

Dilip Singh Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Apr-28-2008

Reported in : RLW2008(4)Raj3075

Judge : R.S. Chauhan, J.

Appellant : Dilip Singh

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

R.S. Chauhan, J.

1. The appellant has challenged the judgment dated 31.7.85 passed by the Sessions Judge, Jhunjhunu whereby the learned Judge has convicted the appellant for offences under Sections 376 and 457 of Indian Penal Code ('IPC' for short). For offence under Section 376 IPC, the appellant has been sentenced to four years of rigorous imprisonment and has been imposed with a fine of Rs. 100/- and to further undergo one month's rigorous imprisonment in default thereof. For offence under Section 457 IPC, he has been sentenced to two years rigorous imprisonment and has been imposed with a fine of Rs. 100/- and to further undergo one month's rigorous imprisonment in default thereof.

2. In a nutshell, the facts of the case are that for an incident that allegedly took place on 10.3.84, the prosecutrix (PW. 1) lodged a written report at Police Station Pilani on 14.3.84 wherein she claimed 'that her husband is serving in the Army. She lives alone with her two children in her farm. Her father-in-law and her uncle-in-law both live near her house. On Saturday, the 10th of March, 1984, while she was sleeping in her room, after having bolted the door from inside, around 11.30 p.m., someone sat on her chest and closed her mouth. He lifted her 'Lehanga' (petticoat). The man started having sexual intercourse with her against her wish. When she tried to scream, he put his hand on her mouth. As soon as man was finished with her, she shouted for help. In the light, which was on in the room, she noticed that the man was Dilip Singh S/o Godha Ram. She pushed him and she started shouting. Dilip Singh got up and started running. When he was about to run off, she caught hold of his sweater. The sweater came off and Dilip Singh ran away. At that time, Hari Singh Chamar, Basti Ram, Munni and Rajendra came to her rescue. They tried to catch hold of Dilip Singh, but they could not succeed. She, therefore, sent her brother-in-law to fetch her father-in-law. He father-in-law told them to send a telegram to her husband and to ask him to come immediately.' On the basis of this report a formal FIR, FIR No. 19/84 was chalked out for offence under Section 376 IPC. Subsequently, the appellant was arrested on 20.3.84. The appellant was charged for offence under Section 376 and 457 IPC. In order to substantiate its case, the prosecution examined nine witnesses and submitted ten documents. The defence examined two witnesses and submitted a few documents. After going through the oral and documentary evidence, the learned trial Court convicted and sentenced the appellant as aforementioned. Hence, this appeal before this Court.

3. Mr. S.S. Sunda, the learned Counsel for the appellant, has raised the following contentions : firstly, although the incident is said to have taken place on 10.3.84, the FIR was not lodged till four days later i.e. on 14.3.84. This inordinate delay in lodging of the FIR has not been explained by the prosecution. Secondly, the testimony of the prosecutrix is replete with contradiction. Thus, she is not a witness of sterling worth. Thirdly, the testimony of the prosecutrix is not corroborated by the medical evidence. According to her medical report, she has not suffered a single injury either on her body, or in her private parts. Fourthly, that

the facts narrated and the evidence produced probablise the case of the defence that it is a case of consent rather than of rape. Lastly, that the prosecution has failed to prove its case beyond a reasonable doubt.

4. On the other hand, Mr. Arun Sharma, the learned Public Prosecutor, has contended that the delay has been explained by the prosecution witnesses. Once the delay has been explained, it is not fatal to the prosecution case. Secondly, in cases of rape since the honour of the woman and that of the family is involved, it is not unusual if some delay does occur before a FIR is lodged. Thirdly, the contradictions pointed by the learned Counsel for the appellant, in the prosecutrix's testimony, are minor absence of injuries does not lead to the conclusion that it is a case of consent and not of rape. The learned Public Prosecutor has vehemently argued that the testimony of the prosecutrix should be accepted almost as a gospel truth. The prosecutrix can no longer be treated as an accompish to a crime. But, she has to be treated as a victim. Therefore, even if, her testimony is not corroborated by other independent evidence, even then a conviction can be based on the sole testimony of the prosecutrix. Lastly, that other witnesses, such as Ramkaran Singh (PW. 2) Reshmi (PW. 3), Umaram (PW. 4) and Basti Ram (PW. 5), have corroborated the testimony of the prosecutrix. Hence, the prosecution has well established its case.

