

Anda Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Jan-27-2006

Reported in : RLW2006(3)Raj2231; 2006(4)WLC118

Judge : R.P. Vyas, J.

Acts : Indian Penal Code (IPC) - Sections 323, 324, 336, 341, 342, 366 and 376;
Code of Criminal Procedure (CrPC) - Sections 161 and 313

Appeal No. : S.B. Criminal Jail Appeal No. 331 of 2002

Appellant : Anda

Respondent : The State of Rajasthan

Advocate for Def. : V.R. Mehta, P.P.

Advocate for Pet/Ap. : M.S. Rathore, Adv.

Disposition : Appeal dismissed

Judgement :

R.P. Vyas, J.

1. This appeal is directed against the judgment dated February 27, 2002, passed by the Additional Sessions Judge No. 3, Udaipur, by which accused -Anda has been convicted and sentenced under Section 366 IPC, to two years' rigorous

imprisonment and a fine of Rs. 200/-, in default of payment of fine to further suffer fifteen days' additional simple imprisonment; under Section 376 IPC, 5 years' rigorous imprisonment and to pay a fine of Rs. 2000/-, in default of payment of fine to further suffer one month's additional simple imprisonment; under Section 342, IPC 6 month's rigorous Imprisonment; under Section 323*, IPC, 6 months' R.I. and under Section 324 IPC, one year's rigorous imprisonment. All the sentences were ordered to run concurrently.

2. Briefly stated, the prosecution story is that on May 17, 2001 at 8.30 p.m., Kum. Dhani D/o Bhika by caste Garasia, R/o Parla-ka-Chaura, District Udaipur lodged a report (Ex.P/1) with the Police Station, Ogana, District - Udaipur that on May 15, 2001, at about 1.00 p.m. while she was going to her house, for taking lunch, after carrying out the work in Drought Relief Operation, then near Mahura, Anda S/o Gala Garasia, R/o Padmavri and Bhagga S/o Dhana Garasia R/o. parla Chaura, stopped her in the way and Anda, by using force and pulling her hand and dragging her, started to say that he would keep her as wife at his house. It was further averred in the complaint that while she resisted and raised hue and cry, then Babu S/o Puna Gameti R/o Parla-ka-Chaura (who was met and supervising the Draught Relief Operation), Pitha S/o Ratta Garasia, R/o Kotiya-ka-Leva and her brother Dhula came to the place of occurrence and tried to rescue her, but both the aforesaid accused were not inclined to set her free and she was forcibly taken to the village of Anda and was confined to the house of anda. Anda committed rape with her against her wishes and, thereafter, Anda burnt the heels of the prosecutrix by fire, so that she may not escape. Anda also gave her beating. In the night, while Anda was sleeping, she came running from the house of Anda to her village and narrated the entire story to her father. Lastly, it was averred in the complaint that case may be registered and action may be taken against Anda and Bhagga Garasia, in accordance with law.

3. On the basis of the aforesaid complaint FIR (Ex.P-6) under Sections 366, 342, 324,323 and 376 IPC, was registered at Police Station, Ogana, District - Udaipur, against the accused persons and the Investigation commenced.

4. During the course of investigation, site was inspected and site inspection reports Ex.P-5 and Ex.P-6 were prepared, statements of the witnesses under Section 161, Cr.P.C. were recorded, medical examination of Ku. Dhanni was conducted and injury report (Ex.P-4) was obtained, clothes of the victim Ku. Dhanni were seized and sealed vide Ex.P-7 and Ex.P-8, the accused were arrested, the report of the examination of the victim was obtained from the Medical Jurist of R.N.T. Medical College & General Hospital, Udaipur vide Ex.P-11, accused Anda was examined and his medical report (Ex.P-12) was obtained, M.L.C. of the victim was got done and report (Ex.P-13) was obtained and X-ray report of Kum. Dhanni (Ex.P-16) was also obtained.

