

Narayan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Mar-15-1988

Reported in : 1988WLN(UC)411

Judge : Jasraj Chopra, J.

Appeal No. : S.B. Cr. Appeal No 423 of 1978

Appellant : Narayan

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

J.S. Chopra, J.

1. This is an appeal against the judgment of the learned Sessions Judge, Merta dated 22-11-1978 where by the learned Sessions Judge has held the accused-appellant Narayan guilty of the offences under Sections 376 and 451 IPC and has sentenced him to two years rigorous imprisonment together with a fine of Rs. 1,000/- and in default to undergo three months' rigorous imprisonment on the first count and to undergo one year's rigorous imprisonment together with a fine of Rs. 500/- and in default to undergo one month's rigorous imprisonment, on the second count. Both the substantive sentences were ordered to run concurrently.

2. The facts necessary to be noticed for the disposal of this appeal briefly stated are: that Mst. Koyali wife of complainant Tulchharam, on 23-10-76 at about 9 a.m. went to her Bada to collect cowdung and to give fodder to the animals. It is alleged that accused Narayan who is the real brother-in-law of Tulchharam's sister entered the Bada and finding Mst. Koyali alone caught hold of her from back and pulled her to the ground and then raised her Ghaghara and committed rape with her Mst. Koyali cried for help. She caused bite-injuries to him by her teeth and moved her legs and hands for releasing herself from the hold of the accused. It is alleged that on hearing her cries Bherudan and Jogida Bhambhi came there and they pulled the accused from over Mst. Koyali. The accused then ran away from the Bada of Tulchharam and in the way, when Tulchharam met him, he threw stones on him and ran away.

3. This occurrence happened at about 9 a.m. on 23-10-76 but no report of the incident was lodged till 25-10-76. However, on 25-10-1976, a complaint has been filed in the Court which was forwarded to the Police on 26-10-76 for investigation under Section 156(3), Cr. PC. It was received by the S.H.O. on 28-10-76. A case under Sections 376, 452, 323, 342 and 147, IPC was registered against the accused-appellant. The police inspected the site and got Mst. Koyali medically examined.

4. It is alleged that accused Narayan also lodged a report at the Police Station, Merta City on 23-10-76 but that report has not been produced before the Court but his injury report Ex. P. 2 has been produced. He was medically examined on 23-10-76 itself.

5. Be that as it was after usual investigation, a case against the accused-appellant was challenged in the Court of learned Munsif and Judicial Magistrate. Merta City, from where, it was committed to the Court of the learned Sessions Judge, Merta for trial, who after holding trial convicted and sentenced the accused-appellant as aforesaid. Hence this appeal.

6. I have heard M/s. S.R. Singhi and Suresh Kumbhat the learned Counsel appearing for the accused-appellant and Mr. R.K. Soni, the learned Public Prosecutor appearing for the State and have carefully gone through the record of

the case.

7. Mr. S.R. Singhi, the learned Counsel appearing for the accused-appellant has argued that the learned lower court has taken a very superficial view of the evidence on record. According to him, on a clear scrutiny of the evidence on record, the case of the prosecution falls to the ground. He has submitted that in this case, the FIR has been lodged late and the testimony of the eye witnesses is contradictory. He has further submitted that a false case has been foisted against the accused-appellant to wriggle out of the case which was instituted by the accused-appellant against the complainant Tulchharam on 23-10-1976 itself.

8. On the other hand, Mr. R.K. Soni, the learned Public Prosecutor appearing for the State has submitted that it is a fully proved case. Two independent eye witnesses have supported the testimony of the prosecutrix. The case of the prosecution is fully supported by the medical evidence and therefore, the judgment of the learned lower court is perfectly justified and deserves to be sustained.

