

Mohan Sarma Vs. State of Assam

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Court : Guwahati

Decided On : Jun-20-2002

Judge : I.A. Ansari, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : Criminal Appeal No. 116 of 2000

Appellant : Mohan Sarma

Respondent : State of Assam

Advocate for Def. : N. Mohammed, PP.

Advocate for Pet/Ap. : S.C. Biswas, K. Bhattacharjee, J.C. Barman and R. Begum, Advs.

Disposition : Appeal dismissed

Judgement :

I.A. Ansari, J.

1. This appeal has been preferred against the Judgment and Order, dated 11.4.2000, passed by the learned Sessions Judge, North Lakhimpur, in Sessions Case No. 16(NL)/1999 convicting, the appellant under Section 376 IPC and sentencing him to undergo rigorous imprisonment for seven years and pay fine of

Rs. 500.00 (Rupees five hundred) only and in default, to suffer rigorous imprisonment for a further period of six months.

2. The case against the appellant, as unfolded at the trial, may, in brief, be stated as follows : On 19.9.1998, Smt. Khageswari Sharma lodged a written Ejahar (Ext. 1), at Bihpuria Police Station, alleging, inter alia, that on the previous day, i.e., on 18.9.1998 at about 4 'O' Clock in the evening, while she was cutting grass at the grazing field on the bank of Dikrong river, accused Mohan Sharma (i.e., the appellant), suddenly, grabbed her from behind, closed her mouth by his hands and by making her lie on the grass, he committed rape on her and as no male member in her house was available, there was delay in lodging the Ejahar. Treating the said Ejahar as First Information Report, Bihpuria Police Station Case No. 377/98 u/s 376 was registered. During investigation, police got the prosecutrix medically examined on 19.9.1998 itself and, on completion of investigation, police laid charge sheet against the appellant under Section 376 IPC.

3. During trial, when a charge framed under Section 376 IPC was read over and explained to the appellant, he pleaded not guilty thereto.

4. In all, prosecution examined seven witnesses including the Investigation Officer. The accused was, then, examined under Section 313 of Cr.PC and in his examination aforementioned, the accused

denied that he had committed the offence of rape alleged to have been committed by him, the case of the defence hearing, briefly stated, thus : While the appellant and the prosecutrix were cutting grass at the said grazing field, the prosecutrix suffered cut injury on her left thumb and on insistence of the prosecutrix, the appellant tied a piece of rope around the said wound. The prosecutrix, then, opened her skirt, removed her pant and forcibly caught hold of the appellant, who was covering himself with only a gamucha (i.e., country towel) around his waist with upper portion of his body bare and, then, forced him to have sex with her and that for stopping bleeding from her vagina caused by such intercourse, the prosecutrix asked the accused to get her some medicine. The appellant has been falsely implicated to force him to marry the prosecutrix.

5. No evidence was, however, adduced by the defence.

6. At the end of the trial, on finding the appellant guilty of the charge, learned trial Court convicted the appellate, accordingly and passed sentence against him as hereinabove mentioned. Hence, this appeal.

7. I have carefully perused the relevant recorq! including the impugned judgment and order. I have heard Mr. S. C. Biswas, learned . Counsel for the appellant, and Mr. N. Mohammed, learned Public Prosecutor and Mrs. B. Rajkhowa, learned Additional Public prosecutor.

8. The moot point, which falls for determination in the preset appeal, is this : whether the finding of guilt arrived at by the learned trial Court is Justified on the basis of the evidence on record and the law relevant thereto

9. It is submitted, on behalf of the appellant, that the evidence on record was not sufficient to hold that the prosecutrix had been subjected to rape inasmuch as the medical evidence on record disclosed that no injury consistent with the allegation of rape was found on the person of the prosecutrix. Even if it is assumed for a moment, points out Mr. Biswas, that the appellant had Intercourse with the prosecutrix, the intercourse was voluntary and with the consent of the prosecutrix, because had the intercourse been against the prosecutrix's consent, she could have cried out for help and she could have freed herself from the clutches of the appellant.