5. The challan against accused Anda under Sections 366, 376, 342, 323 and 324, IPC and against accused Bhagga under Sections 366 and 341 IPC, was filed in the court of Additional Chief Judicial Magistrate, Jhadol from where the case was committed to the Court of Sessions Judge and ultimately, the Sessions Judge transferred the case for decision to the Court of Additional Sessions Judge No. 3, Udaipur.

6. In support of its case, the prosecution examined as many as 18 witnesses (P.W.I to P.W. 18) and produced 19 documents (Ex.P-1 to Ex.P-19). In defence, the accused produced no defence. In the explanation under Section 313, Cr.P.C, the accused denied the charges and stated that they have been falsely implicated.

7. After hearing the learned Additional Public Prosecutor for the State and the learned Counsel for the accused and examining the documents available on record, the learned trial Court gave the benefit of doubt to accused Bhagga and acquitted him from the offence under Sections 366 and 341, IPC, and convicted accused Anda under Sections 366, 376,342,323 and 324, IPC, against which he has preferred this Jail appeal.

8. The Jail Appeal filed by Anda was received by Post. It was placed before the Court on 29.05.2002. On 29.05.2002, the appeal was admitted and the record was called for. Since the jail appeal was not represented by anyone, Mr. Mahesh Thanvi, Advocate, was appointed as Amicus Curiae. On 11.08.2004, Mr. R.S. Chundawat, and Mr. Manoj Singh Rathore, Advocates, filed power on behalf of

accused Anda. Thereafter, the case was taken up and heard for final disposal.

9. It is submitted by the learned Counsel for the appellant that the incident had taken place on May 15, 2001, at 1.00 p.m., whereas the matter has been reported to the Police on May 17, 2001. Thus, the FIR has not been lodged promptly and there is a delay of two days in lodging the FIR and the prosecution has not been able to give a sufficient cause for this delay.

10. It is further submitted by the learned Counsel for the appellant that at the place of the occurrence, the Draught Relief Operation-work was going on and about 50 persons were present, then how two persons, namely, Anda and Bhagga could take away a lady forcibly, it is beyond imagination. According to the learned Counsel, the prosecutrix accompanied the accused persons on her own and there was no scuffle between the prosecutrix and the accused persons and no force was used by the accused.

11. It is also submitted by the learned Counsel for the appellant the semen of the accused was not examined and the FSL report has not been produced by the prosecution. Thus, according to him, in the absence of the FSL report and semen report, the accused should not be convicted.

12. It is contended by the learned Counsel for the appellant that the accused was convicted and sentenced under Section 376, IPC, to five years rigorous imprisonment and he has served out the sentence of four-and-a-half years, so he may be released on the basis of the sentence already undergone by him.

13. In support of his submissions, learned Counsel for the appellant has relied on the case of Khalikuddin S/o Naimuddin v. State of Rajasthan 2003 (2) Cr.L.R. (Raj.) 850, in which the age of the prosecutrix was 14 years and she stated that she herself accompanied the accused appellant and had sex with her counsel. She remained in the company of the appellant for more than a month and was taken from one place to another and during this whole period, she did not make any complaint to any body. In these circumstances, the accused was ordered to be released by this Court, whereas, in the instant case, the accused has forcibly has taken the victim to his house, kept her confined there, committed rape with

her. Not only this, but he gave beating -also and burnt her heels by fire, so that she may not go away. The prosecutrix Kum. Dhanni has clearly deposed in her statement that the accused the accused forcibly took her away, in the scuffle she received injuries on her body also, the accused gave her beating also and, in the night, the forcibly committed rape with her. In the morning, around 4 O'clock, while accused Anda was asleep, she (the prosecutrix), by taking the chance of his sleeping, went to her father's house and narrated the entire story. Thus, in view of the peculiar facts and circumstances of the instant case, this authority is of no help or assistance to the learned Counsel for the appellant.

