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Court : Rajasthan

Decided On : Aug-31-1950

Reported in : 1952CriLJ1563

Judge : Atma Charan, J.C.

Appellant : Har Nath

Respondent : The State

Judgement :

Atma Charan, J.C.

1. This is an appeal by Har Nath from the order of the learned Sessions Judge, dated 4.7.1950, convicting him under Section 376, Penal Code and sentencing him to undergo 3 years' rigorous imprisonment.

2. Mt. Santok (21) is said to be the victim and Mt. Annopi (8) is the daughter of her 'jeth'. The case of the prosecution is that on 22.8.1950 at about mid-day she along with her niece went to her field to fetch some ears of corn. When she was about to return, the appellant came from behind and caught hold of her. She began to struggle, and thereon the appellant threw her down 3-4 times and committed rape with her. Mt. Santok thereafter went back to her village, and reported the matter. She then lodged an f.i.r. at the P.S., and as a result of the investigation the appellant was put for trial under Section 376, Penal Code. The appellant in his statement before the trial Court denied the allegations of the prosecution, and his

case was that he had falsely been implicated at the instance of one Bachittar Singh, Naib-Kaindar of the Sawar Estate. The trial court disbelieved the defence, relied on the prosecution version of the case, and convicted and sentenced as aforesaid.

3. It is to be pointed out at the very outset that the prosecution version of the case has not appealed me in the least and appears to be full of improbabilities. The evidence of Mt. Santok is said to be corroborated by that of Ganesh and Mt. Anoopi. Ganesh went back on the statement made by him before the committing court and his deposition before that court accordingly was brought on the record of the trial court under Section 288, Criminal P.C. No doubt, the trial court did so correctly but the evidence of a witness who has swayed from one side to another could not be accepted unless there is sufficient corroborative evidence otherwise. It may be mentioned here that Ganesh on his own showing went on watching the alleged offence from the beginning to the end and also kept Mst. Annopi away at some distance from the scene. He neither raised a hue and cry for help nor ran to the help of Mst. Santokh though she was throughout crying for help. If any reliance is to be placed on this deposition, then it just shows that he was nothing less than an accomplice in the matter and, as such, no reliance could be placed on his evidence unless fully corroborated otherwise

4. Mst. Anoopi is said to be about 8 years old, and her statement is to the effect as to how the appellant had thrown down the prosecutrix and as to how he had sat down over her at the time. The trial Court in respect of her evidence has rightly observed that evidence of such witnesses should only be accepted with great caution and care. Mat. Anoopi in her statement says that the appellant had shown a knife at the time to Mst. Santokh. Mt. Santokh in the f.i.r., however, says that the appellant had just threatened to stab her with a knife. This clearly goes to establish that the statement of Mst. Anoopi more or less is based on what she had gathered subsequently from Mst. Santokh and others.

5. The sum total of the evidence of the prosecutrix herself appears to be that on the day and the time in question she along with Mst. Anoopi was coming back from her field with some ears of corn, when the appellant caught hold of her from

behind and felled her down inspite of the struggle offered by her. The appellant thereafter raped her inspite of a hue and cry raised for help by her. Her deposition by itself hardly carries any weight whatsoever unless it is corroborated otherwise. It is thus to be seen as to what other evidence, circumstantial or otherwise, is forthcoming in corroboration thereof. Admittedly both the appellant and the prosecutrix are married persons. The appellant is said to be fairly built and normally muscular. The prosecutrix, on the other hand, is said to be well-built, healthy and muscular. Had the sexual intercourse with her been committed, if at all, against her wishes, we would have expected to have found sufficient number of marks of injury on her person as well as that of the appellant. The medical evidence, on the contrary goes to show that there was hardly any struggle offered by her at the time. There were no abrasions, scratches or finger marks over the person of the appellant, which may be said to have been received at the hands of the prosecutrix. Dr. Kaghnbir Chand in his evidence says that he found no abrasions, scratches or finger-marks except a few finger and nail marks on both sides of the neck of the prosecutrix. The injury report, on the other hand, gives no specific details about those injuries. Had there been any struggle offered at the time by the prosecutrix as alleged by the prosecution, she certainly would have caused as well as received very many specific injuries i.e., abrasions, scratches and finger-marks.

6. It further appears that two partially broken churis were recovered from the person of the proseoutrix at the time of her medical examination. It is surprising that these two broken churis should not have fallen down at the place of the alleged offence, specially in view of the fact that the two persons are said to have offered a good struggle to each other. The discovery of the two partially broken churis at the time of the medical examination accordingly goes to suggest that probably something was going on behind the scene. It is surprising that these partially broken churis should not have been discovered by the Police even at the time of the lodging of the f.i.r. Any way, the discovery of the partially broken churls subsequently, in my opinion, goes to suggest that in all probability there was no struggle at all between the prosecutrix on the one hand and the appellant on the other at the time.

7. The medical examination of the prosecutrix shows that she had a prolapse of uterus about 2' outside her vulva. A forcible intercourse with such a woman would have certainly given a copious discharge of blood at the time. The report of the Chemical Examiner, on the other hand, goes to slow that there was only one very small patch of blood on the ghaghra of the prosecutrix. The presence of semen on the clothes of the appellant and the prosecutrix by itself, in my opinion, carries no weight whatsoever for, admittedly, both of them are married persons and had been putting on the same clothes for a considerable time.

8. There is then a certain indication on the record of the trial Court winch goes to suggest; otherwise. The appellant is said to have made a confession before a Magistrate The prosecution did not think it worthwhile to bring it on the record of the trial Court. The confession, any way, is admissible without proof as it was made before a Magistrate. There appears to be no reason as to why the confession should not be gone into, when it goes in favour of the appellant The perusal of the confession suggests that whatever took place, if at all, at the time was not without the consent of the prosooutrix.

9. Considering the entire evidence on the record of the trial Court it appears to me that the prosecution has failed to show that the appellant had sexual intercourse with the prosecutrix without her consent, if at all. The conviction and the sentence, in my opinion, must be set aside and the appellant acquitted.

10. It may be mentioned hero that the trial Court was wrong in disposing of the ease itself. The case should have boon referred to the Court for action under Section 215 of the Criminal P.C. It was for a Magistrate empowered under Section 30 of the Criminal P.C. to have disposed of the case.

11. The appeal accordingly is allowed, the conviction and the sentence of the appellant are set aside and he is acquitted the appellant is in custody, and be released forthwith unless required otherwise.

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