

Shyoji Ram Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-28-2005

Reported in : 2005CriLJ4763; RLW2006(1)Raj155; 2005(4)WLC580

Judge : F.C. Bansal, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 376 and 376(2); ;Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Crl. A. No. 436 of 2000

Appellant : Shyoji Ram

Respondent : State of Rajasthan

Advocate for Def. : Jainendra Jain, Public Prosecutor

Advocate for Pet/Ap. : Keshav Agarwal, Adv.

Disposition : Appeal dismissed

Judgement :

F.C. Bansal, J.

1. This appeal is directed against the judgment and order dated 7-6-2000 passed by the learned Additional Sessions Judge, Tonk whereby accused-appellant Shyojirarn has been convicted for the offence under Section 376(2)(f), IPC and

sentenced to suffer R.I. for ten years and a fine of Rs. 500/-, in default of payment of fine to further suffer R.I. for one month.

2. Briefly stated the facts of the prosecution case are that on 7-11-98 at 4.30 p.m., PW-1 Sitaram S/o Arjun, by caste-Balai, R/o Hisampur submitted a written report Ex. P1 to SHO, P.S. Devli Wherein it was, inter alia, stated that yesterday around 2.30 p.m. his daughter Rajee, aged 10 years had gone to his field to watch the mustard crop. At 6.00 p.m. she returned to home. She was crying and she told him that Shyoji Uncle (accused-appellant) came in the field and asked her to accompany him to eat 'Ber' (plum) and thereafter took her to a nearby place where 'Babool' trees were standing and committed rape on her. It was also stated in Ex. P1 that blood was oozing from the vagina of his daughter whereupon he along with his daughter went to village Baghera and contacted Govind Singh, Compounder (PW-10), who gave treatment to his daughter. It was further stated in Ex. P1 that Govind Singh, Compounder advised him to report the matter to the police, Today he has come to report the matter. Blood-stained clothes which the prosecutrix was wearing at the time of the incident, were also produced before the SHO. On the basis of written report Ex. P1, the SHO registered FIR Ex. P2 and investigated the case. On completion of investigation, a charge-sheet was filed against the accused-appellant in the Court Of Chief Judicial Magistrate, Tonk who committed the case to the Court of Sessions Judge, Tonk. On transfer the file was received in the Court of learned Additional Sessions Judge, Tonk.

3. Learned Additional Sessions Judge framed charge under Section 376, IPC against the accused-appellant who pleaded not guilty and claimed trial. To prove this charge, the prosecution examined as many as 11 witnesses. In his statement recorded under Section 313, Cr. P.C., the accused-appellant pleaded innocence. However, no witness was examined in his defence by the accused-appellant.

4. The learned Additional Sessions Judge after hearing the final submissions made by both the parties, convicted and sentenced the accused-appellant as indicated herein-above.

5. I have heard learned Counsel for the accused-appellant, learned Public Prosecutor for the State and have also gone through the record of the case.

6. Learned counsel appearing for the accused-appellant made the following submissions :--

- (1) There is unexplained delay of 26 hours in reporting the matter to the police. :
- (2) Medical evidence does not lend any assurance to the testimony of the prosecutrix.
- (3) The prosecutrix is a child witness and there is no evidence on record in support of her testimony and the conviction cannot be based upon the uncorroborated testimony of the prosecutrix.
- (4) On medical examination no injury or swelling or semen or blood was found on the penis of the accused-appellant.
- (5) No injury was found on the back and buttocks of the prosecutrix whereas the rape was allegedly committed on the thorny place.
- (6) In absence of FSL report, the prosecution has failed to prove that blood was found on the place of occurrence and on the clothes of the prosecutrix and the appellant.
- (7) The prosecutrix sustained injuries on her private parts by fall on the 'Khunta'.
- (8) On account of enmity with the father of the prosecutrix, the accused-appellant has been falsely implicated in the instant, case.

7. Learned Public Prosecutor appearing for the State has supported the impugned judgment and submitted that delay in lodging the FIR has been satisfactorily explained by the prosecution, medical evidence corroborates the version of the prosecutrix, the testimony of the prosecutrix stands corroborated by the testimony of his father P.W. 1 Sitaram and mother P.W. 3 Prem and there is nothing on record to prove the previous enmity between the father of the prosecutrix and the accused-appellant and, therefore, the appeal of the appellant be dismissed.