14. On the other hand, learned Public Prosecutor has supported the impugned judgment of the trial Court and invited my attention to the statement of Ku. Dhanni (P.W.I), in which she has clearly deposed that accused Anda took her away forcibly, by saying' that he would keep her as his wife. She further deposed that during the scuffle, her bangles were broken and she received bruises on her body. Thereafter, she was taken to the house of Anda. Anda burnt her heels and gave her beating, upon which she received injury on her back. In the night, Anda committed rape with her. In the morning, at 4 O'clock, while Anda was sleeping, she went to her house and narrated the entire story to her parents. In the cross-examination, she has clearly deposed that Anda committed rape ('Khota Kaam') with her against her wishes.

15. It is further submitted by the learned Public Prosecutor that P.W. 12 Dr. Smt. Madhubala Chauhan has deposed that on May 18, 2001, she was posted as Associate Professor in R.N.T. Medical College, Udaipur and she has examined the victim Kum. Dhanni with regard to committing rape with her by the accused. The Doctor has deposed that there was bruises on her breasts as well as thighs, her hymen was found ruptured, there was a wound of 2' x 2' and the blood was oozing from that part. Lastly, the Doctor gave the opinion that the rape has been committed with Ku. Dhanni.

16. It is also submitted by he learned Public Prosecutor that P.W. 18 Dr. Anis Ahmed, who was Medical Jurist in M.B. Government Hospital, Udaipur on May 18, 2001 and examined the victim Kum. Dhanni with regard to age and rape, has

clearly deposed that eight injuries were found on her body. These injuries were ordinary in nature and the duration was 3 to 4 days, he further deposed that injuries No. 1 to 6 were inflicted by 'kunda aala' and injuries No. 7 and 8 found on the heels of the victim were burn injuries. The Doctor has also deposed that on examination, it was found there had been penetration in the vagina. According to the X-ray report and her body structure, the age of the prosecutrix, as per opinion of the .Doctor, was found to be between 16 to 17 years.

17. In support of his contentions, learned Public Prosecutor has placed reliance on the case of State of Madhya Pradesh v. Dayal Sahu 2005(9) SRJ 307, in which it was held by their Lordships of the Supreme Court that once the statement of prosecutrix inspires confidence and accepted by the Court, as such conviction can be based on the solitary evidence of the prosecutrix and no corroboration would be required unless there are compelling reasons. It was further held that corroboration of testimony of prosecutrix as a condition for judicial reliance is not a requirement of law, but a guidance of prudence under the given facts and circumstances of the case.

18. Learned Public Prosecutor has further placed reliance on the case of Shyaji Ram v. State of Rajasthan 2005(4) WLC (Raj.) 580 and Vishram v. State of Rajasthan 2005(4) WLC (Raj.) 597 : 2005(4) RLW 2815. In Sri Narayan Saha and Anr. v. State of Tripura : (2004)7SCC775 , it was held by their Lordships of the Supreme Court that a prosecutrix of sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice which requires it to look for corroboration. If a prosecutrix is an adult and of full understanding, the Court is entitled to base conviction on her evidence, unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case disclosed that the prosecutrix does not have a strong motive to falsely involve the person charged, the Court

should ordinarily have no hesitation in accepting her evidence.

19. With regard to delay in lodging the FIR, learned Public Prosecutor has referred to the case of *Bheru Lai v. State of Rajasthan* 2004(1) RLR 177 : RLW 2004(1) Raj. 602, in which this court held that in India, women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person, she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such women; it casts doubt and shame upon her rather than gives comfort and sympathies with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. In *Karnel Singh v. State of Madhya Pradesh* : 1995 CriLJ4173 , it was held that the delay in sexual offences in lodging the FIR can be due to variety of reasons, particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the incident which concerns the reputation of the prosecutrix and the honour of her family. It is only after giving a cool thought that a complaint of sexual offence is generally lodged. Delay in filing FIR would not be fatal to the prosecution case, if delay is properly explained.

