

Datar Singh Vs. State of Rajasthan

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SooperKanoon Citation : sooperkanoon.com/771370

Court : Rajasthan

Decided On : May-25-2009

Reported in : RLW2009(1)Raj607

Judge : Mahesh Chandra Sharma, J.

Appellant : Datar Singh

Respondent : State of Rajasthan

Judgement :

Mahesh Chandra Sharma, J.

1. The accused appellant has filed this appeal against the judgment and order dated October 7, 2005 of Sessions Judge, Bundi whereby the accused appellant was convicted and sentenced under Section 376 IPC for 8 years and fine of Rs. 5,000/- under Section 376(1) IPC, in default of payment of fine to further undergo. 15 days rigorous imprisonment.

2. Brief facts of the case are that Ramdulari along with her husband Mahaveer and brother Sobhag lodged an FIR No. 252/2004 dated June 25, 2004 at Police Station Keshoraipatan, district Bundi at about 6.20 p.m. alleging that in the morning when the prosecutrix had gone to the field of Shambhu Singh to collect mustered leaves, at about 10-11 a.m. when she had gone to wash her hands at 'Khal' (dry area of river) Datar Singh son of Sheoji Singh came there and

committed rape upon her. It was further alleged that after committing rape, when Datar was running away then she saw her brother-in-law Girdhari coming over there, on seeing him she cried that Datar Singh raped her. Immediately, her brother-in-law caught Datar Singh and beat him but he somehow ran away. It was alleged that she came to her house with her brother-in-law. At that time, her husband was not in the house. He has gone out to take medical treatment in the village. It was alleged that her brother-in-law (jeth) Bhanwar Lal came with her at village Thikaria Kalan which was her parental place later on her husband also reached there. It was further alleged that she told about the incident to her husband, her mother Ganga Bai, sister-in-law Mangli Bai and brother Sobhag, She also stated that she came there' with her husband and brother to lodge the complaint against the accused. Upon this statement an FIR under Section 376 IPC and Section 3(2) (v) of Prevention of Atrocities (SC and ST) Act was registered and investigation was started. The trial Court framed charge under Section 376 IPC and Section 3(2)(v) of Prevention of Atrocities (SC and ST) Act 1989 against the accused appellant. The appellant denied the charges and desired trial. The prosecution in support of its case examined as many as 13 witnesses and exhibited 14 documents. The accused appellant in defence exhibited documents Ex. D.1 statement of complainant under Section 164 Cr.P.C. and Police statements Ex. D.2. The statement of accused appellant under Section 313 Cr.P.C. was recorded. After hearing arguments of both the sides, the Sessions Judge Bundi vide its judgment dated October 7, 2005 acquitted the accused appellant for the offence under Section 3(2)(v) of the Prevention of Atrocities (SC & ST) Act but convicted the accused appellant under Section 376(1) IPC and sentenced for eight years rigorous imprisonment along with a fine of Rs. 5,000/- in default of payment of fine he was further directed to suffer rigorous imprisonment of fifteen days. Against this order, the present appeal has been filed by the appellant.

3. Mr. K.K. Sharma, learned Counsel for the accused appellant submitted that the trial Court committed a gross error of law in convicting the accused appellant. Not a single witness was able to establish a case as against the accused appellant. Not a single witness was an eye witness except the complainant. All the witnesses are the relatives of the complainant and no witness is an independent witness and in such circumstances their testimony cannot be said to be creditworthy and the

accused appellant could not have been convicted on the basis of their statements. The trial Court failed to appreciate that the FIR lodged by the complainant was a false complaint. There was arch rivalry between the families of the complainant and the accused appellant and for the same the accused appellant was falsely implicated in the case. The Court below also failed to appreciate the statement of PW.3 Bhanwar Lal who is brother in law of Ramdulari. In his statement, Bhanwar Lal and stated that he was in the field at the relevant point of time and nothing happened before him. He stated that Girdhari, who is his younger brother told nothing about Ramdulari. He also stated that Police did not seize bangles in his presence while police took his thumb impression on Ex. P.3. The police did not seize her skirt and underwear in his presence but took his thumb impression on Ex. P. 4. The trial Court failed to appreciate that there was a money dispute between the families of accused appellant and the complainant. The father in law of the complainant Nathu took some money from one of the family members of the accused and when they asked about their money to return back then the quarrel took place between them and lodged this false FIR. The prosecutrix herself stated in her statements that one of her relatives has caught hold of the accused just after the incident but for no reason the FIR has been lodged after an inordinate delay. The delay in lodging the FIR without any satisfactory explanation in itself makes the entire story to be untrustworthy. As such the benefit of doubt ought to have been given to the accused appellant.

