

Suresh Vs. the State

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Court : Delhi

Decided On : Dec-02-2005

Reported in : 2005CriLJ282; 126(2006)DLT176

Judge : Manmohan Sarin and; Manju Goel, JJ.

Acts : Indian Penal Code (IPC) - Sections 376, 376(2), 506 and 506II; Code of Criminal Procedure (CrPC) - Sections 164, 313 and 428

Appeal No. : Cri.A. No. 634/2003

Appellant : Suresh

Respondent : The State

Advocate for Def. : Ravinder Chadha, Addl. Public Prosecutor and ; Jagdish Prasad, Adv.

Advocate for Pet/Ap. : Satish Tamta, Adv

Judgement :

Manmohan Sarin, J.

1. This is an appeal preferred by appellant-Suresh against the judgment dated 18th July, 2003 and the order of sentence dated 19th July, 2003, by which appellant was convicted for offence under Section 376 IPC and sentenced to life

imprisonment and a fine of Rs. 10,000, in default of payment of fine, further SI for one year. Appellant was also sentenced to imprisonment for 7 years RI with a fine of Rs. 10,000/-, in default, SI for six months for the offence under section 506-II IPC.

2. The prosecution case, in brief, is that a minor girl 'A' aged about 8 years had been living with her brother-in-law Nand Kishore and her sister following the death of her parents.

3. On 21st July, 2000, Nand Kishore, her brother-in-law gave her Rs. 2/- to purchase medicine for eye. 'A' who had gone to purchase medicine did not return till late night. Nand Kishore lodged a missing person report at Police Post Prem Nagar and searched for her. On the next day, at about 1.30 a.m., Suresh the present appellant and one Prempal who lived in neighborhood, brought 'A' home. 'A' was terrified and did not say anything. In the morning, 'A' told that Suresh had committed rape on her. Further when she tried to raise alarm, he closed her mouth and threatened to kill her. Nand Kishore informed the police on 100 number. Prosecutrix 'A' was sent for medical check at Sanjay Gandhi Memorial Hospital. A site plan was also got prepared and a FIR under Sections 376 and 506 IPC was registered. Appellant was arrested and his disclosure statement was also recorded. Exhibits were sent to FSL and after completion of investigation, challan was filed.

4. The prosecution version as it emerges from the statement of prosecutrix is that she had lost Rs. 2/- given to her for purchasing medicine and she was sitting next to the temple, crying when Suresh came to her and took her inside the temple. He beat her, caught hold of her by neck and threatened to kill if she made any attempt to leave the place. Appellant/accused removed her underwear and tied her hands and made her lie down. He forcibly had sexual intercourse with her which hurt her. She kept on crying. Prosecutrix claims that he raped her and went to his shop, returned after some time and raped her again. Thereafter, the appellant put her on the stair case of a shop and he himself went inside his shop and slept. An old man from a nearby flour mill had seen her lying there and asked her to go home.

5. Appellant and his friend who runs a tailoring shop, thereafter brought her home and left. Suresh had threatened her that he would beat her if she disclosed the incident at home. Prosecutrix also identified the appellant as the person who had raped her. She alleges that she was taken inside the temple and her hands were tied and clothes removed and raped by the appellant three times.

6. Prem Pal, who had been examined as PW-4 corroborated the factum of prosecutrix being found sitting outside the shop belonging to the appellant in a terrified state. Her frock was also torn. Prem Pal deposed that since he knew that appellant slept in the shop, he woke him up and both of them brought and left her home.

7. Following injuries were found by Dr. Rashmi who had examined 'A' and Dr. Manju Goel who had done the gynaecological examination:-

1. Abrasion over left elbow right arm;

2. Scratch mark over lower part of abdomen;

3. Bruises on left and right thigh;

4. Tenderness over left leg;

5. Hymen was absent-labia ma

6. No collection of semen on labia minora;

7. No per vaginal examination done as prosecutrix was an unmarried girl. Finding was that sexual assault could not be ruled out and it can be confirmed after swab repeat.

8. It may also be noted, at this stage, that vaginal swab did not reveal evidence of spermatozoa. No signs of semen were found on the underwear of the prosecutrix. There were semen stains on the underwear of the appellant/accused. There were dirty stains on the frock but no sign of semen. Human blood was detected on the gauze cloth. During the cross-examination, Dr. Manju Goel was asked whether ``hymen being absent`` was a result of an internal injury, Dr. Goel stated that

hymen had been freshly ruptured, thus ruling out any old injury as cause of absence of hymen.

