

Sitaram Vs. the State of Maharashtra

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Court : Mumbai

Decided On : Apr-26-1973

Reported in : 1974CriLJ82; 1973MhLJ572

Judge : Padhye and ;Bhojraj, JJ.

Appellant : Sitaram

Respondent : The State of Maharashtra

Judgement :

Bhojraj, J.

1. The appellant Sitaram son of Bajirao Kumre, aged about 23 years of Pimpaleaon talua Hinganghat, district Wardha. stood charged before the Sessions Judge, Wardha. under Section 376 of the Indian Penal Code for committing rape on Saraswati wife of Gulab on November 19, 1970, at about 8 A. M. at Pimpalgaon.

2. The Sessions Judge held the charge as proved. The appellant was convicted under Section 376 of the Indian Penal Code and was sentenced to undergo rigorous imprisonment for a period of three years.

3. The version of the prosecution is as follows : The prosecutrix Saraswati (P. W. 2) is a married woman, aged 16 years. Her parents and brother Ishwar (P. W. 1)

are residents of Pimpalsaon. Saraswati was married three years before August 1971 and was staying at her husband's place. She visited her father's Place in the month of November 1970. The accused is a resident of Pimpalgaon.

4. On November 19, 1970, at about 7 a. m.. Saraswati went to her father's field at Pimpalgaon. She watched the crop for sometime. Her brother Ishwar (P. W. 1) came to the field and sent Saraswati home. by about 9 a. m. Saraswati left the field alone to at home. After she passed some distance, crossed the nalla and came on the road, Saraswati found that the accused, who was hiding in the bushes, obstructed her. She told him that she would complain to her brother if he caught her. However, the accused forcibly caught her. Thereupon Saraswati shouted for help. The accused, however, dragged her to some distance in the bushes, felled her on the ground and gagged her mouth. He then loosened her sari and had full sexual intercourse with her. Semen was discharged in the vagina.

5. Witnesses Ganpat (P. W. 31 and Bapurao (P. W. 5) came running on hearing the shouts. The accused run away to the opposite side. According to Saraswati she told these persons that the accused had raped her and was running away. Thereupon Ganpat took Saraswati to her father's field where Ishwar was. Saraswati told Ishwar that the accused had committed rape on her. These persons then proceeded to the village. They then went to the witness Shrihari (P. W. 4). Saraswati told him as to what had happened. She also showed her torn sari and injuries on her person to Shrihari. Thereafter Ishwar. Saraswati and Shrihari went to the police Patil, who. however was out of the village.

6. On the said day, the mother of Saraswati was not in the village. Saraswati proceeded to Hinganghat where another brother Kisan was residing, but she could not meet Kisan. The next day Ishwar and Saraswati returned to Pimpalgaon. they proceeded to the Police Patil Pandurans who prepared a report (Ex. 10)). Ishwar signed it. The report was then taken to Girad police station. Head Constable Govinda (P. W. 9) obtained the report on 21st November 1970 at about 2 p. m. The First Information Report had already been recorded by another Head Constable. Head Constable Govinda proceeded to Pimpalgaon, which is 10 miles away reaching by 6 p. m. The same day he recorded the statements of Saraswati

and Ishwar.

7. The next day, i. e. November 22. 1970, a panchanama of the scene of offence was prepared (Ex. 16). The sari of Saraswati and the dhoti of the accused were seized and sent to the Chemical Analyser. The Chemical Analyser did not find any semen on either of the articles. On the dhoti seized from the accused, neither blood nor semen was detected. On the sari seized from Saraswati, human blood stains were found.

8. Saraswati was then sent for medical examination. This was performed by Dr. Mrs. Mulmule (P. W. 6) at the Hinganghat hospital at about 10 a. m. on November 23, 1970, She found the following injuries on her person:

- (1) Abrasion 2' x 1/4' on the front part of the right knee joint. situated vertically;
- (2) Abrasion 1/2' x 1/4' parallel to the abrasion at serial No. 1 on the right knee joint:
- (3) Abrasion 1/2' x 1/2' on the external side of the right knee joint:
- (4) Abrasion 3' x 1/4' on the left foreleg on its anterior part below the left knee joint:
- (5) Abrasion 1/2' x 1/4' on the right side of the back below the right scapular region and in the scapular region:
- (6) Abrasion 1/2' x 1/4' on the right thigh on its anterior part and on the right side of the vagina : and
- (7) Abrasion 1/2' x 1/2' on the left thigh on its anterior part.

There was an old rupture on the hymen. The girl was complaining of pain in the vaginal canal when fingers were put in.

