

Sulekhan Singh and ors. Vs. State

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Court : Rajasthan

Decided On : Mar-08-1999

Reported in : 1999CriLJ3798; 1999(3)WLC415; 1999(1)WLN449

Judge : N.N. Mathur, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 114, 354, 376 and 511; Code of Criminal Procedure (CrPC) , 1974 - Sections 161

Appeal No. : Criminal Appeal No. 6 of 1981

Appellant : Sulekhan Singh and ors.

Respondent : State

Advocate for Def. : A.R. Nikup, Addl. Public Prosecutor

Advocate for Pet/Ap. : S.S. Dhillion and; H.S.S. Kharlia, Advs.

Disposition : Appeal dismissed

Judgement :

N.N. Mathur, J.

1. This appeal is directed against the judgment dated 17-12-1980 passed by the Addl. Sessions Judge, Sri Ganganagar convicting the appellants of offence under Sections 376, 511, I.P.C. and sentencing each of them to undergo 4 years

rigorous imprisonment and to pay fine of Rs. 500/-, in default of payment, to further undergo 6 months' rigorous imprisonment.

2. In brief, the prosecution case is that on 19-2-1980 one Shri Diwan Chand lodged a First Information Report at police station Sri Karanpur stating inter alia that his daughter Toshi aged 16 years along with wife of his son Mst. Chindo had gone to the field. At about 1 p.m. Shri Shiv Singh s/o Shri Darshan Singh informed him that about half an hour before, accused-Sulekhan Singh, Sukha Singh and Bansa Singh misbehaved with his daughter Mst. Toshi. He also informed that Mst. Toshi was seen in terrible condition. On enquiry she disclosed that 3 accused persons namely Sulekhan Singh, Bansa Singh and Sukha Singh with intention to outrage her modesty caught her and took bite on her cheeks and undressed her. The incident was witnessed by Smt. Chindo and Smt. Sukh Deo Kaur. Providing the motive the informant stated that there was a rumour in the village that his son Raj Singh was having illicit relations with Jindo daughter of accused-Sulekhan Singh. To discuss the complaint Panchayat was called in which he had assured to send his son Raj Singh out of the village. On this information police registered a case under Section 354, I.P.C. and proceeded with investigation. After usual investigation, the police submitted a charge-sheet against 4 accused persons for offence under Sections 376/511 read with Section 114, I.P.C.

3. During the trial, the prosecution examined 8 witnesses. The trial Judge held that the prosecution, succeeded in establishing the case of attempt to rape against all the accused persons except one namely Gyani alias Gyan Singh. The learned Judge accordingly convicted 3 accused appellants as stated above and acquitted Gyan Singh.

4. At the outset it is pointed out by the learned counsel that the first appellant-Sulekhan Singh was died during the pendency of the appeal. Assailing conviction of the accused-Bansa Singh and Sukha Singh, it is contended by Mr. S. S. Dhillon, learned counsel for the appellants that the entire story is highly improbable, as it is difficult to believe that father along with two sons would go for committing a crime like rape. It is also submitted that there is a motive for falsely implicating the accused persons. It is further submitted that the case of Gyan Singh is identical to

that of Bansa Singh but, on the same set of evidence, he has been acquitted. He has further submitted that there is nothing to show that the accused persons intended to commit rape. He has relied upon the decisions reported in 1996 Cri LJ 346 (Orissa) (Damodar Behera v. State of Orissa) and the case reported in 1991 Cri LJ 751 (Madh Pra) (Ankariya v. State of Madhya Pradesh).

5. On the other hand, it is contended by the learned Additional Public Prosecutor that the statement of Mst. Toshi is corroborated by the statement of P. W. 2 Mst. Chindo, P. W. 3 Sukhdeo Kaur and other witnesses including medical evidence. It is further submitted that the reading of the statement of the prosecution witnesses clearly reveals that the accused persons had gone to the field with an intention to commit rape on Mst. Toshi. It is thus, submitted that the learned trial Judge has rightly convicted the accused persons of offence under Sections 376/511, I.P.C. which calls for no interference.

6. I have considered the rival contentions and also gone through the record. Mst. Toshi P.W. 1 has stated in her statement that in the afternoon when she was in the field, the accused persons Sulekhan Singh, Sukha Singh, Bansa Singh and one other person whose name she did not know arrived there. Bansa Singh caught her, than Sukha Singh and Bansa Singh torned her cloths and took bites on cheeks. She also stated that cord of her Salwar was forcibly torn, her clothes were put off and she was thrown on the ground. Other ladies were asked to leave the field. While she was on the ground, Sukha Singh tried to come on her from the legs side with an intention to modest her, but she pushed him back, by giving a kick. His sister-in-law made a cry and also to protect fell on her. On hearing the cry Chanan Singh arrived on the spot. Seeing him all the accused persons ran away. She also stated that Sulekhan Singh was exhorting them to outrage her modesty. She also stated that to Chanan Singh and one Bawariya boy, working in the field took out his trouser and gave her, which she put on. Shiv Singh gave information of the incident to her father. In cross-examination on being confronted with her statement under Section 161, Cr.P.C. She denied to have made statement that Sukha Singh tried to insert penis.