8. I have given my thoughtful consideration to the rival submissions made by both the parties. The Apex Court in *Sri Narayan Saha v. State of Tripura*, (2004) 7 SCC

775 : AIR 2005 SC 1482, has observed as under (para 5 of AIR) :--

'We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR is really of no consequence, if the reason is explained.'

9. In this case the incident of rape took place around 3.00 p.m. on 6-11 -1998. After the incident, the prosecutrix came to her home at 6.00 p.m. and narrated the incident to her father P.W. 1 Sitaram and not her mother P.W. 3 Prem. As per the testimony of P.W. 1 Sitaram, he found blood oozing from the vagina of the prosecutrix. He also stated that he did not get any means of transport and, therefore, he went to Govind Singh, Compounder (P.W. 10), R/o Baghera along with Prem and Badri. As per the testimony of P.W. 10 Govind Singh, Compounder, he had found the blood oozing from the vagina of the prosecutrix. The prosecutrix was brought to him by her father, mother and Badrilal and she was given first-aid. As per formal FIR Ex. P2, distance between village Hisampur and police station Devli is 30 km. Next day i.e. 7-11 -1999 P.W. 1 Sitaram along with the prosecutrix went to police station Devli and lodged written report Ex. P1 at 4.30 p.m. Initially the father of the prosecutrix may be hesitant to report the matter to the police because of reputation and honour of his family but on the advise of Govind Singh, Compounder, as stated in written report Ex. P1, P.W. 1 Sitaram went to the police station next day and lodged the FIR. P.W. 1 Sitaram has also stated in his deposition that on the date of the incident, because of non-availability of any means of transport, he could not come to Devli. Thus, in my considered view, in the instant case the prosecution has explained the delay in lodging the FIR to the satisfaction of the Court and which is not fatal to the prosecution.

10. The Apex Court in *Suryanarayana v. State of Karnataka*, 2001 Cri LJ 705, has held as under (paras 5 to 7) :--

'Admittedly, Bhavya (P.W. 2), who at the time of occurrence was about four years of age, is the only solitary eye-witness who was rightly not given the oath. The time and place of the occurrence and the attending circumstances of the case suggest no possibility of there being any other person as an eye-witness. The evidence of the child witness cannot be rejected per se, but the Court, as a rule of

prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The witness of P.W. 2 cannot be discarded only on the ground of her being of teen age. The fact of being P.W. 2 a child witness would require the Court to scrutinize her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone, corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis of discarding the testimony. Discrepancies in the deposition, if not in material particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix up what the witness saw with What he or she is likely to imagine to have seen. While appreciating the evidence of the child witness the Courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the Court has no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

This Court in *Panchhi v. State of U. P.*, (1998) 7 SCC 177 : 1998 AIR SCW 2777 : AIR 1998 SC 2726 : 1998 Cri LJ 4044 : 1998 All LJ 2018 held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon as the rule of corroboration before it is relied upon as the rule of corroboration is of practical wisdom than of law (vide *Prakash v. State of M. P.* (1992) 4 SCC 225 : 1992 AIR SCW 2582 : AIR 1993 SC 65 : 1992 Cri LJ 3703. *Baby Kandayanathi v. State of Kerala*, 1993 Supp (3) SCC 667: 1993 AIR SCW 2192 : AIR 1992 SC 2275 : 1993 Cri LJ 2605 *Raja Ram Yadav v. State of Bihar*, (1991) 9 SCC 287 : 1996 AIR SCW 1882 : AIR 1996 SC 1613 : 1996 Cri LJ 2307; *Dattu Ramrao Sakhare v. State of Maharashtra*, (1987) 5 SCC 341.

To the same effect is the judgment in *State of U. P. v. Ashok Dixit*, (2000) 3 SCC 70 : 2,000 AIR SCW 548 : AIR 2000 SC 1066 : 2000 Cri LJ 1436 : 2000 All LJ 700.'

11. In view of the aforesaid decision of the Apex Court, the evidence of the prosecutrix cannot be rejected on the sole ground that she is a child. The only legal requirement is that the evidence of the child witness must be evaluated with utmost care which is being done in the instant case.