4. The learned Public Prosecutor on the other hand opposed the submissions of learned Counsel for the appellant and stated that the Court below after considering all the evidence, documents and record passed the order of conviction, and rightly sentenced the accused appellant. This impugned judgment of the trial Court is just and proper and no interference is required to be called for in the impugned judgment.

5. I have heard the learned Counsel for the parties and gone through the entire record and judgment of the trial Court.

6. Ramdulari along with her husband Mahaveer by caste Dhobi and brother Sobhag appeared in person on June 25, 2004 at Police Station Keshoraipatan,

district Bundi at about 6.20 p.m. and orally stated that in the morning when she had gone to the field of Shambhu Singh to collect mustered leaves, at about 10-11 a.m. she was washing her hands at 'Khal' (dry area of river) Datar Singh son of Sheoji Singh came there and committed rape upon her. After committing rape, when Datar was running away then she saw her brother-in-law Girdhari coming over there, on seeing him she cried that Datar Singh raped her. Immediately, her brother-in-law caught Datar Singh and beat him but he somehow ran away. Thereafter she came to her house with her brother-in-law. At that time, her husband was not in the house. He has gone out to take medical treatment in the village. Thereafter her brother-in-law Bhanwar Lal came with her at village Thikaria Kalan which was her parental place later on her husband also reached there. She told about the incident to her husband, her mother Ganga Bai, Sister-in-law Mangli Bai and brother Sobhag. Then they reached to police station as mentioned above for lodging FIR. On June 26, 2004 at 6.30 p.m. after preparing Naksa Moka Ex. P.2, prepared seizure memo Ex. P.3. The police recovered 13 pieces of broken bangles of prosecutrix from the place of occurrence and two bangles from prosecutrix. The police also seized Lehnga, one underwear stained with blood and semen. The same were sealed. The prosecutrix was medically examined by Ex. P.7 by Medical Jurist General Hospital Bundi on June 26, 2004 at 10.30 a.m. Following injuries were found on the prosecutrix:

(1) Redish bruise 3 x 2 cm. below left eye

(2) Redish bruise almost circular 2.5 cm x 2.5 cm. On left cheek.

(3) Reddish bruise 3 x 2 cm. On neck left side middle 1/3 part

(4) Abrasion 10x 4cm. With red clotted blood vertically placed on back of chest lower 1/3 part.

Right side to back of abdomen right side up part.

(5) Abraded bruise reddish in colour 1 x 1/2 cm. On back of abdomen middle 1/2 midline.

All injuries are simple blunt duration about 24 hours. Nothing is suggestive of she is virgin i.e. She is habitual of intercourse. Opinion regarding recent intercourse could be given only after receiving FSL Jaipur report. Result of Report FSL Ex. P. 14 stated that human semen was detected in Exhibits 5, 6, 7 and 8 (which Lehanga, Chaddi Cloth pieces, Semen, Blood and Saliva).

The appellant Datar Singh was examined at Govt. Hospital K. Patan Bundi. The doctor given opinion that he is capable to do intercourse. Blood, Saliva, and semen duly sealed, sent for FSL.

The prosecution in support of its case examined 13 witnesses. PW.1 Ramdulari prosecutrix stated that when she has gone for natural call in the field of Gopal Singh, Datar Singly who was hidden in the field caught hold of her and taken her in the 'Khal' where she committed rape on her after removing Ghagra. Datar left her only after discharge of semen. Her brother inlaw searching her came there and tried to cath Datar but he escaped. Her brother in-law taken her to Thikaria. They thereafter gone to Police Station where FIR was lodged and she put in her thumb impression on it. She was medically examined. The police recovered broken bangles from the place of occurrence vide Ex. P.3. She was cross examined at grant length but she forcefully narrated the story which was happened to her. She in so many words repeated about the rape committed on her by accused Datar Singh. She also narrated about the injuries received by her and the same were also examined by the doctor at the time of medical examination.

PW.2 Mahaveer who is husband of the prosecutrix stated that when the incident of rape occurred he was in the village for injecting injection. When he reached at the house at 1.00 p.m. his sons Dinesh and Ramraj found weeping. When he came out of house his mother Panni Bai stated to him that Ramdulari was raped by Datar Singh. Thereafter he went to his in laws house. Ramdulari his wife also stated that Datar Singh committed rape on her. Thereafter he went to police station along with Ramdulari and he has also put his thumb impression on the report.

PW.3 Bhanwar Lal was declared hostile. But he stated about the putting of his thumb impression on Ex. P.2 and Ex. P. 3.

