

State Vs. Ram Singh

State Vs. Ram Singh

SooperKanoon Citation : sooperkanoon.com/922053

Court : Delhi

Decided On : Aug-25-2011

Judge : S. Ravindra Bhat; G.P.Mittal, Jj.

Acts : Indian Penal Code (IPC) - Sections 302, 376, 377

Appeal No. : CRL.L.P.111/2011

Appellant : State

Respondent : Ram Singh

Advocate for Pet/Ap. : Mr. Jaideep Malik, Adv.

Judgement :

1. The state seeks leave to appeal, in this petition, against a judgment and order of the Additional Sessions Judge (hereafter "ASJ") dated 27.08.2010, in SC No. 28/2010, by which he acquitted the respondents of the charge of committing offences punishable under Sections 302/376/377, Indian Penal Code, 1860 (IPC).

2. The prosecution case is that on 18.07.2005 Police Station SP Badli received information (through DD No. 41B) that at about 06:05 PM the body of a girl was discovered in Sharadanand Colony. Thereafter complainant Sarita (mother of the deceased) went to police station SP Badli to file a report that her daughter Kanchan was missing. On reaching the police station she was informed that the body of a girl lying in a Jhuggie, at Bhalsva Dairy was found. She was asked to

first look at the body to ascertain whether it was her daughter Kanchan. The body was lying inside the bushes and was naked below the waist; a salwar was tied around the neck of the body. Complainant (PW-2, Sarita) identified the body as that of her daughter Kanchan. An FIR, bearing No. 515/05 was registered at Police station SP Badli at about 09:00PM and D.D. No. 20A was recorded. The body was sent for post mortem to BJRM Hospital on that day itself and examination was done on 19.07.2005 at about 12:30 PM. On 21.07.2005, accused Ram Singh was interrogated and was medically examined at BJRM Hospital by Dr. Anil Shandilya (PW-1) who had also conducted the autopsy of the deceased. In his report Ex. PW-1/B he stated that "dried up brownish scab was present in circular shape around the corona glandis and frenulum" was present and there was simple abrasion of about 4-5 days duration. The report further stated that if the injuries on the body of the deceased and the accused were collectively seen, then it was "prima facie suggestive of forceful penetration in a constricted hole by hard erected penis (disproportionate in size)". On 22.07.2005 the accused was taken to Forensic Science Laboratory (FSL) and he voluntarily gave a blood sample. Thereafter the accused was released.

3. On 09.09.2005, PW-19 (the second IO) met the deceased's mother and father; one neighbor Maya Devi also met him. He recorded the statements of all 3 witnesses and thereafter arrested the accused at about 11:15 PM; Ex.PW-18/A. A charge was framed against the accused under section 376/377/302 IPC on 09.10.2006, to which he pleaded not guilty and claimed trial.

4. In support of its case, the prosecution examined 20 witnesses. PW-1 Dr. Anil Shandil, PW-2 Sarita (mother of deceased), PW-7 Ram Singh (father of deceased) and PW-8 Maya Devi are the material witnesses in the prosecution story. PW-8 Maya Devi (neighbour of the deceased) is a star witness. PW-2, mother of the deceased deposed that she used to live with her husband and 2 children (Kanchan aged about 8 years and Sanjay aged about 6 years) at Bhalsva Dairy, Jain Colony. Her husband (Ram Singh, PW-7) used to sell toys and she used to clean utensils in houses and parties. She deposed that one day her children asked her to take them to the swings and accordingly she took them to the swings installed at Bengali Basti, situated near their house at about 5/6 PM. There was

