

Pala Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-06-1993

Reported in : 1994CriLJ1677

Judge : Mohini Kapur, J.

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

Appeal No. : Criminal Appeal No. 218 of 1991

Appellant : Pala Ram

Respondent : State of Rajasthan

Advocate for Def. : H.R. Panwar, Public Prosecutor

Advocate for Pet/Ap. : M.L. Garg, Adv.

Disposition : Appeal dismissed

Judgement :

Mohini Kapur, J.

1. The appellant Pala Ram has been convicted for the offence under Section 376, IPC and sentenced to seven years' rigorous imprisonment and a fine of Rs. 2000/-. In default of payment of fine he has been ordered to undergo rigorous imprisonment for two months. Against this conviction and sentence made by the

Addl. Sessions Judge, Raishingnagar by his judgment dated 29th June, 1991 he has preferred this appeal.

2. In village Satjhandra one-Bhagirath Bishnoi (father of the appellant) had some agricultural land and this was given to Banwari Lal, husband of the prosecutrix Mst. Savitri for the purpose of cultivation on 14th share. Turns were allotted for irrigating the field and it so happened that on 28th October, 1987 it was the turn of Banwari to irrigate the field and Banwari Lai along with his two brothers Ram Narain and Ram Swaroop left for the field at about 9.00 p.m. Their turn to irrigate was upto 7.00 a.m. on the* next day. Mst. Savitri was alone in the house except for her one year old child. The family of Banwari Lai was staying in the house of Bhagirath Bishnoi, who himself lived in another house which is close by. At about 3 or 4 in the early morning the appellant entered the house of Banwari Lai where Mst. Savitri was sleeping in the courtyard. He raised the Ghagra of Mst. Savitri then removed her underwear and himself undressed and committed rape upon her. She shouted but no one came there. Then the accused went out of the house and at that time Ram Narain came from the field to fetch some tea. He saw the appellant coming out of the house and upon entering the house, he found Savitri weeping on the cot, and then she told the whole story. Ram Narain went towards fields to inform Banwarilal about it and in the way Bhagirath Bishnoi came out with a gun saying that the matter should not be taken further. On the same day a Panchayat was also held in which Bhairath apoigised on behalf of his son but considering the circumstances Savitri and her husband were not agreeable to this. On the same day i.e. on 29th October, 1987 a first information report was lodged at the Police Station Raisinghanagar upon which a case was registered. Usual investigation was done. The prosecutrix Mst. Savitri was medically examined and though a definite opinion about rape could not be given as there was no positive finding indicating forcible intercourse as she was a married woman but the following injuries were found on her:-

1. Bruise blue coloured 5' x 1' (transverse) on dorsal aspect of right shoulder-simple-blunt.

2. Bruise blue coloured 6' x 1'(Transverse) on left scapular region upper part. Simple Blunt.
3. Abrasion with dried clotted blood 1/3'x 1/8' on dorsomedial aspect on left index finger proximal phalanx. Simple Blunt. '
4. Abrasion with dried dark brown scab each 1/8' x linear on right cheek. Simple, Teeth bite.
5. Abrasions (four) with dried dark brown scab each 1/8' x linear on left cheek. Simple Teeth bite.

The clothes of the prosecutrix and her vaginal swab were not found positive for semen. However, the learned Additional Sessions Judge relied upon the testimony of Mst. Savitri holding her to be of sterling worth. On basis of her evidence corroborated by the medical evidence as far as the injuries were concerned and the statements of P.W. 5 Banwari Lai and P.W. 6 Ram Narain he found the case against the accused to be proved and convicted and sentenced as stated above.

3. The learned counsel for the appellant has contended that the occurrence is said to be of 4.00 a.m. 29th October, 1987 but the report of the incident was lodged at 9.00 p.m. on the same day even though the distance to the Police Station from the village is 18 Kms. According to him the case becomes suspicious on account of this delay. Referring to the occurrence it is contended that in the winter end of October, Savitri could not have been sleeping in the court yard and this also makes the story false. According to him the accused has been falsely implicated on account of some dispute about the share in the crops. It is also argued that no witness of the Panchayat has been examined which would have gone to show that the father of the appellant apologised for the act of his son.

4. All these contentions have been explained in the evidence produced by the prosecution. The weather was such that it was neither hot nor cold and it was a little chilly in the early morning and one can use a blanket at that time while sleeping in the courtyard. Savitri has been put a question that she was a consenting party and only because Ram Narain came there, a false case has

been made. In view of this suggestion the story about the Panchayat became probable even though no witness of the Panchayat has been examined. Bhagirath would have appeared in the witness box in support of the accused to deny that he had gone with a gun to the complainant party to get the matter settled. There was some incident and it was on account of that Bhagirath came with a gun to frighten Banwari Lai and his brothers and assembled a Panchayat. In the statement of Mst. Savitri it has come out that the accused caused injuries on her cheeks by teeth bite and this finds corroboration from the medical evidence. Abrasion on her shoulders suggests use of force at the time of intercourse. Had it been the case of consent there are less chances of these injuries. If it could be said to be the case of consent then Ram Narain when he came from the field had not seen the accused and the prosecutrix Savitri in any compromising position but had met the accused outside the house, Savitri could have easily concealed the fact that appellant had come to her. On the contrary, Ram Narain found Savitri' weeping which shows her disturbed mental condition.

5. It has been pointed out by the learned counsel for the appellant that the injuries Nos. 1, 2 and 3, which are abrasions and bruises on the shoulder and index finger were found between 24 to 48 hours old while the abrasions on the cheeks are reported to be of 2 to 4 days duration It is contended that all the injuries cannot be said to have been caused at the ' time of occurrence and Mst. Savitri cannot be relied upon when she stated that the accused appellant caused these injuries. Savitri was examined about 30 hours after the incident and according' to Dr. Mahavir Prasad, P.W. 4 none of the injuries were of within 24 hours of the incident. Mst. Savitri herself has not been questioned that the injuries occurred at different times. The difference in the time of the injuries is very marginal and in view of the oral evidence of Mst. Savitri it cannot be accepted that they were caused at different occasions.

6. A perusal of the evidence produced in the case and also the circumstance about the Panchayat and the action of the father of the appellant in trying to frighten the complainant party, with- a gun, the case of the prosecution can be said to have been proved beyond reasonable doubt. Learned Additional Sessions Judge has considered the evidence in detail and on the basis of the evidence, it

cannot be said that the accused is entitled to benefit of doubt.

7. As far as the sentence is concerned, in the facts and circumstances of the case it is appropriate. Hence, this appeal fails and is, dismissed. The conviction and sentence passed by the Additional Sessions Judge, Raichangnagar is confirmed.

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