

Soni and ors. Vs. State

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Court : Delhi

Decided On : Dec-08-2004

Reported in : 117(2005)DLT135; 2005(79)DRJ654; (2005)140PLR29

Judge : Pradeep Nandrajog, J.

Acts : Indian Penal Code (IPC) - Sections 120B, 363, 365, 366 and 376;
[Constitution of India](#) - Article 21

Appeal No. : Crl. A. 978/2001

Appellant : Soni and ors.

Respondent : State

Advocate for Def. : Anil Soni, Adv.

Advocate for Pet/Ap. : Sachin Chopra, Adv

Disposition : Appeal allowed

Judgement :

Pradeep Nandrajog, J.

1. Appellants were charged for having committed offences punishable under Sections 363, 365, 366, 376 and Section 120-B IPC. Appellants Rajan, Gomti, Soni and Udal suffered a conviction under Section 376 IPC. appellant Kalyan

suffered a conviction under Section 366 IPC, vide judgment dated 3.12.2001 in Sessions Case No. 104/98.

2. Vide order dated 4.12.2001, Rajan, Soni, Gomti and Udal were sentenced to undergo imprisonment for a term of 10 years with fine of Rs. 500/- each, in default of payment of fine to undergo S.I for 3 months. Kalyan was imposed a sentence of imprisonment of 7 years with fine of Rs. 500/-. In default to undergo S.I. for 3 months.

3. In a nutshell, case of the prosecution against the accused was that prosecutrix `R' was abandoned by her husband. Kalyan met her during Navratras in 1997 and told her that her husband had been admitted in a hospital at Mathura. She, Along with her two children accompanied Kalyan, who took her to Patrawal, District Mathura. She was kept there for 1-2 days and from there was taken to Rudawal, a place in District Bharatpur. She was handed over to Rajan. Rajan snatched her jewellery. She was confined there for 2 months. Rajan, Udal, Gomati and Soni, all brothers, repeatedly raped her. After about 2 months they took her, to be sold to some other place. She managed to escape and reached P.S. Deeg. The police at Deeg helped her to be dropped at Mathura from where she reached Delhi and lodged a complaint at the police post Nehru Place on 5.12.1997, pursuant where to FIR was registered. Daughter of the prosecutrix, Pramodi was recovered from Rajan on 28.12.1997. Prosecutrix `R' was found to be pregnant when medically examined on 6.12.1997.

4. The learned Sessions Judge has believed the testimony of the prosecutrix while convicting the appellants. It may be noted that there were no eye-witnesses.

5. Shri Sachin Chopra, learned counsel appearing for the appellants took me through the entire record very meticulously and brought out the broad features of the case of the prosecution and urged that the learned Additional Sessions Judge has totally mis-appreciated the evidence. Learned counsel urged that the prosecutrix was a totally unbelievable witness. Counsel urged that in view of the testimony of the daughter of the prosecutrix, the story set up by the prosecutrix had to be thrown in the dust-bin. Counsel urged that it appears to be a case of a lady with dubious character, falsely implicating the appellants. Medical record

establishes that she was pregnant much before the Navratras. She was known to the accused. She lived with the family voluntarily. She wanted to black-mail the appellants taking advantage of her pregnancy.

6. Let me begin with the testimony of the prosecutrix and test its veracity in the light of the testimony of her daughter, Pramodi, PW-4; medical record and other evidence and see whether the prosecutrix stands falsified or whether she comes out clean.