some Jagran which was to be held in the night near the swings for which a tent was being erected. The accused Ram Singh and Pramod, who used to operate and manage the swings, asked her to prepare some food for them and their labourers. Accordingly she prepared the food and the next day, in the evening, after the Jagran was over she cleaned the utensils with some help from her daughter Kanchan (she brought the water required for cleaning utensils). She further deposed that after cleaning the utensils in the evening, she slept for some time as she had not slept the previous night; her daughter went to play on the swings. After some time, Pramod woke up PW-2 and asked her to look for her daughter as he had not seen her (daughter) for some time. PW-2 started searching for the deceased and even got an announcement made from a nearby mosque. She continued her search through the night and on the next day but when she could not trace her, PW-2 went to the police station at about 5/6 PM. On reaching the police station she was informed that a body of some girl lying in jhuggies, Bhalsva Dairy behind gas factory had been found and she was asked to first have a look at the said body and ascertain whether it was of her daughter Kanchan or not. She went to the spot with the police officials and saw the dead body of her daughter lying inside the bushes. She deposed that the body of her daughter was naked below the waist and her shalwar of green colour was tied around her neck however she was still wearing her shirt of the suit. On seeing her daughter's condition, PW-2 started crying. She deposed that her statement Ex.PW-2/A was recorded at the spot itself by the IO.

5. After about two months, her husband returned from Punjab and she along with her son and husband returned to her house at Jain Colony. At that time her neighbour PW-8 Maya Devi, told her husband PW-7 that she had seen the accused taking away the deceased on the day of the incident towards the gas go-down, Bhalsva Dairy. PW-2 adds that prior to the incident, accused had molested her daughter 2/3 times and she had told her daughter not to go near him but she (PW-2) did not inform about the molestation to anyone. She further deposed that her statement was recorded by the IO on the same day wherein she had mentioned about what PW-8 saw. She clarified that PW-8 had gone to her village after the incident and she returned after about 2 months and it is on her returning that she informed them (PW-2 & PW-7) regarding seeing the deceased with the

accused.

6. PW-2 in her cross examination, deposed that the deceased was the daughter of PW-7, Ram Singh. She stated that her house was about 100 meters from the place where Pramod and the accused had installed the swings and that the accused was known to her and used to visit places near her house as he stayed in the same locality. The owner of the swing was Pramod and the accused was working with Pramod. She admitted that she had last seen her daughter at about 05:00 PM when she (deceased) was playing on the swing; the deceased's brother was playing on the other swing. She further admitted that when the deceased had gone missing, the accused was also missing. She states that PW-8 was her neighbour and as she was going to her village, she had not contacted her (PW-2) on the day when the matter was reported to the police. She admits that prior to her marriage to PW-7, she was married to one Vijay. She further admits that the deceased was born out of her wedlock with her former husband Vijay. She stated that PW-7 was also previously married. She further admitted that she requested the accused to help her find the deceased to which he replied "Mein kisi ke baap ka naukhar nahin hoon". She denied that her husband too had gone missing when her daughter went missing. She denied the suggestion that PW-8 had not gone anywhere after the incident and was very much available at her house. She admitted that her husband had returned to their house after the arrest of the accused. She denied that her husband was having an evil eye on the deceased and that he had sexually assaulted the deceased and committed her murder.

7. PW-7 Ram Singh (step-father of the deceased) deposed that in the month of June, 2005, he had gone to Punjab to sell toys at a mela and returned on 09.09.2005. He further deposed that he found out about the deceased's death on returning from Punjab and took his wife (PW-2) from her parent's house back to their house at Bhalasava Dairy. PW-8 Maya Devi told him that she had last seen the deceased in the company of the accused. He deposed that PW-8 was to go to her village and hence left the next day. Even PW-2 did not know about the deceased last being seen in the company of the accused as PW-8 had left for her village.

8. In his cross examination, PW-7 admitted that the deceased was not his real daughter but was born out of wedlock between his wife and her former husband. He states that he had never been married before. He states that he had gone to Jalandhar to attend a mela and could not maintain any contact with his wife while he was away as he was not having any contact number; and that the mela lasted for 3 months. He denies to having not gone to attend the mela and further denies that he had gone missing since the day when the deceased was found missing. He denies having visited the police station in the month of July with his wife. He deposed that the statement of PW-8 was recorded in his presence. He further stated that he had seen the accused at the police station on 09.09.2005. He denied the suggestion that on 17.07.2005, he was present at a Jagran held at Bhalasva Dairy. He further denied the suggestion that he had taken the deceased away, committed rape on her and murdered her. He denies having fled and came back only when he found out that the accused had been arrested. He further states that since he came back in the month of September, he did not know whether on 21.07.2005, 4-5 police officials along with Pradhan of Bhalasava Dairy and accused had visited the house of PW-8 or not.

