

Maan Singh Vs. State

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Court : Rajasthan

Decided On : May-09-2008

Reported in : RLW2008(3)Raj2605

Judge : R.S. Chauhan, J.

Appellant : Maan Singh

Respondent : State

Disposition : Appeal allowed

Judgement :

R.S. Chauhan, J.

1. The appellant has challenged the judgment dated 23.04.1986 passed by the Sessions Judge, Kota, whereby the learned Judge has convicted the appellant for offences under Sections 366 and 376 of Indian Penal Code (for short, 'IPC'). For offence under Section 366 IPC, the appellant has been sentenced to three years of rigorous imprisonment and imposed with a fine of Rs. 500/- and to further undergo three months of rigorous imprisonment in default thereof. For the offence under Section 376 IPC, the appellant has been sentenced to seven years of rigorous imprisonment and imposed with a fine of Rs. 1,000/- and to further undergo a sentence of six months of rigorous imprisonment in default thereof.

2. In brief, the facts of the case are that on 18.11.1985, Mr. Pyarelal (P.W.2) lodged an oral report wherein he claimed that 'mother-in-law and sister-in-law of his daughter, Kajori aged about fifteen years, had come to his house in order to take back his daughter to her matrimonial home. This morning, Karjori was supposed to go along with them. Kajori went to meet her friend at 7:00 PM. But, she did not return at night. I and my wife, Gulab, went to look for Kajori. We asked Geeta as to the whereabouts of Kajori, but she told us that Karjori is not with her. We have searched her the entire night and even this morning. Only recently, we have discovered her in toom belonging to one Mr. Maan Singh S/o Pratap Singh Rajput. The room is situated in Sunder Nagar. Kajori is all alone there. She is locked from outside. I talked to her through the window and Kajori has informed me that yesterday when she was going with Geeta, she met Maan Singh on the road. She further stated that he forcefully took her away to his room and at night he had sexual intercourse against her wish. She further told him that in the morning, around 12' o'clock, Maan Singh has locked her in the room and has gone somewhere. Because she was frightened of Maan Singh, she could not do anything. On the basis of this report, a formal FIR, FIR No. 178/1985 (Ex.P.5) was chalked out for offences under Sections 363, 366, 368 and 376 IPC. Subsequently, the appellant was put on trial for offences under Sections 366 and 376 IPC. In order to prove its case, the prosecution examined seven witnesses and submitted eleven documents. The defence did not examine any witness, but did submit one document - Pyare Lal's statement recorded under Section 161 of Criminal Procedure Code (for short, 'Cr.P.C.'). In the statement recorded under Section 313 of Cr.P.C., the appellant claimed that 'the prosecutrix was known to him. In the evening, the prosecutrix, of her own volition, came to him at his room and told him that her in-laws have come and they are planning to take her to her matrimonial home. However, she does not wish to go to her matrimonial home. She, therefore, requested that he should take her away somewhere else. At night, with Kajori's consent, he thrice had sexual intercourse with her. On the next day, at the request of the prosecutrix, he locked her in the room, as she did not want her parents to discover her, and went away in order to make arrangements for some money. In the afternoon, he came to his room to give lunch to the prosecutrix and then left the room for meeting his friends. In the evening, he came to know that

Kajori had been recovered from his room by the police. Subsequently, he was arrested. Karjori wanted to give her testimony in his favour. However, the Public Prosecutor told her that in case she gives her statement before the Court as she had stated to the police, the accused would be acquitted.' Notwithstanding the explanation given by the appellant, but relying upon the testimonies of the prosecution witnesses and the documents submitted by the prosecution, the learned trial Court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

3. Mr. Sanjay Mehrishi, the learned Counsel for the appellant, has challenged the impugned judgment on the following grounds: firstly, the prosecution had produced the report with regard to the age of the prosecutrix as Ex.P/11. According to the said report, which was available on record of the Court, the prosecutrix was between the age of eighteen - nineteen years. However, ignoring the report (Ex.P/11), the learned trial Court has relied upon the testimony of Pyare Lal (P.W.2) and has concluded that the prosecutrix was a minor at the time of incident. According to the learned Counsel for the appellant, in absence of birth certificate or school certificate, the learned trial Court should have relied upon scientific evidence as revealed in the Report of the age determination test. In order to support his contention, he has relied upon two cases which were decided by this Court, namely *Shorab v. State of Rajasthan* 2002(2) RCC 843 and *Darshan Singh and Ors. v. State of Rajasthan* 2006 (1) RCC 121. Secondly, if the testimony of the prosecutrix is read in juxtaposition with the statement of the appellant recorded under Section 313 Cr.P.C., the defence story is probablized - it is a case of consent and not of rape. Thirdly, since the learned trial Court had concluded that the prosecutrix was not taken away forcefully by the appellant, this fact also lends credence to the defence story.

4. On the other hand, Mr. Arun Sharma, the learned Public Prosecutor, has argued that the testimony of the father of Kajori is most reliable piece of evidence with regard to the age of prosecutrix. After all he is the father, who would remember the birth of his child. According to the learned Counsel, a medical opinion, like any other opinion, is not binding on the Court. Lastly, the testimony of the prosecutrix is sufficient to convict the appellant. Therefore, he has supported the impugned

judgment.

5. We have heard the learned Counsel for the parties, have perused the impugned judgment and have examined the material available on record.