12. The prosecutrix's evidence is quite clear and categorical. She stated before the trial Court that on the day of incident she along with her brother aged 4 years had gone to the field to watch the mustard crop. She further stated that appellant Shyoji came there and asked her to accompany him on the pretext of giving her 'Ber' to eat. Thereafter the appellant took her to the place of occurrence and committed rape on her. She also stated that because of rape blood came from her vagina. It was further stated by her that the appellant asked her not to disclose; the incident to anybody and after having committed rape the appellant left the place of incident. She came to her home and narrated the incident to her mother Prem and father Sitaram.

13. On close and careful scrutiny of the testimony of the prosecutrix, I have found it free from blemish and implicitly reliable. Her testimony stands corroborated by the testimony of her father P.W. 1 Sitaram and mother P.W. 3 Prem. P.W. 1 Sitaram and P.W. 3 Prem have stated categorically in their deposition that when their daughter (the prosecutrix) returned from the field they found blood oozing from her vagina. The prosecutrix told them that appellant Shyoji had committed sexual intercourse with her. Thereafter they took the prosecutrix to P.W. 10 Govind Singh, Compounder who stitched the wound sustained by the prosecutrix. P.W. 1 Sitaram has denied the suggestion given in his cross-examination by the learned Counsel for the appellant that cases were pending between him and the appellant and he had a dispute with the appellant. No suggestion about the alleged previous enmity has been given to P.W. 3 Prem in her cross-examination. Thus, there are no grounds on record to disbelieve the testimony of P.W. 1 Sitaram and P.W. 3 Prem. The submission of the learned Counsel that the

appellant was falsely implicated in the instant case on account of previous enmity, has no force.

14. It was deposed by P.W. 10 Govind Singh, Compounder that the prosecutrix was brought to him by Sitaram, Smt. Prem and Badrilal at about 9.00 p.m. 'Clothes' of the prosecutrix were stained with blood and blood was oozing from her vagina and her condition was serious. He advised them to go to Devil but they told him that no means of transport was available and asked him to treat the prosecutrix. Despite his efforts, blood did not stop. Seeing the serious condition of the prosecutrix he took her to P.H.C., Nasirda for further treatment.

15. P.W. 1, Dr. Gharishyam Agarwal stated that on 7-11 -1998 he was posted as Medical Officer, In charge, Government Hospital, Devli. At 6.15 p.m. he examined the prosecutrix and found three stitches on her vagina. With the help of Dr. Vandana Agarwal, Junior Specialist, Gynaecology stitches were removed and on examination he found the following injuries on the person of the prosecutrix :--

(1) There was tear of left lateral vaginal wall I'/T long.

(2) Hymen was torn. ,

(3) There was lacerated wound 1' long, 1/4' wide x %' deep extending from fourchette to posterior side towards anus,;

16. It was further stated by Dr. Ghanshyam Agarwal that old blood clots were present in the vagina. Duration of injuries was between 24 hours to 36 hours. She was admitted to C.H.C., Devli for treatment. He prepared his report Ex. P6 which bears his signature. The testimony of Dr. Ghanshyam Agarwal is credible and lends support to the prosecution case. In these circumstances, the submission of the learned Counsel for the appellant that medical evidence does not lend any assurance to the testimony of the prosecutrix deserves to be rejected.

17. It was also contended by learned Counsel appearing for the appellant that the prosecutrix sustained injuries on her private parts by fall on 'Khunta' or from the tree and no injury was found on the back and buttocks of the prosecutrix whereas the rape was allegedly committed on the thorny place. Learned counsel further

submitted that it was stated by P.W. 10 Govind Singh, Compounder that on being asked, Sitaram and Prem told him that the prosecutrix had fallen from a tree, It was stated by P.W. 7 Vimal Kumar and P.W. 8 Suganchand that they came to know that the prosecutrix sustained injuries on her private parts by fall on 'Khunta' .

18. I have given my thoughtful consideration to this submission made by learned Counsel for the appellant. Hearsay evidence of Vimal Kumar and Suganchand is not admissible in evidence. As regards the statement of P.W. 10 Govind Singh Compounder, Sitaram and Prem might have not disclosed the incident of rape to Govind Singh Corn-pounder because of reputation and honour of their daughter and family. As no question on the aspect of accidental injuries in this regard was asked to Sitaram, Smt. Prem and the prosecutrix during their cross-examination, it cannot be held that the prosecutrix had sustained injuries on her private parts by fall on 'Khunta' or from a tree.