10. Controverting the above submissions made on behalf of the appellant, it is submitted on behalf of the prosecution, that the medical evidence on record clearly shows that the prosecutrix had suffered injuries on her private parts and these injuries, had been caused according to the convincing evidence on record, as a result of forcible sexual intercourse, which the appellant had with her at the said grazing

filed.

11. Having heard both sides, when I peruse the records, what attracts my eyes, prominently, is that according to the evidence of PW-6 (Dr. J.M. Bora), who had,

admittedly, examined the prosecutrix (PW-5) on 19.9.1998 at 9.50 A.M., he found as follows :

No marks of violence seen on her private parts resembling nail scratches or teeth bites. The vulva moderately swollen. Hymen was torn and its margins were fresh; it bleeds on speculum examination. No semen like stains seen.

12. PW-6 was of the opinion that forcible penetration of blunt object into the vaginal canal within last 24 hours was suggestive from the above findings. PW-6 has proved Ext. 3 as his report.

13. I have carefully scrutinized the cross-examination of PW-6 by defence, but I do not notice that any fact could be elicited by the defence from his cross-examination to show that what PW-6 deposed was untrue and /or what PW-6 opined was incorrect. Far from this, PW-6 has, I find, clarified, in his cross-examination, that during normal intercourse, swelling of vulva cannot occur and that he did not find any spermatozoa.

14. What, therefore, transpires from the above discussion is that while no nail scratches or marks of teeth bite were found on the private parts of the prosecutrix, her hymen was found torn with its margins fresh, her vulva was moderately swollen, which could not have occurred as a result of normal intercourse, and, over and above all these, there was bleeding from her vagina. From all these findings, PW-6 concluded to the effect that since these findings were consistent with forcible intercourse, the prosecutrix could have been put to forcible penetration of some blunt object (which could mean penis) into vaginal canal of the prosecutrix. I see absolutely no reason to disbelieve or discard the evidence of PW-6 and/or his opinion, when nothing could be pointed out to show that he was partisan and/or incompetent.

15. I may pause here to point out that since the perusal of the records revealed that the incriminating pieces of evidence, which PW-6 gave in his evidence, had not been put to the appellant, when he was being examined under Section 313 Cr.PC, I have, in keeping with the guidelines issued by the Apex Court in State (Delhi Administration) v. Dharam Paul (AIR 2001 SC 2994) have called upon the

learned counsel for the appellant to say if the appellant has any comments/ explanation to offer on the evidence given by PW-6. Learned counsel for the appellant has clearly submitted that the appellant has no

comments/explanation regarding the evidence of PW-6, thus, though medical evidence on record had not been put to the appellant by the . learned trial Court as aforesaid, it clearly transpires that the appellant has no explanation/comments to offer in this regard. It, therefore, logically follows that the omission to put the medical evidence on record to the appellant by the learned trial Court has not caused any prejudice to him. It may also be noted that neither in the trial Court nor in this appellate Court, any grievance of prejudice has been expressed by the appellant for not giving him specific opportunity to offer his comments on, or explanation to, the evidence given by PW-6, The omission to put the relevant question, in this regard, to the appellant by the learned trial Court can, therefore, be safely ignored. (Reference may be made in this regard to the State of Punjab v. Naib Din (2001) 8 SCC 578).

16. Situated thus, one can safely conclude, and I do conclude, that as per medical evidence on record, the possibility of the prosecutrix having undergone forcible sexual intercourse within 24 hours of her said medical examination cannot be boldly ruled out.

