

Balram Vs. State of M.P.

Balram Vs. State of M.P.

SooperKanoon Citation : sooperkanoon.com/508108

Court : Madhya Pradesh

Decided On : Aug-23-1999

Reported in : 2000(1)MPHT517

Judge : V.K. Agrawal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1208/1998

Appellant : Balram

Respondent : State of M.P.

Advocate for Def. : Prakash Gupta, Penal Lawyer

Advocate for Pet/Ap. : H.S. Dubey, Adv.

Disposition : Appeal dismissed

Judgement :

V.K. Agrawal, J.

1. This appeal is directed against the judgment dated 2nd December, 1988 in S.T. No. 2/1988 by Additional Sessions Judge, Seoni whereby the accused-appellant was convicted under Section 376 of the I.P.C. for having committed rape with

prosecutrix Premvati Bai and sentenced to undergo R.I. for 7 years.

2. The prosecution case stated in brief is that the prosecutrix Premvati Bai (P.W. 3), on the date of incident, i.e., on 21-10-1987 had gone to keep watch of the Jwar crop standing on her field at village Malajpur, P.S. Kanhiwada, District Seoni. The prosecutrix Premvati Bai (P.W. 3) was sitting on the 'Madha' in the field. The accused-appellant Balram, armed with a scythe, came there, caught hold of her and dragged her down. After extending threats to the prosecutrix and also assaulting her, he committed forcible sexual intercourse with the prosecutrix: The prosecutrix Premvati Bai (P.W. 3) raised cry of alarm. Her husband Ramprasad (P.W. 4), on hearing shouts of help of his wife, came there and saw the appellant and his wife Premvati from some distance. The appellant ran away and could not be apprehended despite chase given by Ramprasad (P.W. 4). Premvati (P.W. 3) narrated the incident to her husband Ramprasad (P.W. 4). Premvati Bai (P.W. 3) then went to the Police Station Kanhiwada, District Seoni and lodged report (Ex. P-5) of the incident on the same day at 3.30 P.M.. Offence was registered.

3. During investigation, Premvati Bai (P.W. 3) was sent for medical examination. Dr. (Smt.) A. Paraste (P.W. 2) conducted medical examination of Premvati Bai (P.W. 3). She found the following injuries on her person :--

(i) 3 linear abrasions on ventral aspect of left forearm, at its middle, almost parallel to each other; sizes 3' x 2' & 2 1/2' transversely situated; (ii) Linear abrasion transversely situated 2' below the left elbow joint; on ventral aspect 2' in length;

(iii) One abrasion transversely situated on posterior aspect of elbow joint size 1 mm. x 1 mm.

It was opined that the above injuries were caused by hard and blunt object within 12 hours of examination. Report of medical examination is Ex. P-3-A of the prosecutrix. Slides of vaginal smears of the prosecutrix were prepared. Sari worn by the prosecutrix at the time of the incident was seized as per seizure memo (Ex. P-6).

4. Dr. Mahendra Narayan Suryavanshi (P.W. 1) examined the appellant and as per his report (Ex. P-1), he opined that the accused-appellant was capable of performing sexual intercourse. The Dhoti worn by the appellant was also seized, as per seizure memo (Ex. P-7). From the spot, broken pieces of bangle were seized as per seizure memo (Ex. P-10). The bangles worn by the prosecutrix were also seized as per seizure memo (Ex. P-9). Spot map was got prepared. The Dhoti of the appellant, the Sari of the prosecutrix Premvati and the slides of the vaginal smear were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report (Ex. P-12) was received. After concluding other formalities of investigation, charge-sheet was filed against the accused-appellant.

5. The learned trial Court, relying upon the statement of the prosecutrix as well as the medical evidence, chemical examination report (Ex. P-12) received from F.S.L., Sagar, as also other material and evidence placed on record, found that it has been proved beyond reasonable doubt that the appellant committed forcible sexual intercourse with the prosecutrix. The learned trial Court therefore, held the appellant guilty for committing offence punishable under Section 376 of the I.P.C.. The appellant was accordingly convicted and sentenced, as mentioned earlier.

