

Moolasingh and anr. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-09-2004

Reported in : 2005CriLJ1347

Judge : O.P. Bishnoi, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 354, 376 and 511; Code of Criminal Procedure (CrPC) - Sections 161

Appeal No. : Criminal Appeal No. 81 of 1987

Appellant : Moolasingh and anr.

Respondent : State of Rajasthan

Advocate for Def. : D.D. Kalla, PP

Advocate for Pet/Ap. : Ranjeet Joshi, Adv.

Disposition : Appeal allowed

Judgement :

O.P. Bishnoi, J.

1. This appeal has been filed by the two accused persons Mool Singh and Surendra Singh, who both have been found guilty for an offence punishable under Section 354 of the IPC by the learned Sessions Judge, Merta vide judgment dated

24-2-1987.

2. On 11-9-1985, at 11.30 AM PW 3 Smt. Chuki Devi wife of Hanuman Bux, r/o village Budsu went to the police station Makarana and produced a type written report Ex. P/3 on the basis of which, a case under Section 376/511 of the I. P. C. was registered. According to the report, the incident occurred on the previous day on 10-9-1985. The prosecutrix Ku. Kanchan was allegedly grazing the cows in her agricultural field when a bus, in which, the appellants were travelling, stopped near the said field and the two appellants alighted from the bus. The accused Mool Singh went in the standing crop of 'Bajra' whereas the accused Surendra Singh lifted the prosecutrix and took her to the Bajra field where Mool Singh was waiting and both the appellants allegedly attempted to criminally assault the prosecutrix. The prosecutrix raised hue and cry, on account of which, the mother of Bhanwar Singh and the mother of Jagdish came and seeing them, the two appellants took to their heels. The two elderly ladies orally reprimanded the culprits and thereafter the two ladies escorted the prosecutrix to her house and the incident was narrated to the mother of the prosecutrix PW 3 Smt. Chuki Devi. PW 3 Smt. Chuki Devi approached the respectable persons of the village who advised her to lodge an FIR and hence the report. After investigation, a challan was filed and the appellants were put to trial in the said Court. Both pleaded not guilty to the charge under Section 376/511 of the IPC. The prosecution examined six witnesses in support of its story. DW 1 Parsa Ram and DW 2 Jaswant Singh were examined in defence. They stated that no such incident of attempted rape took place. According to these witnesses, the cows belonging to the complainant entered the field of Mool Singh and damaged the standing crops and Mool Singh attempted to take the cows to the 'Cattle-pound' and there was exchange of hot words between the parties. The learned trial Court then heard the arguments and delivered the judgment on 24-2-1987. Rigorous imprisonment for one year and a fine of Rs. 500/- has been awarded to both the appellants. On account of non-payment of fine, additional R.I. for three months has been ordered in respect of each accused. The amount of fine, if deposited has been ordered to be paid to the prosecutrix.

3. I have heard the learned counsel for the appellants as well as the learned Public Prosecutor for the State and have gone through the record of the trial Court. I find

that the conclusions drawn by the learned trial Court against the two appellants are unsustainable and the appeal deserves to be allowed.

4. Learned counsel for the appellants has argued that the dispute was completely different and the crop standing in the field of the accused Mool Singh was damaged by the cattle left loose by the prosecutrix and apart from the verbal exchanges, no incident occurred. It is submitted that in spite of the fact that the place of occurrence was not far away from the Police Station, no FIR was lodged till noon on 11-9-1995. It is submitted that this delay of more than 24 hours itself goes to show that prosecution story has no grain of truth in it. Further it is submitted that no independent corroboration of any nature has been received and the only independent eye-witness Smt. Gheesi has denied that any such incident took place. The incident has been supported by the prosecutrix, her mother and PW-4 Doll, who in her cross-examination admitted that she is a relation and is grand-mother of the prosecutrix. Further it is submitted that the typewritten FIR makes a specific mention that the two accused-persons came in a bus and the bus was halted near the agricultural field of the prosecutrix from there they went to the place of occurrence, where prosecutrix was raped. However, prosecutrix does not say that any such bus came or accused persons alighted from the bus. Further it is submitted that there are material contradictions in the statements of the three prosecution witnesses. They are not in harmony with the allegations made in the FIR, which was lodged with considerable delay. Regarding deposition of the prosecutrix, it is submitted that she has taken a complete somersault and has stated, on oath, that she was actually raped by one of the appellants. It is submitted that according to the FIR, the incident was forthwith reported to some prominent villagers but strangely enough the Investigating Officer has kept them out of the scope of investigation and no such person has been examined in support of the prosecution story nor he took the trouble to find out the bus which plies on the route and made no attempt from the Conductor or Driver of the bus to ascertain as to whether the two appellants were travelling in the bus and the bus was stopped at their request near the agricultural field belonging to the prosecutrix. I find that the contention raised by the defence cannot be termed as devoid of substance. All the infirmities pointed out by the learned counsel are present in the case. The manner in which the prosecutrix has changed the whole

