

State of Rajasthan Vs. Doonga

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Court : Rajasthan

Decided On : Jan-21-2009

Reported in : RLW2009(3)Raj2530

Judge : Mahesh Bhagwati, J.

Appellant : State of Rajasthan

Respondent : Doonga

Disposition : Appeal dismissed

Judgement :

Mahesh Bhagwati, J.

1. Challenge in this appeal is to the judgment dated 5th April, 1989, rendered by District and Sessions Judge, Bundi whereby the accused respondent Doonga was acquitted in the offence under Section 376 of CPC.

2. The prosecution version as unfolded during trial is as under:

That on 1st of March, 1988 at 10.00 AM PW/3 Moti Lal gave a verbal report to SHO Police Station, Basoli stating that a day before he had gone to attend one marriage at village Khemna being solemnized in the house of his brother-in-law. When he came back to his village Padal in the evening hours, he found 2-5 persons having assembled there. On being enquired, his wife told him that their

daughter Ramdhani had gone to Patiyalwala Kuan to supervise the field. The accused Doonga was also supervising the crop of wheat in his field. It is alleged that at about 3-4 PM the accused Doonga caught hold of their daughter Ramdhani, aged 7 years and ravished her, as a result of which her private parts started bleeding and was still bleeding. As per the report, PW/6 Mangi Lal lifted Ramdhani and brought her to house. The police lodged the FIR Ex.P/1 and commenced investigation.

3. The Investigating Officer recorded the statements of the witnesses acquainted with the facts and circumstances of the case under Section 161 of Cr.P.C, prepared a site plan Ex. P/14, got the prosecutrix Ramdhani medically examined for the determination of her age and commission of offence of rape, arrested the accused Doonga vide memo Ex.P/15, sent the Ghaghdi, Lugadi and Swab for chemical examination to FSL, Jaipur and after usual investigation submitted the charge-sheet against the accused respondent.

4. In due course of time, the case appeared before Sessions Judge, Bundi for trial. The accused was indicted for the offence under Section 376 of IPC, which he did not plead guilty and claimed trial. The prosecution in order to further its version, examined eleven witnesses. In his explanation under Section 313 of Cr.P.C, the accused claimed innocence and pleaded that Ramdhani was her sister and he has been falsely implicated in the case. He further pleaded that Gopi was his maternal uncle who adopted him but the complainant Moti wanted Gopi to adopt his son. This is the reason that a false case lodged against him. He has adduced four witnesses in defence. On completion of trial, the trial Court did not find him guilty and acquitted as indicated hereinabove.

5. Heard the learned Public Prosecutor appearing for the State as also the learned Counsel for the accused respondent and scanned the relevant material available on record.

6. The learned Public Prosecutor has vehemently contended that the impugned judgment of the learned trial Court is totally perverse and arbitrary. The learned trial Court has assigned no specific ground to disbelieve the testimony of prosecutrix Ramdhani. The prosecutrix was only 10 years old at the time of

commission of offence of rape. Not only she has substantiated the contents of FIR Ex. P/1 but her evidence has been corroborated by medical evidence also. The statements of PW.2 Jaiti, PW.3 Moti are based upon the statements of PW.1 Ramdhani, who narrated the entire incident to them. Their evidence is fully worthy of credence and there is no ground to disbelieve their testimony. Hence, the finding of acquittal rendered by the learned trial Court may be set aside and the accused respondent should be convicted in the offence under Section 376 of IPC and adequately punished.

7. Per contra, the learned Counsel Shri Kamlakar Sharma appearing for the accused respondent has canvassed that the statements of the prosecutrix are tutored and thus, not at all, trustworthy. The First Information Report has been lodged after a delay of 18 hours of the occurrence, of which no reasonable and satisfactory explanation has been furnished. It is true that the prosecutrix was of the age of 10 years on the date of occurrence but there is no unimpeachable evidence on record which may base the conviction of the accused. Apart this, the accused has examined four witnesses in defence and their evidence evinces that the prosecutrix had sustained injury in her vagina because of which her vagina was bleeding. DW/1 Gopi Lal compounder was consulted by the mother of the prosecutrix who suggested her to take her to Hospital for treatment. The statement of Gopi Lal has been corroborated by DW/2 Gangollya. The complainant falsely implicated the accused in the case of rape as Gopi had adopted the accused whereas the complainant wanted Gopi to adopt his son. The judgment of the lower Court is perfectly just and proper. The lower Court has critically analysed the evidence of prosecution witnesses at length and thus the impugned judgment does not call for any intervention and the appeal filed by the State deserves to be dismissed.

