

Pooran Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-17-2000

Reported in : 2001CriLJ91; 2001(2)WLN91

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 373 and 376; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313, 360 and 397; [Evidence Act, 1872](#) - Sections 113 and 114

Appeal No. : S.B. Criminal Appeal No. 543 of 1995 and 69 of 1996

Appellant : Pooran Ram

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, Public Prosecutor

Advocate for Pet/Ap. : G. R. Goyal, Adv.

Judgement :

ORDER

GARG, J.

1. The above-named accused appellant has preferred the appeal No. 543/1995 against the judgment and order dated 17.10.1995 passed by the learned

Additional Sessions Judge No.2, Sri Ganganagar in Sessions Case No. 40/94 by which he convicted the accused appellant for the offence under Sec. 376 IPC and sentenced him to seven years' Rigorous Imprisonment and a fine of Rs. 500/- and in default of payment of fine, to further undergo simple imprisonment for six months.

Note:- That accused appellant has earlier preferred S.B.Cr. Jail Appeal No. 494/95 against the same judgment and order and since regular appeal has been filed by him being S.B.Cr. Appeal No. 543/95 and the same is being represented by counsel, judgment is being passed in the main appeal and the jail appeal has been ordered to be tagged with the main appeal.

2. That this Court vide order dt. 15.1.96 issued suo moto notice u/Sec. 397 Cr.P.C. asking the accused appellant to show cause why the punishment of seven years rigorous imprisonment be not enhanced and for that, a separate S.B. Cr. Revision No. 69/96 has been registered and that revision would also be disposed of by this judgment.

(2). It arises in the following circumstances:-

PW 1 Laxmi lodged an oral report in the Police Station Sadar Sri Ganganagar on 29.7.94 at about 2.35 PM to PW4 Sahiram, SHO of that Police Station stating that before the alleged incident she used to live with her grand-mother and since 7-8 months back, she has come to the house of her father (present accused appellant) and, thereafter, she was living with her father, accused appellant. It is further alleged that accused appellant after taking liquor used to see her with lusty eyes and even in the presence of her mother PW 3 Kalawati, accused appellant teased her and upon that, PW3 Kalawati made hue and cry and since then accused appellant has become more annoyed. It is further alleged that on the last Monday in the night at about 10.00 PM when she was sleeping, accused appellant took her to the cot and after putting data in her mouth, he unclothed her and, thereafter, committed rape on her. It is further alleged in the report that this incident was told by her to her mother PW 3 Kalawati and when her mother PW 3 Kalawati made a complaint to accused appellant, he beat her.

It is further alleged in the report that thereafter, on 28.7.1994 at about 10.00 PM accused appellant after awakening PW 1 Laxmi, took her to his cot and put off her clothes and raped her twice for one hour. This incident was also narrated by PW 1 Laxmi to her mother PW 3 Kalawati and thus, a report in this respect has been lodged by PW 1 Laxmi.

On this report, PW4 Sahiram chalked out police FIR Ex.P/5 and started investigation. During investigation, both accused appellant and PW 1 Laxmi were got medically examined. The medical report of PW 1 Laxmi is Ex.P/2 and report about her age is Ex.P/4. The medical report of accused appellant is Ex.P/3. The accused appellant was arrested through Ex.P/7 on 31.7.1994.

After investigation, the police submitted a challan before the Court of Magistrate and, thereafter, the case was committed to the Court of Session.

The learned Additional Sessions Judge No. 2, Sri Ganganagar on 21.3.1995 framed charge against the accused appellant for the offence under Sec. 376 IPC for the incident which took place on 28.7.1994 at 10.00 PM. The charge was read over and explained to the accused appellant, who pleaded not guilty and claimed trial. In support of its case, the prosecution examined only four witnesses and some documents were got exhibited and, thereafter, statement of the accused appellant was recorded u/S. 313 Cr.P.C. and some documents were also produced by accused appellant. The accused appellant produced three witnesses in his defence and he was also examined as DW1.

The learned Additional Sessions Judge No. 2, after recording evidence and considering the material available on record, came to the conclusion that the prosecution has proved its case beyond reasonable doubt against the accused appellant for the offence u/S. 376 IPC and thus, through his judgment and order dated 17.10.1995, he convicted the accused appellant for the said offence u/S. 376 IPC and sentenced as stated above.

Aggrieved from the said judgment and order dated 17.10.1995 passed by the learned Additional Sessions Judge No.2, Sri Ganganagar, the accused appellant has preferred jail appeal as well as regular appeal.

