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Court : Uttaranchal

Decided On : Jul-28-2005

Reported in : 2006CriLJ353

Judge : J.C.S. Rawat, J.

Acts : Evidence Act; [Indian Penal Code \(IPC\), 1860](#) - Sections 228A, 376, 376A, 376B, 376C and 376D; Code of Criminal Procedure (CrPC) - Sections 313; [Constitution of India](#) - Article 21

Appeal No. : Crl. A. No. 723 of 2001

Appellant : Roop Singh

Respondent : State of Uttaranchal

Advocate for Def. : Sudhir Chaudhary, AGA

Advocate for Pet/Ap. : Lokendra Dobhal, Adv.

Disposition : Appeal dismissed

Judgement :

1. This a criminal appeal against the judgment and order dated 2-7-1984 passed by the Sessions Judge Uttarkashi in S. T. No. 3 of 1984 State v. Roop Singh whereby the learned Sessions Judge convicted and sentenced the appellant to undergo four years rigorous imprisonment under Section 376 IPC.

2. It has been held by Hon'ble Supreme Court in the case of State of H. P. v. Shree Kant Shekari, MANU/SC/0750/2004 : 2004 CriLJ4232 as under :

We do not propose to mention the name of the victim. Section 228A IPC makes disclosure of the identity of a victim of certain offences punishable, printing or publishing name or any matter which may make known the identity of any person against whom an offence under Sections 376, 376A, 376B, 376C or 376D is alleged or found to have been committed can be punished. True it is, the restriction, does not relate to printing or publication of judgment by a High Court or the Supreme Court. But keeping in view the social object of preventing social victimization or ostracism of the victim of a sexual offence for which Section 228A has been enacted, it would be appropriate that in the judgments, be it of this Court, High Court or lower Court, the name of the victim should not be indicated. We have chosen to describe her as the 'victim' in the judgment.

3. The prosecution case, in brief, is that on 26-2-1983, the victim took her cattle for grazing in jungle and after leaving the cattle she proceeded to her village for putting cow dung there. At about 4 or 5 p. m. she proceeded for Choriakhali in order to take the cattle back. When she reached there she found the appellant present there. The appellant came out from behind a tree with Darati in his hand. The appellant caught hold of the victim and threw her down on the ground. The appellant threatened the victim with Darati and committed rape upon her. The victim went to her house along with the cattle. On the way PW 1 Asha Devi met her and the victim narrated the story of rape to her. She went to her house where she narrated the entire story to her mother-in-law and Jethani. The mother-in-law and Jethani narrated the entire story to Dev Singh PW 3 who is the Jeth of the victim. In the morning they went to Uttarkashi. The victim submitted written report (Ext. Ka 2) at P. S. Uttarkashi on 27-2-1983. On the basis of the written report FIR (Ext. Ka 3) was prepared on 27-2-1983 at 11.15 a.m. by Kripa Ram Pant Head Moharrir (PW6) and a case under Section 376 IPC was registered against the appellant.

4. Dr. U. K. Joshi PW 2 medically examined the victim on 27-2-1963 at 12.30 p.m. The following injuries were found on the person of the victim :

(1) Abraded contusion 5 cm x 1mm red in colour, front aspect of the wrist.

(2) Abraded contusion 5 cm x 1mm red in colour. 1.5 towards medial side to the injury No.1.

(3) Abraded contusion 3.5 cm x 1mm red in colour on the inner side of the left leg 3 cm above the ankle joint.

There were multiple white stains, dry, on the inner surface of the petti coat.

5. No mark of violence was seen on the perennial region. In the opinion of Dr. (Mrs.) Joshi the injuries were caused by some blunt weapon and the same were one day old. The injuries were simple. The lady was habitual for sexual intercourse. Dr. (Mrs.) Joshi has also stated that the petti coat of the lady, which she was wearing, was taken in possession and was sealed. She has proved the injury report Ex. Ka 1. She has stated that the injuries could be caused by struggle also.

6. The investigation was conducted by S. I. Lakhan Singh (PW 8) who visited the place of occurrence and prepared recovery memo (Ext. Ka 6) with regard to bangles of the victim and recovery memo (Ext. Ka 7) in respect of taking into possession the underwear of the victim. After completing the investigation charge-sheet (Ext. Ka 5) was submitted against the appellant.