PW.4 Girdhari in his statement stated that when he reached in the field of Gopal Singh while going to river for bathing he heard noises. When he reached there he found that Datar Singh was funning and he tried to catch him but he escaped. He found Ramdulari in weeping condition and she stated that Datar Singh raped her. In the cross examination he repeated the same version. Sobhag, who is brother of Ramdulari also stated about the rape done on Ramdulari and he accompanied Ramdulari and Mahavir for lodging report at the Police Station Keshoraipatan. He also admitted thumb impression on the report Ex. P. 1. He also proved the Naksa Moka Ex. P. 2 prepared in his presence. He also proved seizure memo of broken bangles and bangles taken from Ramdulari on Ex. P.3. He also proved Ex.P. 4 seizure memo of Lahanga and Underwear where he has also put his thumb impression.

PW.6 Dr. Ravindra Sachdeva, who examined Ramdulari on June 26, 2004 at 10.30 a.m. He proved the 5 injuries received by Ramdulari in the injury report. He sent the Vaginal swab, Blood and Saliva to the FSL which were given to police personnel. He also gave opinion about the non-vergin of Ramdulari and stated that she was habitual to intercourse. He attested the report Ex. P.7. PW.7 Cr. Karanlal Meena examined the accused appellant Datar Singh. He proved Ex.P.8. and stated that Datar Singh was capable of

doing intercourse. PW.8 Gangabai, who is mother of prosecutrix also stated about the rape done by Datar Singh over Ramdulari, which was stated by Ramdulari to her. PW.9 Manglibai is sister in law Ramdulari. She stated about the incident which was stated by Ramdulari to her and stated that Datar Singh raped her forcibly. PW.10 Prathviraj Circle Officer Police Station Lakheri, stated about the investigation done by him in the case and seizing of clothes and broken bangles and sending of vaginal swab, blood and saliva to FSL. He also stated about the statement of prosecutrix under Section 164 before the Judicial Magistrate on a request of Ex. P.9 where he has made his signatures A to B. Accused Datar Singh was arrested on July 15, 2004 vide Ex.P.10. PW.11 Heeralal SHO Keshoraipatan stated about the investigation and presentation of charge sheet before the Court. PW.12 Chhagan Singh SHO stated about the lodging of report by Ramdulari, Mahavir and Sobhag Ex. P.1. where he has put his signatures A to B. He also

proved the thumb impressions of Ramdulari, Mahaveer and Sobhag on Ex. P.1. As the matter was related to SC & ST Act, the investigation was handed over to CO Lakheri. PW.13 Abdul Sahid, Head Constable stated about the receiving of packets A and B in sealed condition. He also proved that the sealed packets were given to constable Mool Chand for handing over to the FSL Jaipur.

From the discussions made herein above and from the evidence of PW.1 Ramdulari, prosecutrix about rape supported by other witnesses and further corroborated by the medical report of Ramdulari, regarding injuries received by her and proved by the doctor of the Medical Board in his statement before the Court and the broken bangles recovered from the place of occurrence and proved by the prosecution witnesses including the FSL report, the case of the prosecution is proved beyond reasonable doubt that the accused appellant raped Ramdulari, prosecutrix. Minor discrepancy in the statements by the prosecution witnesses is human error that cannot be considered in such types of heinous offences. The trial Court in its judgment categorically discussed each and every point pointing towards the commission of offence by the accused appellant under Section 376 IPC. I am in agreement with the findings of the trial Court. The findings cannot be said to be perverse. The trial Court rightly convicted the appellant for the offence under Section 376(1) IPC. The sentence of 8 years in the facts and circumstances of the case also cannot be said to be unreasonable.

7. Further it is not out of place to mention here that the trial Court discussed in detail that on behalf of the accused argument was raised that it was a consent case and as the brother-in-law of the prosecutrix seen him in order to avoid blame the prosecutrix implicated the accused appellant falsely. The trial Court observed that the accused appellant in his statement under Section 313 Cr.P.C. stated that he has not committed any rape with the prosecutrix and he has been falsely implicated on account of previous enmity. The trial Court observed that on the one hand the appellant taken the shelter that it was a case of consent and on the other he stated that on account of enmity he has been falsely implicated. The prosecution has been able to prove case against the accused appellant beyond reasonable doubt. Thus the judgment of conviction and sentence passed by the trial Court stands confirmed.

8. For these reasons the judgment of the trial Court is confirmed. The appeal filed by the appellant is in jail he shall serve the remaining sentence as ordered by the trial Court.

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