(3). In this appeal, the learned counsel for the accused appellant has made the following submissions:-

1. That statement of prosecutrix PW 1 laxmi does not repose confidence as the same suffers from infirmities and is not corroborated by the medical as well as other evidence and hence, she should not be believed.

2. That whole story of committing rape is concocted one, as it is not possible to commit such type of rape as has been alleged by the prosecutrix PW 1 Laxmi in her report Ex.P/5 and in her statement as PW 1.

3. That prosecution story in respect of commission of offence of rape has not been corroborated by the medical evidence, inasmuch as, the medical report says that hymen of the prosecutrix PW 1 Laxmi was quite intact and there were only readiness around the vaginal orifice and thus, the manner in which rape has been committed, hymen should have been ruptured. Hence, whole prosecution story is concocted one.

4. That since there has been a litigation between the Kalawati, PW 3, mother of PW 1 Laxmi and the accused appellant previous to that incident and also there was a litigation between the Mama of PW 1 Laxmi with the accused appellant, therefore, this false case has been lodged by PW 1 Laxmi against the accused appellant.

5. That learned Additional Sessions Judge No.2 has not considered the affidavits Ex.D/1 of PW 1 Laxmi and Ex.D/3 of PW 3 Kalawati produced in defence and further, defence evidence has not been correctly and properly appreciated by the learned Additional Sessions Judge No. 2 and, therefore, findings of conviction should not be sustained and accused appellant is entitled to acquittal.

6. That since there were loopholes in the investigation of the case, therefore, accused appellant should be acquitted of the charge u/S. 376 IPC.

(4). On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Additional Sessions Judge No. 2, Sri Ganganagar.

(5). I have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

(6). Before proceeding further, first medical evidence in this case should be seen.

(7). The medical report of PW 1 Laxmi is Ex.P/2 and the same has been admitted by the learned counsel for the accused appellant in the lower court and from perusing it, it appears that no external injury was found and there was redness around the vaginal orifice, but hymen was intact and vaginal of PW 1 Laxmi admits one finger and age of PW 1 Laxmi was assessed nearabout 17 years, as per Ex.P/4.

(8). Before proceeding further something should be said whether in rape case corroboration to the statement of the prosecutrix is essential or not before convicting an accused person.

(9). This problem was considered by the Hon'ble Supreme Court earlier in the year 1951 in Rameshwar Kalyan Singh vs. State of Rajasthan (1) and taking into considerations both Sec. 133 and 114(b) of the Indian Evidence Act, answered the question in the following manner:-

'The rule, which according to the cases has hardened into one of law, is not that corroboration is essential before there can be a conviction but that the necessity of corroboration, as a matter of prudence, except where the circumstances make it safe to dispense with it, must be present to the mind of the Judge, and in jury case must find place in the charge before a conviction without corroboration can be sustained. The tender years of the child which is the victim of a sexual offence, coupled with other circumstances appearing in the case such, for example, as its demeanour, unlikelihood of tutoring and so forth, may render corroboration unnecessary but that is a question of fact in every case. The only rule of law is that this rule of prudence must be present to the mind of the Judge or the jury as the case may be and be understood and appreciated by him or them. There is no rule of practice that there must, in every case, be corroboration before a conviction can be allowed to stand.

Further, when corroborative evidence is produced it also has to be weighed and in a given case, as with other evidence even though it is legally admissible for the purpose on hand, its weight may be nil.

It would be impossible, indeed it would be dangerous to formulate the kind of evidence which should, or would be regarded as corroboration. Its nature and extent must necessarily vary with the circumstances of each case and also according to the particular circumstances of each case and also according to the particular circumstances of the offence charged. But to this extent the rules are clear:-

1. It is not necessary that there should be independent confirmation of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant or the accomplice should in itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it provable that the story of the accomplice (or complainant) is true and that is reasonably safe to act upon it.
2. The independent evidence must not only make it safe to believe that the crime was committed but must in some way reasonably connect or tend to connect the accused with it by confirming in some material particular the testimony of the accomplice or complainant that the accused committed the crime.
3. The corroboration must come from independent sources and thus ordinarily the testimony of one accomplice would not be sufficient to corroborate that of another.
4. The corroboration need not be direct evidence that the accused committed the crime. It is sufficient if it is merely circumstantial evidence of his connection with the crime.'

(10). The law laid down was further approved by the Hon'ble Supreme Court in the following cases:-

1. Ram Murti vs. State of Haryana (2)
2. Gurucharan Singh vs. State of Haryana (3)

3. R.K. Agrawal vs. State of Orissa (4)

4. Rafiq vs. State of U.P. (5)

5. Sheikh Zakir vs. State of Bihar (6)

6. Bharveda Bhigin Bhai vs. State of Gujarat (7)

7. State of Maharashtra vs. Chandra Prakesh Kewal Cand Jain (8)

8. Karnel Singh vs. State of M.P. (9)

9. State of Punjab vs. Gurmit Singh (10)

(11). It may further be slated here that prosecutrix of the sex offence cannot be regarded as an accomplice or cannot be put on par with an accomplice, actually she is a victim of the crime.