9. Mr. Satish Tamta, Learned counsel for the appellant has assailed the impugned judgment on the following grounds:-

(i) that the statement of prosecutrix was full of contradictions and fallacies. Hence cannot be made the sole basis of conviction. Medical evidence was not suggestive of rape and it does not corroborate the allegation of rape. No semen was detected on the labia majora or labia minora. The swab test was also not positive for semen.

(ii) There were no injuries on the genitals found. Reference was invited to Modi's Medical Jurisprudence to urge that in case of nubile virgins, the hymen, as a result of complete sexual intercourse, gets lacerated. One or more radiate tears are found in posterior half, the edges of which are red, swollen and painful and bleed on touching. It was urged that absence of injuries on private parts of either of the parties was also indicative and suggestive of there being no offence of rape. Reliance was placed in this connection on Rahim Beg and Anr. v. The State of U.P : 1972 CriLJ1260 to submit that absence of injuries on private parts were suggestive of innocence.

Similarly, the presence of semen stains on the underwear of the appellant could be on account of variety of reasons.

(iii) Real sister of the prosecutrix, who was a material witness had not been produced. The old man who had woken up prosecutrix was not produced. The improbability of the prosecutrix being detained in the temple under construction, which did not have doors and kept there for extended period of time even after her rape appears unlikely. Counsel urged that case was not free from doubt and appellant appears to have been falsely implicated.

(iv) Reference was also made to the statement made under Section 313 Cr.P.C to urge that brother of the appellant was running a chit fund wherein the prosecutrix's brother-in-law owed money to him. This was suggested as the motive of falsely

implicating the appellant.

(v) Prosecutrix's version that she was subjected to rape and then accused went to his shop and returned after one and half hours to rape her again and then again went to the shop and then raped on return was highly improbable. The factum of prosecutrix not informing her brother-in-law on the date of incident was again improbable. Similarly prosecutrix's version that after she was raped in the temple and then being made to lie outside the stairs and she remained sleeping also appeared incredible. The Judge has also not recorded any reasons for dispensing giving oath to the child witness.

10. Lastly, Mr. Tamta submits that Dr. Manju Goel had recorded absence of hymen in the MLC. The cross-examination of Dr. Manju Goel has been conducted in a manner which seeks to damage the accused. He submits that her response of hymen being freshly ruptured purports to damage the appellant and therefore, this part of the evidence ought to be ignored.

11. We have given our careful consideration to the submissions made by learned counsel for the appellant. Reference may be made to *Ranjit Hazarika v. State of Assam* : (1998)8SCC635 wherein the court held:-

“The argument of the learned counsel for the appellant that the medical evidence belies that testimony of the prosecutrix and her parents does not impress us. The mere fact that no injury was found on the private parts of the prosecutrix or her hymen was found to be intact does not belie the statement of the prosecutrix as she nowhere stated that she bled per vagina as a result of the penetration of the penis in her vagina. She was subjected to sexual intercourse in a standing posture and that itself indicates the absence of any injury on her private parts. To constitute the offence of rape, penetration, however slight, is sufficient. The prosecutrix deposed about the performance of sexual intercourse by the appellant and her statement has remained unchallenged in the cross-examination. Neither the non-rupture of the hymen nor the absence of injuries on her private parts, therefore, belies the testimony of the prosecutrix particularly when we find that in the cross-examination of the prosecutrix, nothing has been brought out to doubt her veracity or to suggest as to why she would falsely implicate the appellant and

put her own reputation at stake. The opinion of the doctor that no rape appeared to have been committed was based only on the absence of rupture of the hymen and injuries on the private parts of the prosecutrix. This opinion cannot throw out an otherwise cogent and trustworthy evidence of the prosecutrix.'`

The Supreme Court in a recent decision in *State of M.P. v. Dayal Sahu* AIR 2005 SCW 4839 had quoted with approval the above observations in *Ranjit Hazarika v. State of Assam* (Supra) and summed up the legal position with regard to conviction being based on the evidence of the prosecutrix alone which are as under:-

``A plethora of decisions by this Court as referred to above would show that once the statement of prosecutrix inspires confidence and accepted by the courts as such, conviction can be based only on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons which necessitate the courts for corroboration of her statement. Corroboration of testimony of the prosecutrix as a condition for judicial reliance is not a requirement of law but a guidance of prudence under the given facts and circumstances. It is also noticed that minor contradictions or insignificant discrepancies should not be a ground for throwing out an otherwise reliable prosecution case. Non-examination of doctor and non-production of doctor's report would not cause fatal to the prosecution case, if the statements of the prosecutrix and other prosecution witnesses inspire confidence. It is also noticed that the Court while acquitting the accused on benefit of doubt should be cautious to see that the doubt should be a reasonable doubt and it should not reverse the findings of the guilt on the basis of irrelevant circumstances or mere technicalities.'`

