

Hans Raj Vs. State

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Court : Jammu and Kashmir

Decided On : Aug-10-2005

Reported in : 2006CriLJ896

Judge : Y.P. Nargotra, J.

Acts : Ranbir Penal Code (IPC), 1989 - Sections 341 and 376; ;Code of Criminal Procedure (CrPC) - Sections 156(3) and 342

Appeal No. : 2-A/Cr. Appeal/2001

Appellant : Hans Raj

Respondent : State

Advocate for Def. : B.S. Salathia, AAG

Advocate for Pet/Ap. : Gagan Basotra, Adv.

Disposition : Appeal allowed

Judgement :

Y.P. Nargotra, J.

1. The appellant was tried for commission of offences under Sections 376/341 RPC and the learned Sessions Judge Kathua by his judgment and order dated 31.1.2001 has convicted and sentenced the appellant to undergo rigorous

imprisonment for a period of four years and a fine of Rs. 10000/-, and in case of default in payment of fine to undergo simple imprisonment of six months for proof of the offence Under Section 376 RPC and to undergo simple imprisonment for a period of one month and a fine of Rs. 300/- and in case of default to make payment of fine to undergo further imprisonment of 15 days. Both the sentences have been ordered to run concurrently.

2. The case of the prosecution against the accused was that on 12.11.1995 at about 4/5 PM when prosecutrix Mst. Sham Dai was grazing her cattle in the forest the accused came there and caught hold of her and after forcibly putting her down committed forcible intercourse with her. The prosecutrix raised hue and cry on which PW Mst. Shanti also came on spot and saw the accused committing the crime. At that time husband of the prosecutrix PW Chattru and PW Thakardas, her son-in-law, reached the spot but the accused succeeded in running away from the scene. The prosecutrix in the company of the said witnesses returned to her house and on the next day i.e. on 13.11.1995 she went before the court of Judicial Magistrate Billawar and lodged the complaint EXPWSD. Learned Magistrate forwarded the complaint of the prosecutrix to Police Station Billawar in exercise of power Under Section 156(3) Cr.P.C. After receipt of the application of the prosecutrix, FIR No. 151/1995 for commission of offence Under Sections 376/341 RPC came to be registered at 16.30 hours and investigation commenced. After completion of investigation charge sheet against the accused was instituted in the court.

3. Learned Sessions Judge Kathua by his order dated 31.1.1996 framed charge against the accused Under Sections 376/341 RPC. The accused on being asked to plead, pleaded not guilty. The prosecution in order to prove the charge examined the prosecutrix PW Sham Dai and PWs Mst. Shanti, Chattru Ram, Thakardas, Dr. Suman Gupta and Sagra Singh, Investigating Officer. After the prosecution evidence, statement of the accused Under Section 342 Cr.P.C. was recorded. The accused however put up total denial to the occurrence and submitted that the case of the prosecution was false. He had been framed for the reason that in a criminal case, State v. Rattan Chand, who is younger brother of the husband of the prosecutrix he had appeared as a witness in the court of

learned Judicial Magistrate Billawar. The accused also entered defence and examined DW Baldev, Romail Chand, Des Raj and Mela Ram. Learned Trial court after appreciating the evidence of the prosecution and the defence found the case of the prosecution fully established and hence convicted and sentenced him as aforesaid.

4. I have heard the learned Counsel for the appellant and learned Addl. Advocate General appearing on behalf of the State.

PW Sham Dai prosecutrix when came in the witness box has stated that she had gone to the forest for grazing her cattle and while she was returning back in the way the accused caught hold of her, felled her down and dragged her to one side where he committed forcible intercourse on her. She raised hue and cry. Because of being a paralytic person she could not defend herself. After hearing her cries PW Shanti reached the spot. At that time accused was still in the process of committing sexual intercourse. PW Shanti asked the accused as to what he was doing with a matured woman on which he replied that whatever he had to do he has done. Her husband and PW Thakardas who is her son-in-law, reached the spot but the accused ran away from there. They came back to their house and on the next day of occurrence she alongwith PW Shanti went to Billawar court where she presented an application through a counsel. In the application she had narrated the whole facts. She proved the application EXPWSD to be correct. After obtaining a direction from the court she went to Police Station with the application on which FIR EXPWSD was registered. As the police station was at a long distance from the scene of occurrence therefore on the day of occurrence she had not been able to go to police station. She has also deposed that she and her husband are living alone in their house as their daughters stand already married; that she was medically examined on third day of the occurrence and the accused belongs to the same village. On being cross-examined she admitted that Mela Ram was Numberdar of the village. She had narrated the story to chowkidar from whom the Numberdar himself had heard it. Chowkidar had not accompanied her, as he was sick. She admitted that in the application EXPWSD she had given the names of the persons who were present on spot but the application EXPWSD does not contain any such names. She further admitted that PW Shanti Devi is the

sister of her husband. She has also stated that her first marriage had been conducted with one Dhannu Ram where after she married PW Chattru Ram. She also admitted that Bishan, Rattan and Parkash are real brothers of PW Shanti but she does not know as to whether against them she had filed a case or not. Despite the fact of her denial of the institution of aforesaid case she admitted that in that case the accused had appeared as a witness and deposed against them with his free will. She further stated that at the time of occurrence her trouser was torn by the accused, which was seized by the police. (On the record there is no such seizure). According to her the trouser had not been stained as the accused had slipped the same towards her feet. She admitted on her back she had not received any bruises; and that she had not bitten the accused with her teeth.

5. PW Shanti Devi, who according to the prosecutrix had reached the spot immediately after the occurrence stated that when she had reached the spot, after hearing the noise she saw the accused committing sexual intercourse with the prosecutrix. According to her she had asked the accused as to what he was doing with a lady who was elder to him on which the accused had said that whatever he had to do he has done it. On being cross-examined she denied that she was the real sister-in-law of the prosecutrix though the prosecutrix in her statement has admitted that she was her real sister-in-law.