(12). Thus, corroboration of the testimony of prosecutrix in rape case is not required as a rule of law. However, corroboration in such cases is required as a matter of prudence and this rule of prudence has now almost hardened into rule of law. The rule of prudence which has been hardened into rule of law is that the rule as to corroboration must be present in the mind of Judge and must have been incorporated in the judgment.

(13). Keeping the above principles in mind, the facts of the present case are being examined.

(14). In this case, the alleged incident of rape as mentioned in the report Ex. P/5 by PW1 Laxmi has taken place twice and the report has been lodged on 29.7.1994, though the second incident took place on 28.7.1994. Thus, it does not appear that there is any delay in lodging FIR in the present case.

(15). PW 1 Laxmi in her statement has clearly stated that accused appellant took her to his cot and committed rape on Monday and, thereafter, in the night of 28.7.1994 again he committed rape. She has admitted the following facts in her cross-examination:-

1. That she was married after three months of the alleged incident.
2. That she does not know whether any case pertaining to the taking away of accused appellant by her Mamas is pending or not.
3. That when accused appellant committed rape on her, she did not receive any injury.
4. That at the time of commission of offence of rape, the accused appellant put his penis fully in her vagina and on that she felt pain and some blood came out.
5. That she has not executed affidavit Ex.D/1 in favour of accused appellant.

(16). PW 3 Kalawati is the mother of PW 1 Laxmi and wife of the accused appellant, She has corroborated fully to the statement of her daughter PW 1 Laxmi about the commission of rape by accused appellant. She has denied the fact that there was litigation and she has also denied that she executed affidavit Ex. D/3 in favour of the accused appellant.

(17). PW 4 Sahiram is the I.O. and he has admitted that she did not take the clothes which were worn by PW 1 Laxmi at the time of commission of rape on her. It is also correct that litigation was going on between the accused appellant and his brother-in-law.

(18). In my opinion, in the present case, if we go through the statement of PW 1 Laxmi, it does not appear that she is telling lie. The accused appellant is her father and such type of incident where father commits rape with his own daughter comes rare in picture and this incident is one of them. From the defence evidence, it also appears that some litigation between PW 3 Kalawati and her husband accused appellant was going on earlier, as is evident from the judgment Ex. D/9 dated 17.4.1995. By the said judgment Ex.D/9 passed by the Judicial Magistrate First Class No. 1, Sri Ganganagar, accused appellant was acquitted of the charges u/S 498A, 406 and 323 IPC. Further, from the judgment Ex. D/6 dated 6.7.1995 passed by the Judicial Magistrate First Class No. 1, Sri Ganganagar, it also appears that there was litigation between accused appellant and his brother-in-law. But, simply because of these litigations, it cannot be presumed nor it can be

imagined that a false case would be lodged by the PW 1 Laxmi against her own father.

(19). Hence, the argument that a false case has been lodged against the accused appellant by PW 1 Laxmi is totally frivolous and the same is rejected.

(20). Merely because doctor found that vagina admits one finger, it cannot be inferred that there was no penetration as the muscles must have contracted by then. The Hon'ble Supreme Court has also stated in so many cases that absence of injuries on prosecutrix is not fatal to prosecution case. Thus, it cannot be said that whenever resistance is offered there must be some injury on the body of the victim.

(21). In the present case, redness around the vaginal orifice of PW 1 Laxmi was found and this fact itself is sufficient to constitute that offence of rape was committed by accused appellant with PW 1 Laxmi. It may further be stated here that in India under Sec. 375 IPC, it is clearly mentioned that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. Thus, the argument that if sexual intercourse is committed by accused appellant as stated by PW 1 Laxmi, her hymen should have been ruptured and since her hymen has not been ruptured, whose story of rape should be treated as false are, is wholly untenable, inasmuch as, penetration is sufficient and there is redness around the vaginal orifice of PW 1 Laxmi, which leads to the conclusion that some sort of penetration was there and if her hymen is not ruptured, it does not mean that no rape was committed by the accused appellant. Hence, this argument also would not be helpful to the accused appellant, looking to the facts of the present case.

(22). It may be stated here that in rape cases, Court must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's (prosecutrix) version.

