

Jagan Nath Vs. State

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Court : Delhi

Decided On : Jul-18-1985

Reported in : 29(1986)DLT42

Judge : H.C. Goel, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 366 and 376

Appeal No. : Criminal Appeal No. 201 of 1983

Appellant : Jagan Nath

Respondent : State

Advocate for Def. : N.K. Handa, Adv.

Advocate for Pet/Ap. : Nem

Disposition : Appeal allowed

Judgement :

H.C. Goel, J.

1. This is an appeal by the appellant against his conviction under Sections 366 and 376 IPC and sentences of three years' RI and a fine of Rs. 500/- and of seven years, RI and a fine of Rs. 1000/- there under respectively passed by the court of Shri K.B. Andley, Additional Sessions Judge by his impugned judgment and order

of sentence, both dated September 13, 1983. Chameli Devi, prosecutrix, was known to Jagan Nath appellant. They both belong to one and the same village in Rajasthan. Chameli Devi is aged about 40 years. She was married about 20 years prior to the occurrence on September 14, 1981 and had five children. Jagan Nath appellant was aged about 53 years and is a married person with grown-up children. The prosecution case is that the husband of Chameli Devi was a railway employee and was posted at Rampur in Uttar Pradesh. On September 14, 1981 Chameli Devi got down at the Delhi Main Railway Station at about 9.00 p.m. on her way from Jaipur to Rampur. She was to change to train at Delhi for Rampur. According to the prosecution Chameli Devi happened to meet Jagan Nath, appellant by chance at the Delhi Main Railway Station on the said date and time where the appellant has been working as a coolie (porter). Chameli told Jagan Nath to make her sit in the train which was to go to Rampur from Delhi. The appellant told her that she would get her train for Rampur from another platform. He took Chameli outside the railway station and took her to his house on the first floor near kela godown in Amar Puri, Paharganj in a tonga. Chameli was accompanied by her three year old son at that time. The appellant is alleged to have bolted the door of his house from inside and then committed rape with Chameli thrice in the night after taking liquor there. The appellant then fell asleep and Chameli managed to escape in the early morning of September 15, 1981. She contacted the police at the Delhi Main Railway Station and on her statement a case was registered under Section 366 IPC to which the offence under Section 376 IPC was also later added.

2. The appellant in his statement under Section 313 Cr. P.C. denied the aforesaid allegations of the prosecution. He stated that one SI Darshan Singh was posted at the Delhi Main railway Station as a police officer. There was a strike by the coolies of the Railway Station. SI Darshan Singh gave a danda blow to a coolie, Guru Dhobi. On that all the coolies including the appellant got enraged. SI Darshan Singh had then threatened that they would be taught a lesson by any police officer whosoever may come in his place. The appellant examined two witnesses in defense.

3. None appeared on behalf of the appellant at the hearing of the appeal. Mr. N.K. Handa, learned counsel for the State, took me through the record of the case. I may say at the very outset that the impugned judgments of the learned Additional Sessions Judge is not at all sustainable. The prosecution sought corroboration of the statement of the prosecutrix Chameli (who narrated the alleged occurrence) from the statement of one Satpal Singh, tonga driver (PW 4). According to the prosecution the appellant had taken Chameli Devi in his tonga from the Delhi Main Railway Station to his) (appellant's) house. His evidence was sought to be adduced to corroborate the version of the prosecutrix that the appellant had abducted he prosecutrix by making a false representation to her that he was taking her to the other platform from where he would make her board a rain for Rampur. This witness, however, did not support the prosecution. He stated that he knew the appellant who was a coolie at the Delhi Main Railway Station and that he never brought any woman with him to his tonga for taking them to his house. Satpal Singh was cross-examined by the prosecution, but nothing of any avail to the prosecution came out I his cross-examination by the public prosecutor. Not only that this witness contradicted the version of the prosecution I the above regard, the statement of the prosecutrix appears to be inherently in convincing and is of a highly unsatisfactory order, having regard to the facts and circumstances brought out on the record. Chameli Devi as PW 6 has stated that she had been to Rampur and Bareilly from Jaipur by train via Delhi 15/20 times, although she stated that on all those occasions she came with her husband. That being so, Chameli Devi who was a mature woman of 40 years of age must be knowing as to where the platform was for taking a train for Rampur from Delhi. In any case even if she was told by the appellant that the platform was changed it does not appeal to reason that Chameli Devi would have been led to believe that for going to the changed platform she would have to go out of the railway station and that would be at a distance for which one has to go by tonga Further it is impossible to believe that any person having senses would believe that the platform for catching any train would be located in a street inside Amar Puri Colony In the congested area of Paharganj. It is obvious that the taking of Chameli by the appellant to such a place I a tonga and hereafter taking her inside his house were such things on which the prosecutrix would have known and understood that the appellant was doing

