

Banshilal Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Sep-14-2001

Reported in : RLW2003(1)Raj592; 2002(2)WLN52

Judge : Bhagwati Prasad and; Harbans Lal, JJ.

Acts : Indian Penal Code (IPC) - Sections 363 and 376

Appeal No. : D.B. Criminal Jail Appeal No. 145 of 1997

Appellant : Banshilal

Respondent : State of Rajasthan

Advocate for Pet/Ap. : M.C. Bishnoi, Amicus Curiae and; A.R. Nikub, Public Prosecutor

Disposition : Appeal dismissed

Judgement :

Prasad, J.

1. The present appeal has been filed by the accused appellant against his conviction under Section 363 and 376 IPC. The accused has been sentenced as under: -

Name of accused appellants

Charges

1. Labh Singh

Sections 8/23 and 29 and

2. Major Singh

8/21 of the NDPS Act

3. Mangal Singh

4. Arshad

Sections 8/23 & 29 of the NDPS Act.

5. Harjeet Singh

Section 8/23 and 29 of the NDPS Act.

6. Arvinder Singh

NDPS Act.

by the learned Additional Sessions Judge No. 3, Jodhpur in Sessions Case No. 8/1996 vide judgment dated 5.3.1997.

2. A report was lodged at the Police Out-post, Ratanftda by P.W. Mahendra Gehlot on 11.2.1996 that his nephew Gajendra and niece Ranjana were playing in the Polo Ground. At about 4 p.m. his nephew Gajendra came home and informed him that while Gajendra and Ranjana were playing in the Polo Ground, a man aged about 25 years old came there. His height was 5'3". He was wearing brown pant, full sleeves white shirt and blue coloured baniyan underneath. He was wearing white Action shoes. He had no beard and moustache. His hairs were small. He persuaded Gajendra to get biscuits for which he gave him a five rupee note and (hereafter allured away Ranjana. Ranjana was searched. At about 7.45 p.m. Shri Dau Lal Prajapat, Gulab Ram Prajapat and Rajendra Sharma spotted Ranjana near Residency Dispensary and brought her to Ratanada Chowki. Her

undergarments were found to be stained with blood. On being asked Ranjana the person who allured her and took her with him committed rape on her and deserted her on the New Campus Road. On the basis of this information in first information report was lodged and investigation was conducted. The charge-sheet was filed. The case was committed to the Court of Sessions which in turn made over the case to the trial Court where the charges under Sections 363 and 376 IPC were framed against the accused. The accused denied the charges and claimed trial. At the trial the prosecution examined 23 witnesses and produced 24 documents in support of its case. The trial Court after considering the prosecution evidence found that the testimony of P.W.5 Ranjana, a girl of about 8 years of age, was the testimony of a rational human being. Some preliminary questions were asked to judge her mental capacity and from the answers given to them she was found to be a competent witness with sufficient understanding and maturity of mind. The trial Court also examined another child witness P.W.9 Gajendra Gehlot who is about 10 years of age. He was also found to be a competent witness. According to these witnesses while they were playing in the Polo Ground the accused came and gave a five rupee note to the witness P.W.9 Gajendra Gehlot for bringing biscuits. To persuade this witness to follow the instructions given by the accused, the accused pretended to be maternal uncle of the mother of the witness. P.W.9 Gajendra went to get the biscuits. While he came back he did not find Ranjana and the accused there and he went home and informed at home that Ranjana has been enticed away by the accused. P.W.5 Ranjana in her statement has stated that after P.W.9 Gajendra went to get the biscuits the accused escorted her to the scene of the occurrence and there he ravished her. When she tried to resist, she was threatened. She claims that while being ravished she fainted. She has also alleged that her ornaments were also removed by the accused. After committing assault on her he said that he is going to bring auto and he made his escape good. He did not come and she requested passers by for help who brought her Police Chowki. Both these witnesses correctly identified the accused at the identification parade of the accused and an identification memo Ex.P.8 was prepared. Another witness who identified the accused was prepared. Another witness who identified the accused was P.W.13 Hukma Ram. The test identification memo Ex.P.8 has been proved by P.W.19 Shri Raj Kamal Gaur, A.C.J.M. Jodhpur

who conducted the identification parade. He has stated that the witnesses P.W.5 Ranjana and P.W.9 Gajendra had correctly identified the accused. On medical examination P.W.18 Dr.N.S. Kothari found the following injuries on the person of the prosecutrix:

1. Bruise with Pattern interrupted abrasions at periphery (red) 2.5 cm x 2.5 cm on the left cheek (teeth bite impression).

