

Satbeer Singh Vs. State

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Court : Delhi

Decided On : Oct-13-2004

Reported in : 114(2004)DLT487

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code - Sections 328, 363, 366 and 376

Appeal No. : CrI. A. 567/1999

Appellant : Satbeer Singh

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : D.N. Goburdhan and; Amit Sharma, Advs

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. 4 persons, Suresh Kumar, Azad Singh, Kukku and Satbir Singh were the accused in Sessions Case No.448/1988, arising out of FIR NO. 96/85 dated 6.5.1985, P.S.Najafgarh. Azad Singh and Kukku died during trial. Suresh Kumar @ Patwari was convicted under Section 363/366 and Section 376 IPC. Appellant

Satbir was convicted under Section 363/366 IPC and Section 328 IPC. Sentence imposed was 5 years R.I. for each of the offence. Sentences were to run concurrently.

2. Suresh Kumar @ Patwari did not challenge his conviction. He has undergone the sentence imposed. Present appeal stands filed only by Satbir. In this appeal, therefore, I would not be concerned with the offence committed by Suresh under Section 376 IPC save and accept the facts which are interlinked with the offence under which the petitioner was charged.

3. On 6.5.1985 prosecutrix Sunita made a complaint to PW.II S.I.Jagdish Prashad, pursuant where to an FIR No.96/85 under Section 328/363/376 IPC, P.S.Najafgarh was lodged at 8.15 a.m. complaint stated:

'Statement of Sunita Kumari D/O. Gaje Singh caste Balmiki, aged 14 years. I reside with my parents in Village Jharoda Kalan, P.S.Najafgarh. I am a student of class 8. On 4.5.1985 at about 7.30 p.m. I had gone to the fields to ease myself where I saw Patwari, Azad Singh, Satbir Singh and Kukko standing together. When I crossed them Patwari caught me and Satbir pushed a PEDDA in my mouth. Both grasped me. I became unconscious. I regained consciousness at about 10.30 in the night. I found myself inside a house. All 4 persons were present. On enquiry I was told that this was the house of patwari in village Ausada. Stating that they would come next night, Azad Singh, Satbir and Kukko left me with Patwari who by threat, inducement and fraud (dhamka kar, behkakar and fuslakar) kept me all night and had intercourse with me. Next day on 5.5.1985 when patwari left me alone in the house, I, finding an opportunity to escape came out of the house and reached home in the evening. My father was not at home. I narrated in my plight to my mother Khazani and maternal uncle Sumer Singh. Today I along with my maternal uncle was proceeding to the police station to lodge a complaint when you met me at the bus stop and you recorded my statement.'

4. Statement aforesaid, Ex.PW.1/A, was recorded by S.I.Jagdish Parkash who was on patrol duty in the Baharurgarh bus stand area when prosecutrix and her maternal uncle happened to chance upon S.I.Jagdish Parkash.

5. Prosecutrix was taken for medical examination at R.M.L.Hospital. MLC Ex.PW.5/C records:

'No visible external injury over abdomen, face upper limb, lower limb (below knee), back. No sign of external injury any where in the body. No sign of external injury over breast or thigh. No bleeding. Hymen torn. No sign of inflammation.'

Virginal smear taken for semen and handed over to police constable on duty.'

6. M.L.C. records that prosecutrix was brought at 8.20 p.m. on 6.5.1985.

7. Salwar, which the prosecutrix was wearing was seized at the hospital vide memo Ex.PW.4/A signed by PW.4, H.C.Sultan Singh, duty constable RML Hospital. CFSL report Ex.PW.11/K showed semen stain on the Salwar.

8. Case set up by the prosecution was that the accused persons kidnapped the prosecutrix from the lawful guardianship of her father with intent that she may be compelled or knowing it to be likely that she may be forced to illicit intercourse. This attracted Section 363 and 366 IPC. In addition, case against appellant was that by administering a stupefying drug mixed in a PEDDA, with intent, that it will facilitate the commission of offence of kidnapping, abduction and rape, he committed an offence under Section 328 IPC. In addition case against Patwari was that he committed rape on the prosecutrix.

9. Since in the present appeal I am only concerned with Satbir, I would not be dealing with the factum of rape save and except to the extent necessary as counsel for the appellant took a line that the evidence on record probablised a consensual sex between the prosecutrix and patwari. When her parents found her, the story was webbed. Enmity between the family of the appellant and Sumer Singh maternal uncle of the prosecutrix is also brought in aid.

10. On the issue of age of the prosecutrix, school record proved by PW.6 showed her to be 14 years of age on the date of the alleged incident. PW.2 the Radiologist who had examined the X-ray of the prosecutrix, opined her age to be about 17 years. Prosecutrix and her father PW.8 stated the age to be 14 years. I would take her to be a minor as counsel for the appellant stated that I could well do so.

