

Niranjan Vs. The State of Maharashtra

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Court : Mumbai Nagpur

Decided On : Sep-04-2014

Judge : S.B. Shukre

Appeal No. : Criminal Appeal No. 419 of 2005

Appellant : Niranjan

Respondent : The State of Maharashtra

Advocate for Pet/Ap. : Shri. Tiwari

Judgement :

Oral Judgment:

1. This is an appeal against the judgment and order dated 30/7/2005 delivered by 2nd Adhoc Additional Sessions Judge, Pusad thereby convicting the appellant for an offence punishable under Section 376 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for a period of ten years.

2. Briefly stated, the facts of the appeal are as under.:

P.W.1, hereinafter referred to as the prosecutrix, lodged a report with Police Station, Khandala, district Yavatmal at about 1.45 p.m. of 08/9/2003 alleging that the appellant together with another person Vakil caught hold of the prosecutrix at about 3.00 p.m. of 07/9/2003 at village Sawargaon when she was returning after

answering nature's call and dragging her to a nearby cattle-shed, the appellant committed rape upon the prosecutrix. The prosecutrix alleged that Vakil pressed her mouth and the appellant had caught hold of her both the hands while forcibly taking her to cattle-shed. She further alleged that after she was brought to the cattle-shed, the appellant held her hands while the other person Vakil tied her both the hands by means of a nylon string and thereafter Vakil left the cattle-shed. The prosecutrix further alleged that the appellant stripped the prosecutrix naked and making her lay on the ground supinely, the appellant forced himself upon the prosecutrix and then committed rape. She also alleged that after some time, the appellant again raped her. She further alleged that thereafter she lost her consciousness and that as her hands were tied, she was made to lay in the cattle-shed for the whole night. She also alleged that on the next day in the morning at about 5.00 a.m., the appellant and Vakil removed her from the cattle-shed and dumped her in a dung (manure) pit. She further alleged that when her relatives came to know of her lying in the pit of dung, her uncle Babusing came there and rescued her.

The prosecutrix was brought to her house by her uncle Babusing and thereafter she narrated the whole story to the parents and uncle Babusing. She alleged that thereafter she went to the Police Station along with her uncle and parents for lodging report. She alleged that on the first occasion, when she went to the Police Station, nobody was present there for taking her report and, therefore, in the afternoon again she went to the Police Station with her uncle and lodged the report.

The police registered the offence punishable under Section 376 IPC and started investigation. Necessary seizures were made. The prosecutrix was got examined medically and the opinion of the Medical Officer was obtained. Seized articles, such as clothes of the prosecutrix and of the accused as well as samples of blood and semen were sent to the Chemical Analyzer for analysis and reports. Medical reports and Chemical Analyzer's report were obtained. After completion of the investigation, a chargesheet was filed against the appellant.

As the appellant pleaded not guilty of the charge framed against him for an offence punishable under Section 376 IPC, he was tried in accordance with law. After considering the evidence available on record and hearing both the sides, learned Additional Sessions Judge came to the conclusion that there was sufficient evidence to find the appellant guilty for an offence punishable under Section 376 IPC and accordingly convicted and sentenced him to suffer rigorous imprisonment of ten years together with fine of Rs.1,000/- with default sentence of three months by his judgment and order dated 30/7/2005. Being not satisfied with the same, the appellant is before this Court in this appeal.

3. I have heard Shri Tiwari, learned Counsel for the appellant and Smt. Mehta, learned A.P.P. for the State. I have perused the impugned judgment and order and also the evidence available on record.

4. Shri Tiwari, learned Counsel for the appellant has submitted that the evidence of the prosecutrix is not at all trustworthy and it appears that if at all there was any sexual intercourse between the appellant and the prosecutrix, it was as a result of consent given by the prosecutrix. He submits that admittedly the prosecutrix was about the age of 16 years at the time of the alleged offence and, therefore, her evidence would be required to be scrutinized carefully. He further submits that the medical report does not at all corroborate the version of the prosecutrix and even evidence of P.W.2 Babusing, paternal uncle of the prosecutrix, is not consistent with the story of the prosecutrix and does not inspire confidence. In support of the argument, he has taken me through the evidence.

5. Smt. Mehta, learned A.P.P. for the State submits that it is well settled law that in a rape case, no corroboration to the evidence of the prosecutrix is required if the evidence of the prosecutrix is trustworthy and reliable. She submits that even the medical evidence is not necessary to corroborate the evidence of the prosecutrix. Taking me through the prosecution evidence, learned A.P.P. further submits that the evidence of the prosecutrix is by and large supported by the evidence of P.W.2 Babusing, who has rescued her from the dung pit. She further submits that even the medical evidence does not rule out any possibility of forcible sexual intercourse. Therefore, the learned A.P.P. further submits, the evidence of the

prosecutrix would have to be accepted as reliable and as such there would be no scope for this Court to make any interference with the impugned judgment and order. She places reliance upon the case of State of Uttar Pradesh Vs. Chhotey Lal reported at **(2011) 2 SCC 550**.

