

Satyanarayan Vs. State

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Court : Rajasthan

Decided On : Dec-22-1999

Reported in : 2000CriLJ2529

Judge : G.L. Gupta, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 376, 457 and 458; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cr. Jail Appeal No. 155 of 1997

Appellant : Satyanarayan

Respondent : State

Advocate for Def. : R. Purohit, P.P.

Advocate for Pet/Ap. : S.S. Dhillon, Adv.

Judgement :

ORDER

G.L. Gupta, J.

1. Satyanarayan through this appeal calls in question the judgment dt. 15-2-97 of the learned Addl. Sessions Judge, Churu convicting him under-Section 458, 376 and 323, IPC and sentencing him as follows :-

All the substantive sentences were ordered to run concurrently. Under Section 458 IPC : 7 years R.I. & a fine of Rs. 1,000/-, in default onemonth imprisonment Under Section 376 IPC : 7 years R.I. & a fine of Rs.1,000/-, in default onemonth imprisonment Under Section 323 IPC : One month R.I.

2. The brief facts of the case are that on 25-5-96 at 7 a.m. Smt. 'S' (35 years) lodged a written report at P. S. Kotwali, Churu stating that in the previous night she was staying in the house of her sister and at about 12-30 a.m. when she had got up to urinate and was returning from the bath-room, Satyanarayan (accused) entered into the house, closed the door gave her beatings and committed rape on her. On this report, a case under Section 376, 458, 343 and 323, IPC was registered. The police after usual investigation filed a challan against the accused appellant.

3. To the charges under-Sections. 458, 323 and 376, IPC, the accused appellant pleaded not guilty. The prosecution examined P.W. 1 Bhagwan Sahay, P.W. 2 Vijay Kumar, P.W. 3 Jos, P.W. 4 Smt. Vimla Devi, P.W. 5 Vedprakash, P.W. 6 Ranay, P.W. 7 Amber Kumar, P.W. 8 Dr. R. L. Bansal, P.W. 9 Sulekha, P.W. 10 Amla Prasad, P.W. 11 Mool Singh, P.W. 12 Mst. 'Sand P.W. 13 Tarachand Budaniya. Accused in his statement. Under-Section 313, Cr. P.C. denied accusation. He examined D.W. 1 Ratanlal in defence. In his statement under-Section 313, Cr. P.C. he came out with a case that he has been falsely implicated because of enmity with Vimla and Vijay Kumar. The learned Sessions Judge after holding the charges proved sentenced him as stated above.

4. Mr. Dhillon, learned counsel for the appellant, contended that the trial Court has erred in placing reliance on the testimony of Smt. 'S' and other witnesses. His contention was that some-one might have committed the offence who was not identified by Smt. 'S' but Vimla and Vijay Kumar, who were inimical to the appellant have fabricated the case against the appellant. His further contention was that the evidence of keeping the sealed articles intact and delivering them in the F.S.L. in the sealed condition has not been produced.

5. The learned Public Prosecutor, on the other hand, supported the judgment of the trial Court contending that there could not be any cause for the prosecutrix to

implicate the accused in a false case. Pointing out that the accused was having injuries on his person on 25-5-96, he urged that this circumstance proves that the accused had suffered those injuries in the scuffle during the incident.

6. I have carefully considered the above submissions. P.W. 12 'S' deposes that she was employed as L.H.V. in village Dudhvakhara and that on 24-5-96 she had gone to Ratanagar on duty and while returning from Ratnagar she stopped at her sister's house in Churu but her sister Sulekha was not there. She then says that at about 0,30 a.m. she had got up to urinate and when she was returning from the bath room which was in the courtyard the accused pushed her, closed the door from inside and put a piece of cloth on her mouth. He thereafter, Smt. 'S' says, put the pillow on her mouth and flung her on the ground and committed rape on her thrice forcibly. When she put resistance, she says, the accused gave a cut on his fingers by his teeth and caused injuries by some substance, which, she later came to know, was the iron. She then says that during scuffle a 'tabiz' worn by the accused fell down in her room which was seized by the police. A searching cross-examination has been made to Smt. 'S'. I do not find any infirmity in her statement as to discard her testimony. A suggestion has been put in her cross-examination that Raju Sindhi had forcibly committed rape on her, which she has emphatically denied. There could not be any cause for the witness to leave real culprit Raju Sindhi and falsely implicate the accused in the case.