11. In her examination in chief, the prosecutrix narrated the event from evening of 4.5.1985 to morning of 6.5.1985. Material change in her statement recorded in court vis-a-vis statement recorded on 6.5.1985 i.e. next date of the alleged incident, which were highlighted by Shri D.N.Goburdhan learned counsel for the appellant were:-

Recorded on Recorded in Court 6.5.1985

- a. Patwari caught me and Satbir pushed a patwari pushed a peda in my mouth .
- b. When I reached home My father and my maternal my father was not at uncle Sumer Singh were home. I narrated my present in the house when I plight to my mother reached home. I narrated the and mama. occurrence to them.

12. Counsel specifically drew the attention of this court to the fact, that with leave of the court, the APP cross examined the prosecutrix on the issue as to who forced to peda in her mouth. Following statement was highlighted:

'I did not state to the police that Patwari, accused had caught hold of me and then Satbir accused had inserted a 'peda' in my mouth (confronted with portion A of Ex.PW.1/A wherein so recorded). It is incorrect that I have forgotten this fact, because of a lapse of time and my statement made today is correct. (volunteered: the thanedar might have heard wrongly.'

13. Apart from the inconsistencies noted above and the categorical stand of the prosecutrix that what she had stated in court was correct and not as recorded in Ex.WP.1/A, counsel for the appellant highlighted following statements made in court by the prosecutrix during her evidence:

- a. I gave my salwar to police after coming to my home and changing the clothes.
- b. We had come to our village in December 1984 and after sometime that, I came to know the accused persons. The accused patwari is a resident of village Asauda. Accused Azad is his brother.
- c. One Surte, who is maternal uncle of these two accused lives in our neighborhood. His house is adjoining to our house.

d. I do not know the distance between Jharoda and Asauda Village. I had come to my village on foot from the house I was raped. I had started from there in the morning and reached in the evening. Many persons met me on the way. Many women had also met me on the way and I had not narrated anything to them also.

e. My maternal uncle Sumer Singh had told me that the name of the village where I was raped is Asauda and the house was that of Patwari.

f. Since the accused patwari had inserted a cloth in my mouth at the time of committing rape, I could not cry. Accused patwari had also tied my hands on the back side at that time with a rope.

g. The house of Kukkoo and Satbir accused is also near our house, but we are not on visiting terms. They are on inimical terms with my maternal uncle.

h. There was little sun when I reached my home on 5.5.1985. Since my mother was ill that night, so, how could my father take me to the police station for lodging the report the same night. My maternal uncle was also not feeling well.

14. Counsel urged that it was obvious for the aforesaid that prosecutrix knew Patwari and had gone with him voluntarily, when caught, she and her family had spun a story. Appellant was roped in, because his family was on inimical terms with Sumer Singh, maternal uncle of the prosecutrix.

15. Shri D.N.Goburdhan, learned counsel for the appellant referred to the testimony of PW.3, mother's sister of the prosecutrix and PW.8, her father, to show the alleged inherent falsity of the case against his client. I need, therefore, to note the testimony of PW.3 and PW.8 as was referred to.

16. PW.3, Santro, sister of the mother of the prosecutrix stated:

'About 7 years ago, my sister Khazani and brother in law Gaje Singh went to Safdarjung hospital for taking medicines. Khazani had four daughters who are all living.

My brother-in-law Gajey Singh brought my sister Khazani to me in Yusuf Sarai and had brought her to show her in the Safdarjung Hospital. It was on 5.5.85, at about

2.30 p.m. As the hospital time had closed for making OPD Card, my sister had been brought to me. On the next morning my brother Sumer Singh reached my house, who informed that Sunita had been missing since 4.5.85 from evening time. Then we came back to Jharoda. I, my sister Khazani and Jija Gajey Singh and brother Sumer Singh went to Jharoda. We made a search for Sunita but she did not meet us. Sunita was daughter of my sister Khazani, she was aged 15 yrs. at the time of occurrence.

Sunita returned on the above date in the night to us at about 7.00 or 7.30 p.m. On our enquiry, she told us that she had gone to defecate herself, outside the village where she found aced Suresh and the other three aced persons namely Kuckoo, Satbir and Azad. Aced Suresh stopped Sunita; the aced persons forcibly made a peda to Sunita to eat whereby she became unconscious; she further told me that the aced. persons than took her in their village Aashoda. When Sunita gained conscious, she raised an alarm and was threatened by aced. persons to be killed, with knife and that they would kill her father also. The aced. Suresh committed rape with Sunita while the other aced. persons told to come on the next morning. Sunita told that she got a chance and thus run.'

