

Satish Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-22-1999

Reported in : 2000(1)ALT(Cri)11; 2000CriLJ2380

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 120B, 366, 376, 384, 467, 468 and 471; Code of Criminal Procedure (CrPC) - Sections 161, 164, 202, 313, 315 and 374; Hindu Marriage Act - Sections 9; Code of Civil Procedure (CPC) - Order 39; Code of Civil Procedure (CPC) - Rules 1 and 2

Appeal No. : Criminal Appeal No. 3 of 1997

Appellant : Satish

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : D.N. Yadav and; B.L. Rao, Advs.

Disposition : Appeal allowed

Judgement :

G.L. Gupta, J.

1. Through this appeal Under Section 374, Cr.P.C. Satish Chandra calls in question the judgment dt. 4-11-1996 of the learned Sessions Judge. Jodhpur convicting him Under Sections 376, 366 and 384, I.P.C. He was sentenced to undergo 7 years R.I. and pay a fine of Rs. 1000/- Under Section 376, I.P.C. 5 years R.I. and a fine of Rs. 1000/- Under Section 366, I.P.C. and one year R.I. and a fine of Rs. 500/- Under Section 384, I.P.C. All the substantive sentences were ordered to run concurrently.

2. The prosecution case, in brief, was that on 13-2-1989 accused kidnapped Kumari 'R' (name withheld) from the custody of her parents and committed rape on her up to 5-4-1989 at various places and also he snatched the gold ornaments worn by Kumari 'R' during that period. The prosecution case further was that the accused and the two others (since acquitted) entered into a criminal conspiracy and fabricated the false documents showing the marriage of the accused with 'R'.

3. On 28-3-1989 Govind Narayan (PW-1) lodged a written report at Police Station Shastri Nagar, Jodhpur stating that he was away at Tirupati Balaji for some days and in his absence the accused kidnapped his . daughter 'R' on 13-2-1989. It was stated that 'R' being a simple girl, the accused might have succeeded in persuading her to go with him. On this report, a case Under Sections 366, 368, I.P.C. was registered. During investigation, the police succeeded in recovering 'R'. The recovery was made from a house at Jabalpur on 5-4-1989 in the presence of Govind Narayan vide Recovery Memo Ex. P2. Thereupon 'R' was brought to Jodhpur and her statement Under Section 164, Cr.P.C. Ex. D-14 was recorded by the Judicial Magistrate on 11-4-1989.

In her statement Under Section 164, Cr.P.C., 'R' stated that she had gone with the accused on her own accord and she was consenting party to the sexual activity. After interrogating various witnesses, the police submitted a final report on 24-4-1989. The Magistrate sent a notice to Govind Narayan first-informant about the final report. He appeared on 17-11-1992 and after making requests for adjournment for more than 15 months, he filed protest petition on 8-2-1994 whereupon the learned Magistrate held enquiry under Chapter XV of the Code of Criminal Procedure. After recording the statements of Govind Narayan, 'R' and

one Indira he passed an order on 9-5-1994 directing further investigation by some senior officer of the Police Department. It was directed that steps be taken to recover the vulgar photographs.

4. Consequent upon the directions of the Magistrate, the police conducted further investigation in the matter and filed challan on 3-9-1994 against the accused. The case was committed to the Court of Session where charges Under Sections 376, 366 and 384, I.P.C. were framed against the accused who pleaded not guilty. The prosecution examined PW-1 Govind Narayan, PW-2 Kumari 'R', PW-3 Gajendra Kumar, PW-4 Harnarayan, PW-5 Krishan Vallabh, PW-6 Sumnesh Tapariya, PW-7 Chunnilal, PW-8 Smt. Indira, PW-9 Ashwini Kumar Sharma, PW-10 Hanuman Prasad, and PW-11 Pratap Ram. Accused in his statement Under Section 313, Cr.P.C. denied accusation. He came out with the case that 'R' was consenting party to their going from Jodhpur and that they had married at Agra.

