

Randhir Singh Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : Nov-23-2009

Reported in : 2010(1)MPHT267

Judge : Rajendra Menon, J.

Appellant : Randhir Singh

Respondent : State of Madhya Pradesh

Advocate for Pet/Ap. : Shri. Jagat Sher Singh

Disposition : Appeal dismissed

Judgement :

Rajendra Menon, J.

1. Challenging his conviction under Sections 376 and 450 of the Indian Penal Code and sentencing him to undergo Rigorous Imprisonment for 7 years and fine of Rs. 1000/-, in default Rigorous Imprisonment for 6 months, and Rigorous Imprisonment for 5 years and fine of Rs. 500/-, in default Rigorous Imprisonment for 3 months, this appeal has been filed by the appellant under Section 374 (2) of the Code of Criminal Procedure.

2. It is the case of the prosecution that on 27-11-1993, prosecutrix (P.W. 3) was sleeping in her house alongwith her children. At about 1.30 in the night intervening

27/28-11-1993, appellant entered the house forcibly, took away the prosecutrix to a place near the well, about 10-15 steps away from her house, committed rape on her and ran away. Prosecutrix is alleged to have informed her landlord and neighbour Ram Daroga (P.W. 4), thereafter she went to the Police Station and lodged a report on the next day, in the morning itself. On the basis of the aforesaid, investigation was conducted and after prosecution appellant is convicted as indicated hereinabove and, therefore, the appeal.

3. Shri Jagat Sher Singh, learned Counsel appearing for the appellant, argued that the prosecutrix is a married woman and at the relevant time when the offence is said to have been committed, she was about 23 years of age and it is a case where the prosecutrix has consented to the act and when her son, 10 year old Kaptan Singh (P.W. 6), saw the act between the prosecutrix and the appellant, she has falsely implicated the appellant. Taking me through the statement of the prosecutrix (P.W. 3), the statement of the doctor Dr. Sadhana Mishra (P.W. 2), who had examined the prosecutrix, and the statement of Kaptan Singh (P.W. 6), the 10 year old son of the prosecutrix, learned Counsel emphasized that it is a case where consent of the prosecutrix to the act is question is established and, therefore, in convicting the appellant, learned Court below has committed error, which warrants interference.

4. Shri Jagat Sher Singh, learned Counsel for the appellant, argued that in her statement Dr. Sadhana Mishra (P.W. 2) clearly points out that no injury was seen on the person of the prosecutrix, whereas she has testified that she was forced to lie on the floor, she sustained some injury on her hip. Pointing out discrepancy in the statement of the prosecutrix (P.W. 3), the First Information Report lodged by her so also in the statement of her son Kaptan Singh (P.W. 6), and the difference in the story put forth by both these witnesses, learned Counsel emphasized that the story put forth by the prosecution is not established. The discrepancies pointed out by Shri Jagat Sher Singh relates to closing the mouth of the prosecutrix by pushing a cloth, Kaptan Singh's following the prosecutrix when she was pulled out of the house and non-support of this version by Kaptan Singh himself and on the hue and cry raised by mother and son neighbours like Ram Daroga, who were staying in the opposite house, not coming out. Contending that the story put forth

by the prosecutrix is unbelievable, learned Counsel prays for acquittal of the appellant.

5. Shri Dildar Singh, learned Dy. Government Advocate, refutes the aforesaid and by taking me through the statement of witnesses available on record, submitted that the accused appellant is an influential person in the village, the prosecutrix is a very poor lady and there is no reason for the prosecutrix to falsely implicate the appellant. It is argued by him that some minor discrepancies in the statement of the prosecutrix and that of her son, a boy of 10 years, staying in a village is of no consequence, if the entire story put forth by them is analysed. Submitting that the story of the prosecution as made out by the prosecutrix is supported by the evidence of P. W. 6, a child witness, due credence should be given to the same and the conviction upheld. Accordingly, Shri Dildar Singh seeks for dismissal of this appeal.