7. Prosecutrix was examined as PW-5. She deposed that accused Kalyan used to often come to her house. Whereabouts of her husband were not known. She was residing in a jhuggi in Nehru Place. (Though, in the statement to the police, pursuant where to FIR was registered she stated that Kalyan told her during Navratras that her husband was admitted in a hospital at Mathura), in her deposition in Court she merely stated that Kalyan represented that her husband was admitted in a hospital at Mathura. She accordingly went with Kalyan to Mathura. From there he took her to Rudawal, a place in Rajasthan. At Rudawal, accused Rajan snatched her jewellery. Rajan kept her daughter at some other place. Rajan, Udal, Gomati and Soni threatened her with knife and pistol. They raped her. She managed to escape one day and reached police Station at Rudawal. Police brought her to Shergarh from where she reached Delhi. She lodged a complaint with the police post at Nehru Place. Her daughter, Pramodi was recovered from village Patrawal, from Rajan.

8. In her cross-examination conducted by counsel for the accused Kalyan, she stated that her husband had left her 5-6 months before accused Kalyan, took her to Mathura. After her husband had left her and before Kalyan took her to Mathura, she had gone outside Delhi. She stated that she told her eldest daughter when she left with Kalyan for Mathura that she was going to Mathura. She left with Kalyan on a motor cycle. She stated that from Mathura, she was taken to Bharatpur and from there to some place which falls in the jurisdiction of P.S. Kot. At Kot, she was kept in a house. House was in a jungle. P.S. Rudawal was about a mile from the place in Kot where she was confined. She admitted that on 4.11.1997, the police of Shergarh had left her at Faridabad. She stated in her

cross-examination that when she left with Kalyan she took along with her two daughters and one son. She stated that when the police of Shergarh left her at Faridabad, her daughter Pinky was with her. Her other daughter, Pramodi and son, Deepak were snatched by the accused persons. She stated that somebody left her son in her house. On being cross-examined by counsel for the other accused she admitted that she deposed in the court as advised by a lawyer. She admitted that Rajan, Udal, Soni and Gomti were real brothers. She denied the suggestion that there was a custom in the house which required male and female members to sleep separately. On being questioned about what happened to her pregnancy, she stated that she took 'Jadi Buti' and aborted the foetus.

9. MLC, Ex.PW-17/A of the prosecutrix showed her to be 14-16 weeks pregnant. She was examined on 6.12.1997. Pregnancy, obviously had to be between 2nd to 3rd week of August. Prosecutrix stated that she was confined for about 2 months and accused Kalyan had enticed her during Navratras. As per her statement, she would have accompanied Kalyan somewhere towards end of September or early October. Her pregnancy cannot be a result of sexual intercourse with the accused. She stated that her husband was missing for 5 to 6 months. He too could not have made her pregnant. She admitted that accused Kalyan had been visiting her. That she became pregnant during her liaison with Kalyan cannot be ruled out.

10. Ex.PW-5/B, the statement of the prosecutrix recorded by SI Brijendra Singh (PW-6) on 5.12.1997 at about 9 P.M. pursuant where to the FIR was registered does not mention about the fact that the son of the prosecutrix and another daughter Pinki had also accompanied her when she left with Kalyan. She only referred to her daughter Parmodi. She never asked the police to look for her other 2 children. In her deposition in court, she stated that when she left with Kalyan, her 2 daughters and a son were with her. On being cross-examined, she stated that somebody left her son in her house and regarding her daughter Pinki, she said that when police of Shergarh left her at Faridabad, her daughter Pinki was with her.

11. When was the prosecutrix brought by the police to Faridabad?

12. In her testimony, prosecutrix did not mention any date. Not even approximate. PW-15 H.C. Kashmir Singh of P.S. Shergarh produced record of P.S. Shergarh. It makes an interesting reading. PW-15 proved D.D. Entry No. 30 dated 4.11.1997 (Ex.PW-15/DA) in hand of Ct. Rakesh Kumar, D.D. No. 12 dated 5.11.1997 (Ex. PW-15/DB) in hand of Ct. Rakesh Kumar and D.D. No. 25 dated 5.11.1997 (Ex.PW-15/DC) also in the hands of Ct. Rakesh Kumar.