After the statement of the accused was recorded Mahipal Pathak, I.O. was examined as Court witness. In the meantime, a fresh challan was filed by the police against accused Satish Chandra and two others for offence Under Sections 467, 468, 471 and 120-B, I.P.C. That case was committed to the Court of Session.

The learned Sessions Judge vide order dt. 15-6-1996 consolidated both the cases and a joint trial was held. Charges under Sections 467,468 and 120-B, I.P.C. were framed against Satish and two others who pleaded not guilty. C.W. 1 Pratap Ram was recalled and re-examined as PW-13. PW-6 Sumnesh was recalled and re-examined as PW-14 and PW-2 Kumari 'R' was recalled and re-examined as PW-17. The prosecution also examined PW-12 Somdeo. PW-15 Harish Chandra and PW-16 Devi Singh. The statement of the accused Under Section 313 Cr.P.C. was again recorded. The accused in order to disprove the charges entered into the witness box and stated Under Section 315, Cr.P.C. that he did not commit rape on 'R' but she was consenting party and even the mother of 'R' wanted that they got themselves married.

The learned Sessions Judge acquitting Bahadur. Ramsewak and the appellant Under Sections 467, 468 and 120-B, I.P.C. convicted and sentenced the appellant Under Sections 366, 376 and 384, I.P.C. as stated above.

5. Mr. Yadav, learned counsel for the appellant, having prepared the case thoroughly, pointing out that the age of 'R' was 20 years on the alleged date of occurrence, vehemently contended that it was a case of free consent of the prosecutrix. His emphasis was on the statement Ex. D-14 recorded Under Section 164, Cr.P.C. on 11-4-1989 by the Judicial Magistrate wherein 'R' had fully supported the defence version. His further contention was that the parents were aware of the consent of 'R' and therefore, there was inordinate delay in lodging the first information report. In this connection, he pointed out that even after getting the notice of the final report before 17-11-1992 Govind Narayan did not care to file protest petition for about 15 months. Pointing out that after the final report was given, an application Under Section 9 of the Hindu Marriage Act for restitution of conjugal rights was filed by the accused in the Family Court and even a civil suit was filed by him along with an application under Order 39 Rules 1 and 2, C.P.C. for restraining the second marriage of 'R', he contended that the circumstances prompted the first informant to file a protest petition. Pointing out that 'R' has changed her version after 5 years, Mr. Yadav canvassed that the facts clearly indicate that 'R' was consenting party and even had married to the accused. He submitted that the conviction be set aside and the accused be acquitted.

6. The learned P.P. on the other hand, contended that the accused had blackmailed 'R' by showing her vulgar photographs, and therefore, it should be presumed that there was not free consent of the prosecutrix in the sexual activity.

7. Mr. Rao, learned counsel for the complainant adopting the arguments of the Public Prosecutor contended that the police had asked the prosecutrix to give the statement Ex. D-14 to help the accused and that statement is not of any significance in the presence of the statement of 'R' during trial.

8. It is no more in dispute that on the alleged date of occurrence the prosecutrix was 20 years of age. It has come in her statement that in the school record her date of birth is written as 13-10-1969. At the same time, she deposes that she was 19 years in 1989. There is no cause to disbelieve the school entry of date of birth as even Govind Narayan does not say that he had given wrong date of birth at the time of admission of his daughter in the school. Be that as it may, even accepting

the version of the prosecutrix, she was 19 years of age in the year 1989 i.e. she was not minor on the alleged date of occurrence.