9. Head Constable Govinda (P. W. 9) then submitted the papers of investigation to the P. S. I. This was on November 25, 1970. According to the Head Constable, the papers of investigation continued to be with the P. S. I. from November 25, 1970 to December 16. 1970. It is not clear as to what was being done during all these days

in regard to the present case. Ultimately, on December 16, 1970, the present accused was arrested. Thus, according to the prosecution, the accused had committed rape on Saraswati.

10. The accused in his examination under Section 342. Code of Criminal Procedure, denied the entire prosecution averments. His version was that he has been falsely implicated. The reasons are as follows : Saraswati's mother was residing with a Brahmin and thereupon his community, viz.. the Gond community, had ex-communicated the whole of the family of Saraswati. A request for removal of the ex-communication was ignored by the panchas. Hence the accused has been falsely implicated. As stated earlier, the lower Court, held the accused guilty and convicted and sentenced him as above. The accused is challenging his conviction and sentence in this appeal.

11. The version of the prosecution has been stated in due detail. The prosecution mainly relies for proof of the same on the testimony of the prosecutrix, corroboration by way of the subsequent conduct of the prosecutrix in making disclosures immediately after the occurrence, and the injuries found on her person.

12. The law as regards the credibility of the testimony of the prosecutrix in cases of sexual offences, the question of acting upon the same as a basis for a finding of guilt, and the necessity of corroboration to the same, may be stated as follows;

(i) There is no rule of law that corroboration is essential before there can be a conviction solely on the testimony of the prosecutrix. But as a matter of prudence, the necessity of corroboration must be present to the mind of the Judge:

(ii) There may be circumstances in a given case which might make it safe to dispense with such corroboration;

(iii) On the other hand, there may be factors in a case tending to show that the testimony of the prosecutrix suffers from infirmities or defects, in a manner so as to make it either unsafe or impossible to base a finding of guilt on the same. Some of the salient factors of this type may briefly be stated as follows:

- (a) circumstances showing on the Part of the prosecutrix an animus against the accused;
- (b) where the question of want of consent is material, circumstances tending to show consent; e. g., absence of material showing an attempt at resistance : absence of any marks of struggle;
- (c) attempts at improvement or exaggeration in the version as attempted by the prosecution:
- (d) elements of artificiality or unnaturalness in the story as attempted by the prosecutrix:
- (e) conduct on the part of the prosecutrix. inconsistency with the credibility of the version, e. g.. omission to make a disclosure at the earliest opportunity : and
- (f) absence of signs of rape in the findings of the medical examination or on chemical analysis.

13. In view of the legal position, it is first essential to subject the testimony of Saraswati to a close scrutiny and to consider whether the same suffers from infirmities or defects of the type noted above. It has been strongly contended by the defence counsel that the testimony of Saraswati shows clear attempts at improvement. As noted above, the Chemical Analyser found that there were human blood stains on the sari of Saraswati. At the trial in this Court. Saraswati has stated that this staining took place at the time when the accused committed rape. However, before the Committing Court, she admitted that the day of the incident was the third day of her menses. This would be a due explanation of the blood stains found by the Chemical Analyser. Hence, she was confronted with the said statement made by her in the Committal Court. Saraswati. however, first denied that she had made such a statement and, thereafter, proceeded to categorically state that the blood stains were not due to menses.

14. The contention that the above said averments of Saraswati constitute an attempt at improvements has substance. When an unsophisticated witness attempts improvements on points which she thinks material, the testimony could

be said to suffer from a significant infirmity. The next circumstance which appears from the record, is. that there does not appear to have been on her Part any attempt at resistance. Normally, when a woman is subjected to intercourse against her will, some sort of resistance by her with hands or otherwise would be expected. According to Saraswati. however, she did not beat or even scratch the accused. There is no good explanation on record for her failure to offer this type of resistance. She has stated that she did not bite the accused. Her explanation for this particular omission is that this was because she had been Passed by the accused. In this connection, it has to be noted that the prosecution has failed to get the accused medically examined. Either the presence or the absence of any marks on the person of the accused, on account of any possible resistance by the victim, could have shed some light on the matter. It would, however, appear that the prosecution has chosen not to seek the aid of any such circumstance. There has been a failure to examine the accused and this is without any proper explanation for the same.

15. It has been contended that the version of gagging is only an exaggeration. According to Saraswati. she was pulled to a distance of 2 or 4 cubits from the place where she was caught. However the panchanama of the spot (Ex. 16) contains the recital that the spot of the occurrence was at a distance of 32' from the foot-path. If this, is so, it would appear, as has been contended by the defence counsel, that Saraswati was dragged to a considerable distance. During the time requisite for covering such a distance, particularly when Saraswati was being dragged against her wish and when there was no sagging, one would expect a repeated and loud shouting and this would be during the progress to the spot from the foot-track. However, neither Ganpat nor Bapurao speak of such a type of shouting.