7. Charge was framed against the appellant Under Section 376 IPC to which he pleaded not guilty and claimed to be tried.

8. The prosecution in support of its case examined PW 1 Smt. Asha Devi, PW 2 Dr. U. K. Joshi who examined the victim. PW 3 Dev Singh, PW 4 Saumvati Devi and PW 5 the victim. PW6 H. C. Kripa Ram Pant, PW 7 H. C. Govind Ram and PW8 Lakhan Singh I. O. are the formal witnesses.

9. In his statement Under Section 313 Cr. P. C. the appellant denied the prosecution case and stated that he has been falsely implicated in this case due to enmity.

10. The learned trial Court after appraisal of the evidence on record found the appellant guilty Under Section 376 IPC for committing rape upon the victim and convicted and sentenced the appellants as mentioned above.

11. I have heard the learned Counsel for the parties and perused the evidence on record.

12. The learned Counsel for the appellant contended that the evidence on record is not sufficient to prove the guilt beyond all reasonable doubt that the appellant committed rape on the victim. The learned Counsel for the appellant further contended that the evidence adduced by the prosecution does not support the prosecution story. Learned AGA refuted the contentions. To appreciate the respective contentions of the parties it is essential to go through the evidence adduced by the parties. PW 5 is the victim of the incident who stated in her evidence that she had taken her catties for grazing in the morning in the jungle. After leaving the said animals to graze in the jungle she went to her field for putting the cow dung in the field. Throughout the day she had been working in her fields and at about 4 or 5 p. m. she went to the Chauriyakhal where the cows were grazing. When she reached there she saw the appellant who was hiding himself behind a tree having a Daranti in his hand. When she saw the appellant moving towards her she started running towards her house and the appellant ran behind her and caught hold of her and threw her down on the ground. She started weeping and shouting. Thereupon the appellant threatened her to kill if she would make any sort of shouting or hue and cry. The appellant then committed rape upon her and thereafter again threatened her to kill if this fact is disclosed to anybody else. The appellant went towards his house and the victim came to her house and she was weeping throughout the way. Meanwhile she met PW 1 Asha Devi on the way and Asha Devi asked her as to why she was weeping then she told her that the appellant committed rape upon her. Thereafter she went to her hut where she tied her animals and came to the house. She narrated the entire story to her mother-in-law and Jethani who were in the house. The mother-in-law and Jethani narrated the entire story to Dev Singh PW 3 who is the Jeth of the victim. In the morning they proceeded for Uttarkashi and FIR Ex. Ka 2 was lodged at the police station.

13. I have gone through the entire evidence of PW 5 the victim. The defence failed to elicit anything from her cross-examination. It is well settled position of law that the prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration on material particulars. She stands on a higher footing than an injured witness. In the latter case there is physical harm while in the former case it is both physical as well as mental. However, if the Courts find it difficult to accept the version of the prosecutrix on its face value then the Courts seek the assurance by the corroborative evidence direct or circumstantial, which would leave assurance to her testimony. The learned Counsel for the appellant pointed out certain inconsistencies in the statements of PW 3 Dev Singh and PW 4 Somwati with regard to narration of the incident to Dev Singh. The victim stated that she met her Jethani and informed her about the incident in the hut and Jethani narrated the incident to Dev Singh whereas Dev Singh PW 3 stated that the victim informed his wife and mother at the house. This inconsistency is a very minor and such minor discrepancies are bound to creep in the testimony of truthful witnesses.

14. The observation differs from person to person and what one may notice, another may not. An object or moment might emboss its image on one person's mind whereas it might go unnoticed on the part of another. By and large the people cannot accurately recall a conversation and reproduce the very words used by them or heard by them. They can only recall the main purport of the conversation. It is unrealistic to expect a witness to be a human tape recorder. The witness cannot be expected to possess a photographic memory and to recall the details of an incident. Ordinarily if so happens that witness is overtaken by the events, the witness could not have anticipated the occurrence, which so after has an element of surprise. Ordinarily a witness cannot be expected to recall accurately the sequences of events, which took place in a rapid succession or in a short time of span. A witness is likely to get confused or mixed up when interrogated, later on.

