

Vishram Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/764342

Court : Rajasthan

Decided On : Aug-31-2005

Reported in : 2005CriLJ4443; RLW2005(4)Raj2815; 2005(4)WLC597

Judge : F.C. Bansal, J.

Acts : Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act - Sections 3 and 3(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313; [Evidence Act, 1872](#) - Sections 27, 114 and 118; Indian Penal Code (IPC) - Sections 376 and 392

Appeal No. : S.B. Criminal Appeal No. 318 of 2001

Appellant : Vishram

Respondent : State of Rajasthan

Advocate for Def. : M.L. Goyal, Public Prosecutor

Advocate for Pet/Ap. : R.R. Baisla, Adv.

Judgement :

F.C. Bansal, J.

1. This appeal is directed against the judgment and order dated 30.11.2000 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Cases and

Additional Sessions Judge, Alwar whereby accused appellant Vishram has been convicted under Sections 376 and 392 IPC and sentenced to suffer R.I. for seven years and a fine of Rs. 1,000/-, in default of payment of fine to further suffer R.I. for six months and R.I. for three years and a fine of Rs. 500/-, in default of payment of fine to further suffer R.I. for three months respectively. Both the substantive sentences were ordered to run concurrently. However, the accused-appellant has been acquitted of the charge under Section 3(2) (v) of SC/ST (Prevention of Atrocities) Act.

2. Briefly stated the facts of the prosecution case are that on 3.10.99 'Parcha-Bayan' Ex.P3 of Smt. Ramu Devi (PW2) was recorded by the SHO, P.S. Rajgarh, District Alwar in Zanana Hospital, Rajgarh wherein it was stated by her that yesterday at about 5.00 p.m. she was going from her in-laws' village Sehra to her father's village Luharwala. When she covered some distance from Swami Dayal bus stand she was dragged to a nearby field by accused Vishram and he forcibly committed sexual intercourse with her. Having satisfied his lust, accused Vishram inserted three fingers into her vagina which resulted in tearing of vagina and profuse bleeding. She made hue and cry. Hearing her outcry, daughter of Harlya Bairwa, R/o Kali Pahadi came there. On seeing her, accused Vishram snatched her golden ornaments namely Kundal, Khangwali, Jantar and silver ornaments namely Mangalsutra, Chain, Kanakati, Saanth, Paijeb and fled away. From the place of occurrence she was taken to village Luharwala on motor-cycle by a person who had also reached there. From village Luharwala she was brought to Rajgarh hospital by her mother, Uncle Hajari and Aunt Dhanki. It was also stated by Smt. Ramu Devi that on inquiry she came to know the name of the culprit who had committed rape on her. On the basis of 'Parcha-Bayan' Ex.P3, SHO, P.S. Rajgarh registered the F.I.R. and investigated the case. On completion of investigation, a charge-sheet was filed against the accused- appellant in the Court Additional Chief Judicial Magistrate, Rajgarh who committed the case to the Court of learned Special Judge.

3. The learned Special Judge framed charges under Sections 376 and 392 IPC and under Section 3(ii)(v) of SC/ST (Prevention of Atrocities) Act against the appellant who pleaded not guilty and claimed to be tried. To prove the aforesaid

charges the prosecution examined as many as 16 witnesses. In his statement recorded under Section 313 Cr.P.C., the accused-appellant pleaded innocence and stated that on account of enmity with Chhotelal Meena, he was falsely implicated in this case. In defence two witnesses were examined.

4. The learned trial Judge, on hearing the final submissions made by both the parties, convicted and sentenced the accused- appellant as indicated here-in-above.

5. I have heard learned Counsel for the accused-appellant, learned Public Prosecutor for the State and with their assistance, carefully scanned and scrutinized the material on record.

6. Learned Counsel for the accused-appellant submitted that there was unexplained delay of 23 hours in reporting the matter to the police. The accused-appellant was not known to the prosecutrix before the alleged incident and no test identification parade was held. Additionally there was no corroboration to the evidence of the prosecutrix. Medical evidence does not lend any assurance to her testimony. Learned Counsel has also placed reliance on *Abid and Ors. v. State of Rajasthan*, 1998 Jan. R.C.C. 66. In the aforesaid background it was submitted that the conviction, as recorded, is not proper. Learned Public Prosecutor appearing for the State has supported the impugned judgment.

7. In *Aman Kumar and Anr. v. State of Haryana*, : 2004 CriLJ1399 , the Apex Court has observed as under:

'It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would

suffice.'

