

Nathu Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-22-1998

Reported in : 1998CriLJ4448

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cri. Appeal No. 606 of 1997

Appellant : Nathu

Respondent : State of Rajasthan

Advocate for Def. : D.S. Rathore, P.P.

Advocate for Pet/Ap. : Sanjay Mathur, Adv.

Disposition : Appeal dismissed

Judgement :

G.L. Gupta, J.

1. Through this appeal, Nathu has called in question his conviction under Section 376, IPC and a sentence of 10 years RI and fine of Rs. 500 recorded by the learned Sessions Judge, Doongarpur, vide his judgment dated 9-9-97.

2. The case relates to an occurrence which took place on 25-3-97 at 10 a.m. in village Limbdi. The first information report Ex. P/4 was lodged by Mrs. 'N', mother of the victim 'R' on the same day at 4 p.m. stating that she was away from her house and when she returned in the noon time she found her daughter 'R' (9 years) lying on the cot. On asking, 'R' revealed that she was sitting under the mango tree at about 10 a.m. when Nathu (accused) flung her on the ground and committed rape on her. On this report, a case under Section 376, IPC was registered. During investigation, the police got the medical examination of 'R' done, inspected the site, interrogated the witnesses. The accused was arrested. He was also medically examined. After the completion of the investigation, a challan was submitted.

3. The learned Sessions Judge framed a charge under Section 376, I.P.C. against the accused, who pleaded not guilty. The prosecution examined PW1 Galji, PW2 Ramji, PW3 Nathu, PW4 Dr. Jagdish Badgujar, PW5 Rekha, PW6 Narbada, PW7 Thawra, PW8 Sega and PW9 Laxmilal, IO. Accused in his statement Under Section 313, Cr.P.C. denied accusation. He examined Smt. Leeli in defence. After hearing the arguments of learned P. P. and learned counsel for the accused, the trial Court held that accused had committed rape on 'R'. He, therefore, convicted and sentenced him as stated above.

4. Mr. Mathur contended that there are contradictions in the statements of the witnesses about the remnants of the incident. He pointed out that 'R' admits in her cross-examination that she used to clean night soil by pebbles and once a pebble had entered in her private part and argued that she might have suffered vaginal injury while cleaning after passing stool. In this connection, he also pointed out that the relations of the accused and the family of 'R' were strained and urged that a false case has been lodged against the accused because of enmity.

5. Mr. Rathore, on the other hand, contended that on the basis of the so-called contradiction in the statements of the witnesses regarding the time of the occurrence, the overwhelming prosecution evidence should not be discarded. He invited my attention to the statement of the Medical Officer, who has ruled out the possibility of sustaining vaginal injury by pebbles.

6. I have carefully considered the above arguments. 'R' was medically examined by Dr. Jagdish Badgujar (PW4), who has proved the report Ex. P/1 and the skigram report Ex. P/2. He states that 'R' was between 7 to M years of age. His statement is based on the physical examination of 'R' and also on the ossification test. It has also come in his statement that the formation of second molar had not started. A searching cross-examination has been done but nothing could be elicited as to discard the testimony of Dr. Badgujar regarding the age of the victim.

7. 'R' deposes that the accused had fallen on her and had committed sexual intercourse with her. She further states that after the act she could not stand and walk and with great difficulty she reached her house where she reported the matter to her mother and sister.

8. It has come in the statement of 'R' that this incident had occurred in the evening time whereas 'N' (PW6) deposes that when in the noon she returned her house 'R' informed her about the occurrence. There is, thus, discrepancy in the timing of the occurrence. However, on this discrepancy the statement of 'R' cannot be discarded. 'R' being of tender age, could not have correct idea of the time. If we read her whole statement, it becomes evident that she did not understand various questions and went on telling 'yes' to the questions put to her. There is overwhelming evidence on record in the statements of other witnesses that the occurrence had taken place before noon time and the villagers had been informed about the occurrence in the afternoon. The FIR has also been lodged at 4 p.m. It is obvious that the occurrence had taken place before noon but 'R' being child, did not have the idea of the time.

