

Koja Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Nov-17-1994

Reported in : 1995CriLJ1575; 1995(3)WLC450

Judge : Rajendra Saxena, J.

Acts : Indian Penal Code (IPC), 1960 - Sections 341, 354, 376 and 376(1); Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Criminal Appeal No. 116 of 1994

Appellant : Koja Ram

Respondent : State of Rajasthan

Advocate for Def. : S.M. Singhvi, Public Prosecutor

Advocate for Pet/Ap. : Sandeep Mehta, Adv.

Disposition : Appeal allowed

Judgement :

Rajendra Saxena, J.

1. This appeal has been preferred against the judgment dated 11-2-1994 passed by the learned Sessions Judge, Merta in Sessions Case No. 31/93, whereby he has convicted the appellant for the offence under Sections 376 and 341, I.P.C.,

and sentenced him to rigorous imprisonment for five years and a fine of Rs. 1000/- in default to further undergo six months simple imprisonment on the first count and imprisonment for fifteen days and a fine of Rupees 250/- in default to further undergo five days simple imprisonment on the second count.

2. Briefly the prosecution case is that on 29-9-92 at about 7.00 to 8.00 a.m. prosecutrix P.W. 16 Smt. Shivrai aged 22 years was going from her house situated in Village Modi to her field carrying the meals for her husband. When she reached near the field of Ganga Ram situated near the public way going from Village Modi to Bhadora, appellant Koja Ram aged about 21 years, who was going just ahead of the prosecutrix stopped and asked her as to where she was going? The prosecutrix did not respond. Thereupon the appellant caught hold of her right hand with the result that her 'Tagari; whereon breads, vegetable and 'Rabdi' in an earthen-ware pot were placed, fell down in the path way. It is alleged that the appellant dragged her up to a distance of about 45 paces (equivalent to about 90 ft.) inside the field of Ganga Ram, where 'Moong' and 'Bajra' crops were standing. It is the case of the prosecution that the appellant felled her down behind the Bajra plants, bitten on her cheeks and inserted his penis into her vagina and thus committed rape. The prosecutrix raised hue and cry, but the appellant did not stop and after committing rape fled away towards the eastern side. Thereafter the prosecutrix after coming out from Ganga Ram's field proceeded towards her house weeping. In the way, her brother-in-law (Dever) P.W. 5 Sita Ram aged 18 years, who was a student of VIIIth Class and was going to his field carrying water on a bicycle, met her. She narrated her woeful tale to him. It is further the case of the prosecution that the prosecutrix also narrated about the incident to her mother-in-law P.W. 8 Smt. Maina after coming to her house. At that time P.W. 6 Meharam, the father-in-law of the prosecutrix, had gone to Village Shankhbas for getting his cycle repaired. Therefore, P.W. 8 Smt. Maina went to Village Shankhbas and informed about the incident to Mehram at about 10 a.m. on the same day. Mehram came to Village Modi and therefrom he went to Police Station, Bhanwanda, which is situated at a distance of 14 Kms. from the place of the incident. Mehram submitted a written report Ex. P 6 on the same day at 6 p.m. to P.W. 17 Ram Babu, S.H.O., whereupon formal F.I.R. Ex. P. 14 was drawn and a case under Sections 341, 354 and 376, I.P.C. was registered against the appellant. On 30-9-