story is unbelievable. As pointed out earlier, the FIR was lodged by the mother of the prosecutrix on the information supplied by the prosecutrix. In very vague terms, there is a mention in the FIR that only an attempt was made to outrage the modesty of the prosecutrix. However, the prosecutrix has deposed that when she was sitting under a tree, the accused Surendra Singh caught hold of her and then she was dragged to the 'bajara' field where the accused Surendra Singh caught hold of her both the hands and closed her mouth. Mool Singh lifted her skirt and sat over her and while he was unbuttoning his trousers, she was able to free herself and was able to stand up. Thereafter, according to the witness she was again grabbed by Surendra Singh, and was made helpless and the accused Mool Singh performed sexual intercourse with her. PW-3 Chuki Devi is not to be left behind. She has improved the story and deposed that during the incident, nose-ring and earrings of the prosecutrix were lost. However, Chuki Devi does not say that the sex act was performed. According to her, only an attempt was made. She has stated that she narrated the incident to 3-4 villagers but strangely enough she has not disclosed the name of anyone of them.

5. The accused Surendra Singh is not resident of village 'Badsu' and he is from village 'Chandalia'. PW-3 Chuki Devi admitted this thing during the cross-examination and stated that when the FIR was lodged, she had no knowledge of the father's name of Surendra Singh and the name of the village to which he belonged. Strangely enough, the Fir Ex. P/3 contains the name of the father of the accused Surendra Singh and also the name of village 'Chandalia', to which he belongs. Needless to say, that in the aforesaid circumstances the prosecutrix as well as his mother cannot be termed as witnesses of sterling worth. They have contradicted their statements recorded under Section 161 of the Cr. P. C. in material aspects. The prosecutrix Kanchan was examined twice under Section 161 of the Cr. P. C. First her statement was recorded on 11-9-1995 and the supplementary statement Ex. D/2 was recorded on 30-9-1995. In none of them, she made a mention that she was raped by any accused. During her deposition, she states that the accused Mool Singh removed her clothes and was completely naked when he performed the sexual act. However, in the supplementary statement Ex. D/2, she simply states that the accused Mool Singh simply made an attempt to unbutton his trouser. 'She is 14 year's old girl and states that in spite of

the forcible intercourse she suffered no injury on her vagina and no blood came out. At one place she states that she was wearing underwear at the time of incident, thereafter, she states that she was without Underwear. She has stated that the accused Surendra Singh pounced upon her and thereafter she was dragged to about 15 feet where she was raped. She has stated that during the incident, she gave a teeth-bite to the hand of Surendra Singh and marks of teeth became visible. Still the Investigating Officer thought it proper to not to get medically examined the prosecutrix and also not to get medically examined the accused Surendra Singh.

6. According to the version of the prosecutrix, she did not walk to the place of rape as she was dragged by Surendra Singh. According to PW-3 Chuki Devi also, the prosecutrix did not walk but was dragged to the place where the incident took place. However, according to the FIR Ex. P/3, the girl was lifted and was taken to the place of occurrence by Surendra Singh. Be that as it may, in either eventuality the girl did not walk to the place where she was assaulted. However, according to the site-note Exh. P/1, the prosecutrix duly walked from the place marked 'C' to the place marked 'A' and it is noted that her foot-prints in this respect were noticed.

7. The deposition of PW-4 Doli is ridiculous. She has admitted in cross-examination that she did not notice any accused on the day of occurrence. Still she has insisted that according to the information furnished by the prosecutrix, the two accused persons went towards Eastern side together. However, according to the site-map Ex. P/2, one accused went towards North and other went towards East. According to the prosecutrix, the accused Surendra Singh ran away towards Western side of the place of occurrence, which is nobody's case, PW-4, Doli did not notice anything and according to her, Kanchan complained against Surendra Singh only and that to the effect that her hand was caught and mouth was closed. She states that the prosecutrix did not make a mention about the presence of the accused Mool Singh. According to prosecution story, Smt. Doli rushed to the spot and on seeing her approaching, the two ran away and both were noticed by Smt. Doli.

8. In the light of the discussion made above, I am of the view that the evidence produced by the prosecution is highly unsatisfactory and a finding of guilt cannot be arrived at on the basis of such evidence.

9. Consequently, the appeal is allowed. The judgment under appeal is set aside. Both the appellants are acquitted of the offence punishable under Section 354 of the I. P. C. They are on bail and their bail bonds are hereby cancelled.

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