6. It is submitted by the learned counsel for the appellant that he has been falsely implicated. In the above context, it was submitted that Ramprasad (P.W. 4), the husband of the prosecutrix had stolen the 'Jwar' of the appellant and they had a quarrel over the same. It has further been submitted that the statement of prosecutrix was not supported by independent witnesses. The medical report of prosecutrix Premvati (P.W. 3) does not indicate that she sustained any injury with scythe, as has been stated by her. It has also been urged that the possibility of consent by the prosecutrix is not ruled out. It was, therefore, urged that the accused was entitled to get benefit of doubt.

7. As against this, the learned counsel for the respondent-State has submitted that the statement of prosecutrix Premvati (P.W. 3) is natural and trustworthy. She narrated the incident to her husband Ramprasad (P.W. 4) and others immediately after the incident, and thereafter she reported the matter to the police, on the same day. Injuries found on her person in her medical examination could have been

caused by the accused-appellant. Thus, the medical report supports her statement. It has also been submitted by the learned counsel for the appellant that there was no cause for the prosecutrix to falsely level such a serious allegation against the appellant. It has been urged in the above context that the defence of the appellant regarding the enmity on account of the quarrel between the appellant and the husband of the prosecutrix cannot be accepted as it has been denied by prosecutrix Premvati (P.W. 3) as well as by her husband Ramprasad (P.W. 4) and the accused-appellant has not led any evidence to substantiate his defence as above. It has, therefore, been submitted that the prosecution has successfully established its case beyond reasonable doubt and the conviction of the accused-appellant by the learned trial Court is wholly justified.

8. Narrating the incident, prosecutrix Premvati (P.W. 3) has stated that a day before Deepawali, she had gone to her field at mid-noon for guarding her crop of Jwar. When she was sitting on the 'Madha' of her field, the accused-appellant came there, caught hold of her hands and started dragging her. Thereafter, the accused-appellant assaulted her with scythe and after over-powering her, fell her down. The appellant then committed sexual intercourse with her. She has further stated that she shouted for help upon which her husband, Ramprasad (P.W. 4) arrived on the spot. She narrated the incident to her husband and later on to Sahablal Patel (P.W. 5), Chandan, Mukaddam and to Kotwarin. She then went to the Police Station Kanhiwada and lodged report (Ex. P-5).

9. It may be noted that statement of prosecutrix as above is fully corroborated by the statement of her husband Ramprasad (P.W. 4), who states that while he was returning back to his field, he heard the shouts of his wife prosecutrix Premvati (P.W. 3). He saw the accused-appellant and his wife Premvati (P.W. 3) from a distance. He states that the accused-appellant was holding a scythe. On seeing him, the accused/appellant had run away. His wife Premvati (P.W. 3) narrated the incident to him and told him that the accused-appellant had committed forcible sexual intercourse with her after extending threats to her. Similarly, Sahablal (P.W. 5) also states that the incident was narrated to him by the prosecutrix Premvati (P.W. 3).

10. The statement as above of Premvati (P.W. 3) also gets support from the FIR (Ex. P-5) lodged by her promptly on the same day at Police Station Kanhiwada. In her report (Ex. P-5), the prosecutrix Premvati had given substantially the same narration of the incident, as was stated by her during trial.

