

State of Rajasthan Vs. Ramswaroop

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Court : Rajasthan

Decided On : Nov-14-2008

Reported in : RLW2009(2)Raj1805

Judge : Mahesh Bhagwati, J.

Appellant : State of Rajasthan

Respondent : Ramswaroop

Disposition : Appeal dismissed

Judgement :

Mahesh Bhagwati, J.

1. The challenge in this appeal is to the judgment dated 23 September, 1997 whereby, the learned District & Sessions Judge, Baran acquitted the accused-respondent Ramswaroop in the offences under Sections 376 and 323 of IPC.

2. The nub of the appellant's story is:

That on 17.11.1996 at 5:20 pm the prosecutrix aged 26 years accompanied with her daughter aged 3 and a half years went near Talal for grazing goats. When she was standing near the goats, the accused-respondent came there and asked her as to where that person who used to graze the goats had gone. She told that he had gone to Bohat. Then the accused-respondent suddenly came and forcibly

dragged her to the Mustard field where he made her to lie on the ground. It is further alleged that he pulled her cloths, torn her blouse, squeezed her breasts and forcibly ravished her for about half an hour. He left her only after fulfilling his wild lust. When he was to flee she assaulted on her legs with a wooden stick. The prosecutrix apprised Rameshwar and Ram Kunwar with the incident on her way to home. After reaching there, she narrated the whole incident to her husband. Thereafter, she along with Surajmal and Ram Karan, went to the police station, Baran and lodged the FIR Ex.P/1. The police registered the case and commenced investigation.

3. The Investigating Officer recorded the statements of the witnesses, prepared the site plan Ex.P/3, seized the blouse and peticot vide Ex.P/2, seized the underwear of the accused vide Ex.P/6, got the prosecutrix and the accused medically examined vide Ex.P/4 and Ex.P/8 respectively and arrested the accused. After usual investigation the police submitted the challan in the Court.

4. In due course, the case came up for trial before the District & Sessions Judge, Baran, who read over the charge of the offences under Sections 376 and 323 of IPC to the accused, who did not plead guilt and claimed trial. The prosecution examined in all five witnesses to prove its case. In his explanation under Section 313 of Cr.P.C., the accused-appellant claimed innocence. On completion of trial, the court acquitted the respondent as indicated hereinabove.

5. None is present on behalf of the accused respondents in the Court. Hence, heard the learned Public Prosecutor appearing for the State and scanned the material available on record.

6. Having reflected over the submissions advanced by learned Public Prosecutor and weighed the prosecution evidence, it is noticed that the prosecution case rests upon the sole evidence of the prosecutrix. Hence at the very outset I feel apt to record the observation of PW-9 Dr. Mohan Chand Jain, who examined the prosecutrix vide medical examination report Ex.P/4, PW-4 Dr. Mohan Chand Jain has observed thus:

Small 1/4 cm x 1/10 cm size abrasion above both breast (upper part).

Redness & Abrasion 1 cm x 1/4 cm right side of neck, only cuticle deep.

c/o. Pain on thigh, both side and back - No local 2-3 is seen.

Pubic hair not mated.

While examining her cloths, he observed:

No marks of any stain, blood, seminal fluid on cloths or on body.

While examining her private parts, Dr. Mohan Chand Jain observed as under:

No discharge from vaginal cavity. Vagina dry. Vaginal majora normal.

Opinion:

No opinion can be formed about rape.

7. Now, adverting to the evidence of prosecutrix, in her deposition she has stated that when she was grazing goats in the Talai, the accused came and lifted her to the field of mustard forcibly. Thereafter, he dragged her to a distance of 10 - 15 feet, made her to lie on the ground and took off her petticoat. When she resisted, he hit on her thighs and penetrated his penis into her vagina and thus ravished her. She narrated the entire incident to her husband. In her cross-examination, she stated that she had reported the matter with police before her husband came in the house. Her husband did not accompany her to police station where she lodged the report. She went to police station along with Suraj Mal and Ram Karan.

8. It is pertinent to note that the prosecution case solely rests on the evidence of the prosecutrix. There is no ocular or other circumstantial evidence available on record to support her testimony. Hence, duty is cast upon the court to shift the evidence of the prosecutrix very carefully and cautiously. It is a settled law that the court can base the conviction of the accused solely on the evidence of prosecutrix, if it is found trustworthy and worthy of credence. If the evidence of the prosecutrix appears to be tainted, coloured and shaky, the corroboration of her testimony is required to convict the accused.

9. In the instant case, the evidence of the prosecutrix is not found to be trustworthy. She was dragged to a distance of about 10-15 feet and forcibly made to lie on the ground. Her cloths were pulled and blouse was torn. The accused is alleged to have applied full force while ravishing her. As per her deposition, her peticot too got wet with semen stains. She was also ravished for about half an hour. If this deposition of the prosecutrix is taken to be true, the prosecutrix is bound to have sustained multiple injuries on her person including the back and her private parts, whereas, only a very small abrasion of 1/4 cm x 1/10. cm has been found on her breasts. No mark of any stain, blood or seminal fluid has been found on her cloths or on body. As per PW-4 Dr. Jain, no discharge from vaginal cavity has been seen. On the contrary her vagina was found dry and vaginal majora was quite normal. The prosecutrix soon after occurrence immediately went from the place of incident to the police station straightway and without any delay lodged the report. The medical examination was also conducted upon her on the same day after 40 minutes of the occurrence. But not even an iota of sign of rape was found on her body. The medical examination Ex.P/4 of the prosecutrix does not conform to the evidence led by the prosecutrix in the Court on oath. Thus, the medical examination report also does not lend my support to evidence of the prosecutrix. There is no other evidence available on record which could support the offence of rape having been committed upon her. Thus, the sole evidence of the prosecutrix does not inspire any confidence and her testimony is not found to be worthy of credence.

10. Absence of injury on any part of the body of the victim girl sometimes probabalises 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 appeal, the police registered the case in the offence under Section 376 and 323 of IPC but neither any mark of violence nor any injury has been found on the private parts of the prosecutrix nor any injury has been seen on the penis of the accused. 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 totally untrustworthy and unworthy of credence.

11. In the ultimate analysis, the testimony of the prosecutrix is not found to be credible. Her statements do not inspire any confidence. The learned trial court has properly appreciated and critically analyzed the prosecution evidence. The impugned judgment is cogent and well merited and does not suffer from any infirmity. The finding of the acquittal arrived at by the learned trial court is just and proper with which I fully concur and, in my firm view, the impugned judgment calls for no intervention.

12. For these reasons, the State appeal being bereft of merit stands dismissed. The accused-respondent is on bail. He need not surrender and his bail bonds stand discharged.

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