

Kumar Sai Vs. State of Chhattisgarh

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Court : Chhattisgarh

Decided On : Feb-25-2014

Judge : Sunil Kumar Sinha & Inder Singh Uboweja

Appeal No. : Criminal Appeal No. 939 of 2008

Appellant : Kumar Sai

Respondent : State of Chhattisgarh

Judgement :

Sunil Kumar Sinha, J.

1. Appellant- Kumar Sai has been convicted under Sections 376(1) and 506 IPC and sentenced to undergo imprisonment for life and to pay fine of Rs. 500/-, with default sentence of S.I. for one month; and S.I. for one year, respectively, with a direction to run the sentences concurrently. The judgment and findings have been recorded by the 1st Additional Sessions Judge, Rajnandgaon in S.T. No. 24/2008 on 08.07.2008.

2. The facts, briefly stated, are as under:-

2.1. The prosecutrix (PW-1) was a minor girl, aged about 14 years. She was studying in 7th standard. She was residing with her parents in village Pateli. The appellant is father of the prosecutrix (PW-1). On 01.12.2007, the mother of the prosecutrix (PW-1), namely, Ghasnin Bai (PW-7) was not present in the village,

because she had gone to her brother's place. The allegations are that in the night, at about 9.30 pm, when the prosecutrix (PW-1) was sleeping in a room, the appellant came there, threatened her and committed forcible sexual intercourse against her.

2.2. The further allegations are that on the next day, i.e. 02.12.2007, at about 4.00 pm, the appellant again said the prosecutrix (PW-1) to come to the fields. When she denied, he tried to take her forcibly. On this, the prosecutrix (PW-1) ran away from the house and narrated the incident to Dhansingh. Dhansingh narrated the incident to other villagers, who took the prosecutrix (PW-1) to her grand-father, Dashrath (PW-2), who was residing separately in the same village. Thereafter, the villagers took her to the Police Station in the night itself and a First Information Report (FIR Ex. P/1) was lodged by her at about 1.30 am on 03.12.2007.

2.3. The prosecutrix (PW-1) was sent for medical examination to the Community Health Center, but she could not be examined there, because, no lady doctor was available. Then, she was taken to Dongargaon, where she was examined by Dr. Manisha Keshar (PW-4). In clinical observation, the prosecutrix (PW-1) was found to be aged about 14 years. There were no external injuries on her body. Secondary sexual characters were not fully developed. Auxiliary and pubic hairs were absent. However, the breast were developed. On local examination, no injury was seen externally. The vulva was healthy and vagina was easily admitting two fingers. The hymen was old ruptured and healed at 6 O'clock position. No definite opinion regarding recent sexual intercourse was given by the lady doctor. However, she prepared two slides and handed over the same to the concerned Constable. The medical report of prosecutrix (PW-1) is Ex. P/9.

2.4. The appellant was arrested and he was also sent for medical examination. He was examined by Dr. Rajkumar Pasi (PW-3). He found that smegma was absent and the appellant was competent to perform sexual intercourse. His M.L.C. report is Ex. P/6.

2.5. The learned Sessions Judge relied on the testimony of the prosecutrix (PW-1) and held that it was proved on her evidence that she was threatened and was subjected to forcible intercourse by the appellant, who was none else than her

father, therefore, the appellant was liable for punishment under Sections 376(1) and 506 IPC. The appellant, thus, was convicted and sentenced as above. Hence, this appeal.

3. Mr. Shrawan Kumar Chandel, learned counsel appearing on behalf of the appellant, has firstly contended that there was delay in lodging the FIR, therefore, the story set-forth by the prosecution appears to be concocted.

4. The material available on record would show that the incident took place at about 9.30 pm on 01.12.2007 and the report was lodged at about 1.30 am on 03.12.2007. It would be clear from the record that the mother of the prosecutrix (PW-1) had gone to her brother's place on 30.11.2007 and she was not present in her house on the date of the incident. She came to know about the incident on 02.12.2007 in her brother's house, which was situated in a different village. From there, she came to her village in the night and thereafter, the prosecutrix (PW-1) had narrated the incident to her, who took the prosecutrix (PW-1) to her grandfather i.e. father of the appellant, Dashrath (PW-2), where also the prosecutrix (PW-1) narrated the incident and then all had gone to the Police Station in the late night of 02.12.2007 and the FIR was lodged at about 1.30 am on 03.12.2007.

5. The prosecutrix (PW-1) was belonging to a lower middle class family. She was studying in 7th standard in a village school. This was a case, in which, the accused was her father. It appears that for all these reasons, she kept quiet in the morning. When in the evening, at about 4.00 pm, appellant again tried to take her forcibly to the fields and she could judge that she may be subjected to sexual intercourse again by the appellant, then only, she ran away from her house and firstly narrated the incident to Dhansingh and then, her mother was informed, who came in the night and thereafter, she narrated the entire incident to her. The said conduct of the prosecutrix (PW-1) appears to be quite natural. Therefore, the delay in the above manner was explained by the prosecutrix (PW-1) and only on this account, the FIR cannot be held to be concocted or afterthought.

6. Mr. Chandel then contended that the prosecutrix (PW-1) was an unreliable witness. He based his contention mainly on the ground that the version of the prosecutrix (PW-1) was not supported by the medical evidence. According to him, if

the prosecutrix was forcibly subjected to sexual intercourse, she would have received external and internal injuries and the lady Doctor could have given a definite opinion regarding the sexual intercourse, which is not found in her report-Ex. P/9. It is true that in the medical examination, the lady Doctor (Dr. Manisha Keshar, PW-4) had not found any external or internal injury on the person of the prosecutrix (PW-1). But, that alone cannot be taken as a ground to discredit the testimony of the prosecutrix (PW-1). We note that the incident had taken place on 01.12.2007, whereas, the prosecutrix was medically examined on 03.12.2007.

