

Devendra Kumar @ Kalua Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Feb-28-2005

Reported in : RLW2005(2)Raj1467; 2005(3)WLC129

Judge : F.C. Bansal, J.

Acts : Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act - Sections 3(2)(V); Indian Penal Code (IPC) - Sections 3(2)(G), 376 and 376(2)(G); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : S.B. Criminal Appeal No. 385 of 2003

Appellant : Devendra Kumar @ Kalua

Respondent : State of Rajasthan

Advocate for Def. : S.N. Gupta, Public Prosecutor

Advocate for Pet/Ap. : Himmat Singh, Adv.

Disposition : Appeal allowed

Judgement :

F.C. Bansal, J.

1. The instant appeal has been preferred by accused-appellant Devendra Kumar @ Kalua against the Judgment dated 27.02.2003 passed by the learned Special

Judge (SC/ST Act Cases) cum Sessions Judge, Bharatpur whereby the accused appellant has been convicted for the offence under Section 376 of the Indian Penal Code and sentenced to suffer R.I. for 7 years and a fine of Rs. 5,000/-, in default of payment of fine to further suffer S.I. for one year. He has been acquitted of the charge under Section 3(2) (V), SC/ST (Prevention of Atrocities) Act.

2. Briefly stated the facts of the prosecution case are that on 23.07.2000 at 9.00 p.m. prosecutrix PW2 Reshma submitted a written report Ex.P2 before the Circle Officer, Bharatpur City at P.S. Mathura Gate, Bharatpur wherein it was interalia stated that today at about 5.30 p.m. she had gone to her employer (contractor) to receive her payment of wages. The contractor told her that payment would be made on next day. When she was returning to her house, accused Devendra @ Kalua, by casfe-Lodha met her on the way. Devendra's shop is situated in front of her house. On being enquired by accused Devendra she told that she was in need of the money but the contractor did not make payment of her wages. Accused Devendra assured her that money would be paid by him at his house and asked her to accompany him. Thereafter she accompanied the accused who took her to the second storey of a house situated in front of Bihari Ji temple. Two persons namely Praveen Kumar and Santosh were already there. Accused Devendra forcibly pushed her on a cushion and committed rape on her. When she tried to raise an alarm her mouth was gazed with a cloth. After accused Devendra she was also raped by Praveen and Santosh one by one. After having committed rape all the three accused fled away. She came to her house and disclosed the incident to her daughter Usha and son-in-law Vijay Singh. On the basis of the written report Ex.P2, FIR Ex.P3 was registered at P.S. Mathura Gate and investigation commenced. On completion of investigation a charge-sheet was filed against accused Praveen Kumar, Santosh Kumar and Devendra Kumar in competent Court. The learned Magistrate committed the case to the Court of learned Special Judge (SC/ST Act Classes) cum Sessions Judge, Bharatpur. The learned Sessions Judge framed charges under Section 376(2)(G) IPC and Section 3(2)(V), SC/ST (Prevention of Atrocities) Act against all the three accused, who pleaded not guilty act claimed to be tried.

3. To prove the charges framed against the accused, the prosecution examined as many as 14 witnesses. In their examination under Section 313 Cr.P.C. all the accused pleaded innocence and false implication. In defence no evidence was adduced.

4. The learned Trial Judge on hearing the final submissions made by both the parties, convicted and sentenced the accused appellant Devendra Kumar @ Kalua as indicated here-in-above and acquitted both the co-accused Praveen Kumar and Santosh Kumar of the charges under Section 3(2)(G) IPC and Section 3(2)(V), SC/ST (Prevention of Atrocities) Act.

5. I have heard the learned counsel for the accused appellants, learned Public Prosecutor for the State and with their assistance carefully scanned and scrutinized the material on record.

6. Assailing the impugned Judgment, the learned counsel for the accused-appellant submitted that the learned Court below did not at all meticulously scan and scrutinize the evidence on record and has committed a manifest error in coming to the finding of the guilt of the appellant. Learned counsel further contended that it is no doubt true that in law the conviction of an accused on the basis of the testimony of the prosecutrix alone, is permissible but that is in a case where evidence of the prosecutrix inspires confidence and appears to be natural and truthful. The evidence of the prosecutrix in this case is not of such quality and there is no other evidence which may even lend some assurance, sort of corroboration that she is making a truthful statement. It is submitted by the learned counsel that the Trial Court has not placed reliance on the testimony of the prosecutrix in respect of co-accused Santosh Kumar and Praveen Kumar and has acquitted both of them. In the opinion of the Trial Court, the prosecutrix is not a wholly reliable witness and, therefore, implicit reliance cannot be placed on her testimony. The medical evidence does not corroborate her testimony. Even her daughter and son-in-law have not supported her version so far as accused-appellant Devendra Kumar concerned. They have stated before the Trial Court that on coming back to her house the prosecutrix did not disclose the name of the accused who had committed rape on her. Learned counsel further contended that