11. Dr. (Smt.) A. Paraste (P.W. 2) had examined the prosecutrix Premvati (P.W. 3) and had found several linear abrasions on her person, which have been detailed by her in her report (Ex. P-3-A). Dr. (Smt.) A. Paraste (P.W. 2) opined that the above injuries could be caused by hard-rough object within 12 hours of her examination. Though Dr. (Smt.) A. Paraste (P.W. 2) during cross-examination accepted the suggestion of the defence that injuries as found on the person of Premvati (P.W. 3) could be caused by sharp bushes, however, it may be noted that Premvati (P.W. 3) has specifically denied that injuries were caused to her on account of sharp bushes or 'Jwar' leaves and has categorically stated that the said injuries were caused on account of assault by the accused-appellant. Therefore, the above suggestion to Dr. (Smt.) A. , Paraste (P.W. 2) that the injuries could have been caused on account of 'Jwar' leaves is of no consequence. It would thus appear that the statement of Premvati (P.W. 3) that the accused-appellant had assaulted her with scythe, gets fully corroborated by the statement of Dr. (Smt.) A. Paraste (P.W. 2) and her report (Ex. P-3-A).

12. During investigation, Sari of prosecutrix Premvati (P.W. 3) was also seized by the Investigating Officer Ramesh Chandra Ganghoria (P.W. 6) as per seizure memo (Ex. P-6). Similarly, Dhoti of the accused-appellant was also seized as per seizure memo (Ex. P-7). The seized 'Sari' of the prosecutrix, slides of her vaginal smear prepared by Dr. (Smt.) A. Paraste (P.W. 2) and 'Dhoti' of the appellant were sent for chemical examination to Forensic Science Laboratory, Sagar. The report received from F.S.L., Sagar is Ex. P-12, which discloses presence of spermatozoa on all the above articles. Thus, the report (Ex. P-12) further corroborates the statement of the prosecutrix.

13. Learned counsel for the accused-appellant, relying on Babulal Harnarain and Anr. v. State of M.P. (1994 MPLJ 489), has submitted that since the prosecutrix Premvati (P.W. 3) was a married lady, her statement, before it could be accepted,

should have been corroborated by independent evidence. Learned counsel for the accused-appellant has also urged that independent witnesses have not been examined to corroborate her statement.

14. However, it may be noted that prosecutrix Premvatibai (P.W. 3) during cross-examination has stated that at the time of the incident, persons holding the adjoining fields had gone to their home for having their meals. The explanation as above appears to be natural and trustworthy in view of the fact that the incident took place at about mid-noon which is the normal time for having meals of the villagers. In view of above, it does not appear that there was any independent witness to the incident. In the face of natural and trustworthy statement of the prosecutrix, it is not necessary to seek corroboration by oral testimony. It is common knowledge that such occurrences normally do not take place when there are witnesses around. Hence, the non-examination of independent witnesses would not have any adverse impact on the prosecution case.

15. In *Bharwada Bhoginbhai Hirjibhai v. State of Gujrat* (AIR 1983 SC 753), it has been held that evidence of victim of sexual assault stands at par with evidence of an injured witness and corroboration in the form of eye-witness account cannot be expected in sex offences having regard to the very nature of the offence. Therefore, insistence on corroboration of the statement of the victim of such assault would be adding insult to her injury.

16. Similarly, in *Kamal Singh v. State of M.P.* (AIR 1995 SC 2472), referring to *State of Maharashtra v. Chandraprakash Kewal Chand Jain* (AIR 1990 SC 658), it has been observed by the Supreme Court that a woman who is a victim of a sexual assault is not an accomplice to the crime, but is a victim of another person's lust and, therefore, her evidence need not be tested with the same amount of suspicion as that of an accomplice. She is not in the category of a child witness or an accomplice and, therefore, the rule of prudence that her evidence must be corroborated in material particulars has no application. At the most the Court may look for some evidence which lends assurance.

17. Similar proposition has again been laid down by the Apex Court in *State of Punjab v. Gurmit Singh* (AIR 1996 SC 1393), wherein it has been observed as

below :--

'The testimony of victim in cases of sexual offences is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the Courts should find no difficulty to act on the testimony of a victim of sexual assault alone to convict an accused where her testimony inspires confidence and is found to be reliable. Seeking corroboration of her statement before relying upon the same, as a rule, in such cases amounts to adding insult to injury. Why should the evidence of a girl or a woman who complains of rape or sexual molestation, be viewed with doubt, disbelief or suspicion The Court while appreciating the evidence of a prosecutrix may look for some assurance of her statement to satisfy its judicial conscience, since she is a witness who is interested in the outcome of the charge levelled by her, but there is no requirement of law to insist upon corroboration of her statement to base conviction of an accused.'