9. A gist of the statement of 'R' is this. She knew the accused since 1987-88 as she was reading in VIIIth Class in a private school where the accused was teacher. Thereafter the accused was her tutor right upto final year of the B.Sc. Some 3-4 months prior to 13-2-1989, the accused kissed her for the first time when she had gone to his house for study. Ten twelve days after the incident of kissing, the accused showing the photograph of kissing to her committed rape on her twice/thrice prior to 13-2-1989. On 13-2-1989 she was shown obscene photographs of rape at 'Jaljog' crossing, Jodhpur by the accused, which forced her to go with him to his house, situate in Sindhi Colony and thereafter to Jaipur by air, to Delhi by Bus and to Jalalabad, Farookabad, Agra and Jabalpur etc. where the accused raped her. The accused snatched her ornaments viz. Chain, ring, ear tops and sold them. The accused gave beating to her at all the places, wherever she was taken. He forced her to sign some blank papers at Agra. She surrendered herself to the accused as he used to tell that if she did not act according to his wishes he would show the photographs of rape to her parents and relations and publish them. She was not willing to go with the accused or to have sex with him. Before she gave her statement under Section 164, Cr.P.C. to the Magistrate, she says, the police had told her giving beating to her that she gave statement as per the draft given to her and if she did so the photographs would be destroyed. In other words, she says her statement Under Section 164, Cr.P.C. was not voluntary.

10. The crucial question for consideration is whether the prosecution version, that the accused had committed the rape on 'R' by blackmailing her showing the vulgar photographs, is correct. At the out set, it may be stated that no photographs, either of kissing or of sexual intercourse, have been produced by the prosecution. The accused was in police custody from 6-6-1994 to 17-6-1994 but nothing was recovered from his house or at his instance. Therefore, it is not possible to say with certainty as to what was there in the photographs, if they were, at all, in existence.

11. Before we proceed to have the critical examination of the statement of 'R' it is necessary to know if 'R' is a simple Hkksyh and innocent girl as was stated in the FIR Ex. P-1. Kumari 'R' was student of B.Sc. final in 1988-89. She had switched to English medium from the first year. It has not been brought on record that 'R' was dull in study and that she ever failed or that she did not understand as to what was good or what was bad. It is, therefore, difficult to accept that 'R' who was student of B.Sc. final year was innocent girl and could not understand the implications of the agtivity of the accused which started from kissing in his house.

12. It has come in the statement of 'R' that prior to the incident of kissing, the accused had not misbehaved with her. It has further come in her statement that accused used to visit her house and she also used to visit his house. When for the first time the accused did objectionable activity of kissing her, it would have been the natural conduct of 'R' to have complained about the incident to her parents. According to 'R' she was not aware of the fact that photographs of kissing had been taken by the accused. It has further come in her statement that she did not like the activity of the accused and not only that she had pushed him at the time of incident, but had also left his house at once without talking to him and she did not meet him for 10-12 days. It is evident that for these 10-12 days the prosecutrix did not know that the accused was having objectionable photographs with him and therefore, there could not be any cause of fear in her mind for not complaining against the accused to her mother. It is different thing that in her statement Ex. D-10, recorded by the police, there was the version of the prosecutrix that she knew that the accused had taken the photographs while kissing her. The witness denies the correctness of this statement. If this statement is taken to be correct, then it was all the more a matter of concern for prosecutrix and her natural conduct would have been to inform her mother about the incident. The very fact, that a fully grown up girl was embraced by the accused in his lap and kissed, yet she did not complain to any-one, goes to show that she was in love with the accused and she had enjoyed the event.

13. According to the prosecutrix, 10-12 days after the incident of kissing, the accused had showed the photographs of kissing and committed rape on her telling that if she did not yield to his demand, he would publish the photographs. It is

significant to point out that the version of committing rape by showing objectionable photographs was not there prior to 1994. The witness had neither disclosed this fact in her police statement Ex. D-10 nor in the statement recorded Under Section 164, Cr.P.C. It is obvious that this version is an after thought and has been introduced in order to prove the case of blackmail.

14. 'R' says that she was raped 10-12 days after the incident of kissing by showing her photographs of kissing. It is rather surprising that even after seeing the photographs of kissing and of the first rape committed by the accused on her, the prosecutrix chose to remain silent. According to 'R' in the first incident of sexual activity, she had bled and her clothes were soaked with blood and she washed them at her house. Her conduct in keeping everything secret goes to show that she was willing to the sexual activity and was not annoyed with the accused. As already stated, the prosecutrix was not innocent child of tender age as she was the student of final year B.Sc. and at the age of 19-20 she knew the consequence of sexual activity.