15. The learned Counsel for the appellant tried to take the support from the evidence of PW 1 Asha Devi who stated in her evidence that the victim while

coming to her house PW 1 Asha Devi met on the way and she stated her that there was a scuffle in between the appellant and the victim. However, she stated that the appellant committed rape upon her. The defence has adduced the evidence of DW1 himself that the prosecutrix had left her animals for grazing in his field and caused damages to the tune of Rs. 2500/- -3000/-. Thereupon, she was beaten up by the appellant. Thereafter, the appellant has been falsely implicated. No lady will come forward to say falsely that she was subjected to rape. This contention does not reason to believe me. I am completely in agreement with the findings of the learned Sessions Judge on this point.

16. At the outset it is pertinent to mention here that a sexual assault is a serious offence apart from being a dehumanizing act is an unlawful intrusion on the right of privacy and sanctity of a female. It is serious blow to her supreme honour and offends her self esteem and dignity. It degrades and Humiliates the victim and where the victim is helpless innocent child or a minor, it leaves behind a traumatic experience. A rapist not only causes physical injuries but also more indelibly leaves a scar on the most cherished possession of women, i.e. her dignity, honour, reputation and not the least her chastity. Rape is not only a crime against the person of a woman; it is a crime against the entire society. It destroys the entire psychology of a woman and pushes her into deep emotional crisis. It is a crime against basic human rights, and is also violative of the victim's most cherished of the fundamental rights, namely, the right to life contained in Article 21 of the [Constitution of India](#). The Courts are, therefore, expected to deal with cases of sexual crime against women with utmost sensitivity. Such cases need to be dealt with sternly and severely. A socially sensitized Judge is better statutory armour in cases of crime against women than long clauses of penal provisions, containing complex exceptions and provisos.

17. In the present case the evidence of the victim is completely cogent and credible.

18. It was pointed out by the learned Counsel for the appellant that the victim damaged the crop of the appellant and there was a long standing enmity in between the parties. Enmity as stated by the defence was in between the uncle of

the appellant Chatar Singh, and PW 3 Dev Singh. It was the case of the appellant that the appellant has taken back the land purchased from his uncle and has also tried to purchase 9 plots from Dev Singh but Dev Singh did not agree to it. The appellant has come forward himself as DW1. Chatar Singh was the best witness to prove the facts, which have been stated by the appellant. The prosecution witnesses have categorically denied that there was any long enmity and standing litigation. The appellant has not filed any document in support of the contention. It is further pertinent to mention here that the appellant has admitted in his cross-examination that he has not made any report with regard to the damage caused by the victim to the concerned authority or the police immediately after the incident. Even if there is any enmity between the parties it does not reason to mean that the victim or a lady would come forward with the case that she was subjected to rape. Thus the evidence adduced by the defence is not credible and cogent.

19. The victim has stated in her evidence that she sustained injuries during the course of incident and Dr. Joshi PW 2 stated in her evidence that there were three injuries on the person of the victim. The doctor opined that the injuries, which were found on the person of the victim, would have been sustained while she struggled at the time of commission of the offence. Thus the evidence of the victim stands corroborated by the medical evidence. According to the prosecution evidence, the victim due to the 'struggle sustained these injuries at the time of the incident. As indicated earlier the medical evidence reveals that the victim received injuries, which resulted due to the struggle at the time of the incident. The Investigating Officer who visited the place of occurrence immediately after the report found that there were marks of struggle or foot marks at the spot and he collected the broken bangles from the spot. The Investigating Officer testified this fact in his deposition. This evidence further corroborates the fact of commission of incident.

20. The prosecution adduced the evidence of PW 1 Asha Devi who, stated that when the victim informed about the incident and thereafter she went to her residence. The victim stated the factum of rape to her Jeth and mother-in-law. The victim narrated this fact immediately after the incident to the witnesses. The witnesses have come forward to depose this fact. This fact is admissible in evidence under the provisions of Indian Evidence Act to corroborate, the testimony

of the victim. This evidence further, corroborates the fact that the rape was committed on the victim.

21. In view of the foregoing discussion I am of the view that the learned trial Court has rightly convicted and sentenced the appellant Under Section 376, IPC and this Court requires no interference. The appeal devoids of merit and is dismissed accordingly.

22. Let the lower Court record be sent back to the Court concerned for compliance. Compliance report be submitted within two months.

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