Sridhar Bindhani Vs. State of Orissa

Sridhar Bindhani Vs. State of Orissa

SooperKanoon Citation : sooperkanoon.com/531985

Court : Orissa

Decided On : Sep-26-1987

Reported in : 65(1988)CLT376; 1988CriLJ1022

Judge : K.P. Mohapatra, J.

Appellant : Sridhar Bindhani

Respondent : State of Orissa

Judgement :

K.P. Mohapatra, J.

1. For Rukmini, a child aged about 10 years, 11th day of October, 1980 was the saddest day, for at 10.30 p.m. Sridhar Bindhani (hereinafter referred to as the 'appellant') a middle aged man of about 45 years, committed rape on her and after trial was convicted by the learned Assistant Sessions Judge, Balasore, for the offence under Section 376, I.P.C. and was sentenced to undergo rigorous imprisonment for three years. Criminal Appeal No. 79 of 1981 was preferred against the order of conviction and sentence in the Court of the learned Sessions Judge, Balasore, but when the respondent (State of Orissa) preferred Government Appeal No. 112 of 1981 for enhancement of the sentence, the Criminal Appeal was brought on transfer to this Court (registered as Criminal Appeal No. 180 of 1983) for analogous hearing of both the appeals. Both of them are disposed of by this judgment.

2. Prosecution case in short is that P. W. 1, father of Rukmini (P. W. 7) and the appellant are neighbours in village Sahajipatna, a short distance away from Remuna Police Station of Balasore District. In the night of occurrence, Rukmini took her night meal in the house of her father (P. W. 1) and came to sleep in the nearby house of her maternal grand-mother, not far from the house of the appellant. At about 10 p.m. she came out of the house to pass urine by the side of the village lane. While she was doing so, the appellant arrived and all of a sudden gagged her mouth with cloth, physically lifted her while she was almost naked and carried her inside his own cow-shed. He spread a gunny bag on the floor, made Rukmini lie thereon and then sexually assaulted her. Some time thereafter leaving the helpless child alone he went away. Rukmini had profuse bleeding from her private parts and in that condition while crying she limped her way to the house of her maternal grand-mother and narrated the entire incident to her in the presence of her mother. P. W. 1 and other witnesses arrived and she repeated the story before them. On account of profuse bleeding, she needed immediate medical treatment and so P. W. 1 carried her on his shoulders and accompanied by a few other witnesses proceeded towards the Primary Health Centre, Remuna. On the way, the party stopped in front of the house of the appellant and called him. She once again repeated the incident and pointed her accusing finger at the appellant who hung down his head in shame. At the Primary Health Centre, the medical officer examined and treated her, but the bleeding did not stop. Therefore, he referred her for better treatment at the District Headquarters Hospital, Balasore, She was brought there by an ambulance the same night and was further examined and treated. P. W. 2 lodged F.I.R. (Ext. 2) and immediately investigation commenced. The appellant was arrested and after the investigation was over, he was charge-sheeted for having committed rape on a minor girl.

3. The appellant denied the charge of rape and took the defence that on account of enmity with P. W. 1, a false case was brought against him.

4. The learned Judge in consideration of the overwhelming prosecution evidence found the appellant guilty of the charge. He construed that the appellant's conduct in raping a child was inhuman, for which he deserved a heavy sentence and according to him, in a case of this- nature sentence of substantive imprisonment

for three years was heavy indeed.

5. Mr. D. P. Dhal, learned Counsel appearing for the appellant, urged that the appellant was medically examined in the next morning of the date of occurrence itself and it was found that there were no injuries on his private parts. There were also no incriminating materials to suggest that he was the author of the crime. Therefore, the prosecution case was a concocted story designed to implicate the appellant in a heinous offence in order to humiliate him. Mr. Jairaj Behera, learned Additional Standing Counsel, contended that the prosecution evidence considered with the medical evidence leaves no room for doubt as to the complicity of the appellant with the offence he was charged with. In view of the contentions raised and the nature of the crime, it is necessary to scrutinise the evidence on records to determine if the appellant was the rapist of Rukmini,