15. It is difficult to believe that 'R' Would remain under the pressure of the accused and would not disclose this fact to her parents that the accused was having objectionable photographs of kissing and he had even committed rape on her. It is possible that she might be afraid of disclosing the incident of sexual intercourse but at least she could tell her parents about the incident of kissing, as according to her she had seen the photographs of kissing with the accused. The fact, that after the first incident of sexual intercourse, the prosecutrix did not complain to her parents or any person, goes to show that she was consenting party. It is significant to point out that it has not been stated by the father or the brother of the prosecutrix that prior to 13-2-1989 for some days they had observed that 'R' was not normal and was perturbed. The fact that she was leading normal life even after the incident of sexual intercourse further goes to show that she was the consenting party for the sexual activity with the accused.

16. It is all the more surprising that the accused repeated the sexual intercourse with her twice-thrice yet she did not bother to report the matter to her parents. It is significant to point out that according to the prosecutrix prior to 13-2-1989 the

accused had not shown her photographs of sexual intercourse and she did not know about the photographs of the sexual activity. Therefore, there could not be any cause for the prosecutrix to be under pressure of the accused.

17. It has come in the statement of the prosecutrix that she had visited the house of the accused many a times. The pointed question was asked to her whether she had visited his house twice or hundred times. The obvious purpose of the question was to ask her if she was frequent visitor to the house of the accused. She avoided the answer by telling that she did not remember. This shows that the prosecutrix used to visit the house of the accused frequently as she had fallen in love with him.

18. Coming to the incident of 13-2-1989 when she is alleged to have been abducted by showing the photographs, it may be stated that the conduct of the prosecutrix clearly shows that she had willingly gone with the accused from Jodhpur and the story of showing vulgar photographs by the accused has been concocted to negative the plea of consent.

19. As already stated, no photographs have been recovered in the case. A suggestion has been put in her cross-examination that she had not taken her college bag when she had left her house. She has denied the suggestion. According to her, she had left the bag at the house of the accused while leaving for Jaipur. It is not the case for the prosecution that any bag containing books belonging to the prosecutrix was recovered from the house of the accused. The prosecution has not examined the Investigating Officer who had conducted the initial investigation, and therefore, the defence was unable to bring on record that no bag of books was recovered from the house of the accused. Since there is no evidence of recovery of bag, it will have to be presumed that no such bag was recovered from the house of the accused. This shows that the prosecutrix had not left for the college but had left the house to go with the accused.

20. It is significant to point out that in her statement Ex. D-10 the prosecutrix had stated that in the beginning of February the accused had told her to go with him and that on 12-2-1989 i.e. one day before the occurrence it was decided that they would leave Jodhpur on the next date. This circumstance clearly shows that the

prosecutrix was well aware of the programme of leaving Jodhpur on 13-2-1989.

21. It has come in the statement of the prosecutrix that at the Air Port she had seen 5-7 police constables. The fact that the prosecutrix did not choose to complain them against the accused that he was taking her forcibly goes to show that she was willingly going with the accused to Jaipur.

22. The fact that the prosecutrix did not complain to any-one at Jaipur, Delhi, Jalalabad, Farookabad, Agra and Jabalpur that the accused was taking her forcibly and was committing rape on her, further goes to show that she was consenting party and she had willingly gone with the accused to those places.

23. It is significant to point out that according to the prosecutrix, at all the places she was given beatings by the accused. Not only that, even her ornaments were snatched and sold by the accused, yet the prosecutrix chose to remain silent. There could be some problem for the girl at Jodhpur if the accused had really some photographs with him but there could not be any cause to be apprehensive in other cities as nobody knew the prosecutrix at those places. It was all the more natural for her to complain as the accused was not keeping her happily, rather he was giving beatings to her and he had snatched her ornaments. All this shows that she was consenting party to all the activities and she has given false statement that because of the pressure of the accused, that he was having photographs, she did not complain to any-one.