9. I have given my most earnest consideration to the rival submission made at the bar. On a careful reading of the evidence on record, apparently, it appears that the case of the prosecution is very strong and it is supported by two eye witnesses of the same village and, therefore, as per the learned Public Prosecutor, there is no escape from the fact that such an offence has been committed by the accused-appellant specially when the testimony of the prosecution is fully supported by the medical testimony. However, if we critically examine the evidence recorded in the case, we find that the evidence which has been led in the case is not worth reliance and the judgment of the learned lower court cannot be sustained. It is alleged that the occurrence took place on 23 10-1976 at about 9 a.m. It has taken place in the Bada of Tulchharam. It appears improbable that somebody will choose that hour of the day for committing forcible rape with a lady in a Bada which is just near the public way. It is admitted case of the prosecution that it (23-10-1976) was the next day of the Deepawali and on that day, persons of Hindu community go for meeting with each other to houses of each other and therefore, a lot of movement takes place on that day and so, no body can commit forcible rape with a lady in a Bada which is situated just near the public way. Mst. Koyali

has stated that accused Narayan came to her house only once and that was before about 6 years of the occurrence. It is inconceivable that a man will come to commit rape with a lady, who is his sister-in-law's sister in law, after about 6 years without any rhyme or reason and that too in the day hours. It appears highly improbable and against the human conduct that without any prior acquaintance, such a thing can be done in broad day light specially when the accused and the prosecutrix belong to two different villages and they have not met with each other for the past about 6 years. Village Gwardi is a big village. The occurrence took place on 23-10-76 at about 9 a.m. but its report was not lodged before 25-10-1976. It has been stated by Tulchharam that the accused stopped him from boarding the bus to report the matter. If that was so. he could have complained about it to the other villagers and could have sought their help to report such a grave occurrence to the police. In his cross-examination, he has stated that he did not tell about it to any village person. It is improbable that if a man's wife is raped by his own near relative, he will not tell about it to any person and will remain in village for about two days and shall not ask for help of the villagers for lodging report of the incident to the police. He could as well have sent the report with any body to the Police Station if he was prevented from doing so.

10. PW 5 Tulchharam has stated that on 25-10-76, they went to Merta City but they did not report the matter to the police. For whole of the day, they were sitting in the Merta Hospital but the Doctor did not come to the Hospital on that day. They then went to village Riyanbari and there, they obtained certificate from the Doctor and then came to one Bhanwarlal, Advocate. He has categorically stated that this report Ex. P. 3 was got written from Shri Bhanwarlal, Advocate after the certificate was obtained from Riyanbari.

11. PW 1 Dr. R.P. Soni, who was the Medical Officer Incharge, PHC Riyanbari on 25-10-76, has stated that he examined Mst. Koyali at 6 p.m. on that day. According to Tulchharam, they came to Merta City after obtaining the certificate from the Doctor and then got this report written with the help of Shri Bhanwarlal, Advocate. Thus, the report could not have been presented in the Court on 25-10-76. The report has actually been forwarded to the police on 26-10-76 but it appears that it has been presented in the Court on 25 10-76 rather than 26-10-76.

If it has been presented on 25-10-76 then the Court does not sit after 5 p.m. and, therefore, it appears that the medical examination has been got done after the complaint was filed.

12. In the complaint, it has been mentioned that the complaint has been filed as soon as the Court has opened. Thus, from the evidence of Tulchharam, it is not clear whether the report was filed in the Court on 25-10-76 or 26-10-76. Moreover, if he reached Merta on 25-10-76 then who prevented him from reporting the matter to the police on that day i.e. 25-10-76. This has not been explained by him.

