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Court : Rajasthan

Decided On : Dec-07-2005

Reported in : 2006CriLJ1453; RLW2006(1)Raj808

Judge : F.C. Bansal, J.

Acts : Evidence Act, 1872 - Secions 114 and 118; Indian Penal Code (IPC) - Sections 376 ; Code of Criminal Procedure (CrPC) , 1973 - Sections 161 and 313

Appeal No. : S.B. Criminal Jail Appeal No. 707 of 2001

Appellant : Rang Lal

Respondent : State of Rajasthan

Advocate for Def. : Jainendra Jain, Public Prosecutor

Advocate for Pet/Ap. : Neerja Khanna, Amicus Curiae

Disposition : Appeal dismissed

Judgement :

F.C. Bansal, J.

1. This appeal is directed against the judgment dated February 15, 2001 passed by the learned Additional Sessions Judge, Kekri whereby accused-appellant Ranglal has been convicted under Section 376 IPC and sentenced to suffer R.I.

for seven years and a fine of Rs. 20,000/-, in default of payment of fine to further suffer simple imprisonment for one year.

2. Briefly stated the facts of the prosecution case are that on April 21, 2000 at 1.00 p.m. the prosecutrix (PW 1) submitted a written report Ex.PI at police station Kekri wherein it was, interalia, stated that yesterday on April 20, 2000 she was alone in her house. Her husband had gone to appear in the examination and her inlaws had gone to attend a marriage. At about 10.30 a.m. accused appellant Ranglal S/o Bholu, by caste-Car-painter came in her house and committed rape on her. She protested and made hue and cry but nobody heard it. When the accused appellant was fleeing from her house after having committed rape, he was seen by 4-5 persons who were standing near hand pump. She narrated the incident to her family members on their arrival at home in the night. Along with written report Ex. P1, 'Blouse', 'Ghaghra' (Petticoat) and 'Underwear' which the prosecutrix was wearing at the time of the incident were produced before the SHO. On the basis of the said written report case under Section 376 IPC was registered and investigation commenced. 'Clothes' of the prosecutrix were seized and sealed vide Memo Ex. P4. The Prosecutrix was medically examined. The Investigating Office inspected the place of occurrence and prepared Site Plan Ex. P3. The accused-appellant was arrested and he was also examined by a doctor. Statements of the witnesses under Section 161 Cr.P.C. were recorded. After completion of investigation charge-sheet was filed against the accused-appellant in the Court of learned Additional Chief Judicial Magistrate, Kekri who committed the case for trial to the Court of learned Additional Sessions Judge, Kekri.

3. Learned Additional Sessions Judge framed charge under Section 376 IPC against the appellant who pleaded innocence and claimed to be tried.

4. To prove the charge under Section 376 IPC the prosecution examined as many as 26 witnesses. In his explanation under Section 313 Cr.P.C. the appellant pleaded innocence. He further stated that the prosecutrix used to talk with him on her field which was not liked by her father-in-law Radha Kishan and because of this reason he had deposed against him. The appellant also stated that he received a letter written by the prosecutrix at Central Jail, Ajmer. In defence the

appellant examined DW 1 Sukhdev and DW 2 Ramchandra.

5. Learned Additional Sessions Judge on hearing final submissions made by both the parties, convicted and sentenced the accused-appellant as indicated here-in-above.

6. I have heard learned Amicus Curiae appearing for the accused-appellant, learned Public Prosecutor for the State and have also gone through the record of the case.

7. Learned Amicus Curiae appearing for the accused-appellant made the following submissions:-

(1) There is unexplained delay of 26-1 /2 hours in reporting the matter to the police.

(2) Medical evidence does not lend any a'ssurance to the testimony of the prosecutrix as no injuries were found on her private parts at the time of her medical examination.

(3) As per the prosecution version, the incident of rape took place in the kitchen whereas the Investigating Officer has stated that the rape was committed in the bed-room.

(4) Smt. Santosh (PW 13), Smt. Parvati (PW 14), and Smt. Sita (PW 24) have not supported the prosecution.

(5) The accused-appellant had committed sexual intercourse with the prosecutrix with her consent.

Learned Public Prosecutor appearing for the State has supported the impugned judgment.

8. As regards delay in lodging the FIR, the Apex Court in Sri Narayan Saha and Anr. v. State of Tripura, : (2004)7SCC775 , has observed as under:-

We wish to first deal with the plea relating to the delayed lodging of the FIR. As held in a large number of cases, mere delay in lodging the FIR is is explained.