8. Again in *Shri Narayan Saha and Anr. v. State of Tripura*, : (2004)7SCC775 , while reiterating the same, Hon'ble the Supreme Court has observed as under:

'A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian [Evidence Act, 1872](#) (in short 'the Evidence Act') nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a 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 incorporated in the Evidence Act similar to Illustration (b) to Section 114 which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is an adult and of full understanding, the court is entitled to base a 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 discloses 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.'

9. Keeping in view the aforesaid principle laid down by the Apex Court, I would now examine the prosecution evidence. The prosecutrix PW2 deposed that on the day of incident, around 5.00 p.m. while she was proceeding to her father's village, accused Vishram appeared on the scene near Swami Dayal bus stand. He asked her as to where was she going She replied that she was going to village Pinnan

whereupon accused Vishram went ahead of her and when she crossed him he caught her from behind and dragged her to a nearby field and committed rape on her. She made hue and cry whereupon Sarbi (PW1) came to the place of occurrence from the way. It was further stated by the prosecutrix that when PW1 Sarbi was proceeding towards her, the accused-appellant inserted his fingers into her vagina and dragged her in the field. On arrival of PW1 Sarbi, the accused-appellant ran away. The prosecutrix identified the accused-appellant correctly in the Court. It was also stated by her that Brajmohan (PW6) also came on the spot and he took her to her father's village on motor-cycle. She narrated the incident to her mother. Thereafter she was taken to Rajgarh Hospital by her mother, Hajari and Dhanki and got her admitted. She further stated that next day at 2.00 p.m. police came in the hospital and recorded her statement Ex.P3. She also stated that the place of incident was inspected by the police in her presence.

10. PW1 Sarbi stated that on the day of incident she was going to village 'Kalipahadi'. She alighted from the bus at Swami Dayal bus stand and proceeded ahead on foot at about 4.30 p.m. She further stated that on way while she was urinating, she heard cries from a field. When she stood she saw accused-appellant Vishram dragging the prosecutrix in the field. When she made hue and cry the accused-appellant ran away. On being asked, the prosecutrix told her name and address and narrated the incident of rape to her. It was also stated by PW1 Sarbi that she had seen the 'Petticoat' of the prosecutrix stained with blood. She further deposed that 10-12 persons belonging to village Deda had assembled there and disclosed the name of the culprit. It was also disclosed by them that the accused belongs to village Deda and his father name is Lahari.

11. On close and careful scrutiny of the testimony of PW1 Sarbi, I have found it trustworthy. Her relations with the accused were not strained and there was no motive or reason for her to falsely involve the accused-appellant in the heinous crime of rape. PW1 Sarbi is not related to the prosecutrix. By caste is 'Balai' whereas the prosecutrix belongs to 'Meena' caste. Learned Counsel appearing for the accused-appellant contended that PW1 Sarbi admitted in her cross-examination that she saw the accused-appellant in the Court for the first time and prior to that she had never seen him. In view of such statement of PW1 Sarbi, it is

clear that the accused-appellant is not the real culprit who had raped the prosecutrix. In my opinion, this contention of the learned Counsel has no force. Having perused the entire statement of PW1 Sarbi, I have come to the conclusion that it was stated by her in cross-examination that she had never seen the accused- appellant in the Court before the day on which her statement was recorded. She did not state that she had not seen the accused- appellant on the place where rape was committed on the prosecutrix. Thus, the testimony of the prosecutrix stands corroborated by the evidence of PW1 Sarbi.

12. PW6 Brajmohan deposed before the Trial Court that on the day of incident around 5.30 p.m. while he was returning from village 'Kalipahadi' he found blood on the way near Swami Dayal bus stand. He further stated that at Swami Dayal bus stand he found the prosecutrix who told him that accused Vishram had committed rape on her. He also stated that he took the prosecutrix to village 'Luharwala' on his motor-cycle and left her at her residence. It is true that Brajmohan is related to the father of the prosecutrix but on this ground alone, his testimony is credible and has supported the version of the prosecutrix.

13. PW3 Kamli, who is mother of the prosecutrix, has stated on oath that on the day of incident around 6.00 p.m. her daughter (the prosecutrix) reached her home with Brajlal @ Brajmohan and on being asked she narrated the whole incident of her rape to her. She has further stated that on examination she found blood oozing from the vagina of her daughter. Thereafter she took the prosecutrix to Rajgarh Hospital where the doctor stitched the wound sustained by the prosecutrix. She has also stated that on that day she did not disclose the incident to the doctor but on arrival of the in-laws of the prosecutrix, she narrated the incident to the doctor. The evidence of PW3 Kamli could not be discarded merely on the ground that she is the mother of the prosecutrix. On scrutiny, I have found that her testimony inspires confidence and supports the version of the prosecutrix in regard to rape.

