

State of Rajasthan Vs. Bhanwarlal

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Court : Rajasthan

Decided On : Sep-06-2000

Reported in : 2001(1)WLC325; 2001(1)WLN122

Judge : V.G. Palshikar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 363, 366 and 376

Appeal No. : S.B. Criminal Appeal No. 163 of 1984

Appellant : State of Rajasthan

Respondent : Bhanwarlal

Advocate for Def. : Vijay Bishnoi, Adv.

Advocate for Pet/Ap. : D.D. Kalla, P.P.

Judgement :

ORDER

Palshikar, J.

(1). Being aggrieved by the order of acquittal passed by the learned Sessions Judge, Bikaner on 5.1.84 in Sessions Case No. 128/82, the State has come up in appeal against the said acquittal on the grounds mentioned in the memo of appeal as also verbally canvassed before me.

(2). With the assistance of the learned P.P. and the learned counsel for the accused, I have scrutinised the record and reappreciated the oral and documentary evidence.

(3). The prosecution story as unfolded on reappreciation of the evidence is that on 3.9.82 a seven years' old girl named Soma was playing near her house on the road when the accused came there, took her into the house and raped her. At that time, the girl cried and hearing her cries, one Gordhan went to the house. On seeing him, the accused ran away. Gordhan took the bleeding girl to her mother and thereafter when the father of the girl returned, a First Information Report (FIR) was lodged at 9 AM on 5.9.82 in Police Station, Nokha. After investigation, the case was registered and the accused was charge sheeted under Sec. 363, 366 and 376 I.P.C. The learned Judge on appreciation of the evidence on record, came to the conclusion that the prosecution has failed to prove the guilt and, therefore, proceeded to acquit the accused of all the offences with which he was charged. Being dissatisfied with this order of acquittal, the State has come in appeal as aforesaid.

(4). The learned P.P. contended that the reasons given by the learned trial Judge in acquitting the accused are unsustainable in law. The delay caused in lodgment of the FIR is satisfactorily explained. The testimony of the prosecutrix is liable to be accepted. It is duly corroborated by the medical evidence and only for few minor contradictions, the acquittal should not have been recorded.

(5). Mr. Bishnoi learned counsel appearing on behalf of the accused submitted that the order of acquittal is correct, the delay in lodgment of the FIR is not explained. He claimed that the incident is alleged to have taken on 3.9.82. On 1.9.82 the complainant took the victim to the doctor, who examined her and that doctor was told that injuries have been caused by cow horn. Mr. Bishnoi contended, therefore, that non-examination of the doctor and Nurse by the prosecution and their witnesses is fatal to the prosecution and an adverse inference is liable to be drawn. Then Mr. Bishnoi relied on the evidence of the prosecutrix and pointed out that the witness has stated at one stage that the injury on her person is caused due to fall. He, therefore, claimed that in the circumstances, the order of acquittal

cannot be said to be unreasonable and, therefore, is liable to be maintained.

(6). The prosecution has examined as many as eight witnesses in this case to prove its case. P.W. 1 Bhera Ram is a witness to whom the mother of the prosecutrix told about the assault on the daughter. He is, therefore, a witness of immediate disclosure of assault on the prosecutrix. The cross examination of this witness is wholly inconsequential.

(7). P.W. 2 Chandu Ram is another witness of immediate disclosure. He has seen the prosecutrix, who was injured and was bleeding. He also states that Bhera Ram, P.W. 1 was with him when he was told about the assault. Thus, both P.W. 1 and P.W. 2 corroborate each other and they have seen the victim and injuries caused immediately after occurrence of the assault.

(8). P.W. 3 is the prosecutrix Soma who at the time of the assault, was only seven years old. The Court was satisfied that she can answer the questions put to her and was not administered oath. She has deposed that she was playing on the street when the accused Bhanwara took her into the kitchen of his house and ravished her. She has deposed the manner in which she was ravished and has stated that she was taken to hospital and was examined by a doctor. In her cross examination, she has stated that the accused levered into the house by offering her piece of a fruit and she has also answered the cross examination in relation to the allegations of rape. She has stated that where she was assaulted blood was lying on the floor. The incident is extremely

unfortunate and the girl has deposed in her cross examination

Then she says- From this deposition of the prosecutor, I have no manner of doubt that she has been brutally ravished by the accused. Her testimony was rejected by the learned judge because of her answers to leading questions in the cross examination, which read as under:

rqEgkjs [kwu eqyfte vij p<+krc vk;k ;k pksV yxus ls vk;k rqEgkjs pksV yxus ls [kwu vk;k Fkk ewyfte ds mijcSBus ls**