13. D.D. No. 30 of 4.11.997 (Ex.PW-15/DA) records that at 6.30 P.M. on said date, prosecutrix accompanied by a girl child aged 3 years came to the police station and stated that she had no means to go home. She sought and was given permission to spend the night at the police station under the care of a lady constable. D.D. No. 12 (Ex.PW-15/DB) records that next day i.e. 5.11.1997 Ct. Om Sharma left at 8.10 A.M. to drop the prosecutrix and her daughter to their home. D.D. No. 25 (Ex.PW-15/DC) records that Ct. Om Sharma reported back at 2.20 P.M. on 5.11.1997 and got recorded that he had safely left prosecutrix and her daughter in the custody of her mother-in-law and father-in-law Ramphal and 'Chachia Saas' Radha and brother-in-law Gomti.

14. In her cross-examination, prosecutrix admitted that on 4.11.1997 police of Shergarh had left her at Faridabad.

15. Prosecutrix lied when she told the police on 5.12.1997 that she just managed to escape from the clutches of the accused. She lied in court when she reiterated said fact, only to admit in cross-examination that on 4.11.1997 the police of P.S. Shergarh left her at Faridabad.

16. Prosecutrix was obviously moving about freely. On 4.11.1997, she sought refuge in P.S. Shergarh by stating that she had no means to go home. She was not in the clutches of the accused. She never told the police that she was abducted and had managed to free herself. On 5.11.1997, she was left by the police in the house of her in-laws.

17. FIR has been lodged on 5.12.1997. Falsity in the version of the prosecutrix is writ large. Evidence on record shows that she was moving around freely. Her daughter Pinki was with her. The story of abduction and rape is a fabrication.

18. Pramodi, daughter of the prosecutrix was examined as PW-4. She was examined on 18.1.1999. She deposed :-

'About a year back I along with my mother and my brother had gone to a village but I do not remember the name of the village. Accused Rajan present in the court and correctly identified by the witness has taken us there. The village was that of accused Rajan. We stayed in the village in the house of accused Rajan. Accused Rajan has stated that it is in his house. Except this house we have not resided in any other house. We had gone there in summer days and we returned back during the winter. First of all my mother had left that house in the village alone. I do not know where my brother had gone. I remained at the house alone. That is at the house of sister of accused where the mother of accused Rajan was also residing. My mother had taken police to the house and I returned with the police. Except Rajan nobody else had taken us to village of Rajan. At this stage, Id. APP wants to cross-examine the witness on certain points as she is resiling from her earlier statement. Heard Allowed.

XXXXXX by Id. APP.

I can identify accused Kalyan who is present in Court. It is correct that before we stayed at the house of Rajan we have stayed at the house of accused Kalyan for one day in which Kalyan was tenant. It is correct that initially I have forget to mention this fact. After I have stayed in my house one day police had taken me to hospital. I had not told the doctor that I have been raped.

XXXXX Shri R.P. Kasana, Adv. for the accused Soni, Gomti, Dugal and Rajan.

On the day we have gone to village myself, my mother, younger sister and my brother along with Rajan and Kalyan had gone there. At the house of Kalyan we had stayed for 6/7 days. One woman from near by jhuggi use to visit my mother in that jhuggi except this my mother used to remain in the house itself. I had also gone to visit the jhuggi of that woman but my mother had not gone there. There were many house nearby the said house of Kalyan. At the time we went to the village only accused Rajan was with us. We had gone on two wheeler scooter. We have started in the morning and reached during night. We had not met any police