6. The determination of age of the prosecutrix is a crucial issue to be decided in case of rape. For, the entire case can tilt either in favor of or against the accused on the basis of the age of the prosecutrix. Therefore, the learned trial Court must be extremely careful while appreciating the evidence on this issue. Human memory, like human life is frail and fragile. It tends to lapse, it tends to be vague, it tends to be confused, at times. Therefore, compared to scientific report, human memory can be unreliable as a piece of evidence. When the question of life and liberty of a person is involved, the Court must choose an emphirical and scientific data. For, scientific data is based on medical evidence, medical knowledge, and in case of doubt, can be retested to check its veracity. Wherever a scientific information is available, it should be preferred over other pieces of evidence. Because, scientific evidence is more direct and objective and more emphatic and unquestionable. In case, the Court wishes to disregard the scientific evidence, it should give cogent reasons for doing so. However, in the present case, the learned trial Court has merely stated that the age determination Report is unreliable as it is merely a scientific opinion - an opinion which at times can be uncertain. However, the learned trial Court does not tell us on what basis it finds the evidence to be uncertain. Of course, it is true that age determination does not pin-point and does not fix the age at a particular point, but is an approximation which can be off by two years. However, in catena of cases, the Apex Court has held that where two interpretations are possible from the same evidence, then the one favourable to the accused should be accepted. According to Ex.P/11, the age of the prosecutrix is between eighteen to nineteen years. Therefore, notwithstanding the testimony of the father, Pyare Lal (P.W.2), the learned trial Court should have taken the age of the prosecutrix to be nineteen years. Hence, relying upon the Ex.P/11, this Court has no hesitation in concluding that the prosecutrix was major at the time of incident.

7. Undoubtedly, the offence of rape is a dastardly act not only against the victim, but also the society at large. Unquestionably the offence leaves the victim psychologically scared and emotionally shattered. But, the conviction in a criminal case cannot be based on the heinousness of the crime. A conviction has to be based on the objective assessment of the evidence produced by the prosecution. The objectivity of a judicious mind cannot be blinded by the fact that the prosecutrix alleges that her honour has been defiled. Thus, while examining the evidence, a holistic view of the evidence is essential.

8. Many a times, the prosecutrix is the sole eye-witness in the crime of rape. After all, rape may be committed where other eye-witnesses are unavailable. Of course, she is not an accomplice in a crime. In fact, she is the victim. But nonetheless, her testimony being an evidence of a sole eye-witness has to be examined carefully. She should be a witness of sterling worth. Her testimony, if of sterling worth, can be used to convict the accused. But, if her testimony is weak, or improbable, then the Court should look for corroboration from other independent evidence. Ref. to *Ramdas v. State of Maharashtra* : AIR 2007 SC155 . The intrinsic value has to be deduced by meticulously examining her testimony. The Court is required to consider whether her testimony is studded with contradictions, exaggerations, improbabilities or not. The truthfulness of a testimony also has to be examined on the touchstone of other evidence produced by the prosecution. Hence, the Court must objectively and meticulously examine the entire evidence produced by the prosecution.

9. A bare perusal of the prosecutrix's testimony reveals that she is an unreliable witness, in her cross-examination, she states that 'upto the school, she went with the appellant of her own will. However, from the school to his house, she was dragged by the appellant who had closed her mouth with his hands.' She tells us that 'she was dragged on the road where other people were coming and going'. She further claims that 'she had shouted for help from the school till the appellant's house, but no one came to her rescue'. She further admits that 'when she went to sleep in the appellant's house she was wearing a saree'. According to her, 'when she was raped, the saree was not soiled because she herself had taken the saree off'. Surprisingly, she does not state that it is the appellant who had taken off her

saree and then proceeded to rape her. The fact that the prosecutrix herself took off the saree clearly shows the strong possibility of consensual sex. In her examination-in-chief, she claims that she was raped thrice by the appellant in the same night. Yet, according to her injury report, there was not a single injury on her body or on her private parts. Moreover, although the vaginal swab was sent for medical examination, the prosecution has not produced any report of Forensic Science Laboratory to prove the presence of human semen. Lastly, according to the prosecutrix, when she was locked up by the appellant, she could see the people moving on the road, yet she did not shout for help nor plead for being rescued. According to the site-plan also, the windows were found to be open and only curtains were hanging upon them. A bare perusal of her testimony thus, points to consensual sex and probablises the case of defence.

The improbabilities and the exaggeration in her testimony, the evidence of the medical report create doubt about the veracity of the prosecutrix's testimony. Therefore, this Court does not find the prosecutrix as a trustworthy witnesses. Hence, it is difficult to convict the appellant on the basis of the testimony of the prosecutrix.

10. The appellant also claims in his statement under Section 313 Cr.P.C., the prosecutrix did not wish to go to her in-laws' place, therefore, she came to him and asked him to take her away. He further claims that there was consensual sex thrice in the night. Next morning, he locked up the prosecutrix as she did not wish to be discovered by her parents and went to make arrangements for getting some money. He needed some money to take the prosecutrix to some other place. Therefore, the appellant has also pleaded the defence of consensual sex with a major girl. The testimony of the prosecutrix also points in the same direction. Hence, the prosecution has not been able to prove its case beyond a reasonable doubt.

11. For, reasons stated above, this appeal is allowed. The appellant Maan Singh S/o Pratap Singh is acquitted of offence under Section 376 IPC and offence under Section 366 IPC. Since he is on bail, his bail bonds need not be forfeited.

