

Sukhmel Singh Bhika and Mohan Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Mar-19-1980

Reported in : 1980WLN(UC)107

Judge : Mahendra Bhushan, J.

Appeal No. : S.B. Criminal Appeal No. 55(sic)/75

Appellant : Sukhmel Singh Bhika and Mohan

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

Mahendra Bhushan, J.

1. The Additional Sessions Judge, Sirohi has convicted the accused-appellant Sukhrnelsingh under Section 366 and 451, IPC. Under the former count, he has been sentenced to two years R I and under the latter count to one year's R.I.. Both the sentences have been ordered to run con currently. The other two accused-appellants have been convicted under Section 366, IPC read with Section 34,IPG, and each of them has been sentenced to one year's R I.

2. In brief, the case of the prosecution is that the appellent Sukhmelsingh is a transporter and the other two appellants are his employees They were on visiting

terms with Premchand (PW5) father of the prosecutrix Kumari Meena (PW2). It is alleged that Meena was aged about 15 years in the month of July, 1974, and in the night intervening 14/15 7 74, the accused appellants came to the house of Premchand (PW5) He was away as he had come along with his wife and ailing daughter Kanta to Jodhpur for treatment. The accused knocked at the door and they wanted to have the radiator It is alleged that the door was opened by Kumari Meena (PW2) and Mst Teepu, a woman of the age of about 70 years was also present. The three accused took away Kumari Meena by force in a bus, which was standing near the house of Prem Chand and the engine of the bus was on. Accused Sukhmelsingh had driven the bus, but hardly the bus had travelled upto the railway crossing, it had to be stopped because of the barrier. Meena got a chance and she jumped from the bus and got injuries on her knees and she rushed to the house. A cinema house was near by, and the second show had ended, and many persons came out of the cinema hall and assembled. No report of the incident was lodged immediately, and it is alleged that this was because Premchand was away to Jodhpur and from Jodhpur he had proceeded to Gujarat. Deodutt (PW 6) the SHO, Bali happened to be in the village Palna on 18 7 74 and came to know about this incident from one Mukhbir and he sent a report to the P S Bali and a case was registered and investigation was set in motion After investigation a charge sheet was filed.

3. The accused appellants were charged, but they did not plead guilty to the charges. The prosecution examined as many as six witnesses. Thereafter the accused were examined under Section 313. Cr P C and the plea of the accused Sukhmelsingh was that Premchand (PW 5) father of Kumari Meena owned a sum of Rs. 1000/ and when he demanded his money, he has concocted a case against him through Kumari Meena, his daughter, He denied that he abducted Kumari Meena, as alleged. He examined few witnesses in defence.

4. The learned Additional Sessions Judge placing reliance on the statement of Kumari Meena, and holding that there appears to be no need of corroboration, convicted and sentenced the accused, as aforesaid.

5. The learned Advocate for the appellants has challenged the judgment of the learned Additional Sessions Judge on the ground that there is delay of about 4 days in lodging the FIR and the story as given by Kumari Meena is full of improbabilities and cannot be relied upon. He submits that the statement of Kumari Meena without corroboration cannot be relied upon and if she had jumped from the bus and was hurt, the presence of injuries on her person would have gone a long way to corroborate her statement. The learned P.P. has supported the judgment of the learned Additional Sessions Judge.

6. The law is settled that in a case of abduction, corroboration of the statement of the prosecutrix is not essential and all that is required is that the necessity for corroboration should be present in the mind of the Judge, and the Judge may dispense with it, if he is satisfied that it is safe to do so. In the instant case, it has come in the statement of Teepu (PW 3), a woman aged about 70 years, that besides the family of Premchand, 3 other families reside in the same house. Even if Premchand was out to Jodhpur and his wife Mohini (PW 4) returned on 15-7-74, as alleged by her, i.e., on the next day of the incident, she would have lodged the report in the police, if the incident took place, as alleged by Kumari Meena. The learned Sessions Judge has himself observed that by the time Deodutt (PW 6) SHO happened to come to village Phalna, it was a talk of the town that Kumari Meena had been abducted. Therefore, Mohini (PW 4) could have lodged the report or she could have asked her neighbours to lodge a report, but no report was lodged. The facts, which are contained in Ex P 3, can hardly be collected through a Mukhbir, as they contain all the details of the incident. Be that as it may. The question is, as to whether the statement of Kumari Meena can be relied upon without any corroboration. The other question is, as to whether there is any corroboration worth the name of Kumari Meena in this case.