13. Mst. Koyali has stated that in the scuffle that took place between her and the accused, the male organ of accused Narayan could enter her vagina only once and immediately, it came out on account of her resistance. He could not discharge in her vagina. She has stated that she felt no pain in her vagina. If that was so, it appears that the condition of her body that was found by the Doctor was not the result of this incident. The Doctor found a light watery and blood discharge on her clothes. If the accused has not discharged, there was no occasion for watery or blood discharge coming out of the vagina. The Doctor has reported that there was slight ademe on labia majora and labia minora and the clitoris was red and swollen. On P.V. examination, it was found that the vaginal walls were tender, red and congested and slight swelling was present. Mst. Koyali has stated that the accused could not commit rape with her fully. She has stated that during her medical examination, some instruments were used and they were put inside her vagina but she felt no pain. She has further stated that she received no blunt weapon injury nor any other injury or abrasions on her body but later she has corrected herself and has stated that some abrasions were received on her elbow. If vagina was swollen and was tender and red then it is impossible that she will not feel any pain if some instrument is put inside her vagina. Moreover, if she was not fully raped and only once the male organ of the accused could enter her vagina and immediately, it came out on account of her resistance, then no watery blood discharge could have come out of the vagina. It is, therefore, clear that this medical examination considered with the statement of Mst. Koyali cannot connect the accused with the guilt.

14. The Doctor has found 90% dead sperms and 10% alive sperms on microscopical examination of the vaginal smears. When the accused did not discharge, there was no question of any sperms being present in the vaginal smears what to talk of dead or alive.

15. Mst. Koyali is a married lady. Her husband Tulchharam has come on leave from Military. If her husband has cohabited with her and on account of that cohabitation if he has discharged and so, if some semen stains were found on her Ghaghra, that cannot connect the accused with this incident because she has categorically stated that the accused could not discharge in her vagina. Thus, the certificate that has been obtained by the prosecutrix appears to be false because it does not accord with the version given by Mst. Koyali. Moreover, the condition of the body of the prosecutrix that is recorded in her clinical examination report Ex. P. 1 cannot be connected with this incident. PW 1 Dr. R.P. Soni has stated that he examined Mst. Koyali on 25-10-76 at 6 pm. The occurrence took place on 23-10-76 at 9 a.m. The Doctor has stated that the injuries were within a duration of 24 to 48 hours and therefore, these injuries could not have been received by her in this incident and the condition of her vagina could not have been that which has been stated in this report.

16. One more strange aspect of the prosecution evidence is that although the rape was committed on 23-10-76 at 9 a.m. and Mst. Koyali at that time was wearing one Kanchali to cover her breasts which was torn at the site of her breasts and she was wearing that very Kanchali for 2 days still she was examined by the Doctor on 25-10-76 at 6 p.m. and she put off those clothes only when the SHO seized them. It is against human conduct that the lady will not change her Kanchali for about 2 days specially when it is torn at the site of her breasts. No lady can be expected to show her breasts to others. Normally she must have put off that Kanchali to wear another Kanchali and then could have produced it for seizure to the police as and when demanded by it. The Dhoti of the accused as also the Ghaghra of the lady were taken into possession by the police. The accused was arrested on 30-10-76. The chemical report shows that the Ghaghra and the Dhoti of the accused were found stained with human semen. When the accused has not discharged how could the Ghaghra of the lady and his Dhoti be stained with

human semen. It might have been the result of the cohabitation of Mst. Koyali with her husband Tulchharam. It is also against human conduct that any accused will wear the same Dhoti stained with human semen for about 7 days so that the police may take it into its possession when he is arrested.

