

**Narayan Dutta Vs. the State**

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**SooperKanoon Citation :** [sooperkanoon.com/879436](http://sooperkanoon.com/879436)

**Court :** Kolkata

**Decided On :** Dec-13-1979

**Reported in :** 1980CriLJ264

**Judge :** N.C. Mukherji and ;Sudhindra Mohan Guha, JJ.

**Appellant :** Narayan Dutta

**Respondent :** The State

**Judgement :**

**Sudhindra Mohan Guha, J.**

1. The appellant was found guilty and convicted under Section 376/511 I. P. C. and sentenced to rigorous imprisonment for 5 years by Shri A.P. Bhattacharrya, the learned Assistant Sessions Judge, Nadia.

2. On hearing the learned Advocates on both the sides and on going through the judgment and evidence on record we propose to accept the appeal. The prosecution case is founded on an improbable story and built up on conflicting, divergent and untrustworthy evidence.

3. The F. I. R. Ext, 4 was lodged at 4.15 A. M. on 9-5-70 on the complaint, Ext. 3' of P. W. 1 Hashenara Bibi. It reveals' that she was the wife of Matabbar Rahaman, P, W. 2 and they were residents of Kajibari, Palpara, P. S. Chakdaha, Samiran, (P.

W. 10) was the wife of her Bhasur Mozammal Haque, P. W. 3. Their mother-in-law Arjia Bibi (P. W. 4) also used to reside with them. The brick built house on north was purchased by one Harinarayan Banerji of Calcutta, The house generally remained vacant. But sometimes one Manik of Khos Bas Mohalla and one Narayan (Appellant) of Hamidpur used to bring some unknown persons and stay there. On 8-5-70 at about 11 P. M. to 11-30 P. M. Manik and Narayan called P, Ws. 2, 3 and 4, and threatened them to hand over to police. They were armed with weapons and accompanied by two other unknown persons whose names later on transpired as Amal and Dilip. Thereafter they confined P. Ws. 2, 3 and 4 in an adjoining room and took P. Ws. 1 and 10 to another room forcibly and against their will Manik committed rape on her (P. W. 1) and Narayan (Appellant) attempted to commit rape on P.. W. 10. They shouted out of fear and many men of the locality came there being attracted by their shouts. Then Manik and Narayan and two others who were on guard on the doors fled away towards the two storeyed house of Harinarayan Babu and shut the door. Thereafter the police arrived and arrested them with the weapons.

4. Thereafter the names of all the four accused persons with their full addresses were given.

5. The importance of the F.I.K, lies in its being the first recorded statement of the occurrence. It is also the earliest information on which the investigation is commenced. But in the present case it transpires that Ext. 3 was not the first recorded statement of the occurrence. P. W. 15 I. O, admits in cross-examination that they got the first information from Niranjana Bhattacharjee (P. W. 6) and Prasanta Chatterjee (P. W. 7) who informed that there had been some trouble at Kazibari. A. G. D. Entry was made. But that has been withheld. Any way they left thana for the place of occurrence at 1.35 A. M. and stayed there till 4 A. M. P. W. 3 Mozammal Ilaque also admitted in cross-examination that he also had been to thana, where Daroga Babu recorded his statement and thereafter the police came to their place.

6. It is rightly pointed out by Mr. R.K. Datta Gupta, the learned Advocate for the appellant that the earliest version of the occurrence has been withheld with a

purpose and what we find in Ext. 3 is an embellished and concocted story implicating the appellant in an heinous offence. Ext. 3 also suffers from another infirmity. The result of investigation appears to have been incorporated therein, otherwise the names with addresses of the accused persons could not have found place therein. It is argued by Mr. Datta Gupta that investigation started on the basis of G. D. Entry or on the information given by the husband of the victim girl. In fact, such particulars of the accused persons are covered by Sections 161 and 162 Cr. P.O. whereas the first information report is the information recorded under Section 154 of the Cr. P. C. Such a procedure was disapproved by their Lordships of the Supreme Court in the case reported in : AIR 1960 SC391 .

7. With this background the evidence of of the victim girl (P. W. 10) should be analysed. The learned Assistant Sessions Judge accepted her testimony, as- she appeared to him to be a truthful witness. The statement of a ravished girl made voluntarily and immediately after or .shortly after the occurrence is admissible in evidence That is relevant as evidence of the credibility of the testimony of the prosecutrix. The Court can dispense with the necessity of corroboration of the testimony of the prosecutrix, if it is satisfied that it would be safe to rely upon her testimony. But where corroboration is possible and is available, it is judicious and reasonable to seek for such corroboration.

