

Sukh Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-23-1989

Reported in : 1990(1)WLN590

Judge : I.S. Israni, J.

Appeal No. : S.B. Criminal Appeal No. 232 of 1982

Appellant : Sukh Ram

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

I.S. Israni, J.

1. This criminal appeal has been filed Under Section 374 Cr. PC against the judgment and order dated June 15, 1982 passed by learned Sessions Judge, Alwar in Sessions Case No. 18-A/82 by which the accused-appellant was convicted Under Section 376 IPC and sentenced to undergo rigorous imprisonment for a period of 3 years and also to pay fine of Rs. 500/-. In default of payment of the fine to further undergo rigorous imprisonment for period of 3 months. He was also convicted Under Section 323 IPC and sentenced to undergo 3 months rigorous imprisonment. Both the sentences were to run concurrently.

2. It will suffice for the purpose of this appeal to state that on February 2, 1982 at about 6.45 p.m. PW 1 Smt. Gafooran wife of Shri Samme, resident of village Bandipura District Alwar lodged a written report, Ex. P 1 to the effect that on the same day at about 1 00 p.m. she was going with her mother-in-law Smt. Bassi PW 4 to take grass from the field. Her mother-in-law was engaged in excavating the grass from a field started the mustered field of one Nabbi Khan. All of a sudden, accused-appellant came and caught-hold of Mst. Gafooran and made her to fall on the ground and forcibly opened her Salwar' and thereafter forcibly committed sexual intercourse with her. On hearing the cries of Gafooran, her mother-in-law came there. On seeking her mother-in-law, accused appellant stood up inflicted a lathi blow on Mst. Bassi, as a result of which she fell down on the ground. On hearing the cries, Banda and Himmat came at the site, and on seeing them accused-appellant ran away. After registering the report the matter was investigated and the trial court after recording the evidence and hearing both the parties, convicted the accused appellants as stated above.

3. Shri R.N. Sharma, learned Counsel for the accused-appellant contends that from the medical evidence the accused-appellant was 50 years old at the time of incident and it is doubtful that the accused-appall ant was capable of performing sexual inter course. It is also contended that there is no medical evidence to prove that any sexual intercourse had been committed. It is further contended that the only two independent witnesses who were mentioned in the FIR Ex. P. 1 itself i.e. Banda PW 5 and Himmat PW 6, do not support the version of the prosecution and, therefore, were declared hostile It is, therefore, pointed out that the trial court has seriously erred in relying upon the statement of prosecutrix PW 1 and Mst. Bassi her mother-in law PW 4.

4. It is contended by learned Public Prosecutor that the testimony of Prosecutrix does not need any corioboration and the trial court had rightly relied upon the same inspite of there not being any independent-witness.

5. I have heard both the parties, gone through the documents and evidence on record.

6. Ex. P. 2 is medical for verification of age and rape. The prosecutrix is said to be of age of 18 to 19 years. No definite opinion has been given regarding recent intercourse. It is mentioned that she is accustomed to inter-course. Ex. P4 is Pathological report of accused-appellant and Ex. P 5 is medical report of the prosecutrix. Ex. P. 7 is medical report of Mst. Bassi PW 4 mother-in-law of the prosecutrix. It states that even though she claims to have pain but no superficial mark of injury was found and there was no tenderness also. Mst. Gafooran PW 1 states in her examination in chief that accused-appellant came behind her and caught hold and opened the rope of her Salwar and forcibly committed intercourse with her. threw her on the ground and committed intercourse. She shouted and was also given beatings with fists to the accused-appellant. On hearing her shouts her mother-in-law Mst. Bassi came at the time when the accused-appellant was still committing rape with her. On seeing Mst. Bassi the accused-appellant got-up. Mst. Bassi abused him whereupon appellant gave a blow with stick to Mst Bassi. At that time Himmat and Banda who were working in the field nearby also came. On seeing them the appellant ran-away. She further states that she had told Himmat and Banda at that time that rape had been committed by her appellant. She states that her husband and Mst. Bassi also accompanied her went to the police-station. She also states that during the course of rape her bangles had broken which were taken possession by police. In her cross examination she states that she received no injuries on her back as she had fallen on the grass cut by her. She states that she tried her best and struggled to free herself. How ever, in this struggle neither any cloth worn by her was torn nor she received any injuries on her body. She received no injuries on her wrists on account of broken bangles. She states that she did not bite the appellant. She further states that there were marks of semen on her Salwar. She also states that when appellant had completed the intercourse and was beating her mother-in-law with stick, she had stood up and had cleaned her private parts with Salwar. On this account also there were mark of semen on her Salwar. She denies that there was any quarrel between them and appellant on account of any buffalo and on 9-2-1982 the buffalo of her mother-in-law had fought the buffalo of the appellant on account of which appellant had given a lathi blow to Mst. Bassi. She states that she had lodged verbal report which was written by authorities at police station. How ever, it may be stated that it is