92, P.W. 17 Ram Babu reached the spot and after inspecting the site, prepared site-plan Ex. P. 9 and memo Ex. P. 10. He also seized and sealed vide seizure memo Ex. P. 11 the 'Lahanga' of the prosecutrix, which allegedly was stained with semen at six places. P.W. 2 Dr. J. P. Mirdha examined the prosecutrix on 30-9-92 at 1. p.m. and found few linear scratches present on her left cheek and a scratch on the dorsal surface of her right index finger, 2' away from the tip. Smt. Shivrai complained of pain on the intra scapular and lumbar region on her back, but there was no sign of external injury. The doctor did not find any blood, seminal stains, foreign hairs or fibres on her clothes, which were torn at some places. The doctor noticed that her pubic hair were not matted from semen, and no dried seminal stains were found on her genital and thighs. The doctor also did not notice recently effused or dried blood on her genital organs or in the neighbourhood. Neither bruises and lacerations on the external genitals were present, nor there was any redness, swelling or inflammation thereon. Her fourchette and posterior commissure were also not injured. The doctor obtained the vaginal swab from her vagina and sealed and sent the same to the Director, State Forensic Science Laboratory, Jaipur on the same day vide forwarding letter Ex. P. 3. The doctor vide his report Ex. P. 2 opined that the act of sexual intercourse with her could not be denied. He, however, reserved his final report awaiting the chemical report of vaginal smear and swab. The appellant was arrested as late as on 8-3-93 vide arrest memo Ex. P. 1. He was medically examined by P.W. 18 Dr. S. O. Shukla, who opined that there was nothing to suggest that the appellant was not capable of committing sexual intercourse. After usual investigation the police submitted a challan against the appellant in the court of learned Additional Munsif and Judicial Magistrate, Nagaur, who committed the case to learned Sessions Judge.

3. The appellant was charged for the offence under Sections 341 and 376, I.P.C. The appellant denied the indictment and claimed trial. The prosecution examined as many as ten witnesses. The appellant in his plea recorded under Section 313, Cr. P.C., admitted that he was arrested by the police and that he was subjected to medical examination, but categorically denied all the circumstances appearing against him in the prosecution evidence. He asserted that the prosecution witnesses were close relatives of the prosecutrix that long drawn litigation is pending between their families, that he is innocent and that due to older enmity a

false case has been foisted against him. He however did not examine any witness in His defence. Aftertrial, the learned Sessions Judge-by his judgment dated 11-2-94 convicted and sentenced the appellant in the manner indicated above. Hence this appeal.

4. I have heard Shri Sandeep Mehta, the learned counsel for the appellant and Shri S. M. Singhvi the learned Public Prosecutor for the State and carefully perused the record of the lower court in extenso.

5. Shri Sandeep Mehta has strenuously contended that P.W. 5 Sita Ram, P.W. 6 Mehram, P.W. 8 Smt. Maina, P.W. 7 Ramdeo, P.W. 9 Ram Karan, P.W. 10 Ram Niwas and P.W. 11 Nimba Ram are the brother-in-law, father-in-law, maternal-father-in-law, mother-in-law, uncle-in-law and husband respectively of the prosecutrix and as such all these witnesses are close relatives and that the prosecution has not examined any independent witness except P.W. 12 Kana Puri, who has turned hostile and not supported the prosecution case. According to him, from the prosecution evidence, it stands well established that informant Mehram bears enmity with appellant's father and that litigations, between them are pending, but the learned trial Judge has neither considered this vital and material circumstances nor has scrutinised the prosecution evidence in the light of the checks available on record. He has rather ignored inherent improbabilities and infirmities appearing in the prosecution evidence Mr. Mehta has asserted that the inordinate delay in filing the F.I.R., as well as delay in its despatch to the concerned Magistrate have not been satisfactorily explained and the learned trial Judge has also conveniently ignored these material facts. According to him, the statement of prosecutrix Smt. Shivrai is replete with material contradictions and the story told by her is not at all probable. Moreover her testimony has not been corroborated by the medical evidence. The prosecution also did not care to file chemical examination report of the vaginal swab/smear of the prosecutrix and non-production of the chemical examination report raises an adverse inference against the prosecution. Shri Mehta has asserted that P.W. 5 Sita Ram has also not corroborated the testimony of the prosecutrix.

Moreover, the statements of Sita Ram, Smt. Maina Devi and Mehram are inconsistent and unworthy of credence. The prosecution also did not get the 'Lehanga' of the prosecutrix exhibited in the court and for want of chemical examination report it cannot be said what the same was stained with semen. Shri Mehta has stressed that as per prosecution story the prosecutrix was alleged to have been dragged by the appellant from the path way to the place of alleged incident inside the field of Ganga Ram, but neither any marks of dragging were found at the time of site inspection, nor any injuries were found on the back of the prosecutrix, which makes her version highly improbable. He has, therefore, strenuously contended that the learned trial Judge' has not evaluated the prosecution evidence in the right perspective and committed an illegality in convicting the appellant.