7. The learned Additional Sessions Judge has not taken into consideration the material contradictions in the statement of Kumari Meena (PW 2) and Teepu (PW 3). Kumari Meena admits that the accused were visiting her house and further that the accused persons or any of them had never made advances towards her. At the first knock of the door, Meena gave out that there was no ladiator with them, where was the need then to have opened the door after the second knock. She

has stated that Sukhmelsingh and Mohan entered the house no sooner the gate was opened and Sukhmel Singh grappled her and dragged her out. She has stated that only Sukhmel Singh and Mohan were on the gate and the third man was in the bus, which was standing opposite the gate. She does not state that the gate of the bus was closed or any of those who were present in the bus caught hold of her. She states that Sukhmelsingh drove away the bus. If she would have been taken as alleged, she would have raised an alarm, which would have attracted the neighbours or at least the members of the family residing in her house. She stated that no sooner the bus stopped at the railway crossing because of the barrier, she jumped and got hurt. If the accused persons had abducted her in the manner, as alleged, then they would have closed the gate of the bus, and would not have allowed any opportunity to her so as to jump from there. She has also stated that when she made an attempt to jump from the bus, any of those who were present in the bus did not make any attempt to catch her. She admits that the police outpost is about 200-250 Yds from her house, but strangely the report was not lodged for four days. Though it was a talk of the village, but the Head Constable Incharge did not take any steps and the steps were only taken by Deodutt (PW 6) who happened to be in the village on July 18, 1974. In cross examination, she states that the accused did not enter the house, a statement contrary to the statement in examination in-chief. She instead stated that Sukhmelsingh put a step inside the verandah and grappled her. In her police statement (Fx. D. 1), with which She was confronted, she made a statement that it was Bhika who also entered the gate, whereas in the court she stated that Bhika was in the bus. In Ex. D. 2 police statement recorded on 23-10-74, she made a statement that all the three accused lifted her and took away. She was confronted with her previous statements, but could not reconcile the (sic) inconsistencies. She is alleged to have been hurt, as a result of jump from the bus, when it was standing; at the railway crossing, but she was not medically examined, and she has stated that she did not show her injuries to the doctor. She states that many persons had assembled when they came out of the cinema hall, but states that none of them made any attempt to apprehend the accused even when the bus was standing near the railway crossing. The story disclosed by her appears to be so improbable that no man of ordinary prudence can digest it. It has come in the

statement of Premchand (PW 5) that Sukhmelsingh accused was demanding a certain amount from him. It is the case of the accused that because of the fact that Premchand owed money to Sukhmelsingh, which had been demanded, a false case was concocted against him.

8. The other witness is Teepu (PW 3). If her statement is (sic)scrutinised, it will be clear that on material facts, it is at variance with the statement of Kumari Meena (FW 2). Teepu has stated that the accused dragged Meena, but she could not identify any of them because of her vision being defective. She states that she and Meena raised an alarm till such time she was taken to the bus, but surprisingly at that hour of the night, and even when the cinema hall was nearby, none came to her rescue. She states that she saw two persons entering the Pol, but Meena has stated that only Stkhmel Singh had placed one step, grappled Meena and took her away. She states that after the cinema was over, many persons came running. But, none of them has been produced. Therefore, on the evidence on record, and more to when there is a delay of four days and the story being full of improbabilities, it cannot be held that the accused appellants abducted Meena.

9. The case against the accused appellants is not proved beyond reasonable doubt.¹ The appeal is accepted, the judgment of the learned Additional Sessions Judge, Sirohi convicting and sentencing the accused appellants of the various charges levelled against them is set aside and they are acquitted of all the charges. They are on bail and need not surrender to their bonds, bonds, which shall stand discharged.