something very wrong and that he was obviously not taking her to any platform and instead of that he was taking her to some house. On the prosecution's own showing no kind of alarm was raised by the prosecutrix all along i.e. right from about 9.30 p.m. when the appellant is alleged to have taken her out from the Delhi Main Railway Station to the early hours of the morning when she left the house of the appellant. The prosecutrix obviously had more than ample opportunity of raising an alarm and protesting against the design of the appellant, but nothing of the kind was done by her. Thus the entire version as narrated by the prosecutrix is highly in convincing had her conduct was equally un-natural. The prosecutrix being well about 16 years of age and in fact being of the ripe age of 40 years, having five children, the question of her consent in the sexual intercourse committed with her as alleged by her was material. It is worth-nothing that the investigating agency has not collected any material to corroborate the version of the prosecutrix about the appellant having committed sexual intercourse with her such as the taking into possession of the clothes of the prosecutrix and that of the appellant to find out if they had any fresh stains of human semen thereon. Dr. S. Chaudhary, Medical Officer (PW 10) who examined the prosecutrix also did not take any vaginal swab of the prosecutrix nor was any slide prepared from the vaginal swab of the prosecutrix. Such a swab could be sent to the Chemical Examiner for examination of the presence of semen and spermatozoa therein. In the medical examination of the prosecutrix by Dr. S. Chaudhary (PW 1) and the examination of the appellant by Dr. L.T. Ramani (PW 1) no visible injury is stated to have been found on the person the person of either of them. Had the appellant committed rape on the person of the prosecutrix even once, what to say of thrice, here should have been some visible mark of struggle on the person of the appellant and/or the prosecutrix. The absence of any such mark on the person of either of them also is a circumstance which went to show that if the appellant had at all committed sexual intercourse with the prosecutrix that must be with her consent. A perusal of the statement of the prosecutrix also shows that she made numerous improvements in her statement in the court over her statement before the police which need not be stated her. From all this it is amply clear that the learned trial court went totally wrong in coming to the conclusion that the charges under Sections 366 and 376 IPC stood proved against the appellant from the statement

of the prosecutrix as stated by the trial court. No doubt ordinarily no woman would like to state falsely about her having been subjected to rape as that becomes a blemish on her and sticks as a stigma. However it is such a simple thing and a well-known principle of law that the statement of the prosecutrix is not to be blindly accepted and has to be closely examined and evaluated having regard to the facts and circumstances as borne out on the record. In fact a rule of prudence has grown that corroboration to the statement of the prosecutrix in such a case may be sought unless the circumstances of the given case make it safe to dispense with such corroboration. It may also be pointed out here that the learned trial court did not at all deal with the defense evidence as adduced by the appellant which was impliedly rejected. Although there is something to be said about the defense evidence in favor of the accused/appellant, however, in view of the fact that the prosecution case totally fails having regard to be prosecution evidence itself, I need not deal with the defense evidence. In conclusion I accept, the appeal, set aside the conviction and sentence of the appellant and acquit him. He be released forthwith if not required in any other case.

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