8. P. W. 10 Samiran Bibi, the victim woman was examined on 7-11-73 though P. W.s 1 to 8 were examined on 6-11-73. She states in her evidence that the miscreants namely, Manik, Narayan and two others kept her husband, Matibar (P. W. 2) and the mother-in-law separated in a place, and took her and Hasinara (P. W. 1) to a different room, undressed them and while they raised cries, they were gagged. Thereafter accused Narayan committed rape on her and Manik committed rape on Hasinara. She further states that she gave out the fact that she had been ravished to the local people. In cross-examination she gives that both of them were detained for about half an hour and the miscreants laid her down forcibly and her hands were held by some of the miscreants, while Narayan ravished her. But in her statement Under Section 164 Cr. P. C. on 12-5-70 she states that Narayan took her in an adjoining room and by raising her wearing cloth forcibly ravished her. Within a minute or two Hasinara was also brought there by

Manik who committed rape on her. On the information lodged by her husband, police arrived. In Ext. 3 it is stated that an attempt was made by Narayan to commit rape on Samiran. But Hasinara (P. W. 1) in her statement Under Section 164 Cr.P.C. is silent as to the attempt or actual rape on Samiran by Narayan. But in her evidence before Court she went ahead with the case of rape on Samiran by Narayan. She, of course, does not state that the matter was reported to the local people.

9. P. W. 2 Matibar states that he did not raise any hue and cry out of fear, though none was on guard. The miscreants were said to have confined them in a room which was at a distance of 20 or 30 cubits from his bed room. It is also not his evidence that the fact of rape was reported to the local people. P. W. 3 Mozammel neither did so, but he gives out that the victim women had been taken to a room which was 20 to 30 cubits from their house. P, W, 4 the -mother-in-law was examined. Possibly she could not be persuaded to come out with the alleged story of rape.

10. P. W. 6 Niranjan Bhattacharjee and P. W. 7 Prasanta Kumar Chakravarty were members of R. G. Party. Being attracted by shouts they came to Kazibari. P. Ws. 2 and 3 are stated to have reported to them that 4/5 miscreants had taken away their wives who also reported that they had been ravished. But it is admitted in cross-examination that it was reported to them that the house of Mozamal had been raided. P.W. 8 Ganga Charan Bhattacharyya, another member of the R, G. Party states that they heard from the inmates of the house that their house had been raided by some miscreants, but the two ladies had not stated anything before them. P.W. 12 Dharendra Nath Chakrabarty also came to the house being attracted by shout. He states that Mati, his brother and their wives told them that some four miscreants had come to their house and fled away after torturing them to a great extent.

11. The wearing sharis of both the women and underwears of Mannik and Narayan were seized under the seizure list Ext. 1. The sari of Samiran (P. W. 10) was of light blue colour check-black bordered, which was marked B, and the underwears were marked as C and D by the chemical examiner. No

spermatozoon could be detected in these exhibits. What is more striking is P. W. 10 was recalled to say that the green sari was worn by her that night. This was marked A by the chemical examiner and spermatozoon had been detected therein (Ext. 8)- but the origin or groups of semen could not be detected. Be that as it may P. W. 10 was not a truthful witness at all and she had no hesitation to give apparent lies for securing a conviction.

12. It is also striking that the appellant though arrested on that very night was not produced before Dr. Pal. (P. W. 11) who examined P. Ws. 1 and 10 on 10-5-70. No injury was found on the person of P. W. 10 suggesting resistance to violence.

13. On the materials discussed above the learned Assistant Sessions Judge held that the prosecution had failed to bring home the charge under Section 376 I. P. C., but according to him an attempt had been made, and as such he convicts the appellant under Section 376/511 I. P. C. Mr. Rash Behari Mahato. the learned Advocate for the State tried in vain to support the order under appeal. It is useless to refer to a particular portion of evidence of a witness in support of the prosecution. The evidence as a whole is relevant, because the credibility of a witness can be tested only by way of cross-examination.

14. So having regard to the F. I. R., Ext. 3 which in our opinion was received after the commencement of the investigation, and on the conflicting and divergent evidence discussed above we cannot be persuaded to hold in agreement with the learned Assistant Sessions Judge.

15. In the result, we accept and allow the appeal. The order of conviction and sentence is set aside. The appellant is found not guilty and acquitted of the charge. He may be released from his bail bond.

**N.C. Mukherji, J.**

16. I agree.