17. Keeping in view the above aspects of the case, let me, now, come to, and deal with, the evidence of the prosecutrix (PW-5). According to her evidence, accused is her relative and on 18.9.1998 at about 2 P.M., on being asked by her sister-in-law (wife of her elder brother), Janaki Sarma (PW-1), she (PW-5) came to the grazing field, located at a distance of about half-a-kilometre from her house, for cutting grass and while she was cutting the grass, PW-1 came there and carried away one bundle of grass already collected by her (PW-5) and after departure of PW-1, when she (PW-5) was sitting on the ground and cutting grass no one was around her, but, suddenly, the accused grabbed her from behind, threw her on the ground, gagged her with his hands stopping her from screaming, removed her pant and committed rape on her. It is in the evidence of PW-5 that after committing rape on her, the accused fled away, she (PW-5) came home with the grass and

informed Janaki (PW-1) about the occurrence and when her elder brother, Anil Sharma (PW-2), arrived home at night, he was reported about the occurrence by PW-1 and, then, her brothers, Gopal and Ghanashyam, also came there and they too were reported about the occurrence by PW-1, whereupon her brothers made inquiry about the occurrence from her (PW-5) too and she told them also what had happened. It is also in the evidence of PW-5 that on the following day, on her instructions, a man from Bihpuria wrote Ejahar, which she signed and lodged the same at the thana, which is located at a distance of about 2 kilometres from her house, whereupon police got her examined by a doctor and

police also got her statement recorded in the Court.

18. It is of immense importance to note that when PW-5 was cross-examined by defence, it was suggested to PW-5 by the defence that on the day of the occurrence, Mohini and Mannah (both of whom have not been examined) were cutting grass near her, she (PW-5) sustained cut injury on her left thumb and, on her request, the accused tied a rope around the wound and, then, she (PW-5) grabbed the accused, who had kept himself covered with only a Gamocha (i.e., country towel), she opened her skirt, removed her pant and forcibly caught hold of the accused. It was also suggested to PW-5 that for stopping the bleeding from her vagina, she had asked the accused to get medicine. It was further boldly suggested to PW-5 that on her own volition, She had sexual intercourse with the accused.

19. From a bare reading of the evidence given by PW-5, it clearly emerges that the defence did not virtually cross-examine her, her whole evidence describing the occurrence remained completely unshaken and only a few suggestions were offered, but these suggestions, having been denied, have remained as mere suggestions. Far from proving the suggestions, the evidence on record does not even probablise the suggestions. This apart, while cross-examining PW-5, the fact that the accused had sexual intercourse with her was not disputed at all. What was disputed was that the accused had sexual intercourse with her against her will or consent.

20. Thus, a combined reading of the evidence of PW-5 and PW-6 couple with the fact that there is no dispute that the accused had intercourse with PW-5, it has become abundantly clear that the assertion of PW-5 that the accused had sexual intercourse with her forcibly is true inasmuch as her evidence is substantially corroborated by the medical evidence on record, which shows that prosecutrix's vulva were moderately swollen, hymen was torn with its margins fresh and bleeding, which were, according to the opinion of the doctor (PW-6) suggestive of forcible penetration of blunt object into the vaginal canal within the last 24 hours.

21. Drawing my attention to the case of *Dilip & Anr. v. State of M.P.* (2002) SCC (Cri) 592, Mr. Biswas has submitted that in the case at hand, the clear evidence of PW-6, in his cross-examination, is that he did not find any spermatozoa, when the alleged victim girl was examined by him. On the strength of this piece of evidence, Mr. Biswas submits that the medical evidence on record belies the possibility, of PW-6 having undergone sexual intercourse recently and in this view of the matter, her sole testimony that she had undergone rape at the hands of the appellant cannot be believed.

22. To say the least, I find that the above submission of the learned counsel for the appellant is misconceived. The established view of law, now, is that if the prosecutrix is believed to be a truthful witness, no further corroboration of her evidence should be insisted upon, because corroboration is, admittedly, a rule of prudence and nothing more. I am guided to adopt this view from the law clearly laid down in *State of Himachal Pradesh v. Lekh Raj & Anr.*, reported in (2000) 1 SCC 247.