6. Upon carefully going through the evidence of the prosecution, I find that there is merit in the argument of the learned Counsel for the appellant and no merit in the argument of the learned Additional Public Prosecutor.

7. In the case of Chotey Lal (supra), Hon'ble Supreme Court agreeing with the proposition laid down in many of its earlier judgments, held that the evidence of the prosecutrix is similar to the evidence of the injured complainant or witness and if found to be reliable, it by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. The Hon'ble Supreme Court also clarified that in prosecution for rape, the law does not require corroboration and the evidence of the prosecutrix may sustain a conviction and that it is only by way of abundant caution that Court may look for some corroboration so as to satisfy its conscience and rule out any false accusation. The relevant observation of the Hon'ble Supreme Court as appearing in paragraph-22 may be reproduced for the sake of convenience, as follows.:

In the backdrop of the above legal position, with which we are in respectful agreement, the evidence of the prosecutrix needs to be analysed and examined carefully. But, before we do that, we state, as has been repeatedly stated by this Court, that a woman who is a victim of sexual assault is not an accomplice to the crime. Her evidence cannot be tested with suspicion as that of an accomplice. As a matter of fact, the evidence of the prosecutrix is similar to the evidence of an injured complainant or witness. The testimony of the prosecutrix, if found to be reliable, by itself, may be sufficient to convict the culprit and no corroboration of her evidence is necessary. In prosecutions of rape, the law does not require corroboration. The evidence of the prosecutrix may sustain a conviction. It is only by way of abundant caution that the court may look for some corroboration so as to satisfy its conscience and rule out any false accusations.

8. Bearing in mind the above settled position of law, now let us examine the prosecution evidence. The evidence of the prosecutrix, P.W.1, vide Exh.21 and the first information report lodged by her vide Exh.22 are very relevant and, therefore, it would be appropriate if same are considered first. According to the prosecutrix when at about 3.00 p.m. of 07/9/2003 at village Sawargaon she was returning after having attended to nature's call, the appellant and one person, Vakil came across her and catching hold of her, they dragged her to a nearby cattle-shed where the appellant Niranjana and Vakil tied her legs as well as hands, the appellant also gagged her mouth by putting a piece of cotton in her mouth and then the appellant committed rape upon her twice. The prosecutrix has stated that after she was raped twice by the appellant, she was left in the cattle-shed and she continued to lay there throughout night in unconscious state. She also states that in the morning of 08/9/2003 at about 5.00 a.m. the appellant and Vakil again came to the cattle-shed and releasing her hands and legs, they removed her from that spot and dumped her in a dung pit, which was situated near her house. She also states that her sister Archana saw her as lying in the dung pit and informed her relatives. Thereafter, her relatives came to the dung pit and rescued her. She was then taken to her house where she narrated entire incident to her parents as well as P.W.2 Babusing (Exh.39).

In the cross-examination, the prosecutrix admitted that her legs were not tied and it were only her hands which were tied. She also admits that after the commission of rape by the appellant twice, she did not fall unconscious. She also admits that in the cattle-shed the ground surface was rough to which she refers by saying, hard material like earth was there. In her examination-in-chief, the prosecutrix has stated that she was completely stripped naked by the appellant. However, she is silent as to whether or not any clothes were put back upon her person and, if so, by whom. The other prosecution witness P.W.2 Babusing also does not say as to in what condition, the prosecutrix was found as lying in the dung pit.

9. The above evidence would indicate that after the alleged second act of rape, the prosecutrix did not go into the state of unconsciousness. Her legs were also not tied. The appellant and Vakil had also left the cattle-shed. Thus, it was possible for the prosecutrix to walk out of the cattle-shed and go back to her house, as the

prosecutrix, according to her own admission, was in conscious state. But, she did not do so. There is no evidence to show that the prosecutrix had become so injured and was so tired after the forcible sexual intercourse that she was not in a position to walk or to raise any shouts or to seek somebody's help.

10. From the above evidence, a reasonable doubt arises about credit worthiness of the prosecutrix. The doubtful circumstances pointed out earlier would require some explanation, some clarification, and some support from the other evidence and it would be risky to take evidence of the prosecutrix alone to reach any conclusion about guilt of the accused. It would, therefore, be appropriate to turn to the other evidence.