9. In State of Punjab v. Ramdev Singh : AIR 2004 SC1290 , the Apex Court has held as under:-

Delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect of putting the court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is possibility of embellishment in the prosecution version on account of such delay, the same would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the court, the same cannot by itself be a ground for disbelieving and discarding the entire prosecution version, as was done by the High Court in the present case.'

10. In Bheru Lal v. State of Rajasthan, 2004(1) RLR 177 = RLW 2004(1) Raj. 602, this Court has held as unden-

In India women are slow and hesitant to complain of such assaults and if the prosecutrix happens to be a married person she will not do anything without informing her husband. Merely because the complaint was lodged less than promptly does not raise the inference that the complaint was false. The reluctance to go to the police is because of society's attitude towards such, women; it casts doubt and shame upon her rather than gives comfort and sympathies with her. Therefore, delay in lodging complaints in such cases does not necessarily indicate that her version is false. In this respect, the decision of the Hon'ble Supreme Court in Karnel Singh v. State of M.P. : 1995 CriLJ4173 may be referred to.

In sexual offences delay in lodging of the FIR can be de 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. It is only after giving it a cool thought that a complaint of sexual offence is generally lodged. Delay in filing FIR would not be

fatal to the prosecution case if delay is properly explained. In this respect, the decision of the Hon'ble Supreme Court in State of Punjab v. Gurmit Singh : 1996 CriLJ1728 may be referred to.

Keeping in mind the above observations made by the Hon'ble Supreme Court and looking to the entire facts and circumstances of the case, since on the day when the whole incident was narrated by the child prosecutrix PW 1 Nirmala to her mother PW 2 Dhakhi, the father of the child prosecutrix, namely, PW 4 Hazari was not in the village, therefore, if after coming to village, he lodged the report with delay, such delay cannot be said to be fatal to the prosecution case.

11. In State of Himachal Pradesh v. Shree Kant Shekari 2004 AIR SCW 5162 = RLW 2004(4) SC 568, the Apex Court has observed that in any event, delay per se is not a mitigating circumstance for the accused when accusations of rape are involved. Delay in lodging first information report cannot be used as a ritualistic formula for discarding prosecution case and doubting its authenticity. It only puts the Court on guard to search for and consider if any explanation has been offered for the delay. Once it is offered, the Court is to only see whether it is satisfactory or not. In a case if the prosecution fails to satisfactory explain the delay and there is possibility of embellishment or exaggeration in the prosecution version on account of such delay, it is a relevant factor. On the other hand satisfactory explanation of the delay is weighty enough to reject the plea of false implication or vulnerability of prosecution case. As the factual scenario shows, the victim was totally unaware of the catastrophe which had befallen to her. That being so, the mere delay in lodging of the first information report does not in any way render prosecution version brittle. These aspects were highlighted in Tulshidas Kanolkar v. State of Goa : (2003)8SCC590 .

12. In the instant case, the incident of rape took place at about 10.30 a.m. On 20.4.2000. All the family members of the prosecutrix were out of station. Her husband had gone to appear in the examination and her in-laws had gone to attend a marriage. When they returned in the evening, the prosecutrix narrated the incident to them. The distance between the village of the prosecutrix and police station Kekri is 16 km. and they could not go to the police station in the night and,

therefore, the matter was reported at the police station next day. Thus, in my considered view, in the instant case, the prosecution has explained the delay in lodging the FIR to the satisfaction of the Court and it is not fatal to the prosecution. The prosecutrix was a married lady and she could not report the matter to the police without informing her husband and inlaws about the incident.

13. In Aman Kumar and Anr. v. State of Haryana : 2004 CriLJ1399 , the Apex Court has held as under:-

It is well settled that a prosecutrix complaining of having been a victim of the offence of rape is not an accomplice after the crime. There is no rule of law that her testimony cannot be acted upon without corroboration in material particulars. She stands on a higher pedestal than an injured witness. In the latter case, there is injury on the physical form, while in the former it is both physical as well as psychological and emotional. However, if the court of facts finds it difficult to accept the version of the prosecutrix on its face value, it may search for evidence, direct or circumstantial, which would lend assurance to her testimony. Assurance, short of corroboration as understood in the context of an accomplice, would suffice.