6. P. W. 9 was on night duty in the Primary Health Centre, Remuna on 12-10-1980. At about 2 a.m. he was called for examination and treatment of Rukmini Sahu. On examination, he found that there was a tear and a lacerated injury of the size of 2' x W in the vulva and the vaginal canal of Rukmini. There was bleeding from the area which could not be stopped. He explained the size of the injury by stating that the laceration was 2' long and 1/4' broad. The length of the laceration in the case was the depth of the injury which means, the laceration in the vaginal canal was 2' deep. The laceration started from the opening the vagina. The tear of the vulva and the vaginal canal was on the left side. There was rupture of the mouth of the vagina from the vulva. The injury could have been caused within six hours of the examination. He opined that it might have been due to forcible penetration of a male organ in an erect position inside the vagina. The Medical Officer gave first-aid by placing a cotton swab on the injury in order to check bleeding, but as it did not stop, he referred the case to the District Headquarters Hospital, Balasore. The report of the Medical Officer is Ext. 10/1. P. W. 6 was on emergency duty on 12-10-1980 in the District Headquarters Hospital, Balasore where Rukmini was brought for treatment the same night on reference from the Medical Officer of Primary Health Centre, Remuna. He immediately attended on the patient and found cause and cotton pack on the injured part which were soaked with blood. There was severe pain and tenderness of the vagina. She did

not cooperate with further examination. Therefore, subsequently pethidine speculum examination was conducted and it was found that there was a lacerated wound on the right lateral side of the vaginal wall 1'' from the introuitus. The depth of the injury was 1/3'' x 1/3' into the mucus membrane. At that time bleeding had stopped. No foreign hair or spermatozoa could be detected. The cause of bleeding was on account of the lacerated wound. The Medical Officer proved the bed-head ticket (Ext. 8/2) showing discharge of Rukmini from the hospital on 20-10-1980 after recovery. Subsequently, on query from the investigating officer, P. W. 6 gave a further report (Ext, 9/1) in which he stated that the age of the injury was 24 hours at the time of examination. He inferred from the nature of the injury, 'it cannot be opined that the patient has not been raped.'

7. P. W. 7 Rukmini stated that after taking food with her father she came to the house of her maternal grand-mother to sleep. She went out to the village street by opening the front door to pass urine. At that time the appellant who was coming from the side of the village tank suddenly gagged her mouth with cloth and by physically lifting her, brought her to the cow-shed and closed its door. He spread a gunny bag on the floor and made her lie on it. Then she gave a vivid description as to how the appellant committed rape on her by inserting his penis into her vagina on account of which she suffered intense pain. There was also bleeding from her private parts. Sometime after, the appellant leaving her alone left the place. While still bleeding, she came to the house of her maternal grandmother and related the incident to her in the presence of her own mother; When her father (P. W. 1) and some other witnesses arrived she repeated the story before them. When her father carried her to the Primary Health Centre, Remuna, while passing by the house of the appellant she pointed him out as the person who had committed rape on her. The evidence of the victim appears to be true. There could be no earthy reason why a minor girl aged about 10 years, who had actually been raped and had sustained injury on her private parts according to the evidence of two Medical Officers of two different places, should have concocted a false case against an elderly neighbour like the appellant. It is needless to say that her evidence has been fully corroborated by the medical evidence. P. W. 1 is the father of Rukmini and P. W. 2 is a co-villager who serves as a Clerk in the office of the S.D.O., Balasore. He lodged information (Ext. 2) at the police station soon after the