18. Similarly, in *Ranjit Hazarika v. State of Assam* [(1998) 8 SCC 635], it was observed that the prosecutrix of a sex offence is a victim of crime and there is no requirement of law, which requires that her testimony cannot be accepted without corroboration.

19. In *Babulal Harnarayan* (supra), relied upon by the learned counsel for the appellant, it has been observed that the corroboration of an adult prosecutrix of sex offence may be insisted upon if her evidence is found to be infirm or not trustworthy or 'probabilities factor' renders it unworthy of credit. It was further observed therein that corroboration to the testimony of the prosecutrix should be looked for, when there is exaggeration or artificiality in her statement, and her statement is found to be infirm or untrustworthy. Therefore, the principle as laid down in that case also is that, corroboration of the statement of prosecutrix is not always necessary and that such corroboration would be looked for only when the statement of prosecutrix does not appear to be trustworthy and not in accord with the 'probabilities factor'.

20. In the instant case, the statement of prosecutrix Premvatibai (P.W. 3) is natural and appears to be trustworthy. Moreover, the statement of prosecutrix is fully corroborated by the statement of her husband Ramprasad (P.W. 4) as well as by

her F.I.R. (Ex. P-5). Further, statement of Dr. (Smt.) A. Paraste (P.W. 2) and medical examination report (Ex. P-3-A), FSL report (Ex. P-12) also lend support to her statement.

21. The learned counsel for the accused-appellant has also urged that either it was a case of false implication or consent. However, so far as false implication is concerned, it may be noticed that prosecutrix Premvatibai (P.W. 3) as well as her husband Ramprasad (P.W. 4) have stoutly denied the suggestion of the defence that there was any quarrel between the accused-appellant and the husband of prosecutrix Ramprasad (P.W. 4) regarding the theft of Jwar of the accused-appellant. The accused-appellant has led no evidence to substantiate the above allegations. Therefore, the mere suggestion as above to the above witnesses during cross-examination would not substantiate his defence in any manner. It may also be noticed that the accused-appellant in his examination under Section 313 of Cr.P.C. also did not speak a word regarding his defence as above. Therefore, there appears to be no ostensible reason as to why the prosecutrix would falsely involve the accused and make false accusation against him, staking her own honour and prestige. Hence, contention of the learned counsel for the appellant that the appellant has been falsely implicated on account of enmity or ill-will cannot be accepted.

22. So far as consent of the prosecutrix is concerned, it may be reiterated that the statement of prosecutrix is categorical, natural and trustworthy. The version of the incident and the circumstances of the case rule out any possibility of consent on the part of the prosecutrix. It would appear from her statement that the accused-appellant was armed with scythe and on her raising protests, assaulted her with it. Further, as also noticed by the trial Court, had it been a case of consent of the prosecutrix, a better place for the occurrence would have been chosen rather than the place of incident, which was easily visible from a distance as is clear from the statement of Ramprasad (P.W. 4), the husband of the prosecutrix. Therefore, the contentions as above of the learned counsel for the accused-appellant that it was a case of consent or false implication cannot be accepted.

23. In view of above, the finding of guilt recorded by the learned trial Court appears to be wholly justified and is confirmed. So far as sentence is concerned, it is noticed that the accused-appellant had gone to the field of prosecutrix after noticing that she was alone. The appellant, after threatening the prosecutrix and also assaulting her had committed forcible sexual intercourse with her. In the circumstances, the sentence awarded by the learned trial Court is also just and proper and calls for no interference.

24. The appeal, therefore, has no merit and is accordingly dismissed. The accused-appellant is on bail. The appellant is directed to surrender to his bail bond and to appear before the C.J.M., Seoni on 28-9-1999 to note the result of the appeal and to serve out the remaining part of his sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com