19. From the Site Plan Ex. P3 it appears the 'Babool' trees were standing near the place of incident but there is nothing on record to show that the rape was committed on thorny place or on hard surface and, therefore, in absence of injuries on the back and buttocks of the prosecutrix it cannot be held that she was not ravished by the appellant.

20. Dying investigation blood stained soil was allegedly seized from the place of incident. It is also said by the prosecution that blood stained clothes of the prosecutrix were also seized by the Investigating Officer. These articles were sent to the F.S.L. for chemical analysis but F.S.L. report has not been produced by the prosecution before the trial Court and the prosecution is deprived of any corroborative evidence which the report may have provided. Hence, seizure of these articles does not help the prosecution but on this ground that prosecution story cannot be discarded. I have examined the evidence of the prosecutrix and her parents as also the medical evidence, I find no reason to disbelieve these witnesses.

21. Placing reliance on the following rulings, learned Counsel also submitted that on medical examination, no injury of swelling or blood or semen was found on the

penis of the accused-appellant and, therefore, the prosecution has failed to prove the charge of rape against the appellant beyond reasonable doubt :--

(1) Lalaram v. State of Rajasthan, 1992 (1)Raj LW 87.

(2) Ashok Kumar alias Ashok v. State of Rajasthan, 1999 Cr LR (Raj) 51.

22. It is true that on medical examination no injury or swelling or blood or semen was found on the penis of the appellant but on this ground alone, the prosecution evidence with regard to rape committed by the appellant on the prosecutrix cannot be disbelieved. It is not necessary that there should always be marks of injuries on the penis of the accused. In Jito v. State of Himachal Pradesh, 1990 Cri LJ 1434, the Himachal Pradesh High Court has held as under (paras 18 & 19) :--

'Further contention of the learned Counsel relates to the absence of injury on the penis of the accused. It is contended that presence of injury is essential because of the tender age of the prosecutrix. Reference to AIR 1973 SC 343 : 1972 Cri LJ 1260, Rahim Beg and Mahadeo v. The State of U.P. is made to support this contention. In this case, it appears from para 20 of the judgment, that the Court came to this conclusion on the basis of the opinion of the doctor. Normally an injury is caused to the male organ when sexual act is committed by a fully developed male with a girl of tender age who is virgin. However, this is not a universal phenomenon. It is relevant to quote para 9 at page 380 of Modi's Medical Jurisprudence and Toxicology, Twenty-first Edition :--

'9. Injuries to the genital parts may result from force exerted by the accused or from forces applied by the victim. In addition to scratches or lacerations on the penis caused by the finger nails of the victim during a struggle, an abrasion or laceration may be discovered on the prepuce or glans penis, but more often on the fraenum, due to the forcible introduction of the organ into the narrow vagina of a virgin especially of a child, but it is not necessary that there should always be marks of injuries on the penis in such cases.

The accused cannot, in my opinion, take any benefit simply because of the absence of the Injuries on his penis. Moreover, he was examined on 18-8-1984

relating to an incident which took place on 1-8-1984.'

23. In the instant case also, the appellant was examined after three days of the incident. The incident of rape took place on 6-11-1998 whereas the appellant was examined on 9-11-1998. The injuries which the appellant might have suffered were abrasions or bruises which would heal in the ordinary course of nature within 2 to 3 days of the incident. For the aforesaid reasons, the contention of the learned Counsel for the appellant cannot be accepted.

24. It is not the law that in every case version of the prosecutrix must be corroborated in material, particulars by independent evidence on record. It all depends on the quality of the evidence of the prosecutrix. If the Court is satisfied that the evidence of the prosecutrix is free from blemish and is implicitly reliable, then on the sole testimony of the prosecutrix, the conviction can be recorded. In appropriate cases, the Court may look for corroboration from independent course or from the circumstances of the case before recording an order of conviction. In the instant case, I find that the evidence of the prosecutrix is worthy of credence and implicitly reliable and other evidence adduced by the prosecution, in fact, provides the necessary corroboration, even if that is considered necessary.

25. Thus, I have come to the conclusion that the prosecution has succeeded in proving the charge under Section 376(2)(f) IPC against the accused-appellant and the trial Court has committed no error in convicting and sentencing him,

26. In the result, the appeal of accused appellant Shyoji Ram is dismissed and the impugned judgment dated June 7, 2000 passed by the learned Special Judge (Communal Riots Cases) cum Additional Sessions Judge, Tonk is confirmed.