

Laxman Dan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-25-2001

Reported in : 2001CriLJ4501; 2002(5)WLC73; 2002(1)WLN440

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 323, 342 and 376; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 313

Appeal No. : S.B. Criminal Appeal No. 755 of 2000

Appellant : Laxman Dan

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : P.N. Mohanani, Adv.

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. This appeal has been filed by the accused appellant against the judgment and order dated 4.12.2000 passed by the learned Addl. Sessions Judge, Barmer in Sessions Case No. 27/99, by which he acquitted the accused appellant of the

charges for the offence under Sections 342, 323 IPC, but convicted him for the offence under Section 376 IPC and sentenced him to undergo seven years RI and to pay fine of Rs. 2,000/-, in default of payment of fine, to further undergo RI for three months.

2. It arises in the following circumstances:-

On 8.5.1999 at about 9.30 AM, PW 6 Durgaram lodged a written report Ex. P/5 before PW 16 Shanti Prakash, S.I. Police Station Bakhasar, District Barmer stating inter-alia that he hailed from village Tadla and his sister Mangi, PW4 (hereinafter referred to as the prosecutrix) was living in the village with his mother, father and younger brother and he had gone to Dissa (Gujarat) for the purpose of doing labour work. It was further stated in the report that he received a message that his sister Mangi PW4 prosecutrix was ravished by accused appellant and after hearing this news, he came to his village on the same day i.e. on 6.5.1999 and he asked his sister Mangi PW4 prosecutrix and PW4 Mangi told him that when she went to collect cow-dung and reached near the Nadi, the accused appellant was there and he caught her left hand and tried to take her behind the Nadi, but he managed to set free her hand from accused appellant and thereafter, again accused appellant caught her hands and dragged her and took her in the Nadi and put her on the ground and hereafter he slapped her and pressed her mouth, as a result of which she received injuries near the eyes and thereafter, accused appellant caught her both hands and committed rape on her and she made hue and cry and on hearing her cries, PW2 Kesharam came there and seeing PW2 Kesharam, accused appellant ran away from the place of occurrence. Thereafter, prosecutrix PW4 Mangi came to her house and told the whole incident to her mother PW5 Varju and also showed her injuries. In these circumstances, the report was lodged on 8.6.1999 though the incident took place on 6.5.1999. It was also mentioned in the report that the accused appellant also tried to molest prosecutrix PW4 Mangi before 15 days back. It was further mentioned in the report that since he came late, the report has been lodged with delay.

On this report, police registered the case and chalked out FIR Ex.P/21 and started investigation.

During investigation, the accused appellant was arrested on 14.5.1999 through Ex.P/19 and the accused appellant was got medically examined by Dr. P.C. Deepan, PW8 and his medical examination report is Ex.P/7 and injury report is Ex.P/12. The prosecutrix PW4 Mangi was also got medically examined for the purpose of rape as well as for ascertaining her age by Dr. P.C. Deepan, PW8 and Dr. A.K. Goyal, PW10 and her injury report is Ex.P/9, medical examination report is Ex.P/8 and radiological opinion is Ex.P/10.

After usual investigation, police submitted challan against the accused appellant in the Court of Magistrate, from where the case was committed to (he Court of Session.

On 10.8.1999, the learned Addl. Sessions Judge, Barmer framed charges under Sections 376, 342 and 323 IPC against the accused appellant. The charges were read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During trial, the prosecution in support of its case examined as many as 17 witnesses and got exhibited some documents. Thereafter, the statement of the accused appellant under Section 313 Cr.P.C. was recorded. In defence, one witness was produced by the accused appellant.

After conclusion of the trial, the learned Addl. Sessions Judge, Barmer through his judgment and order dated 4.12.2000 acquitted the accused appellant of the charges for the offence under Sections 342, 323 IPC, but convicted and sentenced him for the offence under Section 376 IPC in the manner as indicated above holding inter-alia;-

1. That in the present case, the delay in lodging the report has been explained.
2. That on the date of occurrence, the prosecutrix, PW4 Mangi was minor.
3. That though other witnesses including PW5 Varju, mother of the prosecutrix, PW 6 Durgaram, real brother of the prosecutrix and other independent witnesses, namely, PW1 Motiram, PW2 Kesharam and PW3 Bhera do not support the statement of the prosecutrix PW4 Mangi, yet the statement of the prosecutrix PW4

Mangi gets corroboration from her medical report.

4. That the prosecution has proved its case beyond all reasonable doubts against the accused appellant for the offence Under Section 376 IPC.