6. On the other hand Shri S. M. Singhvi, the learned Public Prosecutor has submitted that though there was previous litigation between Mehram and the father of the appellant, but those cases were compounded and as such there was no enmity. He has asserted that no lady would unnecessarily and falsely implicate a person for committing rape upon her, because the same affects her honour. He has submitted that though there are minor contradictions in the statement of the prosecutrix, but there is no valid reason to disbelieve and discard her sworn testimony. He has also reiterated the reasonings given by the learned trial Judge and supported the impugned judgment.

7. I have given my thoughtful consideration to the rival submissions. First of all let us carefully examine, scan and analyse the evidence recorded in this case. P.W. 16 Smt. Shivrai is a married woman and as per her medical examination report Ex. P. 2, she was of about 22 years of age on the day of alleged occurrence. The age of appellant on the date of incident was of about 21 years as is evident from the entries of his arrest memo Ex. P. 1. P.W. 16 Smt. Shivrai deposed that on the fateful day at about 7-8 a.m. she was going from her house situated in Village Modi to her field, where her husband Nimba Ram was working, that she was carrying his meals in a 'Tagari', whereon breads, vegetable and 'Rabdi' in an earthen-ware pot were placed, that the appellant was going ahead of her and that after seeing her, he stopped in the path way near the field of Ganga Ram. She

stated that the appellant asked her as to where she was going, but she kept silent, that he caught hold of her right hand and thereupon the 'Tagari' along with breads, vegetable and the 'Rabdi' fell down and got scattered on the path way and that thereafter he pushed and dragged her inside the field of Ganga Ram in the 'Moong' and 'fajra' crops. She admitted that though the breads, vegetable and the 'Rabdi' had fallen down on the path way, but she did not remember as to whether her clothes were plained by those or not. However as per statement of P. W. 17 Ram Babu, Investigation Officer the breads, vegetable and 'Rabdi's earthenware pot and the Tagari were not found on the path way, but were found inside the field of Ganga Ram at place marked B in Site-plan Ex. P. 9, which is at a distance of about 40 fts. from the path way, where the prosecutrix was alleged to have been stopped and dragged by the appellant on the path way. P.W. 7 Ramdeo and P.W. 10 Ram Niwas, who was admittedly uncle-in-laws of the prosecutrix and who were the motbirs of the site-plan Ex. P. 9 and memo Ex. P. 10, have also not stated that they had seen the 'Tagari' broken earthenware pot, vegetable and 'Rabdi' lying scattered on the path way. As per statement of Smt. Shivrai the appellant had caught hold of her hand at mark A in the path way shown in Site-plan Ex. P. 9 and that the aforesaid articles had fallen down there, but on the other hand those articles were found lying inside the field of Ganga Ram, at a distance of about 40 ft. Thus, the statement of the prosecutrix on this count is positively false. P.W. 17 Ram Babu also did not find any stains of vegetable and 'Rabdi' on' the Lehenga of the prosecutrix, which was seized vide seizure memo Ex. P. 11. These facts, therefore, reflect that the prosecutrix had not put any resistance, when she was taken away to Ganga Ram's field from the path way.

8. P.W. 16 Smt. Shivrai further stated that the appellant after catching hold of her right hand in the path way had given a jerk with the result that her bangles were broken and pieces thereof fell down there, that she became perplexed and that j she managed to take out her hand from the grip of the appellant but could not raise any hue and cry. Later on 'she changed her version and stated that the appellant lifted her from the path way. She stated that she had not walked herself inside the field. She invented a new story and deposed that thereafter the appellant dragged her inside the field up to the place of incident. This distance, as per site-plan Ex. P. 9 is about 45 fts. She admitted that she did not raise any

