

Dungar and ors. Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Aug-10-2001

Reported in : 2002CriLJ386

Judge : Sunil Kumar Garg, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 313; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 366 and 376,

Appeal No. : Cri. Appeal No. 258 of 1987

Appellant : Dungar and ors.

Respondent : State of Rajasthan

Advocate for Def. : R. Purohit, P.P.

Advocate for Pet/Ap. : Sanjay Mathur, Adv.

Disposition : Appeal allowed

Judgement :

Sunil Kumar Garg, J.

1. This appeal has been preferred by the accused appellant against the judgment and order dated 29-7-87 passed by learned Sessions Judge. >Dungarpur in Sessions Case No. 13/87 by which he convicted the accused appellant Dungar for

offence under Section 376, IPC and accused appellants Bhana and Jeeva for offence under Section 366/34, IPC and sentenced them as under :

Name of Offence Sentence awarded accused

Dungar 376, IPC 7 years' R.I. and a fine of

Rs. 1000/- in default to further

undergo 1 year's R. I.

Bhana 366/34, 7 years' R.I. and a IPC fine of

Rs. 1000/-in default, to further

undergo 1 year's R. I.

Jeeva 366/34, 5 years' R.I. and a IPC fine of

Rs. 1000/- in default to further

undergo 1 year's R. I.

By the same judgment dated 29-7-87, he acquitted accused Bala and Huka for offence under Section 313, IPC.

2. This appeal arises in the following circumstances :

(i) On 1-4-86, P.W. 1 Savita (hereinafter referred to as the Prosecutrix) lodged a written report Ex. P/1 before S.P. Dungarpur against seven persons stating that about 3 months back, when P.W. 1 Savita was alone in her house, the accused appellant Dungar enticed her and took her to his house, where he committed rape and kept her there for three months. She further stated that she became pregnant and she was aborted.

3. On this report, P.W. 5 Jeetmal registered a case and chalked out regular FIR Ex. P/4 and during investigation P.W. 1 Savita was got medically examined by P.W. 4 Dr. Bal Mukund Upadhyaya and her medical report is Ex. P/2.

4. After usual investigation, a challan was filed against the accused appellants and Bala and Huka.
5. During investigation, it was revealed that P.W. 1 Savita lived in the house of accused appellant Bhana for three months.
6. That the learned Sessions Judge, Dungarpur on 3-3-87 framed charges for offence under Section 376, IPC against the accused appellant Dungar, for offence under Section 366/34, IPC against the accused appellants Bhana and Jeeva and for offence under Section 313, IPC against Bala and Huka who pleaded not guilty and claimed trial.
7. During trial, 5 witnesses have been produced by the prosecution and thereafter statements of accused under Section 313, Cr. P.C. were recorded and no evidence was led in defence by the accused persons.
8. At the conclusion of the trial, the learned Sessions Judge, Dungarpur vide his judgment dated 29-7-87 convicted and sentenced the accused appellants as stated above and acquitted Bala and Huka for offence under Section 313, IPC.
9. Aggrieved from the said judgment, this appeal has been filed by the accused appellants.
10. In this appeal, the following submissions have been made by the learned Counsel for the appellants :

From the statements of P.W. 1 Savita, no case of kidnapping or rape has been made out against the accused appellants and, therefore, the approach of the learned Sessions Judge is erroneous one and the accused appellants are entitled to acquittal.
11. On the other hand, the learned PP has opposed the submission made by the learned Counsel for the appellants and submits that the judgment of the trial Court is based on correct appreciation of evidence and the same does not require interference by this Court.
12. I have heard both.

13. Before proceeding further, medical evidence in this case has to be seen and the same is found in the statement of P.W. 4 Dr. Bal Mukund Upadhyaya who has proved medical examination report pertaining to P.W. 1 Savita.

14. From the statement of P.W. 4 Dr. Bal Mukund Upadhyaya, it is apparent that he examined P.W. 1 Savita on 1-4-86 and after examination he gave following opinion :

(i) The age of P.W. 1 Savita on the date of examination was above 18 years.

(ii) No recent intercourse with her was found.

(iii) She was aborted within last 7 to 14 days back.

15. Thus above facts stand proved from the statement of P.W. 4 Dr. Bal Mukund Upadhyaya.

16. Now the statement of P.W. 1 Savita, has to be examined.

Burden of Proof

17. In a case of rape, the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and her mother have falsely implicated the accused. The evidence of the prosecution witnesses cannot be accepted merely because an accused person has not been able to say as to why they have come forward to depose against him. However, great the suspicion against the accused and however strong the moral belief and conviction of the Judge, unless the offence of the accused is established beyond reasonable doubt or beyond the possibility of reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring the offence home to the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt.

18. Apart from this, something should be said about the medical examination of the victim. If the victim is unwilling to yield to sexual intercourse, she is expected to

receive some injuries on her person. Absence of injury on her person generally give rise to an inference that she was consenting party to coitus. Absence of injuries on the prosecutrix or the accused shows that the prosecutrix did not resist. But absence of injuries is not by itself sufficient to hold that the prosecutrix was consenting party.

19. P.W. 1 Savita in her statement has stated that before Holi the accused appellant Bhana and Jeeva came to her house and asked her to go to Gujarat and at that time, his brother P.W. 3 Dhula was not in her house but her Bhabhi P.W. 2 Tulsi was in the house. Thereafter they took her to the house of Bhana where they asked her to become wife of accused appellant Dungar and Dungar committed rape with her and she remained there for three months, as a result of which she became pregnant and she was aborted by a nurse. After 3 months, her brother P.W. 3 Dhula came and took her back. In cross-examination, she admits following facts :

(i) In the house of Bhana, she remained for 3 months continuously and at that time, her mother was also there. In the house of Bhana, all other accused persons were also there and they used to give food to her happily.

20. In my considered opinion, looking to the statement of P.W. 1 Savita, no case of rape or abduction or kidnapping is made out as she had remained there for three months. She is a major lady as per medical evidence and in her examination as P.W. 1 in the Court, she does not know her exact date of birth. Therefore, in these circumstances, it appears that she was consenting party in going with the accused appellants and staying in the house of Bhana and further more she was consenting party with sexual intercourse committed by accused appellant Dungar. Therefore, no case of forcible abduction or forcible rape is made out. Hence, findings of the learned Sessions Judge by which he convicted the accused appellants as stated above are liable to be set aside and the appeal filed by the appellants is liable to be allowed.

For the reasons mentioned above, the present appeal filed by the accused appellants Dungar, Bhana and Jeeva is allowed and the judgment and order dated 29-7-87 passed by the learned Sessions Judge, Dungarpur in Sessions Case No.

13/87 are set aside and the accused appellant Dungar is acquitted of the charge for offence under Section 376, IPC and accused appellants Bhana and Jeeva are acquitted of the charge for offence under Section 366/34, IPC.

Since the accused appellants Dungar, Bhana and Jeeva are on bail, they need not surrender. Their bail bonds are hereby cancelled.

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