2. Bruise with pattern abrasions at periphery (red) 3.0 cm x 2.0 cm on the right cheek (teeth bite impression).

3. Bruise 2.5 cm x 1.5 cm on the upper part of left side chest near axilla at anterior axillary line.

4. Bruise (red) 2.5 x 1.5 cm on the upper part of chest above nipple (red).

5. Abrasion 12 cm x 2 cm on the mid dorso-lumber region.

6. Abrasion 2.5 cm x 2 cm left lumber region.

3. The following injuries were also found on the private parts of the prosecutrix:

1. Small abrasion 1.5 cm x 0.2 cm on [he outer aspect labia minora.

2. The Labia Majora & Minora are separated with Brusing (red).

3. Brusing and petetchial haemorrhagic points introitus (vaginal opening) and sub-urethral mucosa with bleeding on touch.

4. Vaginal canal narrow, admits swab stick with difficulty, Local part is tender, vaginal swab stained with blood.

5. Hymen shows irregular laceration all around and at 6 O' Clock, which extending from vaginal opening to perineal tear about 3.0 cm lower down upto anterior to anal opening and oozing blood on touch.

4. In the opinion of the Doctor there was evidence of recent vaginal and private parts penetration and swab and smear taken from the vagina of the prosecutrix

was preserved for chemical examination.

5. Thus, there was a recent sexual assault committed on the prosecutrix. The trial Court after carefully considering the evidence of all the witnesses came to the conclusion that there is no inherent improbability or infirmity in the prosecution case and thus, believed the prosecution evidence and found that the witnesses correctly identified the accused. The fact of rape being committed on the prosecutrix is established by the medical evidence. Thus, there is sufficient material on record available to convict the accused and in this back-ground the learned trial Court convicted the accused appellant for the offences punishable under Section 363 and 376 IPC and sentenced the accused as aforesaid.

6. Learned Amicus Curiae, Mr.M.C. Bishnoi, appearing for the accused appellant has stressed that the identification parade conducted is not reliable as the accused was wearing different apparel than the other persons mixed with him in the parade for identification. To bring home this argument, learned Amicus, Curiae has relied upon the testimony of P.W.9 Gajendra. P.W.9 Gajendra in his statement has said that he identified the accused because he was wearing a dhoti and baniyan. Thus, according to the learned counsel for the accused appellant the identification parade has become a farce. There was distinct clothing of the accused. Learned counsel for the accused appellant further urged that if the identification loses its value then there will be no other evidence to connect the accused with the crime, Learned counsel for the appellant further stressed that the arrest was made on 16.3.1996 whereas the occurrence took place on 11.2.1996. There was a considerable period in between the occurrence and arrest of the accused. Likelihood of the witnesses missing the links cannot be ruled out. Further the learned counsel for the appellant has urged that there is no evidence of keeping the accused Baparda. Learned counsel for the appellant has further urged that the conviction on testimony of the child witnesses is a very dangerous proposition. They live in dream world and are amenable to tutoring. Therefore, the child witnesses should not be believed.

7. Per Contra, learned Public Prosecutor has submitted that the doubts which the learned counsel for the appellant has sought to create regarding the evidence of

identification are unsustainable. At the time when the identification parade was conducted nothing was complained to the Magistrate conducting the test identification parade. The only complaint made to the Magistrate conducting the identification parade was that the witnesses have earlier seen the accused. About the apparel nothing has been mentioned in the identification memo. Further no question has been directed on this aspect of the matter to the Magistrate conducting the identification parade. Had there been any such infirmity in the identification parade as alleged by the learned counsel for the appellant then cross-examination would have been directed on this question from the learned counsel for the appellant then cross-examination would have been directed on this question from the learned Magistrate. No question was asked in this regard to the Magistrate. Therefore, this lapse goes a long way. When P.W.5 Ranjana has been asked regarding identification of the accused only on the strength of apparel she deposed that she identified the accused because he had met her and had taken her. Therefore, it cannot be said that these witnesses have identified the accused only because of distinctive his apparels. The question of accused being not kept Baparda was also not raised before the Magistrate conducting the identification parade. No cross-examination was made from the investigating officer on this point. The arrest memo Ex.P/7 makes a mention that the accused was kept Baparda. In this back-ground the argument of the learned counsel for the appellant loses its significance as far as keeping of the accused Baparda is concerned. The argument of the learned counsel for the appellant that tutoring is possible is not a sound argument. P.W.13 Hukma Ram has seen the accused with the child witnesses. He has corroborated them in material particulars. Thus, the accused having been seen with the child witnesses is corroborated by the testimony of this witness. Further the medical evidence also corroborates the statement of the prosecutrix and in this back- ground it cannot be said that the prosecution has not been able to prove the charges levelled against the accused appellant.

8. We have heard the learned Amicus Curiae appearing for the accused appellant as well as the learned Public Prosecutor at length and have also perused the record and have given our thoughtful consideration to the submissions made by them.

