Pappu Vs. the State

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Court : Rajasthan

Decided On : Sep-28-1981

Reported in : 1981WLN(UC)284

Judge : M.B. Sharma, J.

Appeal No. : S.B. Criminal Appeal No. 735/76

Appellant : Pappu

Respondent : The State

Disposition : Appeal dismissed

Judgement :

M.B. Sharma, J.

1. Accused appellant Pappu has been convicted by the learned Addititional Sessions Judge, Hanumangarh Under Section 376 IPC and sentenced to undergo four years rigorous imprisonment and to pay a fine of Rs. 500/-, in defult of payment of which he has further to suffer two months rigorous imprisonment.

2. In a nutshell the case of the prosecution is this. One Gafoor Khan is the father of Smt. Phoola, PW 1. His field and the field of Taru, father of accused appellant are adjacent to each other in Bhukarka-ki-rohi. Smt. Phoola aged 16 years along with her younger brother Munshi then aged about 12-13 years had gone to her

fields for work. She was conducting weeding operations in her field and it is alleged that at 11 A.M. the accused along with three others viz. Ramu, Suresh and Raju came there. The accused appellant is said to have caught hold of Phoola and he and others took her to a room in the fields of accused. It is alleged that Phoola was placed on a cot and the accused appellant and other ravished her. She put resistance but to no effect. It is further alleged that she was made to gulp liquor, half bottle of it and became unconscious and also vomitted. The accused appellant is said to have shown a pistol to the younger brother of Phoola as a result of which the brother went away.In the evening at about sun set Munshi, younger brother of Phoola went to his house and narrated the incident to Smt. Salma. Smt. Salma came to the field and saw her daughter Phoola was lying there. She was taken to the house. On the next day of occurrence on February 3, 1974 at about 12.30 in the noon, a report was lodged by Phoola in police station, Nohar, District Ganganagar and investigation was set in motion.

3. Phoola was sent for medical examination and Dr. Jagdish Prasad PW 4 examined her on February 3, 1974 at 4.50 P.M. He found the following injuries on her person:

1. Scratches over both cheeks more on left side.

2. Blood and semen stains on the clothes.

3. She was in menstural phase vagina full of blood.

4. Hymen perforated badly all around tags which are inflamed.

5. Multiplescratches on the leftthigh.Also onrightthigh and leg.

6. Public hair sent for chemical examination.

In the opinion of the doctor. Phoola has been raped badly by more than one person.

4. The S.H.O. Shri Hari Singh PW 5 after the report had been lodged in the police station, went to the spot and prepared the site plan Ex. P. 4. A hair clip which was identified by Phoola as belonging to her was found in the room where she was

ravished. It was found in the almirah. He also noticed that there were some marks which suggested that she had been raped. The accused appellant was arrested on February 11, 1974. at about 11 a.m. Other accused persons were also arrested and the accused appellant along-with two others was sent for medical examination and that was only to know as to whether the accused were capable of doing sexual intercourse. Dr. Jagdish Prasad PW 4 examined the acaused on the same day and reported that the accused and two others who were sent to him for medical examination were mature and were capable of sexual intercourse. The 'ghaghara' which Phoola was wearing at the time of the rape was also seized and was was sent for chemical examination. The chemical examiner in his report Ex. P. 7 found that there was human semen in 'ghaghara'. Blood was also detected.

5. Accused along with three others was tried, They pleaded not guilty to the charge. The prosecution examined as many as five witnesses. The accused were examined Under Section 313 Cr PC to explain the circumstances which appeared against them. The accused stand on bare plea of denial. The case set up by him is that his father Tarachand has enmity with Chhotu and Bishna residents of village Bhukarka. It was political enmity. Father of Phoola belongs to their group and that is why he has been falsely implicated at the instance of Chhotu and Bishna. It was also stated by the accused in his statement that on the day of incident one Prabhu had come to his field and told him that Sohan and Phoola were taking liquor in that 'kotha' of the accused. Sohan was armed with a gun. Sohan and Pooran are said to be persons belonging to the group of Chhotu and Bishna and instead of them, he has been falsely implicated. DW 1 Rajaram was examined on behalf of Raju accused, who was acquitted by the Additional Sessions Judge, The learned Judge placing reliance on the prosecution, convicted the accused, whereas the other three persons were acquitted of the charge levelled against them.

