjured his guilt. He took a specific plea that there was a quarrel between the appellant and the husband of the prosecutrix for a sum of Rs.800/-.

Nanhu took a sum of Rs.800/- in advance to construct the house of the appellant but, neither he worked nor he returned the amount and therefore, due to demand made by the appellant, Nanhu, husband of the prosecutrix, had lodged a false report with the help of the prosecutrix. Murari Lal Shukla (P.W.1) was examined to show that a sum of Rs.800/- was given to the witness Nanhu.

4. Learned Additional Sessions Judge after considering the evidence adduced by the parties acquitted the co-accused Gangaram but, convicted and sentenced the appellant as mentioned above.

5. I have heard learned counsel for the parties. 4 Criminal Appeal No.2283/1996 6. Learned counsel for the appellant has submitted that the appellant was falsely implicated in the crime because Nanhu, husband of the prosecutrix, was not interested to return a sum of Rs.800/- back and therefore, to create a pressure, a false case was registered against the appellant. Testimony of the prosecutrix is not at all believable. There is no support of medical evidence. FIR was lodged in a delayed manner. Under such circumstances, it is prayed that the appellant may be acquitted. Reliance was placed upon the judgment passed by the Single Bench of this Court in the case of Rajkumar & another Vs. State of M.P. (2000 CR.L.J 1896).

7. On the other hand the learned Panel Lawyer has submitted that the conviction and sentence directed by the trial Court appears to be correct and no interference is warranted from the side of this Court.

8. After considering the submissions made by the learned counsel for the parties and looking to the evidence adduced by both the parties it is to be considered as to whether the appeal filed by the appellant can be accepted and whether sentence can be reduced ?.

9. Prosecutrix (PW4), Nanhu (PW2) and Jhunari (PW3) have stated that the appellant pushed the door of the room where the prosecutrix was sleeping and therefore, the latch was opened due to that push therefore, appellant went inside the room and showed a knife to the prosecutrix. Also he put 5 Criminal Appeal No.2283/1996 some clothes in her mouth and thereafter, he committed rape. After

the incident the appellant ran away and he climbed the wall of the house of co-accused Gangaram. The prosecutrix went to the house of her mother-in-law and informed about the incident and she remained with her for the remaining night. When Nanhu came from his work, entire story was told to him and thereafter, the prosecutrix and her husband went to the Police Station, Khurai to lodge an FIR. The appellant has examined one Murari Lal Shukla (DW1) to the effect that a sum of Rs.800/- was given to the witness Nanhu and Nanhu was neither doing his work of construction nor he had returned that amount and therefore, he lodged a false case against the appellant with the help of his wife. However, it is apparent that Murari Lal Shukla (DW1) was an interested witness and therefore, he could tell a falsehood as told by the appellant. Most important fact is that such type of defence was created by the appellant for the first time during the cross examination of the prosecutrix. Nanhu (PW2) and Jhunari (PW3) were examined prior to the prosecutrix and no suggestion was given to them that the witness Nanhu took a sum of Rs.800/- from the appellant. Under such circumstances, the defence of Rs.800/- was created in an after thought manner and therefore, testimony of the defence witness Murari Lal Shukla (DW1) cannot be relied upon.

10. However, the testimony of the prosecutrix is to be considered independently because her testimony was No.6 Criminal Appeal No.2283/1996 corroborated by any medical evidence. Dr. Usha Saina (PW5) took her petticoat but, no sperm or semen was found on that petticoat. The prosecutrix and her mother-in-law, Jhunari have stated that the prosecutrix sustained some injuries on her breast. Her blouse and sari were torn but Dr. Usha Saini did not have find any external or internal injury to the prosecutrix. If some clothes were pushed inside the mouth forcefully then some abrasion must be found on her lips also but, no external or internal injury was found by Dr. Saina on her person.