Aggrieved from the said judgment and order dated 4.12.2000 passed by the learned Addl. Sessions have been raised by the learned counsel for the accused appellant:-

3. In this appeal, the following submissions have been raised by the learned counsel for the accused appellant:-

1. The learned Addl. Sessions Judge has grossly erred in believing the statement of the prosecutrix PW4 Mangi, as her evidence suffers from a number of infirmities and her statement is not corroborated by any other evidence, especially when PW6 Durgaram, who lodged the report Ex.P/5, has been declared hostile and he has admitted that he did not lodge any report.

2. That medical evidence is also against the prosecution. As per medical evidence, the prosecutrix PW4 Mangi is habitual to sexual intercourse. This shows that she had sex activities in the past.

3. That prosecution has not been able to prove that on the date of occurrence, the prosecutrix PW 4 Mangi was below 16 years of age and thus, findings of the learned Addl. Sessions Judge on this point are erroneous one, as the doctor has opined her age between 14 to 16 years and has further stated that margin of error might be on both sides. From this point of view also, the age of the prosecutrix cannot be determined below 16 years of age.

Hence, it is prayed that this appeal be allowed and the accused appellant be acquitted of the charge under Section 376 IPC.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order of the learned Addl. Sessions Judge, Barmer.

5. I have heard the learned counsel for the accused appellant and the learned Public Prosecutor and perused the record of the case.

6. To appreciate the contentions raised by the learned counsel for the accused appellant, first medical evidence of this case has to be seen.
7. PW8 Dr. P.C. Deepan has been produced by the prosecution to prove the medical examination report Ex.P/8 and injury report Ex.P/9 of the prosecutrix PW4 Mangi.
8. PW8 Dr. P.C. Deepan has stated that on 9.5.1999 he examined the prosecutrix PW4 Mangi and found that her breasts were developed; auxiliary and pubic hairs were present; no tears abrasions cut were present over genitals and no bleeding was present. He found the following injuries on her person:-
 1. Two scratch 2cm in length each, present on medial aspect of Rt. thigh. - ,
 2. Scratch (2) 1cm and another 4cm in length. Rt. knee joint and present on right leg.
 3. Bruise 4cm x 4cm present on Rt. gluteal region.
 4. Scratch 3cm x 0.1 cm present on Lt. lg.
 5. Bruise 4cm x 0.5 cm present on back of Lt. thigh.
 6. Lacerated wound 2cm x 1cm Li. side of temporal region. He has proved the injury report Ex.P/9 and the medical examination report Ex.P/8.
9. Dr. A.K. Goyal, PW10 has been produced by the prosecution to prove the radiological age of the prosecutrix PW4 Mangi. He has stated that age of the prosecutrix was near about 14 to 16 years. He has proved the report Ex.P/10, but he has admitted that there may be margin of one or two years on either side.
10. It may be stated here that for ascertaining the age of girl, the best evidence is Found in the birth certificate or the school certificate and the same is missing in the present case and looking to the physical condition of the prosecutrix PW4 Mangi that her breasts were developed, auxiliary and pubic hairs were present, she was habitual to sexual inter-course and her body average built and looking to the radiological age which has margin of two years on either side, the age of the

prosecutrix cannot be determined below 16 years and her age should be from all point of view more than 16 years or nearabout 16 years.

11. Therefore, the findings of the learned Addl. Sessions Judge that prosecutrix PW4 Mangi was below 16 years of age on the date of occurrence are liable to be set aside and the same are set aside and it is held that on the date of occurrence, the prosecutrix PW4 Mangi was just above 16 years of age.

12. Before critically examining the statement of the prosecutrix PW 4 Mangi, other evidence has to be looked into.

13. PW6 Durgaram, who lodged the report Ex.P/5, is the brother of the prosecutrix. He has stated in his examination that he received the message that accused appellant beat his sister PW4 Mangi with stone and, thereupon, he came to his house and he was not told by his mother PW5 Varju or anybody that PW4 Mangi was raped by accused appellant. Because of this statement, he was declared hostile. He has further admitted that report Ex.P/5 was written by somebody in the police station and the same was not read over to him. Thus, he does not support the case of the prosecution on the point of rape as well as on the point of lodging of the report Ex.P/5.

14. In the report Ex.P/5, there was a mention of the fact that when prosecutrix PW 4 Mangi was being raped by the accused appellant, PW2 Kesharam came there and seeing PW2 Kesharam, accused appellant ran away. PW2 Kesharam has been examined by the prosecution and he has been declared hostile and thus, he does not support the case of the prosecution.