6. I have heard learned Counsel for the parties at length and perused the record.

7. From the statement of witnesses available on record, it is seen that prosecution had examined the following witnesses: Dr. R.N. Upadhyay (P.W. 1), Assistant Surgeon, who had examined the accused appellant; Dr. Sadhana Mishra (P.W. 2), Lady Assistant Surgeon, who had examined the prosecutrix. Even though Dr. Sadhana Mishra (P.W. 2) says that she did not find any injury on the person of the prosecutrix and no definite opinion can be given about rape, prosecutrix (P.W. 3) implicates the appellant and accuses him of having committed the offence; Ram Daroga (P.W. 4) is the landlord and neighbour of the prosecutrix, he has turned hostile; Munshi (P.W. 5), another witness who stays 2-3 houses away and has turned hostile; Kaptan Singh (P.W. 6), the 10 year old son of the prosecutrix and who has supported the story put forth by his mother, even though there may be some minor discrepancies in his statement; P.W. 7 is the Investigating Officer, ASI Dhaniram; Manoj Kumar (P.W. 8), Constable, who had prepared the spot map and other material; and H.P. Singh (P.W. 9), Head Constable, who has received the report and lodged the same on the basis of the statement of the prosecutrix.

8. According to the prosecutrix, her husband had gone to Sagar on the date of the incident, she was sleeping in her house alongwith her children, which included her

10 year old son Kaptan Singh (P.W. 6). It is stated by her that as the latch of the door was broken, she had closed the door by putting a stone. According to her, in the night she heard the door being opened forcibly, appellant came in, caught hold of her hand, pulled her out of the house and took her about 10-15 steps away from the house, put a cloth on her mouth and committed the offence. Even though she says that in the police report she has not stated anything about putting the cloth on her mouth, but she testifies that her son also came when the entire act took place, he was crying and he was standing near her. The son Kaptan Singh (P.W. 6) initially in his examination-in-chief says that on hearing the cries of his mother, he ran after her, the appellant slapped him and he went home, but in his cross-examination he says that he was sleeping and went out of his house when he saw his mother crying. Even though there are some discrepancies in the statement of this witness, but the fact remains that the prosecutrix and Kaptan Singh (P.W. 6), her son, are villagers and they may have got confused while withstanding the cross-examination by efficient lawyers. Some discrepancies here and there, in their statements, have to be ignored. In a case for an offence under Section 376, IPC, due weightage and credence has to be given to the statement of the prosecutrix. If the statement of the prosecutrix in the present case is analysed, it is seen that she has clearly implicated the appellant as the person who has committed the offence and another aspect of the matter is that her testimony in material particulars is corroborated by the statement of her son, Kaptan Singh (P. W. 6). Statement of these two witnesses are enough to hold that the appellant had committed the offence.

9. At this stage, it would be appropriate to consider the principle laid down by the Supreme Court, for appreciating evidence in cases pertaining to offence under Section 376 and importance to be given to discrepancies. In the famous case of *Bharwada Bhoginbhai Hirjibhai v. State of Gujarat* : AIR 1983 SC 753, in Paragraphs 5 (6) and 5 (7), it is so observed by the Supreme Court:

5. *** *** ***

(6) Ordinarily a witness cannot be expected to recall accurately the sequence of events which take place in rapid succession or in a short time span. A witness is

liable to get confused, or mixed up when interrogated later on.

(7) A witness, though wholly truthful, is liable to be overawed by the Court atmosphere and the piercing cross-examination made by Counsel and out of nervousness mix up facts, get confused regarding sequence of events, or fill up details from imagination on the spur of the moment. The sub-conscious mind of the witness sometimes so operates on account of the fear of looking foolish or being disbelieved though the witness is giving a truthful and honest account of the occurrence witnessed by him - perhaps it is a sort of a psychological defence mechanism activated on the spur of the moment.

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Thereafter, in Paragraphs 6, 7 and 8, the matter is so dealt with:

6. Discrepancies which do not go to the root of the matter and shake the basic version of the witnesses, therefore, cannot be annexed with undue importance. More so, when the all important 'probabilities-factor' echoes in favour of the version narrated by the witnesses.