14. As regards medical evidence, PW16 Dr. Brajlal Meena stated in his deposition that on 2.10.99 he was posted as Junior Specialist, Gynecology at C.H.C. Rajgarh. At about 9.00 p.m. the prosecutrix was brought to the hospital by her mother. On examination he found injury of posterior vaginal wall. He stitched the wound and

admitted the prosecutrix in the hospital for treatment. He prepared bed-head ticket Ex.P25 which bears his signature. He further stated that on next day around 6.00 a.m. he came to know that the injury on the person of the prosecutrix had been caused by a boy whereupon he reported the matter to the Medical Jurist.

15. PW8 Dr. Shiv Shankar Sharma deposed that on 4.10.99 he was posted as Sr. Medical Officer, Rajgarh. On that day at 5.00 p.m. he examined the prosecutrix and found a stitched wound 6.4 cm. in length on posterior vaginal wall to fourchet. The injury was simple and its duration was within 1-2 days. He prepared injury report Ex.P5.

16. PW13 Dr. Geeta Malik stated that on 4.10.99 she was working as Medical Officer in Zanana Hospital, Alwar and examined the prosecutrix. She found the prosecutrix having pregnancy of about 20-22 weeks. She also found her hymen absent and stitched wound on lower part of vagina. Vagina admitted two fingers and blood was coming out from the stitches. She prepared her report Ex.P9 and forwarded it to the Medical Jurist.

17. PW7 Dr. Amar Singh Rathore, Medical Jurist, General Hospital, Alwar deposed that on perusal of the medical report Ex.P9 prepared by lady doctor, he came to the conclusion that the injury (Vaginal tear) was the result of rape and he prepared report Ex.P8.

18. There is no reason to disbelieve the aforesaid medical evidence and thus, the testimony of the prosecutrix stands further corroborated by the medical evidence.

19. Thus, the statement of the prosecutrix that the accused- appellant Vishram had committed rape on her, appears to be worth reliable and inspire confidence as it is corroborated by medical evidence as well as by other evidence of the aforesaid witnesses and, therefore, the learned trial Judge has rightly placed reliance on the testimony of the prosecutrix with regard to commission of rape.

20. As regards delay in lodging the F.I.R., the Apex Court in Shri Narayan Saha and Anr. v. State of Tripura (supra), has observed as under:

'We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR is really of no consequence, if the reason is explained.'

21. In *State of Punjab v. Ramdev Singh*, : AIR 2004 SC1290 , the Apex Court has held as under:

'Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as was done by the High Court in the present case.'

22. In *Bheru Lal v. State of Rajasthan*, 2004(1) RLR 177 : RLW 2004(1) Raj. 602, this Court has held as under:

'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 this respect, the decision of the Hon'ble Supreme Court in *Karnel Singh v. State of M.P.* : 1995 CriLJ4173 may be referred to.

In sexual offences delay in lodging of 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 it 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. In this respect, the decision of the Hon'ble Supreme Court in State of Punjab v. Gurmit Singh : 1996 CriLJ1728 may be referred to.

Keeping in mind the above observations made by the Hon'ble Supreme Court and looking to, the entire facts and circumstances of the case, since on the day when the whole incident was narrated by the child prosecutrix PW1 Nirmala to her mother PW2 Dhakhi, the father of the child prosecutrix, namely, PW4 Hazari was not in the village, therefore, if after coming to village, he lodged the report with delay, such delay cannot be said to be fatal to the prosecution case.

23. In this case, the incident of rape took place around 5.00 p.m. on 2.10.99. After the incident the prosecutrix reached at the house of her father on the motor-cycle of PW6 Brajmohan and narrated the incident to her mother. As per the testimony of the prosecutrix, her father was not present at his house as he was serving in a factory in Bhiwadi town. The prosecutrix's mother PW3 Kamli examined her private parts and found the blood oozing from the vagina. Thereafter, she brought the prosecutrix to Dr. B.L. Meena (PW16), posted at Rajgarh hospital. Dr. Meena examined the prosecutrix and stitched the aforesaid wound and admitted the prosecutrix in the hospital for further treatment. PW3 Kamli has stated that she did not disclose the incident of rape to the doctor immediately but narrated the incident to him next day when the in-laws of the prosecutrix reached in the hospital. Thereafter the matter was reported to the SHO, P.S. Rajgarh and Medical Jurist.

