

Banna Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Nov-07-1977

Reported in : 1977WLN(UC)528

Judge : M.L. Shrimal, J.

Appeal No. : S.B. Cr. Appeal No. 232 of 1976

Appellant : Banna

Respondent : The State of Rajasthan

Disposition : Appeal allowed

Judgement :

M.L. Shrimal, J.

1. This appeal is directed against the judgment dated March 10, 1976 of learned Addl. Sessions Judge, Ajmer whereby he convicted the appellant under Section 376 I.P.C. and sentenced him to four years' rigorous imprisonment and a fine of Rs. 100/- and in default of payment of fine to further undergo rigorous imprisonment for one month.

2. The facts giving rise to this appeal are that on 5-9-75 Mst. Godi daughter of Sarwan was dragged by the accused-appellant Banna to the field of Ranglal Jit, and thereafter, he committed rape upon her. On hearing her cries Sarwan, Nanda

and Gopal reached on the scene of occurrence. They found Mst. Godi lying in the field. She was bleeding profusely from her vagina. Her Ghaghra was smeared with blood. She was removed from the scene of occurrence to her house in village Dabrela. While being taken to the Police Station she narrated the story to her father. A First Information Report Ex. P/9 of this occurrence was lodged by Sarwan. During the course of investigation Mst. Godi was clinically examined by PW. 10 Dr. Poornima Mathur. The accused-appellant was also clinically examined. The Police after usual investigation submitted a challan against the accused-appellant in the court of Munsif and Judicial Magistrate, Kekri who committed him to the court of Sessions. Ultimately, the accused was tried by the learned Addl. Sessions Judge, Ajmer. The accused pleaded not guilty to the charge and the prosecution examined 17 witnesses in support of their case. Besides the oral testimony, police statement of Mst. Godi Ex. P/1 was brought on record. As Mr. Godi did not state in her examination-in-chief any thing regarding commission of rape by the accused, she was declared hostile to the prosecution and was allowed to be cross examined by the Public Prosecutor. The reports of the Chemical Examiner and Serologist were also placed on record. The accused in his statement recorded under Section 313 Cr. P..G. denied his complicity in the crime and stated that at the relevant time he along with his wife Mst. Misri was guarding his field. Mst. Godi's cattle trespassed into his field and damaged the crop which led to a quarrel between Mst Godi and his wife Mst Misri. During the course of that quarrel his wife pushed Mst. Godi, who fell on a 'Khunta' and sustained injuries on her p hate part. Later on her father came, abused him and foisted a false case against him. In support of his plea he examined Mst. Misri as a deience witness. The learned Addl. Sessions Judge placing reliance on the portion 'A' to 'B' of Ex. P/1 the police statement of Mst Godi, held that she was dragged and raped by the accused. He also considered the infirmities appearing in the statement of Dr. Poornima Mathur and held that though the prosecution did not ask her whether such an injury could be caused by a male organ, yet it was possilk to arrive at the conclusion that the injury sustained by Mst. Godi could be caused by sexual intercourse. On this finding, he convicted and sentenced the accused-appellant as mentioned above. Hence this appeal.

3. Learned Counsel for the accused-appellant vehemently urged that the learned Addl. Sessions Judge committed a grave error of law in basing: the conviction of the appellant on inadmissible evidence viz. police statement of Mst. Godi (prosecutrix) though she did not want to support the prosecution case. In support of his contention learned Counsel submitted that 'the prosecutrix in her statement before the trial court in examination-in-chief did not state that she was subjected to any sexual intercourse, and as such she was declared hostile and confronted with her police statement recorded under Section 161 Cr. P.C. on 15-9-1976. Besides this, the witness in her cross-examination clearly denied to have made such a statement yet the learned Judge relied on portion 'A' to 'B' of her police statement Ex. P/1. She also stated that though she was married but did not go to tier husband's house and did not understand what does sexual intercourse mean. I find sufficient merit in the submission of the learned Counsel for the accused that the portion of police statement marked 'A' to 'B' in Ex. P/1 could not have been used as substantive piece of evidence as it was hit by the provision of Section 162 Cr P.C. Reference mat be made to Union of India and Anr. v. Gajinder Singh : [1972]3SCR660 .

4. Learned Counsel for the appellant further urged that though two doctors were examined by the prosecution yet none of them stated that sexual intercourse was committed with Mst. Godi. In the injury report it was mentioned that definite opinion regarding sexual intercourse could be given only after chemical analysis. As the result of chemical examination and analysis by Seriogologist disclosed that no spermatozoa could be detected, it ought to have been concluded that sexual intercourse did not take place with Mst. Godi.

5. The failure on the part of the prosecution to put a question to the Medical Legal Jurist whether after the perusal of the reports of Chemical Examiner and Seriologist, she was was in a position to say that sexual intercourse did take place with Mst. Godi or not leads to an inference that she was not ready to support the prosecution case.

6. A bare perusal of the first information report shows that the prosecution case at the initial state was that rape was committed in the field of the accused whereas at

the stage of trial scene of occurrence was changed and all the prosecution witnesses stated that Mst. Godi was raped in the field of Ranglal fat. This change regarding the scene of occurrence appears to have been introduced with purpose behind it. The reason for this development of the prosecution story is obvious. In order to meet the defence plea the prosecution witnesses have made this improvement purposefully leading to the inference that much reliance can not be placed on statements of such witnesses. A pointed question was asked to the Investigating Officer as to why he did not inspect the field of the accused but the Investigating Officer failed to give any cogent explanation to it. There appears to be substantial truth in the submission of the learned Counsel for the appellant that the scene of occurrence was changed to deprive the accused of the defence set up by him, because if the field of the accused would have been inspected then he would have been able to show that there were marks of blood on the 'Khunta'.

7. Keeping in view the laconic evidence of the prosecution regarding commission of sexual intercourse with Mst. Godi at the relevant date and time, the change regarding scene of occurrence introduced later on and the defence set up by the accused, it would not be safe to maintain the conviction of the accused under Section 376 IPC. The accused is not required to prove to the hilt the defence set up by him, in the statement recorded under Section 313 I.P.C. The story set up by the accused cannot be said to be palpably wrong. Taking an overall view of the case, I extend the benefit of doubt to the accused-appellant.

8. In the result, the appeal is allowed. The conviction and sentence of the accused-appellant awarded by the trial court under Section 376 IPC are set aside. He is acquitted of all the charges framed against him. The accused-appellant is in jail and shall be released forthwith, if not required in any other case.