6. PW Chaattru Ram has stated that on hearing the cries of his wife he went to the scene of occurrence from his fields where he was working alongwith his son-in-law, PW Thakardas. On the spot he saw his wife lying on the ground who was weeping and her trouser stood torn. The accused was running from the spot. On being cross-examined he admitted that till the date of his examination in the court he had not told about the occurrence to any one; that he had got his wife treated for paralysis from one Dr. Bishan. He was called upon to produce the prescriptions of the doctor, which he did. It may be mentioned here that these prescriptions do not disclose the fact of the prosecutrix suffering from paralysis. It only mentions about the medicines and injections prescribed.

PW Thakardas has also deposed on similar lines as that of PW Chattru.

7. The defence evidence is only on general lines, led to prove that the prosecutrix and PW Shanti devi are not of good character whereas the accused is a man of character.

The prosecution has also examined PW Dr. Sumankant Gupta.

8. I have heard the learned Counsel for the appellant and also the learned Addl. Advocate General appearing on behalf of the State.

PW Dr. Sumankant Gupta who examined the prosecutrix has testified that there was no injury on any part of genitalia of the prosecutrix. He did not observe any bloodstains, semen stains on the prosecutrix and there was no tear of her vagina and vaginal smear showed no spermatozoa. In his opinion the prosecutrix was habitual of sexual intercourse and was more than 32 years of age. On being cross-examined he has stated that the prosecutrix was well built, so she could have shown resistance. She did not complain that she was suffering from paralysis. According to him he also did not observe any sign of hemiplegia on any side of her body.

9. The evidence of the doctor thus points out two things; one that no signs indicating rape or struggle were found on the person of the lady and two that he did not observe any signs of hemiplegia on any side of the lady. The only evidence relied upon by the learned trial court for recording conviction of the accused is the ocular testimony of the prosecutrix, PW Shanti Devi, PW Chattru Ram, husband of the prosecutrix and PW Thakardas his son-in-law. Since the medical evidence tendered by the prosecutrix does not corroborate the version of the prosecutrix, the question arising for determination is could conviction be recorded by the trial court against the appellant on the basis of the evidence of the said witnesses.

10. The law is well settled that a conviction for an offence of rape can be based on the sole testimony of the prosecutrix without corroboration provided statement of the prosecutrix inspires confidence. Insisting for corroboration in such a case adds insult to the injury. Only that statement of a prosecutrix can inspire confidence which when appreciated in the light of cross-examination and the attending circumstances of the case is not found to be out of tune with probability factor. In

appropriate cases it is open to the court to look for corroboration or at least insist for some evidence, which lends support to the version of the prosecution for accepting it at its face value.

11. In the present case the prosecutrix was not a young lady at the time of occurrence but was a woman of about 40 years, married for the last 20/25 years, having married daughters. The accused is said to be about 29 years of age. The prosecutrix and PWs Shanti Devi, Chattru Ram and Thakardas are close relations of each other. The prosecutrix has admitted in her cross-examination that in a case lodged against Shanti Devi and her brothers, the accused had appeared as a witness and tendered evidence against them. The witnesses being closely related can have animus against the accused and it has also to be kept in mind that it is not unlikely that when a married woman is found in a compromising position in the company of a person who is not her husband, she can make false allegations against such person in order to protect her honour. In such a case if not the corroboration to the statement of the prosecutrix is to be insisted, at least the court must be satisfied before it accepts the testimony of the prosecutrix for recording that there was sexual intercourse committed with her. There is nothing in the medical evidence to suggest that there was sexual intercourse. The prosecutrix in her statement has alleged that the accused committed forcible intercourse with her. In the ordinary course in the case of forcible intercourse on a well built matured lady the marks of violence indicating resistance/struggle are certainly to be found. The doctor who examined the prosecutrix has testified that there were no marks on the body of the prosecutrix. The absence of such marks of struggle indicates that either there was no forcible intercourse on the lady or if it was there then it was with her consent. The prosecutrix has explained that she could not resist because she was a paralytic patient but the doctor PW Manwati has ruled out this fact. The prosecutrix says that her trouser was seized but investigation does not show any such seizure. Therefore, from the statement of the prosecutrix alone it cannot be accepted that she was the victim of rape.

12. Be it so, now let us examine the other evidence to find out whether there is any corroboration to the version of the prosecutrix. The prosecution for the purpose of corroboration relies upon the evidence of PWs Santi, Chattru Ram and Thakardas

who as per the prosecutrix herself are her close relations. Though they have supported the prosecution in their evidence but their evidence is not free from doubt in my considered opinion and as such does not deserve to be relied upon. The witnesses being her close relations were known to the prosecutrix and therefore their names could have been disclosed in the FIR lodged by the prosecutrix, as it was not the case that the FIR got lodged in a hub on the day of occurrence but was lodged on the next day when she could have been in a calm posed state. If those witnesses had witnessed the occurrence their names would have found mention in the FIR. The absence of the names of the witnesses in the FIR coupled with the fact that they are close relations of the prosecutrix renders their evidence doubtful and as such cannot safely be relied upon for corroboration. The testimony of the prosecutrix without corroboration in the face of abovesaid infirmities cannot be accepted against the accused for basis conviction, as the same will be hazardous.

13. The prosecution therefore is found to have failed to bring home the guilt to the accused beyond all reasonable doubt. The appeal is thus allowed. The judgment of learned Sessions is set aside and the accused is acquitted of the charges. The bail bonds shall stand discharged. The record of court below, with a copy of this judgment, be returned.