6. I have heard the learned Counsel for the appellant and Dr. Bhandawat, Public Prosecutor on behalf of the State and have gone through the record of the case. The contention of Mr. Mehta is that the case rests on the solitary statement of Phoola, PW 1 and she cannot be said to be a witness of sterling worth and as such placing reliance on her testimony, the accused cannot be convicted. He further contends that the various checks are available on the record and if the

statement of Phoola is scrutinised in the light of those checks, it does not stand to the test of scrutiny. According to him Phoola in her statement had admitted that she had gone to jail and taken part in the identification parade of the accused persons but accused petitioner was not identified by her. According to the learned Advocate this alone is sufficient to acquit the appellant of the charge against him. The learned Public Prosecutor has supported the judgment of the trial court.

7. So far as the age of Phoola is concerned, she was definitely more than 16 years on the date of the alleged occurrence. Dr. Jagdish Prasad PW 4 clearly stated that there was no X-ray machine available and, therefore X-rays of the various joints to ascertain the age of Phoola could not be taken. Smt. Salma PW 2 does not say as what was the age of Phoola on the day. Phoola has given her age as 16 years. Thus on the matter on record, it can be said that Phoola was aged more than 16 years on the day of occurrence. It may be stated that when the occurrence took place, Phoola was unmarried and only after six months of the occurrence she was married.

8. On the statements of Phoola as well as Jagdish Prasad P.W. 4, I am of the opinion that the conclusion of the trial court that Phoola was ravished was correct. 'Besides the statement of Phoola P.W.I that four persons including the appellant subjected her to sexual intercourses look at the injury report which has been proved by Dr. Jagdish Prasad P.W.4 shows that it does not appear to be case of sexual intercourse with consent not amounting to rape. She was in menstural phase and not only her hymen was perforated badly and there were all around tags which were inflamed, but there were also multiple scratches on the, right and left thigs. There were also scratches over cheeks Human semen was also collected and sent for chemical examination, Thus it can be said that she was subjected to sexual intercourse amounting to rape within the meaning of Section 376 of the I.P.C.

9. Now the question is as who is responsible for this occurrence, whether it is the accused or not? Before I enter into this discussion on the evidence on record, it may be stated that in such cases prudence requires that there should be corroboration of the statement of the prosecutrix. The corroboration can be from

various circumstances, but the first information report Ex. P. 1 which was lodged by none else but by Phoola though furnishes corroboration but cannot furnish independent corroboration as held by their Lordships in Kamail singh and Anr. v. State of Punjab AIR 1954 S.C. 204 In case an interested witness makes a verbal statement as regards the existence of certain facts and it is possible for the court to put it to a test in the light of checks available on record, before it is accepted, the court should test it and unless it is corroborated, it should not be relied upon. See Dhanna v. State 1950 RLW 357. I will later on advert to the statement of Phoola P.W. 1 and will also discuss the argument of the learned Counsel for the accused appellant as to whether her statement is corroborated by other evidence on record For the present T will deal with the various material contradictions which in the opinion of the learned Advocate make her statement unacceptable. According to the learned Advocate Phoola has stated that her cheeks were bitten by the accused person when she was ravished but there were no marks of tooth bite. Though she has stated that she had also bitten the cheeks of the accused but no such marks were found on the cheeks of the accused. She stated that she was dragged upto a long distance from her fields to the fields of accused but there are no injuries on her buttock or back. She is said to have consumed about half bottle of liquor though by force, but no bottle was found at the time of site inspection. In spite of her crying for about two hours, none was attracted. According to her though there was blood on the cot as well as on the earth, but the S.H.O' did not notice any blood either on the cot or on the floor. The bundle of grass which she had collected is said to have been left by her but was not noticed by the S.H.O., though she states that she had shown it to the S.H.O. It is also contended that she did not disclose the incident to her mother and brother and also did not disclose the name of the appellant which is against normal human conduct. By reference to the above infirmities in the statement of Phoola, as already observed, the learned Advocate submits that she is not a witness of sterling worth and she introduced more accused persons than accused appellant and that case has been found to be false by the learned Additional Sessions Judge.