alarm, while she was being dragged by the appellant, because he had threatened to kill her. She also admitted that the appellant had not placed his hands over her mouth and that when she was being dragged, she had received bruises on her hands, legs and other parts of her body including her wrist, elbow, back and face by the Bajra plants. She stated that the colour of injuries so sustained by her was red, but those were not bleeding. She told that she tried to resist, but since the appellant had caught hold of her hands, she could not do so, that the appellant had bitten 3-4 times on her cheeks by his teeth with force and that marks of those bites were visible on her cheeks, that the appellant also pinched tightly squeezed on her chest at 5-6 places causing red external injuries. She admitted that she was putting on shoes on her legs and that even after the appellant dragged her inside the field d committed rape, her shoes remained intact on her legs. She stated that at the time of her medical examination, she had shown the marks of teeth bites on her cheek as also the injuries on her chest to the doctor. But as mentioned earlier, the doctor did not find any teeth bile marks on her cheek and injury on her chest, as also in the back, wrist, legs etc. It may also be mentioned here that as per testimony of P.W. 17 Ram Babu, S.H.O., the distance from the path way, where the prosecutrix was caught by the appellant to the place of occurrence is 45 paces, say about 90 ft. and the distance form marks B & C was 40 ft. Admittedly the appellant was not armed with any weapon. Therefore, looking to the age of the appellant and the proxecutrix, it appears quite unnatural that if she was not a consenting party then why she did not make any alarm or make any hue and cry and put any resistance when she was being dragged. P.W. 17 Ram Babu also did not notice any mark of dragging either on the path way or inside the field of Ganga Ram, P.W. 2 Dr. J. P. Mfirdha has specifically stated that he did not find any mark of injury either on the back, hand or legs of the prosecutrix. He simply noticed a few linear scratches on her left cheek and a scratch on the dorsal surface of her right index finger, which could be self-inflicted. If the statement of the prosecutrix is taken to be true that appellant had bitten her by teeth on her cheeks and that marks of biting were visible on her cheek, then the doctor should have definitely noticed those marks. Absence of such teeth bite marks on the cheeks and any injury on her chest, back, wrist, elbow or legs makes the statement of prosecutrix highly suspicious. The doctor also did not find any injury or even tenderness on

her genital parts. He even did not notice any redness or inflammation on her tourcelette and posterior commissore. The doctor has also not given any conclusive opinion as to whether the prosecutrix was subjected to rape. The prosecution did not care to produce the chemeical examination report of hervaginal swab/ smear. Therefore, non-production of such material evidence raises an adverse inference against the prosecution case.

9. P.W. 17 Smt. Shivrai also deposed that the appellant committed rape with her for period of about one and half hour. Apparently this part of her statement is patently false and a mere exaggeration. She was confronted with her police statement Ex. D. 4. At portions A to B of Ex. D. 4, she had stated she had raised hue and cry and that thereupon the appellant had threatened to kill her. But during trial she divorced her earlier version and stated that she did not raise any alarm. It may be mentioned here that the prosecution witnesses have admitted that on the day of alleged occurrence, the farmers were in their respective fields. Admittedly the prosecution has not examined any farmer of the neighbouring fields. That is why the prosecutrix changed her earlier version during trial and stated that she did not raise any alarm. She deposed that after the appellant went away from the place of occurrence, she came out of the field and instead of going to her field to meet her husband, she returned for her house and that her brother-in-law P.W. 5, Sita Ram, who was coming from her house and going towards her field, met her in the way and to whom she narrated the incident.

10. P.W. 17 Smt. Shivrai's statement that her bangles had broken and fell down on the path way has also not been supported from the testimony of P.W. 17 R. B. Shukla, Investigation Officer, who deposed that he had found the pieces of bangles inside the field of Ganga Ram. Therefore, on this count also the statement of prosecutrix does not find due corroboration.