24. PW12 Gangaram Kumawat, the then SHO, P.S. Rajgarh stated in his deposition that on 3.10.99 at 1.15 p.m. he received the information on telephone about rape from Dr. Shiv Shankar Sharma, In-charge, Zanana Hospital whereupon he reached the hospital and recorded the statement Ex.P3 of the prosecutrix and thereafter registered the FIR Ex.P18 at 3.45 p.m.

25. Thus, in my considered view, in the instant case the prosecution has explained the delay in lodging the FIR to the satisfaction of the Court and it is not fatal to the prosecution.

26. So far as the contention of the learned Counsel for the accused-appellant regarding non-holding of identification parade is concerned, it has no force and deserves to be rejected. Of course, in *Abid and Ors. v. State of Rajasthan (supra)*, this Court has held as under:

'No test identification was admittedly held in the course of the investigation of the case by PW 8 Hargovind Singh. Identification, being essentially a mental act, whether done by making a statement or by pointing out at some object, has to be made, at a test identification parade held during the course of investigation of a case. In the absence of evidence of holding a test identification parade during the course of investigation and identification of the accused by the witness, the evidence of identification at the trial is, in fact, rendered valueless and cannot be relied upon to base the conviction of an accused.'

27. The same view was reiterated by this Court in *Mahendra Singh v. State of Raj.*, 1986 R.L.R. 132. But in *Ramanbhai Naranbhai Patel and Ors. v. State of Gujarat*, 2000 Cr.L.R. (SC) 138, the Apex Court has held as under:

'So far as witness Niruben was concerned, she is the wife of the deceased Ramanbhai Mohanbhai. The accused mounted an assault on her husband in her bedroom and even though she might not be knowing the accused earlier, the faces of the accused mounting such an assault and which caused fatal injuries to her husband can easily be treated to have been imprinted in her mind and when she could identify these accused in the Court even in the absence of identification parade, it could not be said that her deposition was unnatural or she was trying to falsely rope in the present accused by shielding the real assaulters on her husband.'

28. In *Dastagir Sab and Anr. v. State of Karnataka* (2004) 3 SCC 106, Hon'ble the Supreme Court has observed as under:

'It is also not in dispute that the accused were arrested on 6.11.1993 and according to the investigating officer they were shown to her to ensure that they have arrested the correct persons and in that view of the matter it was impracticable to hold a test identification parade. In view of the peculiar facts and

circumstances of this case, we are of the opinion that non- holding of a test identification parade cannot be said to have vitiated the trial. The learned Counsel appearing on behalf of the appellants, however, would submit that the prosecutrix in her evidence categorically admitted that she did not know the accused persons earlier but despite the same they have been named in the first information report. A bare perusal of the first information report would show that therein it had merely been stated:

'I came to know that the boy who has raped me is Dastagir and the boy who has held me and put the cotton in my mouth is Rajasab and both of them are of Athnoor village, if show to me I can identify them.'

It is, therefore, not difficult to perceive that before the first information report which was lodged on 5.11.1993 the names of the appellants were disclosed and the prosecutrix came to know their whereabouts.

No law states that non-holding of test identification parade would by itself disprove the prosecution case. To what extent and if at all the same would adversely affect the prosecution case, would depend upon the facts and circumstances of each case.

In the facts of this case, holding of TI parade was wholly unnecessary. Had such TI parade been held, the propriety thereof itself would have been questioned before the Trial Court.'

29. In *Malkhan Singh and Ors. v. State of M.P.*, : 2003 CriLJ3535 , Hon'ble the Supreme Court has observed as under:

'It is well settled that the substantive evidence is the evidence of identification in court and the test identification parade provides corroboration to the identification of the witness in court, if required. However, what weight must be attached to the evidence of identification in court, which is not preceded by a test identification parade, is a matter for the courts of fact to examine. In the instant case the courts below have concurrently found the evidence of the prosecutrix to be reliable and, therefore, there was no need for the corroboration of her evidence in court as she

was found to be implicitly reliable. We find no error in the reasoning of the courts below. From the facts of the case it is quite apparent that the prosecutrix did not even know the appellants and did not make any effort to falsely implicate them by naming them at any stage. The crime was perpetrated in broad daylight. The prosecutrix had sufficient opportunity to observe the features of the appellants who raped her one after the other. Before the rape was committed, she was threatened and intimidated by the appellants. After the rape was committed, she was again threatened and intimidated by them. All this must have taken time. This is not a case where the identifying witness had only a fleeting glimpse of the appellants on a dark night. She also had a reason to remember their faces as they had committed a heinous offence and put her to shame. She had, therefore, abundant opportunity to notice their features. In fact on account of her traumatic and tragic experience, the faces of the appellants must have got imprinted in her memory, and there was no chance of her making a mistake about their identity. The occurrence took place on 4.3.1992 and she deposed in court on 27.8.1992. The prosecutrix appears to be a witness on whom implicit reliance can be placed and there is no reason why she should falsely identify the appellants as the perpetrators of the crime if they had not actually committed the offence. In these circumstances if the courts below have concurrently held that the identification of the appellants by the prosecutrix in court does not require further corroboration, we find no reason to interfere with the finding recorded by the courts below after an appreciation of the evidence on record.'

