

Mohan Ram Vs. State of Rajasthan

Mohan Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/761166

Court : Rajasthan

Decided On : Jul-29-1983

Reported in : 1983WLN501

Judge : S.S. Vyas, J.

Appeal No. : S.B. Criminal Jail Appeal No. 130/83

Appellant : Mohan Ram

Respondent : State of Rajasthan

Disposition : Appeal dismissed

Judgement :

S.S. Vyas, J.

1. Accused Mohanram has been convicted under Section 376, IPC and sentenced to two years' rigorous imprisonment with a fine of Rs. 100/-, in default of payment of fine to further undergo one month's like imprisonment by the learned Additional Sessions Judge, Nagaur by his judgment dated February (0, 1983. The accused has filed this jail appeal IO challenge his conviction and sentence.

2. At about 11 a.m. on 27.8.82, the prosecutrix Mst. Dhani (PW. I) aged about 20 years went to her field to bring grass The field is situate at a little distance from her town Jaswartgarh. While she was collecting grass in the field, the accused

came and addressed some words to her. The prosecutrix gave no reply. The accused then threw her down in the held. She tried to raise cries but the accused put his hand on her mouth. Thereafter, he loosened his dhoti, put off the underwear and committed rape on her. After committing rape, he ran away. She raised cries. PW 7 Shyamsunder, who was working in the field nearby came to her. He saw the accused run-ring away. While putting resistance, the victim received some injuries and the lac bangles, she was wearing got broken. She came to her house and narrated the incident to her husband and mother-in-law. She was taken to Police Station, Jaswantgarh, where she lodged written report, Ex.P/1 of the occurrence at about 8 p.m on the same day. The police registered a case and proceeded with investigation. The medical examination of the victim was made on 28.8.88 by PW 4 Dr Pushpa Bhargava. She found an abrasion on her left cheek. Blood was also found coming out through vagina. The accused was medically examined on the same day by PW. 6 Dr. Bhimsingh. An abrasion was noticed on his forehead and he was found capable of doing sexual intercourse. The clothes of the victim and the accused were also seized and sealed. On the completion of investigation the police submitted a Challan against the accused in the court of Judicial Magistrate, Nagaur, who in his turn, committed the case for trial to the Court of Additional Sessions Judge. The learned Judge framed a charge under Section 376, IPC against the accused, to which he pleaded not guilty and claimed absolute innocence. He pleaded that there were strained relations between him and the family of the prosecutrix due to some dispute over a right of way in his field. In support of its case the prosecution examined 9 witnesses while in defence no evidence was adduced. On the conclusion of trial, the learned Judge held the charge duly brought home to the accused. He was, consequently, convicted and sentenced as mentioned above. Aggrieved against his conviction and sentence, the accused has taken this appeal.

3. I have heard the learned Amicus Curiae and the Public prosecutor. I have also gone through the case file carefully.

4. In assailing the conviction, the first contention raised by the learned Amicus Curiae is that it was a case of nil evidence. The accused was convicted solely on the testimony of prosecutrix Mst. Dhani (PW. 1). But there were various

circumstances to discard her testimony. It was argued that there was no corroboration of her story of rape. The medical evidence did not support her. Even if, it is taken that the accused had committed sexual intercourse with her, the circumstances convincingly point out that she as a consenting party to it. In reply, the learned Public Prosecutor supported the judgment of the court-below and submitted that there was unimpeached testimony of the prosecutrix against the accused. No reasons were there to discard or dismiss her testimony. There is corroboration from independent source to support the prosecutrix. PW. 7 Shyamsunder had seen the accused throwing her down at the place of occurrence. The medical evidence was also there to support her to some extent.

5. I have taken the respective contentions into consideration. Needless to say, that in a case of rape, it is the testimony of the prosecutrix, which plays a vital and decisive role. The prosecutrix PW. 1 Mst. Dhani deposed that at about 11 a.m. on the day of occurrence, which she was uprooting the grass in her field, the accused came and told her that he had received some massage from her parents. She gave no reply. The accused came nearer and fallen her down. She tried to put resistance and raise cries. The accused placed his one hand on her mouth. Thereafter, he loosened his dhoti, put off his underwear and inserted his penis in her private parts. She tried to struggle but was over powered by him. After committing rape, the accused ran away. She raised cries. Hearing her cries, PW. 7 Shyarnsunder came to has field. She further stated that in the struggle, she received some injuries and the lac bangles, she was wearing got broken. The accused also received an injury on his fore-head by the ring, she was wearing in her finger. She came to her house and narrated the incident to her mother-in-law, thereafter she went to Police Station and lodged written report, Ex. P.1 of the occurrence. She was subjected to lengthy cross-examination. But nothing could be elicited from her which may help the accused. She denied that there were strained relations between the accused and her family. There are no infirmities in her statement. Her testimony is free from suspicion and above the board. There is nothing to put her testimony at a discount. It is difficult to conceive that she would foist a false charge of rape on the accused.