It will be seen that these questions were obviously leading in nature. In the first question when she was asked whether she is injured because of the accused or because of some other injury and she has deposed that it is because of the accused. In the next question, she was asked that you have a bleeding injury because of some other cause or because the accused assaulted her and she said because of some other cause. It will be seen that in both the cases, she has chosen the first option. In my opinion, merely because such questions were framed and asked to the prosecutrix, her testimony could not be wholly discredited.

(9). Next witness is P.W. 4 Mst. Jadav, mother of the prosecutrix Soma. She has told that when she came home, Soma told her that she was assaulted by Bhanwarlal and she was rescued by Gordhan. She then stated that when she saw the daughter, her condition was very bad, she was bleeding and was, therefore, taken to the hospital. The witness has been extensively cross examined. From the cross examination, it is apparent that the attempt on part of the accused to discredit the witness has failed. She has withstood the cross examination. She is, of course, not an eye witness. She, therefore, proves that the prosecutrix immediately disclosed of the assault to her (the witness) on her return.

(10). P.W. 5 Gordhan is the person who rescued the prosecutrix. He has stated that he heard the cries of a child and, therefore, went towards the noise and saw the accused raping the victim. So when she shouted, the accused got up and ran away. The girl was bleeding. He took her (the girl) to her house. It will be seen that the witness then states that he handed over the victim to Jhuma w/o Bhagirath and told her that Bhanwarlal assaulted the victim. He then states that said Jhuma washed the wound of the victim but inspite of that, bleeding did not stop. The testimony of this witness finds substantial corroboration in the cross examination of P.W. 4 Jadav Bai, mother of the victim when she has stated in the crossexamination that ^esjh tsBkuhus yM+dh ds i'kko djus dh txg o iSj tgka [kwu yxk gqv k Fkk ?ks fn;s FksA**

There is, therefore, no reason to disbelieve the testimony of P.W. 5 Gordhan when from the cross examination of P.W. 5 corroborating piece of evidence has come forward. The learned trial Judge unfortunately has not carefully scrutinised the evidence in this case. He could have seen that the incident was extremely condemnable and required very careful scrutiny.

(11). P.W. 6 Jele Singh is a police witness. P.W. 7 is Dr. Om Prakash Somani, who examined the prosecutrix. He corroborates the testimony of the prosecutrix and her mother in relation to the injury caused to the person of the prosecutrix Soma. He has stated that there was bleeding from the vagina of the prosecutrix. He has opined that she has been raped. He has described the injury on the person. He has also examined the accused and has deposed that he was a hefty fellow. The nature of the injuries deposed to by the doctor corroborate the allegations made by the prosecutrix and prove that it is case of brutal assault on the person of the child by the accused, that these injuries were caused. In my opinion, the testimony of the doctor P.W. 7 fully corroborates the allegations of the prosecution as made by the prosecutrix P.W. 3 and corroborated by other incidental and circumstantial evidence of taking of the prosecutrix to her house by Gordhan etc. P.W. 8 Jogendra Singh is the Investigating Officer.

(12). I have given careful thought to the entire evidence and I have no manner of doubt that in this case, the prosecution has proved beyond reasonable doubt the assault by the accused on the prosecutrix causing her bleeding injury. There is no reason whatever to disbelieve the prosecutrix or the circumstantial evidence of immediate disclosure nor there is any reason to disbelieve the other witnesses particularly Gordhan P.W. 5 who stated that he saw the accused raping the victim and running away of his shouting. In my opinion, the finding of the learned Judge of not guilty in such circumstances is shockingly perverse and deserves to be set aside.

(13). In the result, therefore, the appeal succeeds and is allowed. The order of acquittal is set aside, instead the accused is convicted u/S. 376 I.P.C. for raping a child of seven years old and is sentenced to undergo rigorous imprisonment for a period of ten years from the date he is lodged in prison again. The period spent by

the accused already in jail, shall be counted for the purpose of computing the period of ten years. The accused be taken in custody immediately and to remit to appropriate jail to undergo the sentence. His bail bonds are hereby cancelled.

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