11. P.W. 5 Sita Ram deposed that on 29-9-92 his elder brother - Nimba Ram had asked him not to go to School and to come to the field, that on that day, his father had gone to Village Shankhbas at about 6 a.m. for getting his cycle repaired, that his sister-in-law (Bhabhi) Shivrai left the house around 7.30 a.m. taking meals for his brother, that about half and hour thereafter he started from his house for his

field carrying a pitcher of water placed on his cycle, that when he reached near the field of Bhika Ram, he saw Smt. Shivrai coming back on the Bhadora path way, that she was weeping, that when he inquired, she told him that Koja Ram had taken her in the field of Ganga Ram, and that she did disclose any other thing to him. He further stated that thereafter he along with Shivrai came back to their house, where the latter talked to his mother in his absence. He was declared hostile. In his cross-examination by the Public Prosecutor, he admitted to have stated in his police statement Ex. P. 5 that the prosecutrix had informed him that the appellant had dishonoured her. He also admitted that his statement was recorded by the I. O. after 2-4 days of the incident and positively not on the day of the alleged occurrence. However, a bare perusal of his police statement Ex. P. 5 reveals that it was recorded on 29-9-92 i.e. on the day of alleged occurrence. He changed his earlier version and again admitted in the cross-examination made on behalf of the appellant, that the prosecutrix had simply informed him that Koja Ram had detained and taken her in the field. P.W. 5 Sita Ram was a student of VIII Class. The prosecution had not adduced any evidence to show that on the day of incident, he had not attended his Class or that he had submitted any leave application. This witness has also clearly admitted that there is a long drawn litigation between his father and appellant's father. P.W. 5 Sita Ram has thus not corroborated the testimony of the prosecutrix. The learned trial Judge has, therefore, wrongly placed reliance on his testimony.

12. P.W. 8 Smt. Maina stated that the prosecutrix had left that house around 7-8 a.m. on the day of the incident and that she returned weeping after about one 'Ghari' and on her inquiry she informed that Koja Ram had robbed her honour (Mere Ijjat Loot Lee Hai). She further stated that the prosecutrix had also informed her that the appellant had asked the latter not to disclose about the incident to any body otherwise he would kill her, but evidently such is not the statement of the prosecutrix herself. P.W. 8 Smt. Maina has, thus, unsuccessfully tried to improve the prosecution story. She denied that her family had any litigation with the family of the appellant, which is apparently wrong. In such circumstances, Smt. Maina is not a reliable witness.

13. P.W. 6 Mehram deposed that on the day of incident, he had gone to Village Shankbas for repairs of his cycle, that at about. 10 a.m. his wife Smt. Maina came there and informed that appellant Koja Ram had committed rape with their daughter-in-law Shivrai, that thereupon he went to Police Station, Bhavanda on foot and lodged report Ex. P. 6. However, in his cross-examination he admitted that besides his cycle another cycle of his brother Ram Niwas was available but while going to the Police Station, he forgot to go on that cycle. Written report Ex. P. 6 was submitted by Mehram in the Police Station on the same day at 6 p.m. The distance from Village Modi to the said Police Station is only 14 Kms. A cycle was available to Mehram, but he did not go to the Police Station and went on foot. Even on foot one can cover a distance of 14 Kms, within 3-4 hours. Mehram has, therefore, miserably failed to give satisfactory explanation for the delay in lodging the report Ex. P. 6, which was received by the Magistrate at 11.15 a.m. on 30-9-92. This delay in despatch of F.I.R. has also not been explained. In written report Ex. P. 6, Mehram specifically mentioned that at the time of the alleged incident Smt. Shivrai had raised alarm and made hue and cry, but this fact is categorically negated by the prosecutrix, who deposed that she did not raise any hue and cry because the appellant had threatened to kill her. Admittedly the appellant was unarmed and, therefore the explanation given by the prosecutrix for not raising any hue and cry appears to be false, unbelievable and against; natural human conduct.

14. It may be mentioned here that as per evidence Collected by the Investigation Officer, P.W. 12 Kanapuri was alleged to have seen appellant Koja Ram running away from the field of Ganga Ram. But during trial P.W. 12 Kanapuri specifically stated that he had not seen the appellant running away from Ganga Ram's field. This witness was declared hostile. In his cross-examination he specifically denied to have given portions A to B, C to D and E to F of his police statement Ex. P. 12 to the effect that he had heard an alarm raised by a lady from the field of Ganga Ram and that he had seen the appellant running, away having a fold of his dhoti in his hand from the said field. He has admitted that many cases are pending between him and appellant Koja Ram. He further admitted that Mehram has foisted a false case against the appellant and asked him to dispose falsely. In such circumstances P.W. 12 Kanapuri does not support the prosecution case.