17. Although, two witnesses supported the case of the prosecutrix but it is very easy to procure such witnesses in the village within a period of two days, who may be ready to support the prosecution version. PW 4 Jogaram has stated that he went to the Bada of the complainant on hearing the cries of Mst. Koyali. She was crying 'MARE-RE MARE-RE, CHHUDAO-RE CHHUDAO-RE'. As against this PW 7 Bherudan, who also heard the cries of Mst. Koyali, has stated that he told Jagaram that somebody is weeping in the Bada and let us see who is weeping. The lady, who was weeping was crying 'SIDHI KADIYA, AAGO BAJA. Mst. Koyali has stated that she cried MARE-RE MARE-RE, CHHUDAO-RE CHHUDAO RE.' If actually some one is raped, she will not cry 'MARE-RE MARE-RE CHHUDAO-RE CHHUDAO-RE.' Be that as it may, there is difference in the version of the alleged eye witnesses as to what language was used by the lady when she was crying. PW 4 Jogaram has stated that he along with Bherudan went together in the Bada. There was only a difference of 1-2 paces. This is what has been stated by PW 7 Bherudan also but he has stated that he saw the accused committing rape with the lady. He was sitting over her and was committing rape with her and Mst Koyali was moving her arms and legs and, therefore, he caught hold of his shirt and pulled him off from over Mst. Koyali but PW 4 Jogaram does not support that version. If Jogaram and Bherudan both went together in the Bada then it is impossible that Bherudan alone will see the entire act of rape and that will escape the notice of Jogaram when there was only a difference of two paces between them. PW 4 Jogaram has stated that he and Bheruden both came out of the Bada together and after coming out of the Bada, Tulchharam met them and Mst. Koyali also came out of the Bada along with them where as Bherudan has stated that Tulchharam came inside the Bada when they were there and Mst. Koyali was also present there. Jogaram has stated that he and Bherudan had no talk what so ever with Mst. Koyali but Bherudan has stated that Mst. Koyali related to her how the accused has committed rape with her. PW 4 Jogaram has stated that he only told Tulchharam what ever has happened and the matter should not be proceeded

further. This advice cannot be given in a case where the rape is taken place Such an advice can only be given to some body cohabits with a woman with her consent and then alone the people may say that if mistake has been committed by the lady and the man, the matter may not be proceeded further.

18. Mst. Koyali has stated that she related the entire incident to her husband after coming out of the Bada and Bherudan told her not to weep and, therefore, she stopped weeping. If somebody has been forcibly raped she will not stop weeping on mere persuasion of some body. She can only stop weeping when she has cohabited with some body with her own consent and then she can stop weeping if some body persuades her not to weep PW 7 Bherudan has stated that after Tulchharam came to the Bada, he related entire story to him. This is not supported either by PW 2 Mst. Koyali and or by PW 4 Jogaram.

19. PW 7 Bherudan has stated that Mst. Koyali told him that the accused has inflicted a bite-injury on her breasts. He even saw the injury on her elbows where as PW 4 Jogaram has stated that no talk took place between Mst. Koyali and Bherudan. Even Mst. Koyali does not say that she said these things to Bherudan. It is the case of the prosecutrix Mst. Koyali that she was forcibly raped It is clear from the site plan as well as the site inspection memo that there was rough and uneven ground and, therefore, if she moved her legs and arms at the time of committing rape, she must have received certain injuries on her legs and buttocks. Thus, the injuries that have been received by her cannot be connected with this incident on the basis of the medical testimony and secondly, the manner in which the occurrence has happened and the nature of the injuries received by her are less likely to be received, when rapped on a rough ground. More over she is a married lady. Her husband was with her during the intervening period of 2 days and, therefore, it cannot be ruled out that all these injuries have been received by her while cohabiting with her husband because duration of the injuries does not tally with the time of the occurrence. It is, therefore, clear that these witnesses although they apparently support Mst. Koyali cannot be termed as reliable witnesses. Their testimony is mutually contradictory on material points and as observed earlier, such witnesses can be procured in the village within a period of two days. In the facts and circumstances of the case, I hold that it is highly

improbable that the occurrence has taken place in the manner stated by the prosecution witnesses. Their statements highly improbable and against human conduct and are not supported by medical testimony. The report of the incident is highly belated. The medical testimony itself appears to be unreliable and so, the accused-appellant Narayan deserves to be acquitted by giving him benefit of doubt.

20. In the result, I accept this appeal, set aside the conviction and sentence of the accused-appellant Narayan recorded by the learned Sessions Judge, Merta under Sections 376 and 451, IPC and acquit him of the aforesaid offences. He is on bail. He need not surrender to his bail-bonds.

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