8. Having reflected over the submissions made at the bar and properly weighed the prosecution evidence, it is noticed that the prosecutrix Ramdhani was about 10 years old as per the report Ex. P/12 prepared by PW/8 Dr. Narayan Dixit. The accused Doonga also stated his age to be 15 years when he was examined under Section 313 of Cr.P.C. by the Court. The court estimated his age to be 19 years.

9. It is pertinent to note that the prosecution case solely rests on the evidence of the prosecutrix. there is no ocular or other circumstantial evidence available on record to support her testimony. Hence, duty is cast upon the Court to shift the evidence of the prosecutrix very carefully and cautiously. It is a settled law that the Court can base the conviction of the accused solely on the evidence of prosecutrix, if it is found trustworthy and worthy of credence. If the evidence of the prosecutrix appears to be tainted, coloured and shaky, corroboration of her testimony is required to convict the accused.

10. Now adverting to the statement of PW.I Ramdhani, it is noticed that albeit, she has stated on oath that when she was going to her field for looking after, Doonga swooped on her and gagged her mouth. She further stated that the accused Doonga penetrated his penis into her vagina which started bleeding. Thereafter, he fled from there warning her not to further convey this incident to anybody. But, with regard to the age of her husband, narration of the incident, calling the complainant Moti from village Khemna, reporting the matter with the Police and other particulars, the statements of PW/1 Ramdhani, PW/2 Jaiti and PW/3 Moti have been found to be contradictory on material particulars. PW/7 Dr. Kamlesh Kumar is found to have medically examined the prosecutrix for the commission of offence of rape. He prepared the medical examination report which reads thus:

No mark of violence present anywhere on the body. No external injuries visible. C/o subjective pain on both thighs and back pain in abdomen. Tenderness on lower abdomen.

Dr. Kamlesh Kumar has further stated that he found dried blood stains present on the private parts, thighs and legs. Her Labia major and minora were red and swollen. He found tenderness also. Hymen was torn which was bleeding on touch. Vaginal orifice was admitting one finger easily.

11. It is very relevant to note that accused Doonga was also arrested on the third day of the occurrence i.e. on 2nd March, 1988 at 2.00 PM vide memo Ex.P/15. He was also subjected to medical examination and PW/7 Dr. Kamlesh Kumar did not find any injury on his penis, proluce and glans penis. He prepared his medical examination report Ex. P/5.

12. The fact situation emerging in the instant appeal may be summarized thus:

(i) Prosecutrix is alleged to have been ravished by the accused Doonga forcibly as a result of which her vagina started bleeding and the bleeding' stopped only in Medical Hospital Bundi.

(ii) the accused is alleged to have applied force and penetrated his penis into her vagina but the accused did not sustain any injury on his penis.

(iii) Neither the prosecutrix sustained any injury on her person nor accused is found to have had any injury on his body, which leads to infer that no resistance was shown by the prosecutrix.

(iv) Undisputedly the prosecutrix has been found to be sister of the accused in relation. One Copy, the Maternal uncle, had adopted the accused Doonga. It has emerged on record that the complainant PW/3 Moti wanted Gopi to adopt his own son. He wanted so with a view to become the owner of Gopi's land. This fact is proved from the statement of PW/11 Ramdhan Bairwa, who is the Investigating Officer of this case. It has been found that the complainant Moti ploughed the field of accused Doonga when he was in judicial custody during the trial of the case. After the release of the accused Doonga on bail, the possession of the land was returned to him with the interception of the police.