occurrence had taken place. P. W. 4 is another co-villager and P. W. 5 is the elder brother of P. W. 1. All of them were post-occurrence witnesses. As soon as they heard of the incident they gathered and in their presence Rukmini related as to how she was gagged, forcibly carried to the cow-shed and then raped by the appellant. When they took her to the Primary Health Centre, Remuna, on the way the appellant was called and in his presence Rukmini pointed her accusing finger at him, but the appellant did not give a satisfactory reply. The evidence of these post-occurrence witnesses is also relevant and lends credence and corroboration to the prosecution case. Another important factor lending corroboration to the above evidence particularly for the complicity of the appellant is the report of the Serologist (Ext. 1/1). He reported that the blood soaked pant of Rukmini (M.O.I.) which she was wearing when she was sexually assaulted was found to have contained human blood of 'O' group. A Dhoti (M.O.IV) was seized by the investigating officer by seizure list (Ext. 13) from the house of the appellant which also contained human blood of 'O' group. It seems that the wearing Dhoti of the appellant came in contact with the victim's body and was soaked with blood which came out from her private parts. This link clearly suggests the appellant's complicity with the crime.

8. In : 1973 CriLJ179 Gurcharan Singh v. State of Haryana, it was held that in case of rape a prosecutrix cannot be considered as an accomplice and, therefore, her testimony cannot be equated with that of an accomplice in an offence. As a rule of prudence, however, court normally looks for some corroboration of her testimony so as to satisfy its conscience that she is stating the truth and that the person accused of rape on her has not been falsely implicated. As already referred to above, in this case the evidence of Rukmini has found corroboration from the medical and other evidence. In : 1980 CriLJ926 Krishan Lal v. State of Haryana, it was held that in rape cases, courts must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's version. The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication. The injury on the person of the victim, especially her private parts, has corroborative value. Her complaint to her parents and the presence of blood on her clothes are also

testimony which warrants credence. To forsake these vital considerations and go by obsolescent demands for substantial corroboration is to sacrifice common sense in favour of an artificial concoction called 'Judicial probability'. In : 1983 CriLJ1096 Bharwada Bhoginbhai Hirjibhai v. State of Gujarat, it was held that corroboration to the testimony of the prosecutrix is not the sine qua non for a conviction in a rape case. In the Indian setting, refusal to act on the testimony of a victim of sexual assault on the absence of corroboration as a rule, is adding insult to injury. In the tradition bound non-permissive society of India a victim of rape would be extremely reluctant even to admit that any incident which is likely to reflect on her chastity had ever occurred. She would be conscious of the danger of being ostracized by the society or being looked down on by the society including by her own family members, relatives, friends and neighbours. She would face the risk of losing the love and respect of her own husband and near relatives, and of her matrimonial home and happiness being shattered. If she is unmarried, she would apprehend that it would be difficult to secure an alliance with a suitable match from a respectable or ah acceptable family. In view of these and similar factors, the victims and their relatives are not too keen to bring the culprit to book. And when in the face of these factors the crime is brought to light there is a built in assurance that the charge is genuine rather than fabricated.

Viewed in the light of the aforesaid principles, I find absolutely no material to disbelieve the testimony of Rukmini.

9. P.W. 3 examined the appellant at 10,30 a.m. on the succeeding day. He did not find stains of blood or semen either on his wearing cloth or on the genital region. He did not notice any injury either on his private part or anywhere on his body. He, therefore, opined that the appellant might not have recent sexual intercourse. But he did not rule out the possibility of the appellant washing himself, in which case there was no possibility of noticing signs of cohabitation. Forcible cohabitation with a minor girl may normally cause injury on the penis. But in the case of the appellant, on account of his age, forcible penetration without any resistance could not have caused any injury. He finally opined that in this particular case, there might not have been penetration inside the vagina of the victim. His report is Ext. 7. Taking advantage of the opinion of P.W. 3, it was strenuously urged that the