23. Coupled with the above, presence or absence of spermatozoa, dead or alive, would differ from persons to person and its positive presence depends upon various circumstances. Otherwise also, the presence of spermatozoa is ascertained for the purpose of corroboration of the prosecutrix and hence, when the prosecutrix is believed, absence of spermatozoa loses its significance. The case of *Lekh Raj* (supra) may be referred to.

24. In view of the fact that the evidence of PW-5 has remained completely unshaken that she was forced to undergo sexual intercourse with the appellant,

the fact that spermatozoa was not found by PW-6 can have no bearing in the case, particularly, when no probing question, in this regard, has been put by defence to either PW-6 or PW-5.

25. Moreover, the case of Dilip (*supra*), relied upon by learned counsel for the appellant, is a case in which sole testimony of the prosecutrix was found to suffer from infirmities and also contradicted not only by the medical evidence, but also by the version of prosecutrix's aunt to whom the prosecutrix was said to have narrated the incident soon after the commission of rape. In the case at hand, the medical and, other evidence on record, far from contradictory or weakening prosecutrix's evidence, lends substantial strength and corroboration to the prosecutrix's evidence.

26. Keeping in view of the above aspects of the prosecution's case, let me, now, consider other relevant evidence on record to ascertain if the evidence on record weakens or strengthens the case of the prosecution against the appellant.

27. Close on the heels of the evidence of PW-5 PW-1 (Sister-in-law of PW-5) has, I notice, deposed that on 18.9.1998 at about 2 P.M., she sent PW-5 to fetch grass and at about 3 P.M., she (PW-1) went to the field and brought a bundle of grass and, on returning from the field, when she was working at her house, PW-5 reached home weeping and told her (PW-1) that while she (PW-5) was cutting grass, accused grabbed her from behind, gagged her mouth, threw her on the ground and committed rape on her. It is in the evidence of PW-5 that she (PW-

5) came out of her house and she (PW-5) saw accused going away by the side of the river and at about 6 P.M. when her husband (i.e., PW-2) returned home, she reported the matter to her husband.

28. It is of utmost importance to note that while cross-examining PW-1, it was suggested to her by the defence that PW-5 had reported, to her that she willingly had sexual intercourse with the accused. Nothing was, however, elicited from the cross-examination of the PW-1 to probablise this suggestion or to show that what she (PW-1) had deposed was untrue.

29. Situated thus, I see no reason to disbelieve the evidence of PW-1, particularly, when I do not find her evidence inherently improbable or untrue.

30. It may be noted here that though it was suggested to PW-1 that she had not stated before the police that PW-5 had told her that the accused grabbed her from behind, threw her on the ground and committed rape on her, no suggestion was offered to PW-1 to show that PW-5 did not report at all that the accused had committed rape on her. Viewed from this angle, the omission of PW-1 to state, in detail, before the police that PW-5 had told her (PW-1) that the accused grabbed her from behind, threw her on the ground and committed rape can be given no importance at all.

31. Broadly in tune with the evidence of PW-5 and PW-1, PW-2 (elder brother of PW-5) has deposed that on 18.9.1998 at about 6.30 P.M., when he returned home, his wife (PW-1) and PW-5 informed him that on that day, PW-5 (Khageswari Sharma) came home weeping from the field and reported to PW-1 that the accused forcibly had sexual intercourse with her (PW-5).

32. It is of vital importance to note that there was virtually no cross-examination of PW-2 to show that what he had deposed was incorrect or untrue. It was merely suggested to him that they wanted the accused to marry PW-5 and that is why, they had implicated the accused in this false case. Nothing, however, exists on record except the bare suggestions to indicate that the accused was implicated, because he was unwilling to marry PW-5. These suggestions have, therefore, remained as mere suggestions and have not acquired the shape of evidence.