30. Admittedly, the accused-appellant was not known to the prosecutrix previously but looking to the facts and circumstances of this case, non-holding of test identification parade does not render the version of the prosecutrix untrustworthy. The prosecutrix was dragged by the accused-appellant from the way to a nearby field and raped by him. After rape, the accused- appellant inserted his fingers into her vagina and caused injury. Seeing PW1 Sarbi coming to the place of incident, the accused-appellant again dragged the prosecutrix in the field and thereafter ran away. The face of the accused-appellant can easily be treated to have been imprinted in her mind and when she could identify the accused in the Court even in the absence of identification parade, it could not be said that her deposition was unnatural or she was trying to falsely rope in the present accused by shielding the

real culprit.

31. There is no reason as to why a woman, more particularly a married woman would falsely implicate the accused-appellant. As per the statement of PW1 Sarbi, 10-12 persons belonging to village Deda had also come on the place just after the Incident and they disclosed the name of the culprit who had committed rape on the prosecutrix. It is true that none of these persons has been examined by the prosecution but in view of the facts and circumstances of this case, because of this reason the testimony of PW1 Sarbi cannot be rejected as the accused-appellant also belongs to village Deda. Possibility of winning over of these persons by the accused-appellant cannot be ruled out. Thus, I have come to the conclusion that non-holding of test Identification parade is not fatal to the prosecution.

32. I have also given my thoughtful consideration to the submission made by learned Counsel that the accused-appellant has been falsely implicated in this case on account of enmity with PW4 Chhote Lal Meena. In his cross-examination PW4 Chhote Lal Meena has denied the suggestion put by learned Counsel for the accused-appellant that there was a dispute between him and the accused-appellant. That apart, PW4 Chhote Lal Meena is not related to the prosecutrix and he is an independent witness. The testimony of DW1 Ramchander and DW2 Mawasi with regard to alleged enmity between Chhote Lal and the appellant is not reliable and the above contention of the learned Counsel deserves to be rejected.

33. For the aforesaid reasons and after having examined the prosecution evidence, I have come to the conclusion that the prosecution has succeeded in proving that the prosecutrix was raped by the accused-appellant and the Trial Court has committed no error in convicting the appellant for the offence of rape under Section 376 IPC. It would be pertinent to mention here that I do not place reliance on the reports Ex.P19 to Ex.P21 of the State Forensic Science Laboratory, Rajasthan as the In-charge of 'Malkhana' of P.S. Rajgarh was not examined by the prosecution. In absence of his statement before the Trial Court, the prosecution has failed to prove that the seal on the packets of 'underwear' of the accused-appellant and 'Petticoat' of the prosecutrix had remained intact in the said 'Malkhana'.

34. As regards charge under Section 392 IPC, the prosecutrix stated before the Trial Court that 'Paijeb' and 'Jantar' were given to the police by the members of her family. As per the prosecution version, 'Jantar' and 'Paijeb' were recovered from the house of the accused-appellant and recorded under Section 27 of the Evidence Act. From the above statement of the prosecutrix, it is evident that these articles had not been snatched by the accused-appellant from the person of the prosecutrix after commission of rape. Smt. Kamli, mother of the prosecutrix did not state in her police statement Ex.D5 that while narrating the incident of rape, the prosecutrix had also told her that her ornaments which she was wearing at the time of the incident, had been snatched by the accused. PW6 Brajmohan has not supported the version of the prosecutrix in regard to robbery of her ornaments. In these circumstances, I am of the opinion that the prosecution has failed to prove the charge under Section 392 IPC against the accused-appellant and the Trial Court has committed an error in convicting the accused-appellant for this offence. Thus, the appeal of the accused-appellant deserves to be allowed in part.

35. In the result, the appeal of accused-appellant Vishram is partly allowed. He is acquitted of the charge under Section 392 of the Indian Penal Code, but his conviction and sentence under Section 376 of the Indian Penal Code is confirmed. The judgment and order dated 30.11.2000 passed by the learned Special Judge, SC/ST (Prevention of Atrocities) Cases and Additional Sessions Judge, Alwar stand modified accordingly.