false case of rape was got registered by the prosecutrix to extract money from the State Government in pursuance of the Order dated 29.09.2000 (Ex.D3) issued by the Social Welfare Department, Government of Rajasthan. Learned counsel also contended that from the prosecution evidence it is also clear that initially the prosecutrix stated to her daughter and son-in-law that the person whose shop is situated in front of her house had committed rape on her. The name of that shopkeeper is Murari who is brother of the accused-appellant. After the alleged incident Murari was beaten up by Vijay Singh and others. This fact also proves that the accused-appellant was not involved in the alleged crime, Lastly, the learned counsel submitted that appeal of the appellant be allowed and he be acquitted of the charge under Section 376 of the Indian Penal Code.

7. Learned Public Prosecutor appearing for the State has supported the impugned Judgment.

8. I have considered the aforesaid submissions made by the learned counsel appearing for the accused-appellant. In *Dilip and Anr. v. State of M.P.* (2002 W.L.C. (SC) Criminal 224) = (RLW 2002(2) SC 328), the Apex Court has observed as under:-

'The law is well-settled that prosecutrix in a sexual offence is not an accomplice and there is no rule of law that her testimony cannot be acted upon and made basis of conviction unless corroborated in material particulars. However, the rule about the admissibility of corroboration should be present to the mind of the Judge. In *State of H.P. v. Gian Chand*, (2001) 6 SCC 71, on a review of decisions of this Court, it was held that conviction for an offence of rape can be based on the sole testimony of the prosecutrix corroborated by medical evidence and other circumstances such as the report of chemical examination etc. if the same is found to be natural, trustworthy and worth being relied on. This Court further held:

'If evidence of the prosecutrix inspires confidence, it must be relied upon without seeking corroboration of her statement in material particulars. If for some reason the court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be

appreciated in the background of the entire case and the Trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations. . . .'

In *Madan Gopal Kakkad v. Naval Dubey*, (1992) 3 SCC 204, this Court has held (vide para 23) that lack of oral corroboration to that of a prosecutrix does not come in the way of a safe conviction being recorded provided the evidence of the victim does not suffer from any basic infirmity, and the 'probabilities of factor' does not render it unworthy of credence, and that as a general rule, corroboration cannot be insisted upon, except from the medical evidence, where, having regard to the circumstances of the case, medical evidence can be expected to be forthcoming.

9. Keeping in view the above observations of Hon'ble the Apex Court, the evidence of the prosecutrix is being scanned and scrutinized by me. The prosecutrix deposed before the Trial Court that on the date of the incident she had gone to her employer (the Contractor) to receive her payment of wages. The Contractor told her that payment would be made on next day. When she was returning to the house, accused Devendra @ Kalua met her on the way. On being enquired by accused Devendra she told that she was in need of the money but the Contractor did not make payment of her wages. Accused Devendra assured her that money would be paid by him at the temple of 'Bihari Ji'. Thereafter she went to Bihari Ji temple situated near the house wherein the alleged rape was committed. From Bihariji's temple the accused took her to a double storeyed house, closed the door and forcibly committed sexual intercourse with her in the second storey of the house. The prosecutrix further stated that after the accused appellant, co-accused Praveen Kumar and Santosh also committed rape on her. After the incident she came out of the house and went to police outpost Bharatpur Fort and police outpost Mathura Gate and reported the matter but no action was taken by the police. From police outpost Mathura Gate she came at her house and narrated the incident to her daughter Usha and son-in-law Vijay Singh. Usha and Vijay Singh accompanied her for lodging the FIR and she submitted written report Ex.P2 at P.S. Mathura Gate.