7. It is significant to point out that the accused was not unknown person to Smt. 'S' as Sulekha, the sister of 'S', was residing there for the last 5 years and the house of Satyanarayan was situate in her neighbourhood. Because of the frequent visit to her sister Sulekha she had occasion to see Satyanarayan well. It is also relevant to state that Jos, P.W. 3 who also from Kerala like the prosecutrix, had resided in the house of Satyanarayan for some time and because of the visits of Smt. 'S' to his house, she had enough opportunity to see Satyanarayan. As such, it cannot be accepted that the witness might not have identified the real assailant.

8. The fact that the accused was the person, who had committed rape, is strengthened by the statement of Dr. R. L. Bansal, P.W. 8 who had examined injuries of the accused at 9-15 p.m. on 25-5-96. Accused had nine injuries some

abrasions and some bruises on his person which were of less than 24 hours duration. The accused has not explained as to in what circumstances he had suffered those injuries. A specific question was asked to the accused in his statement under-Section 313, Cr. P.C. that he was having injuries on his person on 25-5-96 which were of less than 24 hours duration. His reply was that it was incorrect. This reply cannot be accepted in view of the medical evidence contained in the statement of Dr. Bansal. There could not be any cause for Dr. Bansal to prepare a false report of injuries of Satyanarayan. It is pertinent to note that it has not been asked in the cross-examination of Dr. Bansal that he was inimical to him or that he was interested in the prosecution witnesses and he had prepared a false injury report. The presence of injuries which were on the front body of the accused, fully strengthens the testimony of the prosecutrix.

9. It has of course come in the statement of Vimla, P.W. 4 that there is litigation pending between the accused and his mother as to the partition of the property and she was acting as power of attorney for the mother of the accused. On the facts which have been admitted by Vimla, it has to be accepted that she cannot be categorised as independent witness. It is, therefore, proper to ignore her testimony. Vijay Kumar, P.W. 2 has not been produced for cross-examination, and therefore, his statement is also to be ignored. Ranay, P.W. 6 is son of Vijay Kumar. He deposes that on hearing noise he had gone out of his house along with many other persons and Smt. 'S' had told him that Satyanarayan had committed rape on her. There is no cause to disbelieve Ranjay, P.W. 6. Amber Kumar Kothiwal, P.W. 7 also deposes that immediately after the occurrence Smt. 'S' had told them that Satyanarayan had given beatings to her and had committed rape on her. Nothing has appeared in the cross-examination of Amber Kumar as to discard his testimony.

10. Thus, there is enough material on record to corroborate the testimony of Smt. 'S'. There is also evidence of recovery of 'tabiz' belonging to the accused from the place of occurrence. Regarding this 'tabiz' a question was put to the accused in his statement under-Section 313, Cr.P.C. but he did not say that the same did not belong to him. His reply was the same as in respect of other questions, that what was asked to him was incorrect. The recovery of 'tabiz' of the accused from the

place of occurrence is a vital circumstance against the accused.

11. Though there is evidence of keeping the seized articles in sealed condition and taking them to the F.S.L. in sealed condition yet on assuming that some link is missing the prosecution case cannot be discarded. There is enough material in the statement of the prosecutrix and other witnesses coupled with the injuries found on the person of the accused which leads to irresistible conclusion that the accused was the person who had committed rape on the prosecutrix.

12. The statement of Ratanlal, D.W. 1 does not help the accused. His presence at the place of occurrence is not disclosed by any prosecution witness. It was not asked to the witnesses in their cross-examination that Ratanlal had also reached the place of occurrence on hearing cries of the prosecutrix.

13. In my considered opinion, the trial Court has not committed any error in convicting the appellant under Sections, 376 and 323, IPC. However, the conviction of the appellant under-Section 458, IPC requires to be altered under-Section 457, IPC because there is no evidence on record that the accused had committed lurking house trespass having made preparation to assault. The appropriate section for the conviction of the appellant is, Section 457, IPC.

14. Keeping in view the facts of the case, the sentence awarded under-Sections. 376 and 323, IPC cannot be said to be excessive. The appellant is sentenced to undergo five years R.I. and pay a fine of Rs. 1,000/- under-Section 457, IPC.

15. Consequently, the appeal is partly allowed. While maintaining the conviction of the appellant under-Sections. 376 and 323, IPC his conviction under-Section 458 is altered to 457, IPC. The sentences under-Sections. 376 and 323, IPC are maintained. under Section 457, IPC the appellant is sentenced to undergo five years R.I. and pay a fine of Rs. 1, 000/-. In default, he shall undergo one month imprisonment. All the substantive sentences are ordered to run concurrently.