9. PW-8 Maya Devi deposed that about 3 years ago, at about 8:00 PM she saw the accused with her daughter Meena and the deceased Kanchan going towards the jungle; the accused had given packets of biscuit to both the girls. On asking, the accused informed PW-8 that he was taking them for a walk. PW-8 took her daughter back but the deceased was with the accused. She deposed that she did not take the deceased back as the accused used to visit the house of PW-2 very often and PW-2 used to prepare food for the accused and his workers. She did not find anything suspicious about the accused taking the deceased as he was well known to the children of PW-2. She further deposed that at the time of the incident, the accused had gone to Punjab and was not present in the house. Thereafter she along with her family went to Jabalpur and returned to Delhi 2 months later. On her returning, she came to know that Kanchan had been murdered by the accused after committing rape on her. She further deposed that one day when she found PW- 2 & PW-7 present at their house, she informed them regarding having last seen the deceased in the company of the accused. She further deposed having made a statement to that effect to the IO at the house of

PW-2. She further deposed that the deceased was wearing a frock suit of black and yellow colour on the day she saw the deceased with the accused. In her cross examination PW-8 stated that, she knew PW-2 for 3-4 days and then again says one month prior to the incident. She states that she had left her house for Madhya Pradesh 3-4 days after having last seen the deceased with the accused; she came back to Delhi after 2 months. She states that on her returning, her statement was recorded by the police. She states that she had told the police about the deceased being taken away by the accused on the same night when she saw them. She further states that before she left for Madhya Pradesh, police visited the house of PW-2 twice; once on the same night when she (PW-8) last saw the deceased with the accused and for the second time after 2-3 days. She stated that on the first occasion 4-5 police persons along with the accused and the Pradhan of their colony visited the house of PW-2; PW-7 was also present in the house. She states that PW-7 left for Punjab the very next day. She says that it is wrong to suggest that she did not go to Jabalpur.

10. PW-1 Dr. Anil Sandilya, conducted the post mortem examination on the body of the deceased on 19.07.2005. He opined that all injuries were ante mortem in nature and that there was forceful penetration of vagina and anal canal. The cause of death according to him is asphyxia resulting from strangulation by means of ligature. According to him time since death was approximately 1½ to 2 days. He also examined the accused Ram Singh on 21.07.2005. He observed that dried up brownish scab was present in circular shape around the corona glandis and frenulum. He further observed that there was simple abrasion present which was about 4 to 5 days old. PW-1 opined that if the injuries on the body of the deceased and the accused were collectively seen, then it was "prima facie suggestive of forceful penetration in a constricted hole by hard erected penis (disproportionate in size)"

11. After considering all the materials and depositions of prosecution evidence, the Trial Court concluded that the case against the Respondent had not been proved beyond reasonable doubt; he was acquitted by the impugned judgment.

12. The learned APP argued that the State should be given leave to appeal, because the Trial Court adopted a hyper-technical approach in appreciating the prosecution evidence, particularly that of PW-2, PW-7 and PW-8. It was submitted that there were bound to be discrepancies in the depositions, and witnesses could not be expected to have precise memories. Counsel also argued that the nature of injuries found on the accused, by the doctor who examined him at the time of his arrest pointed to his guilt; this had to be seen in the totality of circumstances. The APP submitted that the deposition of PW-7 could not have been rejected, and the Trial court needlessly suspected his role in the crime.

13. The impugned judgment proceeded to record the respondent's acquittal. In doing so, the Trial Court was considerably influenced by the fact that PW-8's statement was taken much later, though she was available to record it immediately after discovery of the crime; the prosecution was unable to explain the delay. The Court also noticed several material discrepancies in the deposition of PW-8 and the other witnesses who deposed in favour of the prosecution case. The court also noticed some glaring prosecution deficiencies during the cross examination of the deceased's mother, i.e PW-2, pertaining to her withholding the real identity of Kanchan's father; her silence and the prosecution inaction in not pursuing its inquiry in the direction of the swing owner, Pramod, who disappeared after the girl went missing.