person in the way. I do not remember that any police person was there in the way or not. In the house of Rajan all family members including children were residing who were grown up in age were residing. In the village women used to come at the house to meet but I do not know whether my mother also used to visit other women in the village since most of the time I use to remain in the fields. I use to sleep with my mother in the village. My other brother and sister used to sleep with my mother in the village. On that day when my brother brought the police I was in the house. In the village the men folk use to sleep in the night in a different house while the lady use to sleep in the house where we were staying. During the period we were in the village of Rajan, my father was in his village. Even at the time when we had gone to house of Kalyan at that time also my father was in his village. Today my father had accompanied my mother in the court. I do not know whether it was my father or my mother who had lodged the report in the police. When I returned back from the village along with the police to my house my father was not present in the house. My father had gone to someplace but I do not know to which place and he met us after 3 or 4 months. My mother had brought the police to take me as Rajan was not leaving me at my house. I do not know whether my mother had gone to Kashipur before we had gone to the house of Kalyan. I do not remember whether I had stayed at the house of Dharampal at Kashipur. I do not know whether the youngest child born to my mother was given birth by her at Kashipur. I also could not admit or deny whether the said child was delivered at Kalkaji or not. I do not know the name and address of the person who has taken my sister in adoption. I do not know whether any money had also exchanged hands between my mother and the person who adopted. The adoption ceremony has taken place in my presence at Nehru Place in Delhi. It is incorrect to suggest that the adoption ceremony took place at Kashipur. I do not know whether the person who had taken the adoption was relation of my mother or not. I do not know any person by the name of Dhanni Ram, residing at jhuggi in Kalkaji. In my presence, my mother and father had not talked about taking any money of the accused persons. We had gone to the village just to roam and for excursion. From the Kalkaji we had taken the bus. We had not told the neighbours that we are going for excursion. I do not know anything about the case. It is incorrect to suggest that I have been tutored by my brother.'

19. Deposition of Parmodi completely destroys the version stated by her mother. Far from the prosecutrix being separated from Pramodi and forcibly confined by the accused, testimony of Pramodi shows that they all lived with the family of accused Rajan. Menfolk used to sleep separately and women folk separately. She used to sleep with her mother.

20. PW-2 Dr. Neelam S. Banerjee, Senior Resident AIIMS who had examined Pramodi on 29.12.1997 deposed that on examination, hymen was intact. Rape was ruled out.

21. Prosecutrix, a mother of 4 children stated that accused raped her and wanted to sell her. Her daughter was snatched and she was confined in an isolated place. Accused were supposed to be depraved men. Yet they did not touch Pramodi. Would Pramodi, aged 11 years, not fetch a better price?

22. The entire prosecution version is full of concoction, lies and deceit. The prosecutrix appears to be a woman of easy virtue. Her husband had left her. She was pregnant. Accused knew her. She had lived with them in the village. Her daughter and son were with her. Families of the accused were in the house. There is neither abduction nor rape nor attempt to sell the prosecutrix. She has clearly blackmailed the accused.

23. It is rather unfortunate that the learned Additional Sessions Judge has not even bothered to note the inherent contradiction in the testimony of the prosecutrix. He has failed to note the evidence of her daughter. He has failed to note that on 4.11.1997, a month prior to 5.12.1997, the prosecutrix was moving freely. He has failed to note that her pregnancy was prior to the date of her alleged enticement.

24. Decisions are not nursery rhymes, to be recited like a parrot. Judgments have a meaning. They have to be understood and then applied. Like a parrot, the learned Additional Sessions Judge has picked up a few judgments and has opined that testimony of a rape victim needs no corroboration and it is safe to render conviction solely on the basis of testimony of a rape victim. He forgot that the law is that a rape victim is not an accomplice. There is no reason to disbelieve her,

provided her testimony is such that it inspires confidence and is not controverted by other evidence on record.

25. The warm and vigilant hands of a Judge are the best safety net at any criminal trial. At a criminal trial, the first victim of judicial laxity is Article 21 of the Constitution. The present case is one of such kind.

26. Appeals are allowed. Impugned judgment dated 3.12.2001 and order of sentence dated 4.12.2001 in Sessions Case No. 104/98 is set aside. Accused are directed to be set free if not required in any other case.

27. Copy of the judgment be sent to the Superintendent, Central Jail, Tihar for compliance and for being delivered to the appellants.

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