

inder Singh Vs. State of Rajasthan

inder Singh Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/768911

Court : Rajasthan

Decided On : Jul-19-2001

Reported in : 2002CriLJ721; 2003(2)WLN286

Judge : Sunil Kumar Garg, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 375 and 376

Appeal No. : S.B. Criminal Appeal No. 244 of 1987

Appellant : inder Singh

Respondent : State of Rajasthan

Advocate for Def. : Ramesh Purohit, Public Prosecutor

Advocate for Pet/Ap. : S.K. Goel, Adv.

Disposition : Appeal dismissed

Judgement :

Garg, J.

1. This appeal has been filed by the accused appellant against the judgment and order dated 27.7.1987 passed by the learned Sessions Judge, Chum in Sessions Case No. 88/81 by which he convicted the accused appellant for the offence under Section 376 IPC and sentenced him to undergo four years R1 and to pay fine of

Rs. 250/-, in default of payment of fine, to further undergo two months R1.

2. It arises in the following circumstances:-

On 5.10.1984 at about 11.20 PM. PW7 Ramrakharam lodged a written report Ex.P/8 with the Police Station Ladnu District Nagaur stating inter-alia that on 4.10.1984 in the morning he went to his father-in-law's house and her daughter Bhanwari. PW1, aged about 11 years (hereinafter referred to as the prosecutrix) went to jungle for the purpose of grazing goats and in the noon, the prosecutrix went Odana Nadi for the purpose of drinking water to goats and in the Nadi, accused appellant was also grazing his flock of goats and he following prosecutrix PW1 Bhanwari forcibly caught hold and put her on the ground and started to commit rape with her and she started crying, but he did not allow her to go and then he committed rape with her and at that time, PW2 Kishan Singh and PW3 Kushlaram came there, after hearing cries of the prosecutrix PW1 Bhanwari and seeing them, accused appellant ran away from the scene. It was further stated in the report that as soon as he came from Kanuta, he was told about the whole incident by the prosecutrix PW1 Bhanwari and then he lodged the report.

3. On this report, FIR Ex.P/10 was chalked out at Police Station Ladnu District Nagaur and since the matter pertained to the Police Station Sandwa and not to the Police Station Ladnu District Nagaur, the report Ex.P/8 alongwith FIR Ex.P/10 was sent to the Police Station Sandwa, where case was registered on 6.10.1984 and regular FIR Ex.P/11 was chalked out and police of Sandwa started investigation.

During investigation, the medical examination of the prosecutrix PW1 Bhanwari was got conducted by PW5 Dr. J.L. Jhajharia on 7.10.1984 and her medical examination report is Ex.P/3. The accused appellant was also got medically examined by PW5 Dr. J.L. Jhajharia and his medical examination report is Ex.P/4. The accused appellant was arrested on 8.10.1984 through arrest memo Ex.P/13.

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

On 15.1.1986, the learned Sessions Judge, Churu framed charge for the offence under Sees. 376 IPC against the accused appellant. The charge was read over and explained to the accused appellant, who pleaded not guilty and claimed trial.

During the course of trial, the prosecution in support of its case examined as many as nine witnesses and got exhibited some documents. Thereafter, statement of the accused appellant under Section 313 Cr.P.C. was recorded. In defence, no evidence was produced by the accused appellant.

After conclusion of trial, the learned Sessions Judge, Churu through his judgment and order dated 27.7.1987 convicted the accused appellant for the offence under Sections 376 and sentenced him in the manner as indicated above holding inter-alia that from the statement of the prosecutrix PW1 Bhanwari, it is well proved that the accused appellant committed rape with the prosecutrix PW1 Bhanwari and the argument of the learned counsel appearing for accused in the trial court that since the report was lodged by the father of the accused appellant against PW7 Ramrakharan, PW2 Kishan Singh, PW3 Kushlaram and others, therefore, false report was lodged against the accused appellant, was not accepted by the learned Sessions Judge as the report by PW7 Ramrakharan was lodged earlier to the report lodged by the father of the accused appellant.

Aggrieved from the said judgment and order dated 27.7.1987 passed by the learned Sessions Judge, Churu, this appeal has been filed by the accused appellant.

4. In this appeal, the learned counsel appearing for the accused appellant has made the following submissions:-

1. That since the medical evidence in the present case shows that no rape was committed nor sexual intercourse had taken place with the prosecutrix PW1 Bhanwari, therefore, allegations of rape against the accused appellant are false one.

2. That whole case is false one for the simple reason that the father of the accused appellant lodged a report against PW7 Ramrakharan, PW2 Kishan Singh, PW3

Kushlaram and others and to take revenge, this false case has been got registered by PW7 Ramrakharam against the accused appellant.

Hence, it was prayed that this appeal be allowed and the accused appellant be acquitted of the charge framed against him.