mentioned on Ex. P. 1 that a written report had been lodged by her about the incident. In this FIR there is no mention of any bangles having been broken, as stated by her during her evidence in Court. Doctor PS Agrawal, PW 2 has stated that he had prepared the medical report Ex. P. 2 and that he has not been able to give any firm opinion whether any rape had been committed on prosecutrix. He also states that he prepared report Ex. P. 3 after examining the accused-appellant and it is doubtful that accused appellant could perform successful intercourse. However, he states that he is not an expert on this point. Mst. Bassi PW 4 mother-in-law of the prosecutrix has stated that the prosecutrix was shouting that Sukhlal had caught her. When she reached near prosecutrix she found appellant lying over the prosecutrix. On seeing her he left prosecutrix and got up. Since she abused appellant, he gave her two blows with stick. She further states that when prosecutrix got up the rope of her Salwar was broken. In cross examination she denies that there was any quarrel on account of buffalo with appellant. Banda PW 5 has stated that prosecutrix was shouting that appellant Sukhlal had given two lathi blows to her buffalo. He also states that at the time of the incident neither prosecutrix nor Mst. Bassi told him anything about rape having been committed by appellant with prosecutrix. This witness was declared hostile at this stage. He was confronted with his statement recorded Under Section 161 Cr. PC Ex. P 8 but he denied to have given the statement as recorded therein. Himmat PW 6 is another witness whose name was mentioned in FIR along with PW 5. He states that he heard sound of weeping of prosecutrix but he did not go there and continued to sit in his field. He further states that he did not enquire anything from the prosecutrix. He states that he did see the appellant going out from the field of Nabbi Khan towards on the road. This witness was also declared hostile at this stage. He was confronted with his statement recorded under Section 161 Cr. PC Ex. P 9, but he denied that he had given any such statement. He further stated that neither he enquired from prosecutrix and Mst. Bassi as to what had happened and nor any of them told him that appellant had committed rape with prosecutrix. Puranchand PW 8 is Investigating Officer. In cross examination he states that a written report was lodged at police station. He further states that when prosecutrix came to police station he had brought Salwar which she was wearing at the time of incident and the same was taken in prosecutrix. He also states that during

investigation the accused-appellant had told him that his buffalow and buffalow of Mst. Bassi had fought between themselves. He further states that Mst. Bassi was at distance of about 330 feet from the place where prosecutrix was working in the field at the time of the incident. He also states that he visited the site of occurrence on 11th Feb., 1982 after two days. In his examination Under Section 313 Cr. PC also the accused-appellant has stated regarding the fight between the parties, Nibana DW1 and Ismail DW 2 have stated that there was fight between the buffalows of Mst. Bassi and accused-appellant on account which they had abused each other.

7. From the evidence discussed above, it can be said that there is no medical evidence to support the statement of prosecutrix that she was subject to rape by accused-appellant. It may how ever, be stated that two independent witnesses PW 5 and PW 6 whose names were mentioned in the FIR have not supported the case of the prosecutrix and were, therefore, declared hostile. These two independent witnesses have clearly denied that they saw accused-appellant committing rape with Mst. Gafooran and have further stated that even the prosecutrix and Mst. Bassi her mother-in-law PW 4 did not tell them anything at the time of the incident regarding rape having been committed by accused-appellant with the prosecutrix. A reference may be made to *Rabindra Kumar Dev v. State of Orissa*, where in it was held by the Apex Court that when a witness is declared hostile his evidence cannot be excluded altogether. He does not become unreliable witnesses merely because the party who claimed him was allowed to cross-examine and on this account his evidence cannot be excluded altogether. It was further stated in para 12 that the fact that the court gave permission to the prosecutor to cross-examine his own witness, thus characterising him as, what is described as a hostile witness, does not completely efface his evidence. The evidence remains admissible in the trial and there is no legal bar to base, a conviction upon his testimony if corroborated by other reliable evidence. Therefore, it can be said that the evidence of PW 5 and PW 6 cannot be ignored and brushed aside merely because they have been permitted to be cross-examined by the prosecutor- It may, further, be pointed out that when rape is denied by accused-person some sort of corroboration should be available preferably in the shape of medical-evidence showing that the offence of rape had been committed. It is perhaps

natural that when successful intercourse is committed against the desire of the prosecutrix and it is alleged that she had struggled to free herself from the accused committing rape, some sort of injuries are likely to be found on her body and on her private parts also. In this case as is evident from the evidence discussed above no injury what so ever was found either on the body of the prosecutrix or on her private parts. It is also strange that even though she admits that on account of intercourse there were marks of semen on the Salwar she was wearing at that time and that she had cleaned her private parts after the intercourse was completed with that Salwar and the same was taken in possession by the prosecution agency still it was not sent for chemical examination to corroborate the offence of rape against the appellant. It may also be pointed out that even though the Investigating Officer visited the site of occurrence after two days he could find the pieces of bangles the mention of which however, does not find place in Ex. P 1, FIR which was given in writing. It is perhaps natural that when the bangles are broken by force some sort of injury is likely to occur on the wrist which is also absent as per the statement of the prosecutrix-herself.

8. On account of these circumstances discussed above I am of the opinion that the prosecution has failed to prove the offence against the appellant beyond shadow of doubt and shadow of doubt looms heavily over the case of prosecution. I, therefore, give benefit of doubt to the appellant and set aside the conviction and sentence awarded to the accused appellant. The accused-appellant is on bail. He need not surrender to his bail bonds.

9. In the result, the appeal is allowed.