appellant did not commit rape. In support of the contention, reliance was placed on the decision reported in : 1972 CriLJ1260 Rahim Beg v. State of U.P. in which it was held that absence of injuries on the male organ of the accused would point to his innocence in a case of rape by a fully developed man on a girl of 10 or 12 years of age. The facts of this case were different. A girl aged 10 to 12 years was abducted, raped and then murdered. The case rested mainly on circumstantial evidence which was of weak character and so murder of the victim by the accused persons was disbelieved. Although semen was detected from the langot of one of the accused, the fact was explained away in the manner that the semen stain could exist for a variety of reasons. In my view, the facts and principles laid down in the decision are inapplicable to the facts of the present case, because the victim girl herself implicated the appellant as her rapist. In AIR 1969 All 216 : 1969 Cri LJ 585(2) Dalchand v. State, it was held that absence of injuries on the person of the accused and particularly on the penis cannot be the sole ground for discarding the prosecution evidence. In (1985) 60 Cut LT 236 State of Orissa v. Purnachandra Sadangi, it was held by this Court that absence of injuries on the person of the aggressor is not a sure indication as to whether rape had been committed as in a case of helpless resignation, injuries might not have been caused to the aggressor owing to want of resistance. In this connection, reference to Modi's Medical Jurisprudence and Toxicology (Twentieth Edition) at page 341 is relevant. I quote the following:.Modi had seen cases in which there was no injury to the penis of the accused, although there were lacerations of the hymen, posterior commissure, perinaeum and even the vaginal walls of the complainant (victim)....

Some illustrations have also been given at page 343 and the relevant one is quoted below:

2. A girl 10 years old, alleged to have been raped, was examined on the 30th September, 1920. The hymen and perinaeum were lacerated. The accused who was examined at the same time had no mark of injury on his genital organ.

The evidence of P.W. 3, the observations made by this Court, as well as the Allahabad High Court and the quotations from Modi's Medical Jurisprudence and Toxicology (Twentieth Edition) will show that there is no absolute rule that in every

case of rape by an adult male on a minor girl, the former must necessarily sustain injuries either on his body or on his penis. Injuries on the aggressor will depend on facts and circumstances of each case. In this particular case, the victim was a child aged 10 years. She had almost gone to sleep. She was attacked by the appellant all on a sudden and her mouth was gagged. She was physically lifted and carried away to a cow-shed. This sudden attack must have completely dazed her and so there was no question of offering resistance to the aggressor. The medical reports of P.Ws. 6 and 9 show that there was no full penetration, but partial penetration, as a result of which she sustained injuries on the vaginal wall. In such circumstances, there could be no ejaculation of semen. As there was no violent friction of the male organ inside the vagina, possibility of scratches or other injuries on the male organ could be safely ruled out Soon after the crime was committed, the appellant got sufficient time and opportunity to wash himself so as to wipe out all traces of his involvement in the commission of the rape. These were the reasons why P.W. 3 did not find any injury, signs or traces of rape on the appellant. In consideration of the evidence, facts and circumstances of the case, and the legal position that even partial penetration constitutes offence of rape, I have least doubt that the appellant had committed rape on Rukmini and so his conviction under Section 376, I.P.C. cannot be assailed.

10. The learned Judge obviously felt indignant because of the rape committed by a middle aged person on a child. He viewed the case very seriously and intended to impose adequate punishment. Nevertheless, he sentenced him to undergo rigorous imprisonment for three years. He did not impose any fine although it was mandatory according to the provisions of Section 376, I.P.C. Because of the inhuman conduct of the appellant, I consider that it is a fit case for imposing exemplary punishment. The occurrence took place in the year 1980. Rukmini might now be a young girl of about 17 years of age. In case her marriage has not taken place in the meanwhile, compensation in the shape of money will help her, as well as the parents, to perform the marriage when she would attain the legal marriageable age. If, however, for some reason her marriage has already taken place, a good sum of money will at least partially wipe out the anguish in her heart. I would, therefore, enhance the sentence by imposing a fine of Rs. 5000/-(Rupees five thousand), which when realised shall be given to Rukmini as compensation.

The learned Judge shall make a long term deposit of the sum of Rs. 5000/- (Rupees five thousand) either in the Postal Savings Account or in a nationalised bank, and hand over the certificate by summoning her personally to court.

11. In the result, the Criminal Appeal is dismissed and the Government Appeal is allowed. The appellant is sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 5000/- (Rupees five thousand), in default to undergo rigorous I imprisonment for two years more. After realisation of the fine amount, the same shall be paid to the victim girl Rukmini on proper identification as compensation in the manner indicated above.