(v) In view of these circumstances, the statements of DW/1 Gopi Lal and DW/2 Gangoliay cannot be ignored. As per their statements oozing of bleeding from the vagina of Ramdhani was not the result of commission of offence of rape but it was the cause of some injury she might have sustained.

(vi) The fact of not adopting the son of Moti Lal by Gopi Lal has been corroborated by DW/3 Hira and DW/4 Uda.

(vii) Material contradictions have crept into the statements of the prosecution witnesses with regard to so many factors as to who went to call PW/1 Moti at village Khemna and who lodged the report of the incident with the police?

(viii) PW/6 Mangl Lal is said to have seen Ramdhani in a restless state whose vagina was bleeding. It is said that he lifted Ramdhani and brought her to her house but this witness has not supported the prosecution case and has turned hostile.

(ix) Even the statement of prosecutrix under Section 164 of Cr.P.C. was got recorded after one and half months of the occurrence. The occurrence took place on 29th February, 1988 whereas the statement of the prosecutrix was recorded under Section 164 of Cr.P.C. on 13th April, 1988 by the Judicial Magistrate No. 1, Bundi which renders this statement tutored and suspicious.

(x) No reasonable and satisfactory explanation of lodging of FIR Ex.P/1 after a delay of 18 hours of her occurrence has been furnished by the prosecution.

(xi) An alarming situation springing in this case is that the prosecutrix after having been ravished by the accused, stood and went to her home quietly. PW/3 Ramdhani has deposed that when she was on way to Patiyalwala Kuan, she was caught hold of by Doonga and in hurried heat ravished her without her consent and fled from there after fulfilling his erotic sortie. It is highly surprising that neither she is found to have resisted nor she screamed, nor raised an alarm nor wept or cried due to pain she must have been suffering. She came to her house quietly and on way back also she did not weep nor told this incident to anybody. This conduct of the prosecutrix casts doubt on the veracity of her statement.

(xi) When it is an alleged rape with full penetration of a well developed male organ into the vaginal passage of a girl of 10 years of age, which according to the Doctor would be difficult to admit even the tip of finger there would be likelihood of injury on the private part of the person committing rape and absence of such an injury on the private part of the accused would thus point to innocence of the accused.

19. On the one hand the age of the prosecutrix and her solitary statement coupled with the medical examination and her condition that she was bleeding lead the court to think that a rape might have been committed upon her by the accused but on the other hand, other more weighty factors such as the contradictions in the statements of the witnesses on material particulars, no corroboration of her

statements, hostility of PW.6 Mangi Lal, no injury on the private part or on the person of the prosecutrix, no injury on the penis of the accused, non-examination of Munna and prosecutrix's brother and sister manbhar, withholding the material witnesses etc. lead the court to' infer that the offence of rape was not proved against the accused beyond reasonable doubt.

20. In the case of Kali Ram v. State of Himachal Pradesh reported in AIR 1973 Sc 773, the Hon'ble Apex Court has observed that.

another golden thread which runs through the web of the administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, then the view which is favourable to the accused should be adopted.

21. In the ultimate analysis, a bare reading of the statements, of the prosecutrix deposed during trial, her statement Ex. D/2 recorded under Section 164 of Cr.P.C, the statement of PW.2 Jaiti and PW.3 Moti Lal make the testimony of Ramdhani to be improbable and incredible. Her statements suffer from inherent improbabilities and are vague incomplete, inconsistent and unreliable. The prosecution is found to have withheld the material witnesses in this case which cast doubt upon the testimony of the complainant, the mother of the prosecutrix and the prosecutrix herself. The prosecution is found to have miserably failed to fasten the guilt upon the accused. The learned trial Court has critically analysed and properly appreciated the prosecution evidence, which suffers from no infirmity. The impugned judgment is cogent and well merited. The finding of the acquittal arrived at by the learned trial Court is just and proper with which I fully concur and in my view, the impugned judgment does not call for any intervention.

22. For these reasons, the State appeal being bereft of merits stands dismissed. The accused respondent is on bail. His bail bonds are ordered to be discharged.