11. The prosecutrix and her mother-in-law have stated that the prosecutrix did not shout. She shouted after the incident but, all of the persons who were living in that locality were not in their houses. They went to enjoy the fate but, if spot map Ex.P/7 is perused then it would be clear that the room of the mother-in-law was not far away from the room of the prosecutrix. Jhunari in para 1 has stated that her room was 4-6 steps away from the room of the prosecutrix. Looking to the

statement of the witness Jhunari and the spot map Ex.P/7 it would be clear that there was no separate house of the witness Jhunari. She was residing in the same house in the adjacent room. No separate house of Jhunari was even shown in the spot map Ex.P/7. If the prosecutrix had made hue and cry after the incident then it must be heard at least by her mother-in-law but, Jhunari has stated that her daughter-in-law had never cried at that time. 7 Criminal Appeal No.2283/1996 12. Similarly, the prosecutrix has stated that the bulb was illuminated at the time of incident and therefore, she could identify the appellant whereas, Jhunari has accepted in para 7 that she was told by the prosecutrix that the appellant committed such an offence in the dark. He switched off the bulb before touching the prosecutrix. Under such circumstances, a serious question arises whether the prosecutrix could identify the appellant?. The prosecutrix and Jhunari have stated that some bangles were also broken and those pieces were lying at the spot. The prosecutrix has also stated that the bedding was also tinted by the semen of the appellant and blouse and sari of the prosecutrix were torn but, SHO Shri Rajbir Singh Yadav (PW7) did not seize any of such articles, neither sari nor blouse or bedding which indicates that no clothes were torn in the incident and bedding was not tinted with semen of anyone.

13. There is a lot of contradiction between the evidence given by the prosecutrix and her mother-in-law Jhunari. Such as shouting of the prosecutrix could not be heard by her mother-in-law, if light was switched off by the appellant then how could the prosecutrix see or identify the appellant. If the doors of the room were closed by latches then how such latches could be opened by pushing the door. The most important lacuna in the case is that its FIR is lodged with delay of some hours. In FIR it was stated that at about 3.00 p.m Nanhu came back from his work and thereafter, he took 8 Criminal Appeal No.2283/1996 his wife to the Police Station but, Jhunari in her statement has stated that her son Nanhu came to the house at about 12 o'clock in the noon. According to the FIR Ex P/2 the Police Station was only 4 kms away from the spot and therefore, only one hour's time was required to the complainant in visiting the Police Station. FIR was lodged at about 5.30 p.m and therefore, it is delayed by at least 4.30 hours. There is no explanation given by the witnesses about the delay in FIR. On the contrary it was mentioned that the witness Nanhu came to the house at about 3.00 p.m in the

evening. Under such circumstances, a serious doubt is created as to whether the prosecutrix could identify the appellant at the time of crime ?. It is presumed by the prosecutrix and her mother-in-law that there was no body in the adjacent house whereas house of the prosecutrix was situated in a crowded area and if she would have cried after the incident then her cry could be heard by her neighbour but, nobody came forward to support the prosecution story. Even in the morning the prosecutrix did not inform anyone in the locality about the incident. She has accepted that she informed to one Jhuma and his wife but, such Jhuma and his wife were never examined by the Police or by the Court.

14. Under such circumstances, if entire evidence adduced by the prosecutrix is considered then it is apparent that either the prosecutrix could not identify the actual culprit or she was a consenting party. Since the medical evidence 9 Criminal Appeal No.2283/1996 was not corroborative, FIR is delayed by more than 4 hours and the testimony of the prosecutrix is suffering from basic infirmities then it cannot be fully reliable. Under such circumstances, in the light of the judgment passed by the single Bench of this Court in the case of Rajkumar (supra) and also in light of the judgment passed by Honble the Apex Court in the case of Tameezuddin alias Tammu Vs. State of (NCT) of Delhi. (2009 AIR SCW 6219. story given by the prosecutrix appears to be improbable and her version cannot be accepted beyond doubt. Under such circumstances, it is not proved beyond doubt that the appellant was the person who, went inside the house of the prosecutrix and committed rape upon her and therefore, benefit of doubt should be given to the appellant. He cannot be convicted for offences punishable under Sections 376(1) or 457 of I.P.C or any inferior offence of the same nature. Under such circumstances, the appeal filed by the appellant appears to be acceptable.

15. On the basis of the aforesaid discussion the appeal filed by the appellant is hereby allowed. Conviction as well as sentence directed for the offence punishable under Section 376(1) and 457 of I.P.C is hereby set aside. The appellant is acquitted from all the charges appended against him. The appellant is entitled to get the fine amount back if he has deposited the same. 10 Criminal Appeal No.2283/1996 16. The appellant is on bail. His presence is no more required in the case and therefore, it is directed that his bail bonds shall stand discharged.

17. Copy of the judgment be sent to the trial Court for information and compliance.
(N.K.Gupta) Judge 26.7.2012 bina

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