14. In Sri Narayan Saha and Anr. v. State of Tripura (supra), while reiterating the same view, Hon'ble the Supreme Court has observed as under:-

A prosecutrix of a sex offence cannot be put on a par with an accomplice. She is in fact a victim of the crime. The Indian Evidence Act, 1872 (in short 'the Evidence Act') nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly a competent witness under Section 118 and her evidence must receive the same weight as is attached to an injured in cases of physical violence. The same degree of care and caution must attach in the evaluation of her evidence as in the case of an injured complainant or witness and no more. What is necessary is that the court must be alive to and conscious of the fact that it is dealing with the evidence of a person who is interested in the outcome of the charge levelled by her. If the court keeps this in mind and feels satisfied that it can act on the evidence of the prosecutrix, there is no rule of law or practice incorporated in the Evidence Act similer to Illustration (b) to Section 114

which requires it to look for corroboration. If for some reason the court is hesitant to place implicit reliance on the testimony of the prosecutrix it may look for evidence which may lend assurance to her testimony, short of corroboration required in the case of an accomplice. The nature of evidence required to lend assurance to the testimony of the prosecutrix must necessarily depend on the facts and circumstances of each case. But if a prosecutrix is. an adult and of full understanding, the court is entitled to base a conviction on her evidence unless the same is shown to be infirm and not trustworthy. If the totality of the circumstances appearing on the record of the case discloses that the prosecutrix does not have a strong motive to falsely involve the person charged, the court should ordinarily have no hesitation in accepting her evidence.

15. Keeping in view the afordsaid principle laid down by the Apex Court, I would now examine the prosecution evidence.

16. The prosecutrix's evidence is quite clear and categorical. She deposed that on the day of the incident her in-laws had gone to attend a marriage, her husband had gone to appear in the examination and her brother-in-law (Devar) had gone to a field. She further deposed that when she was cooking food in her kitchen accused-appellant Ranglal came in the house, bolted the door of main gate from inside, pushed her on the floor and thereafter committed forcible rape on her. When she tried to make hue and cry, the appellant inserted a piece of cloth in her on the floor and thereafter committed forcible rape on her. When she tried to make hue and cry, the appellant inserted a piece of cloth in her mouth. After having committed rape, the appellant bolted the main gate from outside and fled away. The prosecutrix also stated that the appellant caused injuries with his nails on her chest and back. Just after the incident her brother-in-law entered into the house and asked her the reason of her weeping but as he was younger to her and on account of shame, she did not narrate the incident to him. Thereafter she narrated the incident to Parvati who was present at the hand-pump and Parvati informed about the incident to Laxman Kumhar, Laxman Daroga, Mahaveer Singh and Gopal Jat who had assembled there. It was also stated by her that on their arrival, she narrated the incident to her husband, mother-in-law and father-in-law and next day she went to the police station and submitted written report Ex.P1, It was

further stated by the prosecutrix that when the appellant pushed her, she-was having her female child in her lap who also feel on the floor. On close arid careful scrutiny of the testimony of the prosecutrix, I have found it free from blemish and implicity reliable. There is no reason as to why a woman, more particularly a married woman would falsely implicate the appellant.

17. PW 8 Prem Devi, PW 9 Radhakishan and PW 15 Laxminarayan are mother-in-law, father-in-law and husband of the prosecutrix respectively. They have deposed that when they arrived at their home, the prosecutrix narrated the incident to them. PW 3 Shambhu Singh has deposed that when he was sitting at Gajendra Singh's house, he had seen appellant Ranglal entering into the house of the husband of the prosecutrix and after 10-15 minutes the appellant came out of the house and went away on a motor-cycle belonging to Kana, who remained standing on the road in the meantime. He has further stated that on hearing noise he went in front of the house of the prosecutrix where Bhanwar Singh, Chhoga wife of Bhagwan Das, Ramraj and other persons had eome. He found the prosecutrix weeping. She also told them that appellant Ranglai had committed rape on her. Similar is the statement of PW 4 Laxman.

18. PW 5 Mahaveer has deposed that on hearing the outcry, he went in front of the house of Radhakishan where 15-20 persons had assembled. The prosecutrix was weeping and other ladies were telling that appellant Ranglai had committed rape on the prosecutrix. PW 6 Laxman Daroga has deposed that while he was going in front of the house of the prosecutrix, the prosecutrix was telling to the ladies that appellant Ranglai had committed rape on her. Similar is the statement of PW. 10 Ramraj and PW 23 Bhanwar Singh.

19. As regards medical evidence, PW 11 Dr. Bhagchand Jain stated that on 21.4.2000 he was posted as Sr. Medical Officer, Government Hospital, Kekri. On that day at 3.00 p.m. he examined the proseculrix and found the following injuries on her person:-

(i) Abrasion 3/4' x 1/4' on front of left side of chest lower level of 3rd rib medial to left.