11. If one goes through the medical evidence, one would find that the version of the prosecution does not receive any support from it, rather it appears that it creates further doubts in evidence of the prosecutrix. According to the prosecutrix, she was lying on a surface of hard material like earth for the whole night with both of her hands tied by means of nylon string. The medical report (Exh.31), however, discloses that no fresh wound or injury anywhere over the body of the prosecutrix was found during examination by the Medical Officer of Rural Hospital, Pusad. There was not even a single scratch or abrasion on the back portion of the prosecutrix nor any ligature mark arising from the state of her hands being tied by means of nylon string. The Medical Officer has also collected vaginal swab of the prosecutrix as there was vaginal bleeding which, in his opinion, could be more than 24 hours in period of time. But, the Medical Officer has further opined that opinion of gynecologist be obtained as regards the vaginal bleeding. No opinion of gynecologist has been obtained and it is not clear as to what was the cause of vaginal bleeding. If there was vaginal bleeding found to be present, the period of which somewhat corresponded to the timing of rape, some blood should have been noticed on the penis or clothes of the appellant. But, there is no evidence produced on record in this regard. On the contrary, the prosecution evidence shows that there were no blood stains found on the nicker of the appellant, which can be seen from the Chemical Analyzer's Report vide Exh.20A. This C.A. Report further shows that neither semen nor spermatozoa was detected in the vaginal swab of the prosecutrix as well as on pubic hairs of the prosecutrix and the

appellant. Thus, the medical as well as forensic evidence does not support in any manner the evidence of the prosecutrix, which has already been found by me to be as not inspiring confidence, if taken by itself.

12. The evidence of P.W.2 Babusing shows that he had received information from Archana, sister of the prosecutrix, that the prosecutrix was lying near a dung pit. He does not state that information which he received was to the effect that the prosecutrix was lying in a dung pit. At this stage, it may be stated that the case of the prosecutrix is that she was thrown into the dung pit and not into a place near dung pit. This contradiction so appearing in the evidence of P.W.2 Babusing is minor and, therefore, can be ignored. But, there is a major contradiction in his evidence. He states that when he rescued the prosecutrix, the prosecutrix was in an unconscious state and she regained consciousness after about half an hour. The evidence of the prosecutrix has already shown that she was in conscious state as she was aware that the appellant as well as Vakil had come to the cattle-shed at around 5.00 a.m. and after releasing her hands and legs, they dumped her in a dung pit. This contradiction appearing in the evidence of P.W.2 Babusing is certainly material in nature and creates a good deal of doubt about the version of the prosecutrix. If it is held that the prosecutrix was unconscious when she was dumped in the dung pit, her being rescued by P.W.2 Babusing would appear natural. But, if it is found that she was very much conscious, there would not be any need for anybody to rescue her from that spot. At this stage, it may also be mentioned that it is the own story of the prosecutrix that the alleged rape was committed upon her by the appellant by spreading her legs and it is not the case of the prosecutrix that the rape was committed with both of her legs remaining tied. So, the prosecutrix, after having been dumped in the dung pit and being in conscious state, could have herself risen from that spot and reached on her own to her house or she could have at least sought help of others by raising shouts. But, this was not done and in order to cover up the major lacuna in the story of the prosecutrix, it appears that Babusing has come out with a case that the prosecutrix was lying near the dung pit in an unconscious state and she regained consciousness after about half an hour.

13. From the evidence discussed above, it would be clear that the prosecutrix is not coming out with a complete truth in the matter and she is trying to suppress some important details relating to the incident. The prosecutrix, admittedly, was above 16 years of age. Her date of birth as seen from the School Leaving Certificate vide Exh.36 was of 01/01/1987, which would indicate that on the date of incident, she was 16 years 8 months and 6 days' old. The fact that no injuries, even no scratches or abrasions, were seen to be present on any portion of the body of the prosecutrix and no ligature mark was also seen on any portion of the hand, the possibility of the prosecutrix going along with some person voluntarily in the cattle shed and staying there for the whole night cannot be ruled out. On the basis of the evidence that has appeared on record, it cannot be said that with any certainty that this person must have been the appellant himself. At the most what can be said is that the prosecutrix may have had some relation with the appellant and as she stayed away for the whole night from her house voluntarily and probably had no justifiable explanation to put forth for such an act, she may have tried to implicate the appellant in the present case.

14. The evidence of the prosecution, thus discussed above, would show that there are many lacunae in the evidence of the prosecutrix for which no explanation has been given by the investigating agency thereby resulting in rendering the evidence of the prosecutrix as not trustworthy. This is a case in which corroboration to the evidence of the prosecutrix would be required in as much as the evidence of the prosecutrix when taken alone, does not inspire confidence of the Court. The other evidence as discussed above does not support the prosecutrix and, therefore, a reasonable doubt about genuineness of the allegations made by the prosecutrix against the appellant has arisen in this case, the benefit of which has to be given to the appellant.

15. In the circumstances, I am of the view that the prosecution has not proved the guilt of the appellant beyond reasonable doubt and the benefit of doubt that has arisen in the prosecution case deserves to be given to the appellant. The learned Additional Sessions Judge has not at all considered the material aspects of the case as discussed above which have affected the genuineness and veracity of the story put forward by the prosecutrix. The Additional Sessions Judge has found that

there are no material contradictions or omissions in the version of the prosecutrix. But, this finding and the resultant conclusion, I must say, are not at all borne out from the evidence. They are, therefore, perverse and need to be quashed and set aside. The appeal is, therefore, allowed and the impugned judgment and order are hereby quashed and set aside. The appellant is acquitted of the offence punishable under Section 376 of the Indian Penal Code.

His bail bonds stand discharged.

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