

Jhinguriya Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-03-2009

Reported in : 2010CriLJ795

Judge : Mahesh Bhagwati, J.

Appellant : Jhinguriya

Respondent : State of Rajasthan

Disposition : Appeal allowed

Judgement :

Mahesh Bhagwati, J.

1. Challenge in this appeal is to the judgment dated, September 28, 1987 rendered by Additional Sessions Judge, Karauli whereby, he convicted the accused appellant in the offences under Sections 376 and 323 of IPC and sentenced as under:

Under Section 376 of IPC:

Rigorous imprisonment for seven years and a fine of Rs. 300/-; in default of payment of fine to further suffer rigorous imprisonment for six months. Under Section 323 of IPC: Rigorous imprisonment for six months. Both the sentences were ordered to run concurrently.

2. The factual matrix of the prosecution case, in brief, is stated as under:

That on 10th August, 1984 at about 2 -2:30 p.m., the prosecutrix was causing the cattle to graze at the taal. The accused appellant came there and caught hold of her hand and asked her to accompany him up to mine, but she refused to go and reminded him that he happened to be her Mama in relation. Thereafter, the accused started staring at her and gave a blow of club. He lifted and took her to the culvert (Nala) above the taal. The prosecutrix raised a hue and cry but accused-appellant ravished her against her will and fled from there. The prosecutrix stayed there for about two hours and then went to her house where she narrated the entire incident to her husband Fatta. It is alleged that Fatta, Jagan and Deoji all the three persons caught the accused appellant and brought before her. Then, the prosecutrix gave a blow of fist on the nose of the accused and beat him with chappal. The prosecutrix lodged a written report Ex. P/2 in police station Karauli, where police registered First Information Report Ex. P/3 and commenced investigation.

3. During the course of investigation, the police recorded the statements of witnesses acquainted with the facts and circumstances of the case, got the prosecutrix medically examined with a view to ascertain commission of offence of rape as also the age, arrested the accused and got him also medically examined and after usual investigation, submitted the charge-sheet in the concerned Court.

4. In due course of time, the case appeared before learned Additional Sessions Judge, Karauli, who indicted the accused for the offences under Sections 376 and 323 of IPC. The accused pleaded not guilty and claimed trial. The prosecution in order to prove its case examined in all 9 witnesses. The accused-appellant in his explanation under Section 313 of Cr. P.C. claimed innocence. On completion of trial, the Court found the appellant guilty and convicted him in the offences under Sections 376 and 323 of IPC and sentenced as indicated hereinabove.

5. Heard learned Counsel for the accused-appellant, learned Public Prosecutor appearing for the State and with their assistance scanned the relevant material available on record.

6. The first argument advanced by the learned Counsel for the appellant is that the occurrence of this case took place on 10-8-1984 at about 2:10-2:30 p.m. and the report by the prosecutrix was lodged on 11-8-1984 at 2:00 p.m., whereas, the distance between the village of the prosecutrix and the police station Karauli is only 12 kms. The prosecution has not furnished any reasonable and satisfactory explanation of this delay of 24 hours in lodging the FIR Ex. P/3. This delay is fatal to the prosecution and merely on this ground, the conviction of the accused appellant recorded by the learned trial Court deserves to be set aside.

7. Per contra, learned Public Prosecutor has submitted that the prosecutrix in her statements given before the Court has furnished the satisfactory explanation of one day's delay in lodging the report that when her husband Fatta came to know about this incident, he called a panchayat in the village. In the panchayat, Santo and her husband narrated the entire incident. The accused was also called in the panchayat but he did not come. Hence, they lodged the FIR on the next date. The explanation furnished by the prosecu-trix is natural and satisfactory and there is no reason to disbelieve the same.