7. It is now time to tackle the pivotal issue as regards the need for insisting on corroboration to the testimony of the prosecutrix in sex-offences. This Court, in *Rameshwar v. State of Rajasthan* : (1952) 3 SCR 377 at p. 386 : AIR 1952 SC 54 at. p. 57, has declared the corroboration is not the sine qua non for a conviction in a rape case. The utterance of the Court in *Rameshwar* may be replayed, across the time-gap of three decades which have whistled past, in the inimitable voice of Vivian Hose, J. who spoke for the Court:

The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge,...

The only rule of law is that this rule of prudence must be present to the mind of the Judge or the Jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, the

corroboration before a conviction can be allowed to stand.

8. And whilst the sands were running out in the time-glass, the crime graph of offences against women in India has been scaling new peaks from day to day. That is why an elaborate rescanning of the jurisprudential sky through the lenses of 'logos' and 'ethos', has been necessitated.

And, finally in Paragraph 9, the principle so crystallized:

9. In the Indian setting, refusal to act on the testimony of a victim of sexual assault in the absence of corroboration as a rule, is adding insult to injury. Why should the evidence of the girl or the woman who complains of rape or sexual molestation be viewed with the aid of spectacles fitted with lenses tinged with doubt, disbelief or suspicion? To do so is to justify the charge of male chauvinism in a male dominated society...

(Emphasis supplied)

10. If the case in hand and the statement of the prosecutrix, her son Kaptan Singh (P.W. 6) are scrutinized in the backdrop of the aforesaid principle, it is the considered view of this Court that the discrepancies pointed out by Shri Jagat Sher Singh, learned Counsel, are not of much significance and may not make any difference to the final outcome, so as to disbelieve the story put forth by the prosecution. The aforesaid principle laid down by the Supreme Court in the case of *Bharwada Bhoginbhai Hirjibhai* (supra), is followed consistently in various cases and it is not necessary to burden this judgment with all such cases. Suffice is to refer to a subsequent judgment, in the case of *State of M.P. v. Babulal* : (2008) 1 SCC 234, wherein in Paragraph 18, after referring to the case of *Bharwada Bhoginbhai Hirjibhai* (supra), and another judgment in the case of *State of Rajasthan v. Narayan* : (1992) 3 SCC 615, the principle is laid down to the effect that if a Court of law finds the evidence of the prosecutrix truthful, trustworthy and reliable, conviction can be recorded solely on the basis of her testimony and no further corroboration is necessary.

11. Keeping in view the principles laid down as indicated hereinabove and on analyzing the material available on record, in the present case, this Court does not see any reason to disbelieve the statement of the prosecutrix, which is corroborated in material particulars with the statement of her own son Kaptan Singh (P.W. 6).

12. Normally, it is the settled principle of law that in the absence of exonerating circumstances available on record to show that the statement of the prosecutrix is not trustworthy, due weightage and credence should be given to be same and relied upon. In the present case, there is nothing to hold that the prosecutrix is falsely implicating the appellant. She has narrated about the incident as it has happened, immediately thereafter in the morning she had gone and informed Ram Daroga (P.W. 3), her landlord, about the incident and thereafter the prosecutrix herself had gone to the police station and lodged the FIR, even without waiting for her husband to come back. Kaptan Singh (P.W. 6), her ten year old son supports the story put forth by his mother, except for some minor discrepancies here and there. Evaluating the statement of the prosecutrix and that of her son Kaptan Singh (P.W. 6), this Court does not see any ground to interfere in the matter. The learned Court below has appreciated the statement of these witnesses and has convicted the appellant for the offence. In doing so, it is the considered view of this Court that the Court below has not committed any error, warranting interference.

13. Accordingly, finding no error in the order passed convicting the appellant warranting interference in this appeal, the same is dismissed.

14. Appellant Randhir Singh on bail. He shall be taken back in custody for undergoing the remaining part of his sentence.