

Mohan Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-02-2005

Reported in : 2005CriLJ2127; RLW2005(3)Raj1560; 2005(2)WLC768

Judge : F.C. Bansal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 1060 of 2002

Appellant : Mohan Singh

Respondent : State of Rajasthan

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

Advocate for Pet/Ap. : N.C. Choudhary, Adv.

Disposition : Appeal allowed

Judgement :

F.C. Bansal, J.

1. The Instant appeal has been preferred by accused-appellant Mohan Singh against the Judgment dated 7-8-2002 passed by the learned Additional District and Sessions Judge (Fast Track), Jaipur, District Jaipur whereby the accused-

appellant has been convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to suffer S.I. for 7 years and a fine of Rs. 500/-, in default to further suffer S.I. for six months.

2. The case of the prosecution is that the appellant-Mohan Singh is the father-in-law of the prosecutrix PW-2 Chain Kanwar w/o Shakti Singh (PW-4). On the intervening night of 27th and 28th October, 1997 PW-4 Shakti Singh was sleeping at his maternal grandfather's home and in one of the rooms of the house belonging to the appellant, the prosecutrix was sleeping. At about 1.00 a.m. appellant asked the prosecutrix to open the door of her room on the pretext that her mother-in-law is not well. When the prosecutrix opened the door the appellant entered into the room, closed the door and thereafter forcibly committed sexual intercourse with the prosecutrix. At that time he was drunk and armed with a gun. When the appellant fell asleep in the same room, the prosecutrix came out and narrated the incident to her mother-in-law. Her mother-in-law asked her not to tell anybody about the incident. The appellant kept the prosecutrix for 1-11/2 months at his house, used to beat her daily and she was dropped thereafter at her parents' house. During this period the appellant got some papers written and signed by the prosecutrix. On reaching at her parents' house the prosecutrix narrated the incident to her mother and father and went to the police station along with her father PW-5 Inder Singh and lodged a written report Ex.P2 at. P. S. Sanganer, District Jaipur. On the basis of written report Ex.P2, the SHO registered FIR Ex.P3 and investigation commenced. On completion of investigation, charge-sheet was filed against the appellant in competent Court. In due course the appellant came to be tried for the offence under Section 376, IPC. The appellant pleaded not guilty and claimed trial.

3. To prove the aforesaid charge the prosecution examined as many as 13 witnesses. In his examination under Section 313, Cr.P.C. the appellant pleaded innocence. In defence DW--1 Ranjeet Singh was examined.

4. The learned trial Judge on hearing the final submissions made by both the parties, convicted and sentenced the accused-appellant as indicated hereinabove.

5. I have heard the learned counsel appearing for the accused-appellant, the learned Public Prosecutor for the State and have also perused the impugned Judgment as also the material on record.

6. Assailing the impugned Judgment, learned counsel for the accused-appellant submitted that the learned Court below did not at all meticulously scan and scrutinize the evidence on the 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 on record which may even lend some assurance, sort of corroboration that she is making a truthful statement. The testimony of the prosecutrix is not reliable and, therefore, the appeal be allowed. Learned counsel took me through the evidence on record and attention was drawn towards the infirmities of the prosecution case.

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

8. The prosecutrix stated that on the fateful night she was sleeping in her room alone as her husband was at his maternal grandfather's house. At about 1.00 a.m. appellant Mohan Singh asked her to open the door and told her that her mother-in-law is ill. When she opened the door the appellant entered into her room, closed the door, caused injuries with a gun, tore her clothes and forcibly committed sexual intercourse with her on cot. She shouted but her mother-in-law did not come to rescue her as she was also drunk and sleeping. Having committed rape the appellant fell asleep on her cot. She thereafter came to another room where her mother-in-law was sleeping and narrated the incident to her. Her mother-in-law asked her not to tell anybody about the incident. It was further stated by the prosecutrix that she was kept at his house by the appellant for 1 1/2 months after the incident. The appellant and his wife used to beat and threatened her and, therefore, she told no one about the incident. Her husband was not allowed to see

her by the appellant and his wife and, therefore, she could not inform him about the rape committed on her. The prosecutrix further deposed that 11/2 months after the incident, her husband took to her parents' house and having left her there he returned to Jaipur. She disclosed the incident to her mother who narrated it to her (the prosecutrix) father and Uncle. It was also stated by her that she went to P. S. Sanganer along with his father and Uncle and lodged a written report Ex.P.2.

9. PW-1 Nahar Singh and PW-5 Inder Singh who are uncle and father of the prosecutrix respectively, deposed that on arrival at their house the prosecutrix narrated the incident to them whereupon written report Ex.P2 was lodged with the police station.