8. Having gone through the statements of the P.W. 3 Smt. Santo, it is found that after the incident of rape she went to her house and told the entire incident to her husband, whereupon, her husband called a panchayat in the village and apprised the panchayat about the commission of rape upon Smt. Santo by the accused. The distance between village of the prosecutrix and the police station is found to be only 12 kms. When the fact of the commission of rape had come into the notice of these so many persons including her husband, any person could aid the prosecutrix and take her to the police station for lodging FIR. The learned trial Court relied upon the statements of the P.W. 1, P.W. 2, P.W. 6 and P.W. 9 and observed that since panchayat of the village was called and when the accused refused to come, the FIR was lodged on the next date. But this observation of the learned trial Court does not seem to be just and proper as the statements of the witnesses suffer from material contradictions with regard to the time of calling panchayat. P.W. 1 Deoji stated that the panchayat of villagers belonging to all seven castes met at 8.00 p.m. in the night, whereas P.W. 4 Fatta deposed that panchayat met at 9.00 p.m. P. W. 6 Mangi Lal, P.W. 8 Sanwalia and P.W. 9 Jagan

also attended the panchayat. Their statements with regard to time are altogether different. They deposed that panchayat met during day hours at about 4.00 p.m. or at sun set time. The prosecutrix did not tell any time. Thus, there being schism on the time of panchayat the statements of witnesses do not inspire any confidence. Prosecutrix is found to have returned to her house at 5.00-5.30 p.m. but as per the statement of P.W. 6 Mangi Lal and P.W. 8 Sanwalia, the panchayat had met at 4.00 p.m. which renders the theory of meeting panchayat false or not true. If the incident of rape is taken to be true, then the question arises as to what prevented the prosecutrix and her husband go to police station on the same day. There was no need to wait for 24 hours. Apart this, a careful perusal of the statements of P.W. 1, P.W. 3, P.W. 4, P.W. 5, P.W. 7, P.W. 8 and P.W. 9, reveals that there are material contradictions in their statements with regard to the time of panchayat held by villagers. The statement of the prosecutrix as also of other witnesses on this issue do not inspire any confidence. The prosecution has failed to furnish a satisfactory explanation of an inordinate delay of 24 hours in lodging the First Information Report with police station, Karauli.

9. In *Thulia Kali v. State of Tamil Nadu* : AIR 1973 SC 501 : 1972 Cri LJ 1296 the Hon'ble Apex Court has held:

First information report in a criminal case is an extremely vital and valuable piece of evidence for the purpose of corroborating the oral evidence adduced at the trial. The importance of the report can hardly be overestimated from the standpoint of the accused. The object of insisting upon prompt lodging of the report to the police in respect of commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of eye-witnesses present at the scene of occurrence. Delay in lodging the First Information Report quite often results in embellishment which is a creature of after-thought. On account of delay, the report not only gets bereft of the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of deliberation and consultation. It is, therefore, essential that the delay in the lodging of the first information report should be satisfactorily explained.

10. In the above case, the occurrence was not reported for more than 20 hours. The delay was found to be fatal to the prosecution and to base conviction upon such evidence was held to be unsafe. But in the instant case, the complaint Ex. P/3 has been filed in the police station after an inordinate delay of 24 hours of the occurrence and the prosecution has miserably failed to furnish satisfactory and reasonable explanation of this delay which to my firm view, is found to be fatal to the prosecution.

11. The second thrust of argument advanced by the learned Counsel for the appellant is that the prosecution has not examined the Investigating Officer who not only registered the FIR but conducted the investigation of this case also. Thus, neither the contents of FIR are proved nor the site plan and other attending circumstances of investigation are proved. It is a serious lapse in the prosecution case and on this ground also, the appellant deserves to be acquitted;

12. Undisputably, the evidence of the Investigating Officer is of great significance. It is he, who verifies the contents of the FIR but in this case the prosecutrix submitted the written report Ex. P/2 before the Station House Officer, Karauli whereupon, he registered the case. So far as the contents of FIR are concerned, they have been proved by the prosecutrix but there are other important factors emerging in this case which need, to be considered. As per P.W. 5 Dr. Krishna Bihari Mishra, the prosecutrix was found to have sustained 3 injuries on her body but the Investigating Officer made no mention of any injury found on her body when he recorded the police proceedings. Had there been any injury on the person of the prosecutrix, the S.H.O. police station Karauli would have certainly recorded these injuries in police proceedings. Apart this, the accused-appellant was also got medically examined on 13-8-1984 after his arrest. The appellant had 5 injuries on his body. It is explained nowhere as to how did the appellant get these injuries on his body. It is the Investigating Officer who could have proved the arrest memo of the accused explained as to how did the appellant get injuries on his body, but the same is not proved. The prosecution has utterly failed to explain the injuries of the appellant. The Investigating Officer prepared site plan but the place, where the appellant is alleged to have ravished the prosecutrix is also not proved. The actual conditions of the place of occurrence has also not been proved

by the prosecution.