(ii) Abrasion 1/4' x 1/4' on the back of left hand, 1 1/2' below left wrist.

(iii) Tenderness present on the back of left elbow joint but no visible injury seen.

(iv) Abrasion 3/4' x 1/4' on the back 2' below left scapula.

(v) Tenderness present on the back of left lumber region but no visible injury seen.

(vi) C/o pain on both cheeks but no visible injury seen.

All the injuries were simple in nature and caused by blunt weapon. Duration of the injuries was within 24 to 48 hours. He prepared Injury Report Ex. P8.

20. Dr. Jain further stated that baby Lalita, daughter of the prosecutrix, aged 4 months was also examined by him and he found a bruise 1' x 3/4' on the back of the scalp in right occipital region. This injury was simple in nature and caused by blunt weapon. Duration of the injury was within 24 to 48 hours. He prepared Injury Report Ex. P9.

21. On close and careful scrutiny of the testimony of all the aforementioned witnesses, I have found it trustworthy. Their relations with the appellant were not strained and there was no motive or reason for them to falsely implicate the appellant in the heinous crime of rape.

22. Thus, the testimony of the prosecutrix appears to be worth reliable and inspire confidence as it is corroborated by medical evidence as well as by other evidence of the aforesaid witnesses and, therefore, I have come to the conclusion that the learned trial Judge has rightly placed reliance on the testimony of the prosecutrix with regard to commission of offence of rape. It is true that PW 13 Santosh, PW 14 Parvati and PW 24 Sita have not supported the prosecution and they have been declared hostile by the learned Public Prosecutor but because of this reason, the testimony of the prosecutrix and other witnesses cannot be discarded. In her cross-examination Parvati has stated that the prosecutrix was weeping in front of her house. Thus from the testimony of Parvati also, it appears that the alleged incident of rape had taken place.

23. It is also true that on examination by PW 25 Dr. Savita Maurya, no Injury was found on the vagina of the prosecutrix but on this ground alone, it cannot be held that the appellant did not commit rape on the prosecutrix. The prosecutrix was a married lady and habituated to sexual intercourse and, therefore, absence of injuries on her private parts is not fatal to the prosecution.

24. In Dastagir Sab and Anr. v. State of Karnataka, 2004 AIR SCW 518, the Apex Court has held that the injury on the body of the person of the victim is not a sine qua non to prove a charge of rape. Absence of injury having regard to overwhelming ocular evidence cannot, thus, be the sole criteria for coming to a conclusion that no such offence had taken place.

25. As regards the place of occurrence, I see no reason to disbelieve the evidence of the prosecutrix that she was raped by the accused in her kitchen and in site plan prepared by the I.O., it was not specifically mentioned that out of five rooms of the house, which room was being used as kitchen. Therefore, I am of the view that as stated by the prosecutrix, the incident of rape took place in the kitchen.

26. So far as the consent of the prosecutrix for sexual intercourse commited by the accused-appellant with her is concerned, as per the version of the prosecutrix, the appellant committed sexual intercourse against her will and without her consent.

27. In State of Himachal Pradesh v. Shree Kant Shekari (supra), the Apex Court has observed that the question of consent in really a matter of defence by the accused and it was for him to place materials to show that there was consent. It is significant to note that during cross-examination and the statement recorded under Section 313 of the Code of Criminal Procedure, 1973 (in short the 'Code' plea of consent was not taken or pleaded. In fact in the statement under Section 313 of the Code the plea was complete denial and false implication.

28. In the instant case, the appellant pleaded complete denial and false implication in his statement under Section 313 Cr.P.C. During cross-examination, no question with regard to consent for sexual intercourse was put to the prosecutrix. Of course, a suggestion was put to her in cross-examination that she was having love affairs with the appellant and she called him to elope, which was denied by her. She also

denied the suggestion that she had written a letter Ex. D2 to the appellant and send it to the jail where he was lodging during trial. No other material has been placed by the appellant to show that there was consent of the prosecutrix for the alleged act of the appellant.

29. In this view of the matter and after having examined the prosecution evidence, 1 have come to the conclusion that the prosecution has succeeded in proving that the prosecutrix was raped by the accused-appellant and the trial Court has committed no error in convicting the appellant for the offence of rape under Section 376 IPC.

30. For the reasons aforementioned, I do not find any merit in this appeal, which is dismissed accordingly.

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