33. It is of some significance to note that the defence has confirmed from the Investigating Officer (PW-7) that PW-2 had stated before him that he had been reported by his wife (PW-1) and/or by PW-5 (i.e., prosecutrix) about the occurrence. Notwithstanding this omission, PW-7 has confirmed that PW-2 did state before him that when he

(PW-2) returned home, he was reported about the occurrence. In other words, while giving his statement before the police that he was reported about the occurrence, PW-2 did not specially mention the name(s) of the person(s), who had

reported the occurrence to him. However, in view of the fact that there exists nothing on record to show that any query was made by PW-7 to find out from PW-2 as to who had reported the occurrence to him, when the latter returned home, the logical inference will be that since PW-2 was not asked by the I.O. as to who had reported the occurrence to him, PW-2 did not mention specifically, while stating before the police that he was reported about the occurrence, the names of the persons, who had reported the occurrence to him. I am, therefore, firmly of the opinion that for mere omission of PW-2: to clearly specify the name or the names of the persons, who had reported the occurrence to him, the evidence of PW-2 cannot be rejected, as untrustworthy, particularly, when the unshaken evidence on record of PW-1 and PW-5 is that when PW-2 returned home, he was reported about the occurrence by both PW-1 as well as PW-5 and when PW-2 did state before police that on his returning home, he was reported about the occurrence.

34. Coming to the evidence of PW-3, I notice that this witness has deposed that the accused is his cousin. PW-5 is his younger sister and on 18.9.1998, in the evening, when he returned home, PW-5 reported to him that while she was cutting grass at the field, rape on her, the accused grabbed her, threw her on the ground and committed rape on her. Even from the cross-examination of PW-3, nothing of significance could, I find, be elicited by the defence to discredit this witness or to show that his evidence is untenable.

35. Turning to the evidence of PW-4, I notice that according to him, the accused as well as the complainant are his neighbours and about a year back, one day at 8 'O' clock in the morning, when he went to Dharmeswar Sharma, elder brother of the accused, he was informed by Dharmeswar Sharma that on the previous day, the accused had reportedly committed rape on Moneswari (PW-5) and police had been informed by her family members. It is also in the evidence of PW-4 that Dharmeswar Sharma requested PW-4 to prevail on the family members of PW-5 to settle the matter amicably. On being so requested, when PW-4, according to his evidence, reached the police station, he found the accused inside the locker. The evidence of this witness has remained wholly undisputed and unchallenged by the defence.

36. As far as Investigating Officer (PW-7), is concerned, his evidence is that on receiving written Ejahar (Ext. 1) at Bihpuria Police Station, on 19.9.1998 at 09.45 A.M., from Moneswari (PW-5), the Officer-in-charge registered a case and handed over investigation thereof to

him and during investigation, he visited the place of occurrence, which is located at a distance of about half-a-kilometre, from the house of, the complainant.

37. A close and dispassionate scrutiny of the evidence on record reveals that the evidence of PW-5 has remained completely unshaken and her evidence receives corroboration, as indicated above, not only from the medical evidence on record, but also from the evidence of other prosecution witnesses, viz. PW-1, PW-2 and PW-3 whose evidence collectively prove that on her return home from the grazing field, PW-5 reported to PW-1 that the accused had committed rape on her and when PW-2 (husband of PW-1) arrived at home, he was reported about the occurrence and, on the following day, at about 9.45 A.M., a written complaint (Ext. 1) was lodged with police by PW-5.

38. Because of what have been discussed above, and upon full and complete appraisal of the evidence on record, I am firmly of the view that the prosecution successfully proved their case beyond all reasonable doubt against the appellant and the learned trial court committed no error in holding the appellant guilty of the charge framed against him and in convicting him accordingly.

39. In the result and for the reasons discussed above, this appeal fails and the appeal is accordingly dismissed. The impugned judgment and order are upheld.

40. Send back the case record with a copy of this judgment and order to the learned Court below.

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