10. I have considered the above contradictions in the light of the material available on record. 1 have already said earlier that it cannot be disputed that she was subjected to sexual intercourse amounting to rape within the meaning of Section

376 of the Indian Penal Code. Dr. Jagdish Prasad stated that she was subjected to sexual intercourse by more than one persons. No doubt, the learned Sessions Judge has not placed reliance on her statement so far as the other accused persons are concerned for reasons stated in his judgment but looking to the condition which was found at the time of medical examination the possibility of her being subjected to sexual intercourse by more than one persons cannot be excluded. In the opinion of the doctor she was a well built girl and the fact that injuries were found on her thihgs and legs goes to show that she put resistance before she ultimately submitted herself to those who ravished her. Dr. Jagdish Prasad PW 4 clearly stated that in a case of sexual intercourse with consent, that part of the thighs where the injuries were found never receive injuries. The fields of the accused appellant are nearby the fields of the father of Phoola as will appear from the perusal of the site plan Ex. P. 4. That apart, PW 1 Phoola states that she knew the accused because his fields are nearby. In her own words she knew the accused by face because their fields are nearby. It was also stated that she never knew the name of the accused prior to the occurrence and only knew the accused by face. This is not so only in her statement in the court but if the FIR Ex. P. 1 is looked into, there is a clear mention that she only knew Ramu by name and so far as the accused appellant and two others who have been acquitted are concerned, she came to know their names when the accused persons were calling each other by name. Thus it can be said that she knew the accused appellant, the son of Tarachand who was having his fields adjacent to the fields of the father of Phoola by face and came to know the name of the accused only on the day of the occurrence. No doubt there are no cheek bites but Dr. Jagdish Prasad only found scratches on both cheeks and more on the left side. In his opinion, they could not be result of teeth bite. According to him there are semi circular bruises as a result of teeth bite. Whether the scratches are by teeth bite or not, at least it can be said that there were scratches on both the cheeks and the duration suggested that they were received at the time when she was ravished. So merely because the doctor did not find cheek bites and only scratches, it cannot be said that the doctor contradicts her so far as her statement to that effect is concerned. So far as any injury on the person of accused appellant is concerned, it maybe stated that the occurrence took place on February 2, 1974 and the accused was only arrested on

February 11, 1974 that is, on the tenth day of the occurrence. The possibility of disappearance of any marks or injuries as result of insistence by Phoola at the time she was being subjected to sexual intercourse cannot be excluded in a period of ten days. That apart, the doctor was only asked by Shri Hari Singh to examine the accused as to whether he was capable of sexual intercourse or not. If there would have been any injury on the person of the accused at the time of his arrest it would have been mentioned in the arrest memo. Even assuming that there was no injury on the person of the accused on the tenth day of the occurrence, it cannot be said that the statement of Phoola that she resisted and also had bitten the accused with her teeth is wrong.