9. Medical evidence shows that the victim has sustained considerable number of injuries on her person and on her private parts. Vaginal swab contains human blood and fresh tearing is available on the hymen of the prosecutrix. On the strength of all these circumstances the Doctor was of the opinion that it was a case of recent sexual assault on the person of the prosecutrix Ranjana. Nothing contrary is available on record to discredit this opinion of the doctor as regards the commission of rape on the prosecutrix. We do not find any infirmity in the finding recorded by the learned trial Court in this regard.

10. Now comes the most important aspect of the matter as to who is responsible for causing this sexual assault on the person of the prosecutrix. The accused was identified by the witnesses P.W.5 Ranjana, P.W.9 Gajendra and P.W.13 Hukma Ram. Ranjana P.W.9 has identified the accused as to be the person who has made the sexual assault on her person. Even upon a very careful examination of the testimony of P.W.5 Ranjana nothing could be found in her cross-examination to shake her testimony. For testing her mental competence and level of understanding the learned trial Court has put certain questions to her which she has answered very rationally. She has also stood the test of cross-examination. Though she is a child witness but her understanding has been found to be mature and rational. In this back-ground it cannot be said that she is an incompetent witness. This witness has identified the accused as to be person who committed sexual assault on her and it cannot be said that her testimony is not sufficient enough to bring home the guilt of the accused more particularly in the back-ground when she is corroborated by P.W.13 Hukma Ram and P.W.9 Gajendra in so far as the case of the prosecution is concerned that the prosecutrix and the accused were seen together before actual commission of the offence. This is a sufficient corroboration of the events preceding the actual sexual assault. As regards the criticism of the identification parade by the learned counsel for the accused appellant is concerned, suffice it to say that no sufficient foundation has been laid in cross-examination by the defence. No questions were asked to the witnesses regarding the, accused being not kept Baparda. The question of keeping the accused in Baparda was required to be asked from the investigating officer. There is nothing on this count and in the arrest memo Ex.P/7 the fact of accused being kept Baparda has been clearly mentioned. Thus, nothing can be seen against the

prosecution on this aspect of the matter. The other criticism of the identification parade by the learned counsel for the accused appellant is on account of being special kind of apparel then wore by the other persons. Such questions were not asked to the Magistrate who conducted the identification parade. No complaint was made before the Magistrate on this count also. Witnesses P.W.5 Ranjana and P.W.13 Hukma Ram too have not been asked any such question regarding their capacity to identify the accused only because he was wearing special apparel. P.W.5 Ranjana in her statement has deposed that she has identified the accused because he was the person who ravished her and took her. Thus, she clearly gives the reason for identification of the accused. No question was asked to her about the distinctive apparel. Thus, this argument of the learned counsel for the appellant appears to be only an after thought of the defence which has been based on a sentence that has trickled out in the statement of P.W.9 Gajendra. It is important to mention here that P.W.13 Hukma Ram was examined after P.W.9 Gajendra but no questions were put to P.W.13 Hukma Ram on this count. Thus, this criticism of the learned counsel for the appellant does not help the defence.

11. We find that reliance placed by the trial court on these witnesses regarding kidnapping /Ranjana P.W.5 and committing rape on her by the appellant was abundantly proved from the ocular and medical evidence available on record and we do not find any illegality or infirmity in the findings arrived at by the learned trial Court. The approach of the learned trial Court is rational and judicious. So, in our considered opinion, no interference is called for in the findings of guilt arrived at by the learned trial Court against the accused appellant. He has been rightly convicted for the offences under Sections 363 and 376 IPC. Looking to the nature of offences and other facts and circumstances of the case, the sentences awarded to the accused appellant by the learned trial Court also does not call for any interference.

12. Learned counsel for the appellant has pleaded for leniency in the matter of sentence on the ground that it is too harsh and has in this regard relied upon a decision of this Court rendered in the matter of this very accused i.e. Banshi Lal v. State of Rajasthan (1) wherein the accused has been held guilty under Section 376 IPC and has been awarded 10 years sentence. The fact of the accused

having committed offence under Section 376 IPC and awarded 10 years sentence does not help the accused in any case because this only shows that the accused is a habitual offender. In that case the learned Judges were of the opinion that no cruelty was committed by the accused appellant but in the instant case there are multiple injuries on the person of the prosecutrix and she was also threatened. Being a child she had to succumb to the assault made by the accused. Therefore, in this back-ground we do not think that the accused is entitled to any leniency and indulgence from this Court. Therefore, we maintain the life sentence awarded to the accused appellant under Section 376 IPC.

13. In the result, the appeal of the accused appellant fails and is hereby dismissed. The conviction and sentences awarded by the learned trial Court are confirmed.

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