12. In the light of the above authorities, let us consider the prosecutrix's evidence in the present case. The evidence of the prosecutrix, PW-3 as recorded is clear and cogent. She had answered the questions put to her for determination of offence, reasonably well. She appears to understand the basics and what was truth and falsehood. Appellant was known to her. She has described how the appellant took her into the temple, tied her hands and pressed her throat and threatened her, removed her clothes and his own and committed the foul act (rape). She mentions that it pained. She has described how the appellant

thereafter left her outside the shop. Her testimony remained unshaken during cross-examination. She stated that she was raped thrice and after the first time, the appellant had gone to his shop then returned and repeated the act. She stated that as the temple was under construction, there was no pujari. She has also correctly described the approximate location of the temple. She has also described the reasons as to why she could not run from the temple because her underwear had been taken off and her hands were tied while her legs were free. There was no labour working in the temple. She explains that she was scared on account of threats given by the appellant and did not disclose anything to her sister and brother-in-law and only disclosed to them the next morning. The aspect of the girl being terrified and her frock being torn are also borne out from the testimony of PW-4 Prempal who admits that he and the appellant had left her at her house. The Magistrate who had recorded her statement under Section 164 Cr.P.C also noted, after searching questions being prosecutrix that she did not appear to be tutored witness or under any kind of undue pressure or coercion.

13. The main plank of the defense submission is that since semen stain was not found in the vaginal swab and there was no bleeding or injury on the genitals despite alleged repeated rape on the prosecutrix, rape was not proved by medical evidence. We are not impressed with this submission. As noted in the earlier paras, there were abrasion over left elbow right arm, scratch mark over lower part of abdomen, there were bruises on the left and right thigh, tenderness over left leg. Most importantly, hymen was found absent and as per Doctor it was freshly ruptured. It is to be noted that medical examination was not carried out immediately but on the next day. It was, therefore, not necessary to have found either semen or blood in the vaginal swab. Moreover, semen was found on the underwear of the appellant and the gauze cloth also tested positive for human blood. The appellant has been found to be capable of sexual intercourse.

14. No tenable cause or reason has been brought on record to show why either the prosecutrix or her brother-in-law would falsely implicate the appellant. Only a vague suggestion was made in the statement under Section 313 Cr.P.C. This could hardly provide any motive without any shred of evidence of any act of the appellant's brother or prosecutrix brother-in-law. Even as per plea put forth, no

money was owed to appellant by prosecutrix's brother in law. No credence can be given to such a plea.

15. The reason for the prosecutrix not making an attempt to escape from the temple during the interregnum has been duly explained. Firstly, the hands of the prosecutrix were tied and her underwear had been removed. In these circumstances, a minor girl of 8 years who is threatened by a young man and is subjected to the trauma of rape with threat to life being extended, her being badly traumatized and shaken is understandable. Rather her being in a terrorized state is borne out by the evidence of PW-4, Prempal who found her sitting outside the steps of a shop in a terrorized state. In the same state of mental shock and trauma, she did not narrate the entire incident to her sister and her brother-in-law at night, but could do so after composure on the next day.

16. In view of the aforesaid discussion, we find no infirmity or error in the judgment and uphold the conviction of the appellant under Sections 376 and 506-II IPC.

17. Coming now to the question of sentence, it is true that appellant has violated the person and committed a gory act of rape on a young minor girl of tender age of 8 years leaving deep scars on her. Counsel for the appellant submits that appellant is a young unmarried man of 22 years. He is a first offender. He is a cardiac patient. He has old aged parents. He has been continuously in jail since 2000. Besides, he has clean antecedents and was running a grocery shop. He had never fallen foul of law in past.

18. Considering the age of appellant and his being a first time offender, with no past antecedents of any crime and having already undergone five years of imprisonment, ends of justice would be met if the sentence is modified to 10 years of RI under Section 376(2) IPC with a fine of Rs. 30,000/- and in default, SI for one year and RI for seven years under section 506-II IPC with a fine of Rs. 10,000/- and in default, SI for six months. Both the sentences to run concurrently. Appellant also to be given benefit of Section 428 Cr.P.C. Fine, if recovered, be paid to the prosecutrix.

Conviction is upheld and the appeal stands disposed of with the sentences as modified above.

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