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

6. In catena of cases, the Hon'ble Supreme Court has held that delay in lodging of the FIR, in case of rape, is not fatal. For, in a case of rape, the honour of the woman, the prestige of the family is intrinsically involved. Both, the woman, and her family members may debate and discuss whether the offence should be brought to light or not. Thus, inevitably some delay may be caused before the FIR is lodged. In the case of Dildar Singh v. State of Punjab (2006) 10 SCC 531, the Apex Court has observed that, 'That Court has observed in several decisions that the courts cannot overlook the fact that in sexual offences delay in the lodging of the FIR can be due to variety of reasons particularly the reluctance of the prosecutrix or her family members to go to the police and complain about the

incident which concerns the reputation of the prosecutrix and the honour of her family. A girl in a tradition-bound non-permissive society would be extremely reluctant even to admit that any incident, which is likely to reflect upon her chastity, had occurred, being conscious of the danger of being ostracised by the society or being looked down by the society. Her not informing anyone about the incident in the circumstances cannot detract from her reliability. In normal course of human conduct an unmarried girl would not like to give publicity to the traumatic experience she had undergone and would feel terribly embarrassed in relation to the incident to narrate such incident. Overpowered, as she may be, by a feeling of shame her natural inclination would be to avoid talking to anyone, lest the family name and honour is brought into controversy. Thus, delay in lodging the first information report cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same on the ground of delay in lodging the first information report. Delay has the effect of putting the court on guard to search if any explanation has been offered for the delay and, if offered, whether it is satisfactory.' In the present case, the prosecutrix and other witnesses have explained the delay by stating that initially a Panchayat was called in the village to settle the dispute. It is only when the Panchayat failed to reach a conclusion, the prosecutrix went and lodge the report. Thus, the prosecution has satisfactorily explained the delay. Therefore, the first contention raised by the learned Counsel for the appellant is rejected.

7. Undoubtedly, the offence of rape is a dasteredly 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. According to the prosecutrix, her husband was serving in the Armed Force in Kashmir at the relevant time. Her father-in-law, mother-in-law and the brother-in-law were living separately in their own houses. She was living with her two children separately and away from her in-laws. She further claims that the third child was born after the incident. She tells us that the incident took place about 13-14 months back and 5 to 7 days after the festival of Holi. According to her she was fast asleep. She had closed the door, but had not locked it from inside. Around 10.30 at night, the appellant entered her room and started raping her. He threw a piece of cloth over her face and then he proceeded to perform the same function, a man would do with his wife. She further claimed that after throwing the cloth on her face, he pressed her down and threatened her with a knife. Therefore, she could not scream for help. Her petticoat was soiled. When the appellant fled from the place, he left the cloth on her face which was in her custody. She further tells us that this cloth was the sweater worn by the accused. After he left the room, the prosecutrix claims that she shouted for help. Upon hearing her hue and cry, her two sister-in-laws, her father-in-law and Hari Singh Chamar rushed to her rescue. These persons saw the foot prints of the appellant. She further claimed that she sent Hari Singh Chamar to fetch her brother-in-law, Ramkaran, but Ramkaran was not at his house. Next day, her brother-in-law, Ramkaran, came between 10 and 11 in the morning. She told Ramkaran about what had happened. Her brother-in-law called a Panchayat. But, the Panchayat could not reach any decision as her husband was working in the Army. Subsequently, they went to Pilani to lodge a

report. She handed over her petticoat to police and she identified the petticoat in the Court.

10. In her cross-examination, she tells us that the appellant was a married man with three children. She further tells us that the appellant was her brother-in-law (Dewar). She claims that he was not visiting her earlier, but she admits that there is no animosity between the families prior to this incident. She further claims that one of her children was sleeping with her, while the other was sleeping on a nearby cot. She further tells us that entire incident lasted for about half an hour. She admits that there was not a single injury mark on her body. But she claimed that during the incident her bangles of one arm had broken. She further tells us that the police had come to her place on the next day of the incident. She denies the fact that initially the police was informed that some theft had occurred in the house. According to her, she waited for four days before handing over the report to the SHO, Ramdhan. She denied the fact that in the report (Ex. P. 1), lodged by her, she had written that 'she had locked the door from inside.' According to her, she had merely stated in the report that 'the door was closed but not locked.'

11. The prosecutrix is the star witness of the prosecution. However, her testimony is weakened by the number of contradictions on material points and by the improbability of her statement. Initially, in the report (Ex.P. 1), she claims that 'she had bolted the door of her room from inside', yet in the testimony she claim that 'she had merely closed the door of the room without locking it from inside.' Whether the door was bloated from inside, or whether it was merely closed, is a material point. For, it would lead to an inference of rape or consent. In case her first statement is to be believed that the door was, indeed, bolted from inside, then it would imply that the accused had forcefully entered the room. In case the door was merely closed but not locked, it would probablise the case of the defence that it is a case of consent. (This aspect shall be considered later on in the judgment).