(23). Looking from this point of view also, it can be said that statement of PW 1 Laxmi inspires confidence and to some extent it is also corroborated by medical evidence and it is further corroborated by the evidence of PW 3 Kalawati, her

mother. Especially when the alleged rape was committed by the father of the prosecutrix, to insist on further corroboration would be to equate prosecutrix PW 1 Laxmi with an accomplice to a crime and thereby insult womanhood.

(24). Therefore, examining the case from every point of view, the statement of PW1 Laxmi inspires confidence in the mind of the Court and the learned Additional Sessions Judge No.2 has rightly believed the statement of PW 1 Laxmi and has rightly convicted the accused appellant for the offence u/S. 376 IPC and thus, the findings of the learned Additional Sessions Judge No. 2 in this respect are liable to be confirmed.

(25). So far as the argument with regard to Ex. D/1 affidavit dated 11.10.1994 by PW 1 Laxmi and E. D/3 affidavit dated 11.10.1991 by PW3 Kalawati is concerned, in my opinion, the learned Additional Sessions Judge No. 2 has rightly not placed reliance on them, as these affidavits are not sufficient to rebut evidence of PW 1 Laxmi and PW 3 Kalawati; which has been recorded in the Court and these affidavits cannot be used as evidence to prove particular facts, it may further be stated that affidavits are not included in the definition of evidence in Sec. 3 of the Indian Evidence Act.

(26). Thus, it is held that declaration in the shape of an affidavit cannot be received as an evidence of the facts stated in it and thus, these affidavits Ex. D/1 and Ex. D/3 are not sufficient to rebut the statements of PW 1 Laxmi and PW 3 Kalawati recorded in the Court. Hence, these affidavits Ex. D/1 and Ex. D/3 would not be helpful to the accused appellant in any manner.

(27). No doubt there is some loopholes (such as clothes of PW 1 Laxmi were not seized) in the investigation conducted by PW 4 Sahiram, SHO, but such type of loopholes in the investigation left designedly to help accused at the cost of poor prosecutrix and acquittal of accused on these grounds would not be justified as it would be adding insult to injury. Hence, the argument that since there were some loopholes in the investigation, therefore, accused appellant be acquitted, would not be helpful to the accused appellant. On this point, decision of the Hon'ble Supreme Court in State of Punjab vs. Gurmit Singh (Supra) may be seen.

(28). Thus, for the reasons stated above, the appeal filed by the accused appellant is liable to be dismissed and the findings of the learned Additional Sessions Judge No.2 convicting the accused appellant for the offence u/S. 376 IPC are liable to be confirmed.

(29). Before parting with this appeal, something should be said about the notice issued by this Court suo moto u/S. 397 Cr.P.C. asking the accused appellant to show cause why the punishment of seven years rigorous imprisonment be not enhanced and for that S.B. Cr. Revision Petition No. 69/96 has been registered.

(30). In Ved Prakash vs. State of Haryana (11), the Hon'ble Supreme Court on sentence propounded its opinion in the following manner:-

'Sentencing an accused person is a sensitive exercise of discretion and not a routine or mechanical prescription acting on hunch. The trial court should have collected materials necessary to help award a just punishment in the circumstances. Even if Sec. 360 Cr.P.C. is not attracted, it is the duty of the sentencing Court to be activist enough to collect such facts as have a bearing on punishment with a rehabilitating slant.'

(31). Sexual offences, however, constitute an altogether different kind of crime which is the result of the perverse mind. The perversity may result in homosexuality or in the commission of rape. Those who commit rape are psychologically sadistic persons exhibiting this tenancy in the rape forcibly committed by them, particularly when the rape is committed by a father with his own daughter.

(32). In my opinion, if a person commits rape with his own daughter, such person cannot be regarded as a normal man. Thus, in the present case, accused appellant is psychologically sadistic person and some psychological treatment should be given to him during the period of detention, but such type of treatment is given in India or not, it is not clear. To prevent such type of offences, psychological treatment is must to such persons and if such type of facility is not available in India, it should be provided in jail.

(33). Looking to the facts and circumstances of the case, in my opinion, punishment of seven years rigorous imprisonment awarded to the accused appellant is sufficient and thus, the notice dated 15.1.1996 issued by this Court to the accused appellant should be discharged. Hence, the revision is liable to be rejected.

(34). In the result:-

1. The appeal filed by the accused appellant Pooran Ram being S.B. Cr. Appeal No. 543/1995 is dismissed, after confirming the judgment and order dated 17.10.1995 passed by the learned Additional Sessions Judge No. 2, Sri Ganganagar.
2. The revision being S.B. Cr. Revision No. 69/96 is rejected and the notice dated 15.1.1996 issued by this Court is discharged.

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