16. As observed at the outset, in a case like the present, the disclosure by the prosecutrix at the earliest opportunity is a circumstance which would lend considerable corroboration to the version. On examination of the material on record on this aspect of the matter, the position is as follows : According to Saraswati. as soon as Ganpat and Bapurao came to her on hearing her shouts, on being asked she told these persons that the accused had raped her. If this version

of Saraswati were to be held as entitled to credence, then the same would duly corroborate her version. Unfortunately, the position on the record is otherwise. Witness Ganpat has stated about hearing shouts and reaching the Place where Saraswati was. According to Ganpat, Saraswati did not tell him anything as to what had happened. According to witness Bapurao, he asked her as to why she had shouted. However, she did not tell anything to Bapurao or Gannat. She did not even name anybody.

17. The learned Counsel for the State has contended that even though the witnesses may have stated as above in Court, yet before the police they have stated as follows : Ganpat has stated that Saraswati told him that the accused obstructed her. Bapurao has stated that Saraswati told him that the accused lifted her up and was taking her behind the bushes. The lower Court has brought the above said portions on record by way of contradiction. The act of obstructing or lifting up and trying to take behind the bushes can certainly not be equated with an act of sexual intercourse. This material on record must, therefore, necessarily demolish the version of Saraswati that at the first opportunity, viz., when Gannat and Bapurao came to the spot, she told them about the accused having had sexual intercourse with her.

18. This is the testimony of witnesses Ganpat and Bapurao on the crucial point in the case, viz., the act of sexual intercourse. Their testimony does not afford any corroboration to the version of the prosecutrix. Witness Ishwar (P. W. 1) has spoken about Saraswati telling him about the accused committing a rape on her. Several criticisms have been levelled against this witness. He is the brother of Saraswati. He is aged 30 years. It is, however, surprising, as admitted by him that he did not make any report of the incident. He admits that he is aware that a report of such an incident must be given at the earliest. The reason ascribed by him for his failure to do so is somewhat strange, viz., that his mother and brother were not in the village. Witness Shrihari also has been examined (P. W. 4) to corroborate the version. What he has stated is that when Ishwar, Saraswati and others came to him at about 10 a. m. Saraswati told him that the accused had misbehaved with her. In the first place, as has already been discussed above, the statement by Saraswati to this witness could not be equated with a statement, made at the

earliest opportunity. On the other hand, as shown above, the record does not bear out that disclosure was at all made at the first opportunity. Further, what this witness states is that the disclosure by Saraswati was of the accused committing 'Beadabi'.

19. The expression is. no doubt very vague, obviously it can denote acts of various types. It is hardly possible by an inferential process to equate such an averment with a disclosure about the commission of rape. The material requisite for the basing of a finding has got to be clear and specific : and in case of an inferential process, the material must be such as to warrant the one inference and none other. It is hardly possible to agree that the above said disclosure satisfies these tests.

20. The position thus is that the testimony of the prosecutrix cannot be acted upon without corroboration. It would be entirely unsafe to base a finding of guilt on the same without corroboration. The corroboration. attempted on the record does not stand the requisite test, with the result that there is no corroboration. It is unnecessary to add the further circumstance that for almost a month after the incident, the police did not choose to arrest the accused. This has naturally lent support to the contention made by the learned defence counsel, that possibly the police were not very sure in their own minds, as to whether such an offence had actually been committed. The explanation that the delay was caused because the papers were lying with the P. S. I., is a futile explanation.

21. The position, which thus emerges is that the testimony of the prosecutrix cannot be a basis for a finding of guilt. As regards corroboration. admittedly the only material that may be said to afford corroboration is the injuries on the person of Saraswati. The same have been noted above. The abrasions at serial Nos. 1 to 5 on the posterior Portions of the body, as admitted by Dr. Mulmule. could be caused due to the pushing through the thorny bushes. Thus, these abrasions are not material on the question of sexual intercourse. The only injuries relevant in this connection are the abrasions on the anterior parts of the right and left thighs. However, in the state of the evidence which has been fully discussed above, it is certainly not possible to agree that the testimony of the prosecutrix, suffering from infirmities considered above, should be accented merely in view of the slight

corroboration afforded by these two abrasions. The learned Counsel for the appellant has attempted explanations for the abrasions. It is hardly necessary to consider the same.

22. The position thus is that the prosecution has failed to bring the offence home to the accused.

23. The result is that the appeal is allowed. The conviction and sentence passed by the lower Court against the accused are, therefore, set aside.

24. The bail bond of the accused shall stand cancelled.

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