5. On the other hand, the learned Public Prosecutor supported the impugned judgment and order dated 27.7.1987 passed by the learned Sessions Judge, Churu.

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

7. Before proceeding further, first medical evidence of this case has to be seen, which is found in the statement of PW5 Dr. J.L. Jhjharia and the medical examination report Ex.P/3, which was admitted during trial by the learned counsel for the accused subject to cross-examination.

8. PW5 Dr. K.L. Jhajharia states in his statement that on 7.10.1984 he was Medical Officer at Sandwa and on that day, he examined prosecutrix PW1 Bhanwari and after examination, he gave the medical examination report Ex.P/3.

9. The medical examination report Ex.P/3 of prosecutrix PW3 Bhanwari reveals the following facts:-

(1) That she was examined by Dr. K.L. Jhajharia on 7.10.1984 though the alleged incident took place on 4.10.1984 and she has taken bath and has changed her clothes.

(2) That she is a married lady.

(3) The auxiliary hairs were absent, breasts were firm and pubic hairs were present.

(4) That there were no marks of injury, bites on any part of her body,

(5) That on genitals, pubic hairs were present. There was no matting and no staining of any sort. There was no marks of injury & staining. Separation of thighs was not painful. There was no fresh bleeding from the vagina. Labia majora was closed contact. There was no injury to the vestibule, labla minora, fourchette and posterior commissure. There was no swelling and discharge. Hymen was ruptured. Vaginal orifice admits two fingers. There Was no signs of any injury to private part and perineum.

(6) That on the basis of the above findings, Dr. J.L. Jhajharia, PW5 opined that she was not habitual of intercourse and there was no accomplishment of recent intercourse with force or resistance. He further opined that there were no marks of injuries on her person and other parts of body.

It cross examination, PW 5 Dr. J.L. Jhajharia admits the following facts:-

(1) That at that time when he examined prosecutrix PW1 Bhanwari, she was in healthy condition.

(2) That on her face, there were no signs of bites.

(3) That there were no marks of injuries on her person.

(4) That there were no signs on her person showing forcible intercourse with her.

(5) That he has written her age 13 years, as per her own saying._

(6) That in her vagina, there were no signs of bleeding.

10. Thus, from the above medical evidence, one thing is clear that there were no marks of injury on private part or other parts of her body and she was a married lady.

11. So far as her age is concerned, there is no evidence in this case and Dr. J.L. Jhajharia has stated in his statement that he has written her age as 13 years, as per saying of the prosecutrix PW1 Bhanwari.

12. Looking to the symptoms, which have been mentioned in her medical examination report Ex.P/3 that auxiliary hairs were absent though pubic hairs were present and in the report Ex.P/8, her age has been written as 11 years and in the examination in Court, she has stated her age as 14 years, it can be said that from all point of view, she was below the age of 16 years on the date of alleged incident.

13. The next question that arises for consideration is whether rape has been committed on the prosecutrix PW1 Bhanwari by the accused appellant forcibly or not.

14. The main evidence in the present case is of prosecutrix Bhanwari herself, who has been produced in the Court as PW1.

15. Before examining the statement of the prosecutrix PW1 Bhanwari, something should be said about the burden of proof in rape cases.

Burden of proof

16. 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.

17. If the victim is unwilling to yield to sexual intercourse, she is expected to receive injuries on her person. The absence of injuries on the body of the

prosecutrix, generally, gives rise to an inference that she was consenting party to coitus. Where the prosecutrix had received multiple injuries on the various parts of her body it indicated that she offered resistance when she was subjected to sexual intercourse. The absence of injuries either on the accused or on the prosecutrix shows that the prosecutrix did not resist but absence of injuries is not by itself sufficient to hold that the prosecutrix was a consenting party.

18. In a rape case, corroboration of the testimony of the prosecutrix is not required as a rule of law, but, corroboration should ordinarily be required in the case of woman having attained majority and who is habitual to sexual intercourse as in such cases there is likelihood of her having levelled such an accusation on account of instinct of self preservation.

19. Keeping the above principles in mind, the statement of the prosecutrix PW1 Bhanwari is being examined.

20. The prosecutrix PW1 Bhanwari has clearly stated in her statement that the accused appellant came suddenly and caught hold of her and after putting her on the ground, he lifted her sari and put her penis into her vagina. She has further stated that accused appellant also bit her and on her making hue and cry, PW2 Kishan Singh and PW3 Kushlaram came there and seeing them, accused appellant ran away from the scene. However, she did not tell about the incident to PW2 Kishan Singh and PW3 Kushlaram. She has further stated that his sari came out and fell on her sari, in cross examination, she has stated that there was profuse bleeding, which continued for 2-3 days and the accused appellant also bit her 2-3 times.