10. In Dilip v. State of M. P., 2002 WLC (Cri) 224 : (2001 Cri LJ 4721) the Apex Court has observed as under (paras 12, 13) :--

'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 : (2001 Cri LJ 2548) 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 (para 13) : '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 : (1992 AIR SCW 1480), 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,

11. Keeping in view the above observations of Hon'ble the Apex Court, the evidence of the aforesaid witnesses has been scanned and scrutinized by me. On close and careful scrutiny of the evidence, I have found the following facts and infirmities in the prosecution case :--

12. As per the statement of the prosecutrix she was kept at his house by the appellant for 11/2. months after the incident. In cross-examination it was stated by her that during the said period of 11/2, months the appellant sent a telegram to her father and called him so that she may be sent to her parent house. On receiving the telegram her father came at the house of the appellant but she was not sent with him. PW-5 Inder Singh admitted in his cross-examination that on receiving the telegram he had gone to the house of the appellant. The prosecutrix did not state that she had disclosed the incident to her father when her father came at her in-laws house. This fact creates doubt in the testimony of the prosecutrix. The prosecution has not given any reason for not disclosing the incident by the prosecutrix to her father.

13. Admittedly the appellant is a handicapped person. His right forearm had to be amputated after he met with an accident prior to the alleged crime but the prosecutrix stated that when the appellant came in his room he was armed with a gun. She further stated 'while the appellant was committing rape on her he was having his gun in his hand. No reliance can be placed on such statement, of the prosecutrix.

14. As per the testimony of the prosecutrix, during her stay at her in-laws her husband used to sleep at his maternal grandfather's house. It was further stated by her that prior to the incident her husband never had sexual intercourse with her. Both she and her husband did not talk with each other. It was admitted by her that

before she was taken to her parents' house her husband had come to his father's house. She was taken to her parents' house by her husband but she never disclosed the incident to her husband. PW-4 Shakti Singh has not corroborated the version of his wife. He deposed that false case had been filed against his father. He used to reside with his father. He further stated that his wife had not informed him about the alleged rape.

15. It was admitted by the prosecutrix in her cross-examination that letter Ex.D3 is in her handwriting. Letter Ex.D3 was written to Shaitan Singh on 17-11-97 with whom she was allegedly having illicit relations. This letter reads as under :--

(Vernacular matter omitted.--Ed.)

16. PW-4 Shakti Singh also stated that his wife was having illicit relations with Shaitan Singh. She had written a letter to Shaitan Singh which he got and it was handed over to his father. In her examination-in-chief it was stated by the prosecutrix that during the aforesaid period of 11/2 months after the incident, the appellant got her signatures on two papers but in cross-examination it was stated by her that letter Ex.D3 was got written by the appellant 5-10 minutes after the rape. Thus, the prosecutrix herself contradicted her earlier statement given in the examination-in-chief.

17. It was alleged in the written report Ex.P2 that the appellant had committed rape on the prosecutrix on the intervening night of 27th and 28th October, 1997. As per Ex.P2 the incident of rape had taken place before Deepawali in the year 1997 but in her statement the prosecutrix stated that the incident took place 2-3 days after Deepawali.

18. Though the prosecutrix has denied her illicit relations with Shaitan Singh but having perused the entire statement of the prosecutrix, I have come to the conclusion that she was having illicit relations with Shaitan Singh and she had written the letter Ex.D3 to Shaitan Singh voluntarily. Before it was (the letter Ex.D3) sent to Shaitan Singh, her husband Shakti Singh got it and gave this letter to his father. Having come to know about the illicit relations of the prosecutrix with Shaitan Singh her father Inder Singh was called by the appellant through the

telegram and was informed about the illicit relations. It appears that Inder Singh was not prepared to take his daughter with him and, therefore, after few days the prosecutrix was dropped at her parents' house by her husband. Because of this reason false report of rape had been filed against the appellant.

19. It is apparent from the testimony of PW-1 Nahar Singh, PW-2 Chain Kanwar, the prosecutrix and PW-5 Inder Singh that the prosecutrix had reached her parents' house on 25th or 26th December, 1997 but the FIR was not lodged promptly and it was lodged after about six days on 1-1-1998 and the prosecution has not explained the delay in lodging the FIR. Looking to other facts and circumstances of the case, this delay also is fatal to the prosecution case.

20. In support of the version of the prosecutrix, the prosecution has not led medical evidence.

21. From the facts and infirmities noticed above, it appears that the evidence of PW-2 Chain Kanwar, the prosecutrix cannot be safely relied upon to base a conviction. On an overall appreciation of the evidence of the prosecutrix and her conduct, I have come to the conclusion that she is not a reliable witness and implicit reliance cannot be placed on her testimony. Thus, I am of the considered view that the prosecution has failed to prove that the prosecutrix was raped by the appellant and the trial Court has committed an error in convicting the appellant for the offence punishable under Section 376, IPC.

22. In the result, the appeal of accused-appellant Mohan Singh is allowed. While setting aside the Judgment and order dated 7-8-2002 passed by the learned Additional Sessions Judge (Fast Track), Jaipur District, Jaipur, the appellant is acquitted of the charge under Section 376 of the Indian Penal Code. He is in jail. He shall be set at liberty forthwith, if not wanted in any other case.