17. PW.8 Gajey Singh, father of the prosecutrix stated:

'My wife was suffering from kidney stone. She was taken to Safdarjung Hospital for treatment prior to occurrence, on 4.5.85 by me. I had left my daughters with my sala Sumer Siungh. Sunita was my eldest daughter and was aged about 13/14 years at the time of occurrence. I went to Yusuf Sarai from the Safdarjung Hospital after showing my wife, to the house of my sister-in-law (Saali). I stayed there in the night with my wife. I was informed there by my sala Sumer Singh that my daughter Sunita was missing from the house in the evening of 4.5.85. Sumer came to me on 5.5.85. I then came to my house in the above village, and searched for my daughter Sunita. Sunita came to me on 6.5.85 at about 12-00 Noon herself. She did not tell anything to me. She might have told something to Sumer Singh or my wife who both have died. I did not take Sunita to the police station. She was taken to the P.S. by late Sumer and my wife.'

18. PW.3 and PW.8, with minor variation have both deposed that on 4.5.1985 PW.8 and his wife went to Safdarjung hospital as Khazani was to be shown to the doctor. From there they went to Yusuf Sarai where PW.3 lived. They stayed the night there. Sumer Singh, mama of the prosecutrix came to Yusuf Sarai on 5.5.1985 to tell PW.8 that his daughter was missing since 4.5.1985. PW.8 says that he searched for his daughter but she came of her own at 12 noon on 6.5.1985. PW.8 is categorical that his daughter told him nothing, she might have told something to Sumer Singh and her mother. PW.8 is categorical that it was not he but Sumer who took his daughter to the police station. PW.3 has stated that when prosecutrix came back she told that the accused had kidnapped her and had taken her to village Ausada where Suresh (@patwari) had raped her. Prosecutrix had stated that when she reached home her uncle Sumer and her father were present in the house and she had narrated the occurrence to them. All went to the police station. PW.11 S.I. Jagdish Parkash to whom the prosecutrix narrated the incident and who recorded her statement PW.1/A deposed that prosecutrix was accompanied by her uncle. It is obvious that the prosecutrix and her father gave contradictory versions.

19. Let us put the jigsaw pieces together. Prosecutrix knew Patwari and his brother Azad, she knew that Patwari resided in village Asauda (refer her statement noted in para 13b and 13c). On 4.5.1985 her parents had gone to Safdarjung Hospital where her mother was to be shown to the doctor. They stayed for the night at house of Santro PW.3. Sumer, her uncle finds her missing. He informs her parents on 5.5.1985 that their daughter is missing. The daughter comes home in the evening at 5.5.1985. (As per father it is noon). She tells nothing to her father. She confides in her mother and Sumer. Sumer takes her for lodging a complaint. Sumer and the appellants family are on inimical terms (refer statement at prosecutrix at 13 g).

20. A host of questions casting doubts arise. Has not Sumer used the prosecutrix to settle scores with the family of the appellant? Prosecutrix says that she knew patwari and that he lived in village Ausada (refer para 13b) did she not lie when she said that when she come back her uncle told her that the name of the village where she was raped was Ausada (refer para 13c)? How was she taken to

Ausada? The prosecution has brought nothing on record. Why would Patwari leave her unguarded to escape? Prosecutrix admits to have met women on the way back, would she not have narrated her woes to them? Village Ausada is about 22 kms. from village Jharoda Kalan. The prosecutrix claims to have walked back unnoticed. Is it possible?

21. Absence of injuries on the person of a rape victim is no ground to disbelieve her. Every female reacts differently when sexually assaulted, some just freeze, some get hysterical, some fight it, out some submit weekly. The court is not to infer anything adverse from any or absence of these factors.

22. But the story of the prosecutrix must inspire confidence. He uncorroborated sole testimony is enough, provided it is trust worthy.

23. The learned Sessions Judge, in my opinion, has brushed aside the evidence and within the sweep of one fact that CFSL report showed semen stain on the salwar, embraced the other facts as proved. Unfortunately, he did not even notice that the prosecutrix had categorical deposed that patwari had put the peda in her mouth, when cross-examined by the APP she maintained that her deposition in court was truthfull, yet appellant has been convicted under Section 328 IPC.

24. There are material contradictions in the prosecution evidence. Possibility of the prosecutrix being a willing party with Patwari cannot be ruled out. When she was caught, Sumer tutored her to implicate the appellant cannot be ruled out. Evidence has come on record that Sumer had inimical relations with the family of the appellant. There are inherent improbabilities in the version of the prosecutrix. She and her father sing in different tune. Appellant is entitled to the benefit of all the doubts which arise when one moves with the prosecution evidence.

25. The appeal is allowed. The impugned judgment of conviction against the appellant dated 29.9.1999 in S.C.No. 448/88 is set aside. The order of sentence dated 8.10.1999 is quashed. Appellant is on bail. The bail bond and surety bond are discharged.