21. PW2 Kishan Singh, whose name is found in the report Ex.P/8 has stated that he saw the accused appellant lying over the prosecutrix PW1 Bhanwari and seeing him, he ran away from the scene. In cross-examination, this witness has admitted that prosecutrix PW1 Bhanwari told him that accused appellant committed rape with her.

22. PW3 Kushla Ram, whose name is also found in the report Ex.P/8, has stated that he saw the accused appellant lying over the prosecutrix PW1 Bhanwari. and

seeing him, he ran away from the scene. He has further stated that he did not ask any question from her and seeing him, she stood up and then went towards the field.

23. PW7 Ramrakharam is the father of the prosecutrix and he lodged the report Ex.P/8. He has stated that when he came on the next day, he was told about the whole incident by the prosecutrix PW1 Bhanwari and, thereafter, he lodged the report Ex.P/8. In cross examination, this witness has admitted that father of the accused appellant has lodged a report against 10-12 persons including him, PW2 Kishan Singh, PW3 Kushla Ram and others about abduction of accused appellant. He has further admitted that her daughter PW1 Bhanwari, prosecutrix has been living with him since her marriage.

24. From perusing the statement of the prosecutrix PW1 Bhanwari as a whole and looking to the fact that she is a married lady though below the age of 16 years, it appears that it is a case of consent, as during the so-called rape, she did not receive any sort of injury on her person either private or other parts of body. Though she has admitted in cross-examination that accused appellant bile her twice and thrice and there was profuse bleeding for 2-3 times, but medical evidence on this point is Nil. PW2 Kishan Singh and PW3 Kushla Ram have clearly stated that when they reached on the spot, they saw the accused appellant lying over the prosecutrix PW1 Bhanwari, meaning thereby this aspect also goes to show that she was a consenting party with the accused appellant, but seeing them, accused appellant ran away and it might be possible that when accused appellant was to run away from the place of occurrence, his semen came out from her penis and fell on the gagra of the prosecutrix PW1 Bhanwari.

25. Absence of injuries on the person of the prosecutrix PW1 Bhanwari shows that accused appellant had sexual intercourse with the prosecutrix with her tacit consent. The medical evidence clearly discloses that prosecutrix PW1 Bhanwari does not appear to have put up any resistance to the alleged onslaught committed on her by the accused appellant. From this, the only irresistible inference can be that the prosecutrix was a consenting party.

26. Thus, the result is that though the medical evidence on the point that sexual intercourse took place with the prosecutrix PW1 Bhanwari is Nil, yet her statement appears to be more correct on the point that sexual intercourse took place with her, but not in a forcible manner as stated by her, otherwise if sexual intercourse would have taken place with her forcibly, injuries on her private part, labia minora and other part of body would have been found.

27. Therefore, the findings of the learned Sessions Judge are confirmed to the extent that accused appellant has sexual intercourse with the prosecutrix PW1 Bhanwari and since on the date of occurrence, she was below the age of 16 years, therefore, if there was consent on the part of prosecutrix, it is immaterial and offence of rape is complete and the accused appellant has been rightly convicted for the offence under Section 376 1PC.

28. The argument that no semen was found on the vagina of the prosecutrix PW1 Bhanwari also carries no weight, as according to Explanation 375IPC, penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. To constitute the offence of rape, it is not necessary that there should be complete penetration of penis with emission of semen and rupture of hymen. Partial penetration of the penis with the labia majora or the valva or pudenda with or without emission of semen or even attempt at penetration is quite sufficient for the purpose of the law. It is, therefore, quite possible to commit legally the offence of rape without producing any injury either to the genital part of victim or to the male organ.

29. The actus reus is complete with penetration. Emission is not relevant. (See The Queen v. Marsden (1).

30. So far as the argument that false case has been got registered against the accused appellant because father of the accused appellant has lodged a report against PW7 Ramrakharan and others is concerned, the same has been rightly rejected by the learned Sessions Judge holding that the present incident took place on 4.10.1984 and the report was lodged by the father of the accused appellant on 5.10.1984 for the incident which took place on 5.10.1984. Apart from this, father of the prosecutrix would not ordinarily subscribe to false story of rape

on his daughter and thereby invite ignominy.

On point of sentence

31. The accused appellant has been sentenced to four years R1 in the case of rape with minor girl. This sentence is not proper, but looking to the fact that this Court has come to the conclusion that this might be a case of consent with minor girl, who was married at the time of alleged occurrence, the sentence awarded by the learned Sessions Judge appears to be reasonable one.

For the reasons stated above, the appeal filed by the accused appellant Inder Singh fails and is hereby dismissed, after confirming the judgment and order dated 27.7.1987 passed by the learned Sessions Judge, Churu.

Since accused appellant Inder Singh is on bail, he shall surrender before the trial court immediately and in case he does not surrender before the trial court, the trial court shall take necessary steps for arrested the accused appellant and sending him to jail to serve out the remaining period of sentence.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com