11. No doubt, no blood was found on the cot and floor as stated by Phoola PW 1 and so also a bundle of grass which is said to have been left by Phoola in her fields when the accused persons took her. To my mind, these things are not such which effect the substratum of the prosecution case. No doubt, in her statement PW 1 Phoola has stated that she had bitten the cheeks of the accured so severely that blood was coming out and had also fallen on the clothes, but that too will not affect her statement which as I presently show was corroborated by many circumstances appearing on the record. It may be stated here that so far as Phoola or her father Gafoor is concerned, it is not the case of the accused that there was enmity between Gafoor Khan and the accused or his father as a result of which the accused has been falsely implicated. The case of the defense is that there were factions in the village and the father of Phoola belongs to the faction of Chhotu and Bishna. Chhotu and Bishna also went with Phoola to the police station when she went to lodge the report on February 3, 1974. But there is no materia] on record that the father of Phoola belongs to the faction of Chhotu and Bishna and that apart, even if it would have been so, no girl will bring a false charge of rape against any body only on account of such ground. It will appear from the statement of Phoola PW 1 that it was not suggested to her that the relations of her father and the accused or his father were strained. Salma PW 2 mother of Phoola also appeared in the witness box and there was not even a suggestion to her that her relations with the father of the accused on any cause were strained. Therefore, I am unable to agree with the submission of the learned Counsel for the appellant that because of party factions accused has been falsely implicated.

12. Phoola PW 1 in her statement said that she had gone to jail but she did not identify any of the accused persons. It appears that Phoola is a rustic villager, uneducated and it does not appear that identification parada of any of the accused persons much less of the appellant was held in jail in which Phoola was made to identify the accused appellant or any other accused and failed to identify them. As already stated earlier, the fields of the father of Phoola and father of the accused are adjacent to each other, both belong to the same village and Phoola stated that she knew the accused by face even prior to the occurrence and came to know his name only at the time of occurrence when the accused and others were calling each other by name.

13. Mr. Mehta learned Counsel for the appellant has referred to Kanan v. State of Kerala : 1979 CriLJ919 and on the strength of this authority submits that in the absence of identification parade only on the identification of the accused in court, the identity of the accused as and who committed rape is not established. In that case a crowd attacked a police station and its articles were burnt. No member of the police station or staff was able to identify the raiders and the only evidence on the basis of which appellants of that case were convicted was the evidence of PW 25, who identified the appellants running away from the scene of occurrence after the raid took place on the police station and also evidence of conspiracy. PW 25 was not the resident of the village, he had gone to that village in order to consult a dentist and that was the only occasion for his presence in the village. There was also other infirmity in his statement. Though PW 25 stated that he knew the appellant by face, and yet named him while identifying in the court. Observing that there was huge crowd outside the police station even if the appellant was seen running away that by itself would no t show that they had taken part in the raid, their Lordships further observed that:

It is well settled that where a witness identifies an accused who is not known to him in the Court for the first time, his evidence is absolutely valueless unless there has been a previous T.I. parade to test his powers of observations. The idea of holding T.I. parade Under Section 9 of the Evidence Act is to test the veracity of the witness on the question of his capability to identify an unknown person whom the witness may have seen only once. If no T.I. parade is held, then it will be

wholly unsafe to rely on his bare testimony regarding the identification of an accused for the first time in Court. In these circumstances, therefore, we feel that it was incumbent on the prosecution in this case to have arranged T.I. parade and get the identification made before the witness was called upon to identify the appellant in the court.

That case has no application to the present case because as already observed above, the accused not only belongs to the same village but has his fields adjacent to the fields of father of Phoola PW 1.Phoola has clearly stated in her statement that she knew the accused by face and came to know his name when the accused and others were calling eachother byname. It, can, therefore, he said that Phoola very well identified the accused though by face not by name. To my mind in a case in which an accused is already known by face to a witness and the witness does not know his or her name, it is not necessary to hold any identification parade Under section 9 of the Evidence Act T.I. parade is only necessary if such an accused is not known to the witness and the witness for the first time has occasion to see the accused at time of the occurrence. Thus in the facts and circumstances of this case, I am of the opinion that no T.I. parade was held and was not necessary and as I have already observed above, I do not attach much importance to the statement of Phoola PW 1 that she had gone to jail but did identify anybody, the reply she gave during the cross examination by the learned Counsel for other accused persons.