24. It has come in the statement of the prosecutrix that when the police recovered her at Jabalpur her father was also with the police, yet she did not tell her father that the accused was having objectionable photographs with her. The prosecutrix clearly admits in her statement that prior to her statement recorded by the police she did not tell anyone about the photographs. Of course, Govind Narayan, PW-1 says that at Jabalpur his daughter had told him that the accused had shown her the photographs of kissing and rape at the 'Jalgog' Chauraha and therefore she had accompanied him, but when the prosecutrix says that she had not disclosed this fact to any-one, the statement of Govind Narayan cannot be believed.

25. The statement of the prosecutrix was recorded Under Section 161, Cr.P.C. for the first time on 8-4-1989 at Jodhpur. In that statement Ex. D-10 it was nowhere stated that the accused had shown the photographs of rape to the prosecutrix on 13-2-1989 and under that pressure she had gone with the accused. Not only that, her statement was recorded by the Judicial Magistrate Under Section 164, Cr.P.C. on 11-4-1989. That statement is Ex. D-14. In that statement the prosecutrix clearly stated that she was in love with the accused and she had gone with him of her own accord and that she had decided to marry him. In that statement, she also stated that they had decided to travel to Jaipur by air and she went with him and got herself married with the accused on 22-2-1989 with Arya Samaj customs at Agra. She gave categorical statement that she had gone with the accused willingly and the accused never persuaded her to go with him. At the close of the statement the prosecutrix stated that she had given the statement without anybody's influence and her statement was voluntary. 'R' admits to have given such statement. After this statement Ex. D-14 can it be said that the prosecutrix was not consenting party and she was blackmailed by the accused to leave Jodhpur and to go place to place. I think not. It is significant to point out that according to the prosecutrix when her statement Under Section 164, Cr.P.C. was recorded by the Magistrate, she was forewarned by the Magistrate that she was to give statement without being afraid of anyone.

26. It is on the statement of the prosecutrix recorded Under Section 164, Cr.P.C. by the police that the police gave final report in the matter. As already stated, five years after the final report was given, a protest petition was filed by Govind Narayan on which enquiry under Chapter XV Cr.P.C. was held by the Magistrate and the matter was sent for reinvestigation. It is not understood as to how the Magistrate could order re-investigation once he had proceeded to hold enquiry under Chapter XV Cr.P.C. Be that as it may, in the subsequent investigation the police again recorded the statement of the prosecutrix Under Section 161, Cr.P.C. and filed this challan.

27. The contention of the complainant is that the police had joined hands with the accused in 1989 and got her statement recorded Under Section 164, Cr.P.C. to help the accused. The version of the complainant can hardly be believed. The

police had recorded the statement of the prosecutrix on 8-4-1989 and the prosecutrix was in the custody of her father right from 5-4-1989 to 11-4-1989 the day on which her statement Under Section 164, Cr.P.C. was recorded. No statement of the prosecutrix other than the one Ex. D-10 dt. 8-4-1989 recorded Under Section 161, Cr.P.C. prior to 11-4-1989 is coming forward. As such there was no occasion for the police to have called the prosecutrix to the police station prior to 11-4-1989 as she had already been interrogated by the police. In any case, since the I.O. who had conducted the initial investigation has not been examined, the accused has remained handicapped to bring this fact on record that the police had not called the prosecutrix to the police station, till the date her statement was recorded on 11-4-1989 by the Magistrate.

28. The prosecutrix says that she had visited the police station prior to 11-4-1989 and the lady constables had given beatings to her and had asked her to give a particular statement before the Magistrate. Her this part of the statement that she was given beatings by the police personnel cannot be believed. According to her, she was beaten heavily but at the same time she says that she did not complain about this fact to her parents. She also did not tell this thing to Magistrate when her statement was recorded by him Under Section 164, Cr.P.C. Once the prosecutrix had suspected that the police was helping the accused she could not remain silent as the question of her prestige was greatly involved. The very fact that she neither complained to the Magistrate about beating nor to her parents goes to show that she has given false statement that the police had forced her to give the statement like Ex. D-14. The prosecutrix cannot be held to be a witness of sterling worth.