15. In the report Ex.P/5, it was also mentioned that after the alleged incident, prosecutrix PW4 Mangi came to her house and told the whole story to her mother PW5 Varju. PW5 Varju has been examined by the prosecution and she has been declared hostile as she does not support the case of the prosecution. However, she has admitted in her cross-examination that a compromise had taken place in the village and she was told by the villagers to give otherwise statement.

16. Apart from this, in this case, PW1 Motiram and PW3 Bhera have also been declared hostile.

17. The main stress which has been put by the learned counsel for the accused appellant during the course of argument is that since PW5 Varju, mother of the prosecutrix, PW6 Durgatam, lodger of the report Ex.P/5 and real brother of the prosecutrix and PW2 Kesharam, alleged eye witness have been declared hostile, therefore, statement of the prosecutrix PW4 Mangi should not be believed as there is no corroboration to her statement.

18. Before this argument is dealt with, the statement of the prosecutrix PW4 Mangi has to be looked into.

19. Before examining the statement of the prosecutrix PW4 Mangi, some thing should be said about burden of proof in rape cases.

Burden of proof

20. In a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and her mother have falsely implicated the accused. The evidence of prosecution witnesses cannot be accepted merely because an accused person has not been able to say as to why they have come forward to depose against him. However great the suspicion against the accused and however strong the moral belief and conviction of the Judge, unless the offence of the accused is established beyond reasonable doubt or beyond the possibility of reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring the offence home to the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

Legal aspect of evidence of the prosecutrix

21. The main evidence in all such cases is that of the victim herself. In practice , a conviction for rape almost entirely depends on the credibility of the woman, so far

as the essential Ingredients are concerned, the other evidence being merely corroborative. It is not necessary that there should be independent corroboration of every material circumstance in the sense that the independent evidence in the case, apart from the testimony of the complainant, should In itself be sufficient to sustain conviction. All that is required is that there must be some additional evidence rendering it probable that the story of the complainant is true and that it is reasonably safe to act upon it.

Medical examination of victim and of accused

22. Where the prosecutrix had received injuries on various parts of her body, it indicates that she offered resistance when she was subjected to sexual intercourse. Similarly, if any accused had injuries on his person caused by finger nails, the nail clippings of victim or in any manner, it also supports the case of the prosecution.

23. Keeping the above legal position in mind, the statement of the prosecutrix PW4 Mangi is being examined.

24. PW4 Mangi in her statement has clearly stated ahat accused appellant caught hold her hands and look her towards Nadi and put on the ground and committed rape on her and at the lime when she was being raped by accused appellant, PW2 Kesharam came there and seeing him, accused appellant ran away and, therefore, she came to her house and told the whole incident to her mother PW5 Varju and since her brotler PW 6 Durgaram was not in the house, he was called upon and she also narrated the whole story to PW6 Durgaram. She admits the following facts in her cross-examination:-

1. That on the date of occurrence, her father was in the house.
2. That her brother PW 6 Durgaram came in the evening on the date of incident i.e. on 6.5.1999.
3. That PW2 Kesharam. PW3 Bhera and PW) Motiram are her relatives.
4. That she is a married lady, but her gonna has not taken place.

25. In my considered opinion, the statement of the prosecutrix PW4-Mangi does not suffer from any infirmity which compels this Court not to believe her statement. She has categorically stated that accused appellant has committed rape on her and in support of her statement, no doubt other evidence is not available, but there is medical evidence which supports her case. The prosecutrix sustained as many as six injuries including two scratches on right thigh, two more scratches on the right knee joint and one bruise on right gluteal region. Had prosecutrix PW4 Mangi would not have put resistance, she would have not received these injuries. Thus, the injuries on the person of the prosecutrix have corroborative value.

26. It may be stated here that accused appellant has also received injury and his injury report is Ex.P/12, which shows that there was scratch 1.5cm in length on upper part of left arm.

27. Thus, the medical examination of the accused appellant further supports the case of the prosecution that when prosecutrix PW4 Mangi would have offered resistance, he would have received the injury. It may be stated here that generally in rape cases accused receives no injuries and only in rare cases, injuries are found on the person of the accused and this is one of the rare case where not only the prosecutrix PW 4 Mangi, but accused appellant has also received injury. Therefore, it is not a fit case where doubt can be created on the prosecution case.

28. In rape cases, the testimony of the prosecutrix must be appreciated in the background of the entire case and court must be alive to its responsibility and be sensitive while dealing with cases involving sexual molestations.