6. There are, then, various circumstances, which afford material corroboration to her testimony. PW. 7 Shyarnsunder, a boy of 18 years in age, deposed that when he was working in his field situate nearby the place of occurrence, he heard the cries of the prosecutrix. He saw the accused, catching hold of her and felling her down in her field. He got afraid and went away. There are no reasons to discard or disbelieve his testimony. It does not appear that he has any grudge against the accused, so as to falsely implicate him. His testimony affords a valuable corroboration to the evidence of the prosecutrix.

7. The prosecutrix deposed that in the resistance, she put to the accused, her lac Bangles, which she was wearing, got broken and the hair pin slipped down. The broken pieces of bangles and hair pin lying scattered, were received from the place of occurrence by the Investigating Officer PW 9 Narain Singh. They were seized and sealed.

8. The medical examination of the prosecutrix was conducted by PW 4 Dr. Mrs. Bhargava. The report prepared by her is Ex. P/6. She deposed that she noticed one abrasion on the left cheek of the prosecutrix, which could be caused by a teeth bite. The prosecutrix also stated that while she was putting resistance, the accused sustained an injury on his fore-head with the ring, she was wearing in one of her fingers. This fact is again corroborated by the medical evidence. PW. 5 Dr. Bhimsingh, who medically examined the accused, deposed that he noticed one linear abrasion on his fore-head caused by some blunt object like ring. His report is Ex. P/8. In cross examination, the prosecutrix stated that while struggling to save her honour, the shirt of the accused was torn by her. The accused was arrested on the next day of occurrence with the same torn shirt on his body. The right sleeve and front side of the shirt were found torn. It was seized and sealed by the Police vide seizure memo Ex. P/5.

9. There is thus ample corroboration from various independent sources to support the prosecutrix's version of rape.

10. It is now well settled that in a rape case, the prosecutrix is not regarded as an accomplice and, therefore, the rapist can be convicted on the uncorroborated testimony of the ravished woman, if it is found true and inspires confidence. Law

does not require corroboration of the testimony of the victim of rape in order to convict the accused. If the corroboration is there, it would give additional strength to the prosecution. But the absence of corroboration does not wipe of or erase the testimony of the victim, and it can safely be acted upon to convict the accused provided it is genuine, trustworthy and impressive. In the instant case, the testimony of the prosecutrix, in itself is strong enough to seek conviction of the accused, Moreover, as discussed above the corroboration in material particulars is there from many sources. The first contention of the learned Amicus Curiae thus, holds no ground.

11. It was next argued that no injuries on the private parts of the prosecutrix were found. The absence of injuries completely negatives the whole story of rape. The contention is untenable. The prosecutrix is a grown up woman of nearly 20 years in age and is also the mother of seven months' old child. Apart from that as pointed out earlier, a teeth bite on her cheek and an injury on the forehead of the accused were found. In these circumstances, the mere absence of the injuries on her private parts is of no consequence

12. The last contention is that even if, sexual intercourse was there, it was with the consent of the prosecutrix It was argued that the absence of the injuries on the private parts of the prosecutrix indicates her tacit consent. It is true that in a case of rape with a grown up woman, the absence of consent is an essential ingredient of the offence and must be strictly proved by the prosecution. Law does not cast a duty on the accused to show that he had sexual intercourse with the prosecutrix with her consent. In *Jiti alias Jeet Singh and Anr. v. The State of Rajasthan* 1977 Cr. L.R. (Raj.) 431, it was observed that:

It is undoubtedly true that in a case where rape is committed on a grown up woman, it is the duty of the prosecution to prove that sexual intercourse was committed without the consent or against the will of the woman. The burden does not lie on the defenses adduce evidence that the prosecutrix was a willing or consenting party to sexual intercourse.

13. Even if, the accused has not raised the defence of consent, it is the duty of the court to examine the prosecution case from all sides to ascertain whether there

was the absence of consent or not. Now, the consent or absence of it is to be gathered from attendant circumstances arising in a given case. No hard and fast rule can be formulated as to what circumstances would make out the constant or absence of it. It all depends on the peculiar circumstances arising in a given case, in which, sexual intercourse had taken place. In the instant case, the prosecutrix has stated that the accused felled her down and when she tried to raise cries, he placed his one hand on her mouth to stop cries. She put resistance to save herself and in doing so, received an injury of teeth on her cheek. She also caused an injury on the forehead of accused and tore his shirt. After when, the rape was committed, she straight away came to her house and told her mother-in-law PW. 3 Mst. Shakuri that the accused had committed rape upon her. All these circumstances, specially of struggle and resistance together with her conduct convincingly point out that she was not a willing and consenting party to sexual intercourse. It was she, who lodged the report of occurrence at the Police Station. Thus, the consent of the prosecutrix is not visible even at a distant horizon.

14. No other contention was raised before me.

15. En Passant, a word about the sentence may be added. The accused has been awarded 2 years imprisonment. For offence of rape, this sentence is only a fly bit. Cases of rape require deterrent sentences.

16. As a result of the foregoing discussion, I find no force in this appeal and dismiss the same. Accused Mohanram is undergoing the sentence and he be informed of the result of appeal.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com