9. On the point of contradictions, the Apex Court has observed in the case of State of Punjab v. Gurmeet Singh AIR 1996 SC 1393: (1996 Cri LJ 1728), as follows :-
.The Courts, therefore, shoulder a great responsibility while trying an accused on charges of rape. They must deal with such cases with utmost sensitivity. The Courts should examine the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the statement of the prosecutrix, which are not of a fatal nature, to throw out an otherwise reliable prosecution case. If evidence of the prosecutrix inspires confidence, it must be

relied upon without seeking corroboration of her statement in material particulars. If for some reason the Court finds it difficult to place implicit reliance on her testimony, it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The testimony of the prosecutrix must be appreciated in the background of the entire case and the trial Court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

10. The statement of 'R' is corroborated by the medical evidence contained in the statement of Dr. Badgujar, who examined her on the police request. There is clear evidence of Dr. Badgujar that the hymen of 'R' had ruptured and there were marks of violence on her private parts and thighs, There was laceration at the labia majora and the victim was feeling pain because of swelling on her vaginal region. There is absolutely no reason to disbelieve the medical officer. He could not have any cause to prepare false report of sexual violence.

11. In the cross-examination of 'R' and Dr. Badgujar, the accused has tried to bring facts that the injuries suffered by 'R' on her private part were caused by pebbles. 'R' of course, admits in her cross-examination that sometimes she used pebbles to clean the night soil and once a pebble had also entered inside the private part but by this it cannot be inferred that 'R' says that on the day of occurrence she had suffered injury on her private parts by a pebble. She makes categorical statement that the accused had fallen on her and had inserted his private part in her private part. Dr. Badgujar rules out the possibility of sustaining injury found on the private part of 'R' by a stone/pebble. According to him, injury on the outer part can be sustained by a pebble but it is not possible to sustain injury in the inner side. He deposes that if an attempt is made to take pebble from the front side, it cannot enter the vagina and if it is brought from the back side then some part of the anus is bound to tear which was not there. The statement of Dr. Badgujar makes it clear that the injury suffered by 'R' could not be caused by a pebble.

12. There could not be any reason for Mrs. 'N' to implicate the accused in a false case. A suggestion has been put in the cross-examination of 'R' that there was some dispute between her parents and father of the accused, to which she replied

in the affirmative but Mrs. 'N', her mother, has emphatically denied that there was any dispute between her family and the father of the accused. 'R', obviously has replied in the affirmative without understanding the question. The accused has not come out with the facts as to what was the dispute between his father and the complainant party. He has not led any evidence to prove his plea of enmity. That being so, it cannot be accepted that Mrs. 'N' had cause to implicate the accused in a false case.

13. The accused has also tried to show that there was groupism in the village and as he belonged to different group, he has been implicated in the case. An attempt was made to show that accused had contested election against Ramji (PW2) and Ramji, Nathu and others had gone along with Mrs. 'N' to lodge the report. Ramji states in clear terms that Nathu, who had contested the election against him, was not the accused Nathu but he was different Nathu Damor. Therefore, there was no question of any enmity between the accused and the persons who had helped Mrs. 'N' to lodge the report.

14. Mrs. 'N' is widow. There was no major male member in the family. Therefore, it was natural for her to inform the villagers about the occurrence and to have taken them to the police station. Because the witnesses had gone along with Mrs. 'N' to the Police Station, it cannot be inferred that the witnesses had conspired to fabricate a case against the accused.

15. A girl or her parents in the traditional bound non-permissive society of India would be extremely reluctant even to admit that any incident which is likely to reflect on the chastity of the girl had ever occurred. She or her mother would never run the risk as they would be conscious of the danger of being ostracized by the society and even family members. If the girl is unmarried, she and her mother would apprehend that it would be difficult to secure an alliance with a suitable match from an acceptable family. When the crime of sexual assault is brought to light, there is a built in assurance that the charge is genuine rather than fabricated : See *Bhogini Bhai v. State of Gujarat* 1983 SC 753.

16. The learned Sessions Judge has considered the entire evidence produced in the case. It cannot be said that he has committed an error in arriving at the

conclusion that the accused had committed rape on 'R'. The conviction of the appellant under Section 376, IPC deserves to be maintained.

17. The sentence cannot be held to be excessive in the facts and circumstances of the case.

18. The appeal being devoid of merit is dismissed.

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