7. That apart, it was not a case, in which, the prosecutrix was forcibly subjected to sexual intercourse either by overpowering her or by throwing her on the ground or rough surface.

8. In the instant case, the appellant (father) silently entered into the bed-room of the daughter, where she was sleeping on her bed and there firstly, he threatened her and thereafter, committed sexual intercourse against her. That is to say that it was a situation, in which after the threat given by the father, the daughter (prosecutrix, PW-1), completely surrendered her before him on her bed and then the sexual intercourse was performed. In this situation, it is not necessary that she would have sustained external or internal injuries during the course of committing the above act by the appellant against her. We further note that it was not a case of recent rupture of hymen by the alleged intercourse. In the instant case, the hymen was old ruptured and the vagina was admitting two fingers easily, therefore, there was no possibility of receiving any internal injury as a matter of rule. Thus, even if, the version of the prosecutrix (PW-1) was not corroborated by the medical opinion as is contended by Mr. Chandel, it would hardly make any difference if her version is otherwise found to be wholly reliable and it inspires confidence of the Court.

9. The prosecutrix (PW-1) has clearly stated that in the night when she was sleeping on her bed, the appellant came there, threatened her and thereafter, committed forcible sexual intercourse against her. Her said version was corroborated by the mother of the prosecutrix, who deposed that when she received information about the incident at her brother's place, she immediately

came to the village, where her daughter (prosecutrix, PW-1) narrated the entire incident to her telling that she was subjected to sexual intercourse by the appellant on the last night at about 9.30 pm.

10. The version of the prosecutrix is also corroborated by the evidence of Dashrath (PW-2). Dashrath (PW-2) is father of the appellant. The appellant is real son of Dashrath (PW-2). He deposed in clear words that at about 8-9 pm, his grand-daughter (prosecutrix, PW-1) came to his house along with Dhansingh, Kirsan and Kanhaiya. She stated before them that she was subjected to forcible sexual intercourse by the appellant in the last night. The appellant had threatened her and thereafter, he committed sexual intercourse against her. He very specifically mentioned in para-2 that the prosecutrix (PW-1) had told him that today also, the appellant wanted to take her with him, but she ran away and disclosed the incident to the villagers. He also deposed that on the date of incident, mother of the prosecutrix (PW-1), Ghasnin Bai (PW-7) had gone to her brother's place.

11. Dashrath (PW-2) was residing separately in the same village. The appellant is his real son. There is nothing on record to take a view that he would falsely implicate the appellant in the above manner. Why a father would unnecessarily implicate his son in such a heinous offence. The same is the case with the prosecutrix (PW-1). She is the real daughter of the appellant. There is no reason why she will falsely implicate her father.

12. Mr. Chandel, has argued that Ghasnin Bai (PW-7) was not willing to reside with the appellant, therefore, on account of her tutoring, the prosecutrix (PW-1) was falsely implicating the appellant.

13. We have perused the entire records. There is no material to show that the prosecutrix (PW-1) was tutored or made to make such allegations against the appellant by her mother. Even if, we take for the sake of argument that Ghasnin Bai (PW-7) was not willing to reside with the appellant and she wanted to get rid of him, why she will use the prosecutrix as an instrument for that. In normal circumstances, we do not think that a mother will use her daughter as an instrument to leave the house of her husband. She could have easily left the

house of her husband, even without resorting to such false allegations against him.

14. The cardinal principle of law is that the evidence of a victim of sexual assault stands on a par with the evidence of an injured witness. Just as a witness who has sustained an injury is the best witness in the sense that he is least likely to exculpate the real offender, the evidence of a victim of a sex-offender is entitled to great weight, absence of corroboration notwithstanding. (Vide *Bharwada Bhoginbhai Hirjibhai Vs. State of Gujrat*, (1983) 3 SCC 217 also referred by the Apex Court in the matter of *State of Tamil Nadu Vs. Ravi alias Nehru*, (2006) 10 SCC 534). 15. In *Mohd. Imran Khan Vs. State Government (NCT of Delhi)*, (2011) 10 SCC 192, it was held that the Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. Rape is not merely a physical assault, rather it often distracts the whole personality of the victim. The rapist degrades the very soul of the helpless female, and, therefore, the testimony of the prosecutrix must be appreciated in the background of the entire case and in such cases, nonexamination even of other witnesses may not be a serious infirmity in the prosecution case, particularly where the witnesses had not seen the commission of the offence. It is a trite law that a woman, who is the victim of sexual assault, is not an accomplice to the crime but is a victim of another person's lust. The prosecutrix stands at a higher pedestal than an injured witness as she suffers from emotional injury. Therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. The Evidence Act, 1872 nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 of the Evidence Act and her evidence must receive the same weight as is attached to an injured witness 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.

16. In the instant case, we have no reason to disbelieve the testimony of the prosecutrix (PW-1). Here the victim is the daughter and the appellant is father. She has no reason to falsely implicate her father. Why a minor daughter would falsely implicate her father in such a case of sexual molestation. The prosecutrix (PW-1)

was aged about 14 years and was studying in 7th standard and thus, she must be aware of the far reaching affects of such allegations in her entire life. In absence of any positive material, there is no reason for us to disbelieve her testimony by discrediting her clear and cogent evidence, which inspires our full confidence.

17. For the foregoing reasons, we do not find any substance in the appeal. The appeal filed by the appellant is liable to be dismissed and is hereby dismissed.

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