12. Secondly, in her testimony, the prosecutrix claims that while she was sleeping with the light on, the appellant had entered the room. She further claims that the appellant had thrown his sweater on her face and had pressed her. She further alleges that he had threatened her with a knife. But, these two facts have not been

mentioned by her in the report lodged with the police. In fact according to her, she had caught hold of the sweater when the accused was running out of the room and the sweater was left in her hand. However, according to her testimony the accused had covered her face with the sweater and had forgotten the sweater when he ran out. According to the report, there is no mention of being threatened with a knife, but in her testimony, she claims that she was threatened with a knife. It is, indeed, surprising that she could see the knife when her face had been covered with a sweater. Therefore, introduction of the knife, in her testimony, amounts to an exaggeration that does not inspire confidence. According to her report, when she pushed the appellant and shouted for help, her in-laws and Hari Singh Chamar had rushed and they tried to catch hold of the appellant. But, they failed. Yet, according to her testimony, the appellant had already made his escape good, by the time her sister-in-law, father-in-law and Haricharan had entered the room. Although this fact is not mentioned in the report that appellant had left certain footprints outside the room, in her testimony, she claimed that the footprints of the appellant could be seen. All of these are material points on which there are contradictions between the report and the testimony. These contradictions, thus, creates a doubt about the veracity and creditworthiness of the witness.

13. There is also a contradiction between the testimony of the prosecutrix and Mst. Reshmi (PW. 3). According to the prosecutrix the other witnesses had tried to catch hold of the appellant, but according to Mst. Reshmi (PW. 3), the appellant was merely seen running away from the house. According to the prosecutrix the appellant had left his sweater, but according to PW. 3, the appellant's sweater was caught hold of by the prosecutrix. Interestingly, Basti Ram, (P.W. 5), in his cross-examination, claims that when he saw the appellant running away, he was wearing the sweater. Thus, there is a clear contradiction within the testimonies of different witnesses.

14. A bare perusal of the evidence available on record probablise the case of the defence that it is a case of consent and not of rape. Firstly, the prosecutrix is a young woman, aged 25 years, who is living separately from her husband, as her husband is serving in the army. The appellant is her brother-in-law. According to

the prosecutrix, her hut is built on her farm which is far away from the village and is separated from the houses belonging to her in-laws. Yet, when she sleeps at night, she does not bolt the door of the hut from inside, but merely closes it. This is a rather unusual conduct on the part of the prosecutrix, for a woman who is staying all alone with two children at far away place from the village. Hence, the importance of the fact whether the door was bolted, or merely closed. As stated above, different conclusion would be drawn depending upon whether the door was bolted from inside, or merely closed. Moreover, according to her, the appellant enters the room and ravishes her on the very bed where a child is sleeping and where another child is sleeping on the cot nearby.

15. Her testimony is further weakened by the fact that the prosecutrix has not sustained a single injury upon her body, although she claims that her bangles were broken in the incident. Even broken bangles were not handed over to the police. Only the soiled petticoat was handed over. According to FSL Report (Ex. P. 9), petticoat does contain the human semen. But, the mere presence of human semen does not prove the commission of rape, in absolute terms, nor does the presence of human semen negate the case of consent as claimed by the defence. According to her, before any one could enter the room, the appellant left. The contradiction in her testimony which have been pointed out above probablise the defence case that in fact an illicit relation might have developed between the appellant and the prosecutrix. It was only when this illicit relation was discovered by someone, then the entire story of rape has been concocted.

16. It is, indeed, a settled principle of criminal jurisprudence that the prosecution must prove its case beyond a reasonable doubt. It is also said that there is vast distance between 'may be true' and 'must be true' - a distance the prosecution must cover. For, no matter how strong the suspicion, it cannot take the place of proof.

17. However, in the present case although it 'may be true' that the offence of rape as alleged by the prosecution occurred, the contradiction in her testimony and other evidence do not prove that her allegations 'must be true'. Hence, the prosecution has not covered the long distance. Therefore, the appellant has to be

given the benefit of doubt.

18. For these reasons this appeal is allowed. While giving the benefit of doubt to the accused-appellant Dilip Singh S/o Godha Ram, he is acquitted of offence under Sections 376 and 457 IPC. Since the appellant is already on bail, his bail bond need not be forfeited.

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