10. The Trial Court has not placed reliance upon the testimony of the prosecutrix in respect of Praveen Kumar and Santosh and acquitted both of them of the charge of rape. As per the testimony of the prosecutrix, on return at her house she narrated the incident to her daughter Usha and son-in-law Vijay Singh. Prior to the alleged incident the appellant was known to the prosecutrix as is evident from her statement but Usha and Vijay Singh have not corroborated her testimony so far as the appellant is concerned. It was admitted by the prosecutrix in her deposition that the shop of Murari, who is brother of the appellant, is situated in front of her house. The prosecutrix also stated that

^jks= dks nks iqfyl okys vk;sFks rFkk eqjkjh dks ys x;s----- eqjkjh o dyqvk dh 'kDy feyrh tqyrh gS rFkqiqfyl us ;g dgk fd tc rd dyqvk ugha vk tk;sxk rc rd eqjkjh dks ugha NksMsaxsvkSj eqjkjh dks nks fnu ckn NksM+k FkkA ;g ckr lgh gS fd eSaus iqfyl dks eqjkjhdh rjQ b'kkjk djds dgk Fkk fd blus esjs lkFk cykRdkj fd;k g SA**

11. PW14 Usha has stated in her testimony that

^fQj esjh eka fnu Nqikus dsckn esa ?kj okil vk;hA esjh eka ikxy lh gks jgh FkhA esjh eka us dgk fd lkeusokys yM+ds us esjs lkFk cykRdkj fd;k g SA esjh eka us fdlh ds uke ugha crk;SA fQjgeus igys lkeus okys dsflV okys yM+ds dks ihVk FkkA

^ftl dsflV okysa dks geusihVk Fkk] oks vkt vnkyr esa gkftj ugha g SA

12. PW12 Vijay Singh has stated before the Trial Court in his cross-examination that '

^;g lgh gS fd tc esjh lkl usdgk fd dsflV okysa us esjh bTtr ywVh gS] rks eSa Hkh nqdku ij x;k Fkk vkSj esjhlkl Hkh mldh nqdku ij x;h FkhA ;g lgh gS fd dsflV dh nqdku ij ,d yM+dk cSBk gqvKFkkA ;g lgh gS fd esjh lkl us eq>s ml yM+dk dh rjQ b'kkjk djds crk;k Fkk fd blus esjs lkFk cqjk dke fd;k g SA ;g lgh gS fd eSaus esjh lkl us ml yM+ds dh oghnqdku ij /kqukbZ dj nh FkhA

^xokg us rhuksa eqyftekuksadks ns[kdj dgk fd rhuksa vknfe;ksa esa oks vkneh ugha gS ftldh eSaus vkSj esjhlkl us dsflV okys dh nqdku ij mldh fiVk;h dh FkhA

13. From the testimony of Usha and Vijay Singh it is clear that the prosecutrix did not name appellant Devendra Kumar (a) Kalua as one of the accused who had committed rape on her but she told that the shopkeeper (Murari) sitting on the shop situated in front of her house had forcibly committed sexual intercourse with her.

14. In view of the testimony of Usha and Vijay Singh, no reliance can be placed on the testimony of the prosecutrix.

15. The medical evidence does not support the prosecution. The prosecutrix was examined by PW1 Dr. Manju Singh on 24.07.2000. Dr. Manju Singh has stated before the Trial Court that no injury was found on the genital organs of the prosecutrix. No other injury was found on the body of the prosecutrix at the time of her medical examination. She further stated that in her opinion, sexual intercourse did not take place with the prosecutrix. The prosecutrix also deposed that on the ground floor of the house wherein she was raped, some shops are situated and on coming out of the house she narrated the incident to the shopkeepers but none of them was examined by the prosecution. As per Site Plan Ex.P4, the house wherein the alleged rape was committed belongs to Tarachand Singhal. As per the testimony of the prosecutrix, one of the shopkeepers gave information over telephone about the incident to the owner of the house but Mr. Singhal has not been examined by the prosecution.

16. For the reasons stated above, the evidence of the prosecutrix cannot be safely relied upon to base a conviction. On and overall appreciation of her testimony, I have come to the conclusion that she is not a reliable witness and the prosecution has failed to prove that the prosecutrix was raped by appellant and thus the Trial Court has committed an error in convicting the appellant for the offence punishable under Section 376 of the Indian Penal Code.

17 In the result, the appeal of accused appellant Devendra Kumar (a) Kalua is allowed. While setting-aside the Judgment and order dated 27.02.2003 passed by the learned Special Judge (Sessions Judge), SC/ST Act Cases, Bharatpur, he is acquitted of the charge under Section 376 of the Indian Penal Code. He is in jail. He shall be released forthwith, if not required in any other case.

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