29. It may be stated here that absence of injuries on prosecutrix is not fatal to prosecution case and from this point of view, if injuries on private part is not found, this aspect is not fatal as injuries on other parts of the body of the prosecutrix PW4 Mangi are found.

30. So far as the argument of the learned counsel for the accused appellant that as PW5 Varju, mother of the prosecutrix, PW6 Durgaram, lodger of the report Ex.P/5 and brother of the prosecutrix and PW2 Kesharam, alleged eye witnesses have been declared hostile, therefore, statement of the prosecutrix PW4 Mangi

should not be believed is concerned, there is no dispute on the point that these witnesses have been declared hostile, but PW5 Varju, mother of the prosecutrix, has admitted in her cross-examination that since a compromise has taken place among Charan, therefore, she was told by them to give negative statement. Thus, it appears that those witnesses, who have been declared hostile in the present case, they have become hostile because of the simple reason that compromise had taken place between the parties and thus, they are stating correct position of the case and, therefore, the fact of becoming hostile would not affect the statement of the prosecutrix.

31. However, so far as prosecutrix PW4 Mangi is concerned, she has not yielded to the pressure even of her mother PW5 Varju and brother PW6 Durgaram and she has categorically stated that she was raped by the accused appellant.

32. The aspect that there was delay of two days in lodging the report Ex.P/5 as PW6 Durgaram came on 6.5.1999 and report was lodged on 8.5.1999 clearly indicates that it was made because compromise talks were going on, but as it was not finalised, report was lodged on 8.5.1999 and subsequent to lodging of the report, compromise had taken place between the parties but not with prosecutrix and that is why, PW6 Durgaram, brother of the prosecutrix, PW5 Varju, mother of the prosecutrix, PW2 Kesharam, alleged eye witness and other witnesses have become hostile, but prosecutrix PW4 Mangi remained adamant and she has categorically stated in her statement that accused appellant committed rape on her.

33. It may be stated here that rape is not only a crime against the person of a woman (victim), it is a crime against the entire society. The rape is regarded most hated crime. It is a crime against basic human rights and is also violative of the victim's most cherished of the Fundamental Rights, namely, the Right to Life contained in Article 21.

34. In these circumstances, if the prosecutrix PW4 Mangi has not surrendered herself to the wishes of her mother PW5 Varju and brother PW6 Durgaram and merely because they have surrendered themselves to the pressure of the Panchayat, the case of the prosecution cannot be thrown away on the ground of

so-called compromise which had taken place between the parties, to which prosecutrix was not a party.

35. In these circumstances, the delay in lodging the report Ex.P/5 is not fatal to the prosecution and similarly, the so called compromise for which PW5 Varju, mother of the prosecutrix refers is also not fatal to the prosecution case.

36. The learned counsel for the accused appellant has relied on the decision of this Court in Fota and Damra v. State (1), where eye witnesses to rape were not supporting the prosecution case and compromise alleged to be entered into between them and it could not be believed that parents would compromise offence of sexual assault on their daughter and medical evidence was also not supporting the prosecution and no injuries were found on her person or private parts and under these circumstances, it was held by this Court that evidence of the prosecutrix was not reliable.

37. In my considered opinion, the facts of the present case are to some extent different from the facts of Fota & Damra's case (supra). In the present case, injuries on the person of the prosecutrix PW4 Mangi were found and the prosecutrix PW4 Mangi was not party to the compromise which had taken place and if PW5 Varju, mother of the prosecutrix has surrendered herself to (he pressure of the local people, it would not affect the case of the prosecutrix, who has categorically stated that she was raped by the accused appellant and her statement is fully supported by the medical evidence. Thus, the decision in Fota & Damra's case (supra) would not be helpful to the accused appellant.

38. For the reasons stated above, it can easily be said that prosecutrix PW4 Mangi is a witness of truth. Her statement gets corroboration from medical evidence. Her testimony is trustworthy and she is a reliable witness and there is no reason to disbelieve her testimony. Thus, the learned Addl. Sessions Judge was right in placing reliance on the statement of the prosecutrix PW4 Mangi and in convicting the accused appellant for the offence under Section 376 IPC and his findings in this respect are liable to be confirmed and this appeal deserves to be dismissed.

Accordingly, the appeal filed by the accused appellant Laxman Dan is dismissed, after confirming the judgment and order dated 4.12.2000 passed by the learned Addl. Sessions Judge, Barmer.

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