20. Heard learned Counsel for the parties.

21. It is admitted position that accused anda has committed rape with Kum. Dhanni in the night at his house, which stands corroborated from the depositions of P.W.12 Dr. Madhu Bala Chauhan, P.W. 8 Dr. Ravindra Yadav and P.W. 18 Dr. Anis Ahmed. According to Dr. Chauhan, the hymen was ruptured, blood was oozing and there was wound of 1/2' x 1/2' in her vagina. It is also corroborated from the evidence of P.W. 8 Dr. Yadav and P.W. 18 Dr. Anis Ahmed that there were injuries on her breasts and signs of dragging were visible on her both the thighs. Further, the statement of Kum. Dhanni (P.W.I) also stands testified from the aforesaid medical evidence that the rape has been committed with her. P.W. 5 Pitha has deposed that on the day of the occurrence, he was also working as labourer in the Draught Relief Operation and around 1.00 p.m. Anda and Bhagga started to drag Kum. Dhanni. Dhanni raised hue and cry. On hearing her cries, he

also went to the place of occurrence. He further deposed that anda had a kulhari in his hand, while Bhagga was having a lathi. They threatened us with dire consequences and took away Dhanni from there. Similarly, P.W. 3 Dhula, who is brother of the prosecutrix, has deposed that in the afternoon, he had gone to summons his sister Dhanni for taking lunch. While Dhanni was coming on the way, she was stopped and Anda started to drag her for taking her to his house. Ultimately, Anda and Bhagga took her forcibly to the house of Anda. He further deposed that Anda and Bhagga also ran towards him. But he fled from the place of occurrence and returned to his house. On that day, his parents (mother and father) had gone away to village Marwar Bhiman. On the next day morning, Dhanni returned to the house and narrated that Anda had burnt her heels.

22. No doubt, some contradictions were found in the statements of witnesses, but they are of minor in nature and the same cannot be regarded as material one, Minor discrepancies in the evidence do not hurt and prosecution case. The minor discrepancies guarantee that the witnesses are not tutored. Hence, minor contradictions found in the statements of the witnesses would not affect their testimony. Non-production of a semen report would not be of much consequence if the other evidence on record is believable.

23. It may be mentioned that in a case of rape, no self-respecting woman would come forward in a Court just to make a humiliating statement against her honour such as is involved in the commission of rape on her. The Inherent bashfulness of the females and the tendency to conceal outrage of sexual aggressions are factors which the courts should not overlook. The testimony of the victim in such cases is vital and unless there are compelling reasons which necessitate looking for corroboration of her statement, the courts should find no difficulty to act on the testimony of a victim of rape to convict an accused where her testimony inspires confidence and is found to be reliable. It may be mentioned that the Court, while appreciating the evidence of a prosecutrix, may look for some assurance of her statement of satisfy its judicial conscience, since she is a witness who is interested In the outcome of the charge levelled by her, but there is not requirement of law to Insist upon the corroboration of her statement to base conviction of an accused.

24. Thus, it is held that the above mentioned circumstances, which have been firmly and cogently proved by the prosecution, form a complete chain without giving any room to hypothesis and are consistent with the guilt of the accused-appellant.

25. There is sufficient evidence to connect the accused appellant with the commission of crime and the above circumstances form a chain so complete that there was no escape from the conclusion that with all human probability, the crime of rape was committed by the accused-appellant and non else. The circumstances are of definite tendency unerringly pointing towards the guilt of the accused-appellant.

26. For the reasons stated above, the learned Additional Sessions Judge No. 3, Udaipur was right in convicting the accused- appellant Anda and the findings of conviction recorded by the learned Additional Sessions Judge are based on correct and proper appreciation of evidence on record.

27. I see no illegality, infirmity or perversity in the findings of conviction recorded by the learned Additional Sessions Judge No. 3, Udaipur against accused appellant Anda.

28. Consequently, no interference is called for with the findings of the learned Additional Sessions Judge and this jail appeal is liable to be dismissed and is hereby dismissed.