13. Having scanned the statements of the prosecutrix in the above backdrop, it is found that the statements of the prosecutrix given in her cross-examination are shocking. She deposed in cross-examination that the appellant took half an hour to one hour in ravishing her. She also deposed that her petticoat got stained on account of sexual intercourse. Before that, the appellant lifted her petticoat and she cried but the appellant gagged her mouth by his hand. She also struggled but she did not sustain any injury. No petticoat is found to have been seized by the police during investigation nor there is any FSL report with regard to the stains of semen on her petticoat. These were the circumstances, which could be proved by the Investigating Officer. Albeit; the prosecutrix has stated that the appellant ravished her but the manner in which the offence of rape is alleged to have been committed by the accused and the way in which the entire incident of rape has been narrated by the prosecutrix in her cross-examination before the Court, suggests that the prosecutrix submitted herself willingly and freely before the appellant. Obviously, consent involves no denial and no resistance. The same is found in the conduct of prosecutrix. This leads the Court to infer that the report with regard to commission of offence of rape was made in the police station after considerable deliberation and consultation. It also compels the Court to observe that either the appellant had a coitus with the prosecutrix with her consent or the incident of rape did not at all occur.

14. Truly, it is a settled law that the Court can base the conviction of the accused solely on the evidence of the prosecutrix if it is found trustworthy and worthy of credence. It may be mentioned here that there is no rule or practice that in every case there must be corroboration of the statements of the prosecutrix before a conviction can be based thereon, but as a matter of prudence, the necessity of corroboration must be present in the mind of Judge, especially where it is found that the prosecutrix is not giving true facts. Undeniably a rapist can be convicted on the uncorroborated testimony of the ravished woman if it is found true and inspires confidence, but if the evidence of the prosecutrix appears to be tainted, coloured, concocted and inconsistent, the corroboration of her testimony is essentially required to convict the accused.

15. In the instant case, the manner in which the prosecutrix P.W. 3 Santo has scribbled the report Ex. P./3 after an inordinate delay of 24 hours and further the way in which the prosecutrix has depicted the incident of rape makes the whole prosecution case highly improbable.

16. Absence of injury on any part of the body of the victim girl sometimes probalises absence of any coitus. When no mark of injury or violence is found on any part of the body in support of having been ravished forcibly by the accused, it can safely be inferred that no rape was committed upon her. In the instant case no mark of violence or injury has been found on the private parts of the prosecutrix. There is no other ocular or circumstantial evidence which supports the prosecution case. Hence, in view of this position, it is highly unsafe to believe the testimony of the prosecutrix. The evidence of the prosecutrix is found to be untrustworthy and unworthy of credence and it inspires no confidence.

17. In the ultimate analysis, it is found that the learned trial Court has not properly appreciated the evidence of the prosecution witnesses. The learned trial Court has not taken into consideration all these factors and failed to properly appreciate the prosecution evidence. The impugned judgment of the lower Court seems to be perfunctory. The prosecution, to my view, has utterly failed to establish the offence and there is no evidence on record which may fasten the guilt upon the accused. In view of the aforesaid discussion, the impugned judgment is not found to be sustainable and deserves to be set aside.

18. For these reasons, the criminal appeal filed by the appellant Jhinguria is allowed. The conviction of the appellant in the offences Under Sections 376 and 323 of IPC and sentences awarded to him are set aside. Instead he is acquitted in the alleged offences Under Sections 376 and 323 of IPC.

19. The appellant is on bail. He need not surrender. His bail bonds stand discharged.