I have read statement of Mst. Toshi carefully and find the statement natural and trustworthy. The statement is supported by the statement of P.W. 2 Chinder Kaur alias Chindo, she has also deposed almost in the same line. The statement is further supported by P.W. 3 Sukh Deo Kaur. P.W. 4 Amreek Kaur has been declared hostile but she has also stated that the accused-Sulekhan Singh, Bansa Singh, Sukha Singh and Gyan Singh arrived at the field and Sukha Singh asked the other ladies to leave the field. Though, she has not narrated the actual incident but she has stated that Bansa Singh caught the hand of Mst. Toshi and Sukha Singh and Gyan Singh torned her cloths. P.W. 6 Chanan Singh is the witness who immediately reached on the spot. He stated that on hearing cries of the ladies, he rushed to the place of the incident. He found that the cloths of Mst. Toshi were torned. He also saw accused Sulekhan Singh and Sukha Singh and Bansa Singh leaving the field. Chindo told him that the accused persons have outraged the modesty of Mst. Toshi. There were no cloths on the body of Mst. Toshi. The trouser was supplied to her by Bawariya boy working in the field. P.W. 8 Doctor M.P. Aggarwal has stated that he examined Mst. Toshi on 19-11-1978 and prepared injury report Ex. P/9. He noticed following injuries on the body of Mst. Toshi:

1. Oval red coloured bruise with abrasions on its edges of different dimension on right cheek.
2. More or less circular red coloured bruise with abrasions on its edges, of different dimensions of left cheek.
3. Red coloured bruise with abrasion $3\frac{1}{4}' \times 1\frac{1}{2}' \times 2\frac{2}{3}'$ on the left sacroiliac region of back. He also noted fresh clotted blood on abrasions.
7. The aforesaid injuries clearly shows the marks of teeth bite on both the sides of the cheeks of Mst. Toshi. From the prosecution evidence, it is amply proved that the accused persons had gone to the field where Mst. Toshi was working. The accused-Sukha Singh and Bansa Singh torned the cloths of Toshi and also forcibly torn the cord of salwar and made her naked. Sukha Singh attempted to go on her body from leg side but he could not succeed as she threw him by giving a kick.

8. The question arises for consideration is:-

whether it is a case of attempt to commit rape punishable under Sections 376/511, I.P.C. or it is only a case of outraging the modesty of a woman, punishable under Section 354, I.P.C

9. Section 511, I.P.C. prescribes punishment for an attempt not otherwise expressly provided for. Section 511 reads as follows :

Punishment for attempting to commit offence punishable with imprisonment for life or other imprisonment- Whoever attempts to commit an offence punishable by this Code with imprisonment, for life or imprisonment, or to cause such an offence to be committed and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment for such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence or with such fine as is provided for the offence, or with both.

10. The expression 'whoever attempts to commit an offence' in Section 511, can only mean, whoever intends to do a certain act with intention or knowledge necessary for the commission of offence. All offences may be viewed in four distinct stages (i) intention (ii) preparation (iii) attempt and (iv) completed act. There is a thin line between preparation and attempt. Attempt has been defined in Stephen's Digest of Criminal Law as follows :

an attempt to commit a crime is an act done with intent to commit that crime and forming part of a serious (series) of acts which would constitute its actual commission if it were not interrupted.

The Supreme Court in *Abhaynand Mishra v. State of Bihar*, reported in AIR 1961 SC 1698 : 1961 (2) Cri LJ 822 held that a person commits the offence of attempting to commit particular offence, when he intends to commit that particular offence and having made preparations and with the intention to commit that

offence does an act toward its commission and that such an act need not be penultimate act towards the commission of that offence, but must be an act during the course of committing that offence.

11. It is now well settled that in a case of attempt to rape in order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events and in spite of all resistance. A preparation added with even a slight over act reasonably proximate to the consummations of the offence is sufficient to bring home the offence of attempt to rape. In Orissa case 1996 Cri LJ 346 cited by the learned counsel, sari of the victim was removed and nothing was done beyond that as such the Court held that it was not a case of attempt to rape. This case is of no help to the petitioner. In Madhya Pradesh case 1991 Cri LJ 751 the accused a stranger representing himself as Sarpanch could manage shelter for the night in the house of complainant. In the night the prosecutrix awakened and found the cord of her petticoat loosened and the accused was trying to sit on her waist. She pushed the accused and cried out to her husband. In this state of evidence, the Court held that the act of the accused would constitute not an attempt to commit rape but only preparation for the same. With respect I am unable to agree with the view of learned single Judge of the Madhya Pradesh High Court. The accused in that case had loosed the cord of the petticoat and then he was trying to sit on the waist of the prosecutrix obviously he wanted to gratify his sexual desire. This act is reasonably proximate to consummation of the heinous crime of rape. In the instant case it is not only that the accused-appellant torn the cloths and took bites on cheeks, but forcibly torn the cord of the Salwar and tried to go on the grown up lady from leg-side. It is definitely an over act beyond the stage of preparation, proximate to the commission of offence of rape, taking to the stage of attempt. First deceased-appellant-Sulekhan Singh along with his two sons the present appellant might not have gone on the spot with an intention to commit rape and intention may be only to outrage the modesty of the prosecutrix, but having touched the body of the prosecutrix, after removing the cloth the desire to indulge in sexual desire could develop, which led them to torn the cord of the salwar with obvious desire to reach to private part of the body. This over act coupled with further act of trying to fall on the body of prosecutrix from the leg side is a proximate act towards the

commission of offence of rape, constituting offence of attempt to rape, punishable under Sections 376/511, I.P.C. Penal provisions pertaining to sexual harassment and torture should not be construed in a manner which gives undue benefits to the offenders involved in such offences.

12. In view of the aforesaid the appeal being devoid of force is rejected. The appellants are on bail they shall surrender to custody to serve out the sentence awarded. The Chief Judicial Magistrate, Ganganagar is directed to issue warrant of arrest against appellants forthwith and send them to jail to serve out the sentence.

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