14. I am conscious of the fact that in case a case rests on the solitary statement of a witness then before a conviction should be recorded on such testimony the witness should be of sterling worth. In the instant case no doubt the learned trial Court has disbelived the statement of Phoola so far as the other accused persons are concerned and has given reasons for it. But merely because other accused persons have been acquitted and their participation in the crime has not been relied upon, by the trial court, it cannot be said that the statement of P.W. 1 Phoola should not be relied upon so far as the accused appellant is concerned. I will presently show that there is corroboration from other evidence on record in this case. It may be stated that a 'ghaghra' of Phoola was seized by the police and was sent to chemical examiner after being sealed. The chemical examiner found blood

as well as human semen on it. According to Mr. Mehta, Dr. Jagdish Prasad does not say that he sealed the 'ghaghara' and P.W.5 Hari Singh, the Investigating Officer has stated that doctor had sent the 'ghaghra' unsealed to him and it was he who sealed it. The doctor should have sealed the' ghaghra'. There is no material as to who had taken the unsealed 'ghaghra' to the S.H.O. There is also no evidence as to how the packet onthe sealed condition was kept and dealt with and therefore, in the absence of any evidence as to how the sealed packet was dealt from the time it was sealed till it reached the office of the chemical examiner on June 26, 1974 it will not be safe to place reliance on the report of the chemical examiner that human semen was found on the 'ghaghra'. Salama P.W. 2, mother of Phoola P.W. 1 has stated that when she reached the iields, she noticed that her daughter Phoola was lying unconscious. The fact that the occurrence took place in the fields of the accused adjacent to the fields of the father of Phoola, in a room where a hair clip of Phoola was found, though in an almirah, to some extent corroporates the statement of Phoola that she put resistance while being ravished in that room by the accused. Her statement that she was ravished by accused and others is also corroborated by the statement of Dr. Jagdish Prasad who also found many injuries on her person and hymen was badly perforated. Though the FIR does not furnish an independent corroboration to the statement of Phoola PW 1, it it corroborates her statement so far as the indentity of the accused is concerned, it will be clearly seen from FIR Ex. P. 1 that the various acts asccribed to the accused are containedt herein. In her statement in the court PW 1 Phoola stated that it was Papia, the accused who had caught hold of her hand. A look at Ex. P.1 will show that it is mentioned that the accused caught hold of her Munshi a boy aged 12-13 years younger brother of Phoola PW 1 has not been produced. Notwithstanding the fact that he has not been produced, on going through the statement of PW 1 Phoola and the other evidence on record, far as the accused appllent is concerned, Iagree with thelearned Sessions Judge that it was the accused who subjected Phoola to sexual inter course amounting to rape within the meaning of Section 376 IPC and there were also some other persons with the accused. There was one more witness Prabhu but he was also not examined and the learned Additional Sessions Judge observed that he was interested in the accused as he was working in the fields of his father and, therefore, merely

because the prosecution did not examine Prabhu, it makes no difference and the learned Judge refused to draw anyadverse inference for non production of Prabhu and rightly so.

15. The FIR was lodged on the next day of occurrence after 25 hours of the occurrence. There is material on record that the father of Phoola was away from the village and even did not return by the evening. So far as Saddiq her brother is concerned, he returned to his house at 9 p.m. The police station is six miles from the place of occurrence. Saddiq or Phoola did not come to the police station in the night and it was only on the next day that they left the village in the morning and the report was lodged at 12.30 p.m. Under these circumstances, the delay of 25 hours to my mind is not such which makes the case of the prosecution doubtful.

16. Mr. Mehta contends that the sentence of four years is excessive. To my mind in a case of rape if proved, even if the occurrence took place more than seven years ago, there is no reason to take a lenient view and reduce the sentence. The appeal is dismissed. The accused is on bail and he shall surrender to his bail bonds failing which the trial court is directed to get the accused apprehended so that he may undergo the sentence or the remaining part thereof. Any imprisonment already undergone by the accused shall be set off Under Section 428 Cr PC and the accused shall only undergo the remaining sentence.