15. P.W, 10 Rain Niwas is the real uncle-in-law of the prosecutrix. He stated that on the day of incident at about 7-8 a.m., when he was returning from his field he had seen the appellant coming out running from the field of Ganga Ram and that after few paces he had seen Sita Ram and prosecutrix Shivrai going towards the Village and that at that time the prosecutrix was making hue and cry. He deposed that when he reached the village'-he inquired from Sita Ram, who informed that appellant had committed rape with the prosecutrix. But neither the prosecutrix nor Sita Ram had corroborated the testimony of this witness. They have also not deposed that they had seen Ram Niwas there. Ram Niwas is the real brother of informant Mehram. In such circumstances, he is also not a reliable witness. There is no other evidence worth the name against the appellant.

16. In my considered opinion there has been an inordinate delay in filing the F.I.R. and its despatch to the concerned Magistrate, which has not been satisfactorily explained. The story given out by the prosecutrix does not appear to be probable. On the other hand, her testimony is replete with contradictions and inconsistencies of Himalayan magnitude. Her statement also does not find due corroboration from the medical evidence. Her conduct has been quite unnatural and against human conduct. Neither the 'Ghaghra' alleged to have been stained with human semen has been produced in the court nor the chemical examination report of those stains and that vaginal swab has been filed in the court. The doctor did not give any conclusive opinion as to whether the prosecutrix was subjected to rape. The prosecutrix is a married woman. She has changed her version at different stages. Her statement has also not been corroborated by any independent evidence. Therefore, in such circumstances, in my considered opinion, the learned trial Judge has not discussed, analysed and evaluated the evidence recorded in this case in the right perspective and committed an illegality in holding the appellant guilty for the offence under Sections 341 and 376, I.P.C.

17. In *Malik Singh v. State*, 1988 Raj Cri C 179, the accused was aged about 17-18 years and the prosecutrix was aged about 17-18 years. It was the case of the prosecution that the rape was committed on rough ground, but the doctor did not find any injury on the person of the prosecutrix. It was alleged that she was lifted by the accused and thrown in the field and that thereupon rape was committed on

her, to which she resisted. It was held that absence of injuries on the person of the prosecutrix made her testimony unreliable and that if there had been any intercourse then that must have been done with her consent and the appellant was acquitted.

18. In *Sukh Ram v. State of Rajasthan*, 1990 Cri LJ (Raj.) 180, there was no injury on the body or private parts of the prosecutrix. The Salwar taken from her possession was not sent for chemical examination. Pieces of bangles were found on the spot after two days, but no such fact was mentioned in the F.I.R. It was held that the prosecution failed to prove the offence of rape beyond shadow of doubt and benefit of doubt was given to the accused.

19. In *Kana alias Kanhaiya v. State*, 1990 Cri LR (Raj.) 762, the oral evidence of prosecutrix did not inspire confidence. There was no corroboration by medical evidence or any of the circumstantial evidence. The conviction of the accused was set aside and the accused was acquitted.

20. In *Sujan Singh v. State of Rajasthan*, 1991, Cri LR (Raj.) 18, it has been held that in the absence of any injury marks on the body of the prosecutrix, it can be inferred that either it is a case of consent or the case has been falsely made out. In that case there was enmity between the accused and the uncle of the prosecutrix. In such circumstances, the appellant was acquitted of the offence under Section 376, I.P.C. Similar are the facts of the case on hand. Similar are the facts of the case in hand.

21. Hence for the reasons mentioned above, in the considered opinion the prosecution has miserably failed to successfully bring home the offence under Sections 341 and 376(1), I.P.C. against the appellant beyond all reasonable doubt.

22. In the result this appeal succeeds. The conviction and sentences of appellant Koja Ram for the offences under Sections 376(1) and 341, I.P.C. are hereby set aside and he is acquitted of the said offences. The appellant is in custody and if he is not wanted in any other case then he should be released forthwith. The Superintendent, Central Jail, Jodhpur be immediately informed accordingly.