29. According to the prosecutrix, she gave statement Ex. D-14 in favour of the accused as she was assured by the police that the obscene photographs would be destroyed. As already stated, the existence of photographs is it self in great doubt and they have not been recovered even after the police custody remand of the accused for 10 days. In any case, when everything had come out in open and even the prosecutrix remained out of Jodhpur for about 2 months, there could not be any pressure on the prosecutrix of the alleged photographs.

30. It is obvious that the first informant was satisfied with the final report inasmuch as he did not care to file protest petition or private complaint for more than 14 months after he was informed that a final report had been given by the police. It seems that the accused on coming to know that 'R' was going to be married, he filed an application Under Section 9 of the Hindu Marriage Act on 26-2-1992, on the basis of his alleged marriage with 'R' at Agra on 22-2-1989, and also filed a civil suit on 23-11-1993 restraining the prosecutrix to marry again, the notice of which was served on Govind Narayan. The accused had also got a news item published in a news-paper on 14-2-1992 that the prosecutrix was his married wife. It is evident that these facts compelled Govind Narayan to file protest petition on 8-2-1994. It is after 8-2-1994 that the situation changed, and the statement of the prosecutrix was recorded first in the Court Under Section 202, Cr.P.C. and thereafter in the police Under Section 161, Cr.P.C. wherein the prosecutrix, for the first time, came out with the case that she was blackmailed and was taken by the accused showing her objectionable photographs. In view of the aforesaid circumstances, in my opinion, it is not safe to place reliance on the statement of the prosecutrix, that the accused had blackmailed her and her consent was not free and voluntary.

31. The prosecution had also come out with the case that the accused and two others had conspired and had prepared false documents of marriage at Agra. The accused has been acquitted of the charges Under Section 467, 468 and 120-B, I.P.C. This circumstance also falsifies the case of blackmailing.

32. The prosecution has further come out with the case that after the prosecutrix was recovered, the accused made an attempt to extort money from the parents on the basis of the alleged photographs. At the out set, it may be stated that the accused has not been charged Under Section 384, I.P.C. for the extortion or attempt of extortion on or after 5-4-1989, the date on which 'R' was recovered, and therefore, the evidence contained in the statements of Krishan Vallabh, PW-5 and Indira, PW-8 cannot be used against the accused.

33. Apart from that, the evidence on the point is not worthy of credence. Krishan Vallabh, PW-5 deposes that on 31-5-1994 the accused went to his house along

with Hanuman Prasad, PW-10 and told him that he was having obscene photos and that Govind Narayan paid him 40,000/- else he would get the photos published in the newspapers. Hanuman Prasad, PW-10, however, does not support the version of Krishan Vallabh. Krishan Vallabh, admittedly, is a friend of Govind Narayan. He admits that the accused did not show any photograph to him. It is significant to point out that Govind Narayan nowhere says in his statement that Krishan Vallabh ever told him that the accused had approached him (Krishan Vallabh) and told him that if Rs. 41,000/- were not paid to him (accused), he would publish the photographs. It is obvious that Krishan Vallabh has come to depose just to help his friend Govind Narayan. The statement of Krishan Vallabh cannot be believed.

34. Govind Narayan, PW-1 says that the accused had demanded a sum of Rs. 41,000/- from him at his (accused) house when he went to him on receiving his telephonic call but the witness admits that he did not complain to anyone against this demand of the accused. He even did not mention this fact in the reply filed by him in the Civil Court to the application under Order 39 Rules 1 and 2, C.P.C. on 26-11-1993. This shows that Govind Narayan has given false statement.

35. As a result of the foregoing discussion. I am constrained to remark that the prosecution version that the accused had procured consent of the prosecutrix for sexual activity by showing the photographs to her is not correct. It is clear case of free consent by the prosecutrix. The trial Court has committed grave error in convicting the accused in this case. The accused is entitled to an order of acquittal.

36. Consequently, the appeal succeeds. The conviction and the sentence are set aside. The accused appellant is acquitted of the charges Under Sections 376, 366 and 384, I.P.C. He is in custody. He is directed to be released forthwith, if not required in any other case.