14. The most important circumstance which apparently persuaded the Trial Court to hold that the prosecution was unable to prove the case against the respondent, beyond reasonable doubt, was that the blood samples on the deceased's body, as well as hair follicles found on her dead body, did not match with the samples taken from the respondent accused. The discussion in this regard, by the Trial Court, is as follows:

"The exhibits collected by Dr. Anil Sandilya for body of deceased/Kanchan and accused Ram Singh were sent for analysis by FSL and the FSL result has been proved by PW-9 Mr. A.K. Srivastava, Sr. Scientific Officer as Ex. PW-9/A & B. Not only this, suspect Ram Singh was also produced by IO before FSL for taking his blood sample for more authentic examination. But on examination, FSL did not

detect blood group of accused on any of the exhibits lifted from body of deceased Kanchan. On examination and comparing the hair found on distal of left lower leg of deceased Kanchan, the same was found to be of human origin but it was found dis-similar with the hairs of suspect/Ram Singh. In note (1) appended to FSL result, Ex. PW-9/A, it has been observed that exhibit „2 (i.e salwar of the victim) and exhibit 6A-3 (i.e micro slide having thin whitish smear of anal and vaginal swab) on which human semen was detected, have been retained in laboratory for DNA analysis required in future, if any. It is noteworthy that accused was available to police IO as well as to FSL laboratory where all examinations had been conducted on urgent basis. It is also on record that accused was volunteering himself for collection of his hair samples and blood samples and even went to FSL laboratory for again giving his blood sample. They why lo did not request FSL to carry out DNA examination of semen found present at salwar of deceased and anal/vaginal swab slide. Under these circumstances, a presumption can be drawn that after scientific analysis at FSL suspect Ram Singh was released with satisfaction that he was not the actual culprit and an adverse inference can be drawn that had the DNA analysis of semen found present on salwar and micro slide been carried out vis-à-vis sample taken from suspect Ram Singh, it would have gone in favour of establishing his innocence.."

15. We have carefully considered the submissions, and also seen the Trial Court records, which were requisitioned for the purpose of this proceeding. The jurisdiction of High Courts, while considering a petition for leave to appeal, by the prosecution, is well settled. The court does not exercise appellate review; it has to consider if the Trial court's judgment, to invite the High Court's jurisdiction in granting leave should disclose substantial and compelling reasons. As to what constitute such reasons, has been spelt out in Chandrappa & Others v. State of Karnataka (2007) 4 SCC 415 as follows:

"In light of the above, the High Court and other appellate courts should follow the well settled principles crystallized by number of judgments if it is going to overrule or otherwise disturb the trial court's acquittal :

1. The appellate court may only overrule or otherwise disturb the trial court's acquittal if it has "very substantial and compelling reasons" for doing so.

A number of instances arise in which the appellate court would have "very substantial and compelling reasons" to discard the trial court's decision. "Very substantial and compelling reasons" exist when :

(i) The trial court's conclusion with regard to the facts is palpably wrong; (ii) The trial court's decision was based on an erroneous view of law; (iii) The trial court's judgment is likely to result in "grave miscarriage of justice"; (iv) The entire approach of the trial court in dealing with the evidence was patently illegal; (v) The trial court's judgment was manifestly unjust and unreasonable; (vi) The trial court has ignored the evidence or misread the material evidence or has ignored material documents like dying declarations/report of the Ballistic expert, etc. (vii) This list is intended to be illustrative, not exhaustive.

2. The Appellate Court must always give proper weight and consideration to the findings of the trial court.

3. If two reasonable views can be reached - one that leads to acquittal, the other to conviction - the High Courts/appellate courts must rule in favour of the accused. Had the well settled principles been followed by the High Court, the accused would have been set free long ago. Though the appellate court's power is wide and extensive, it must be used with great care and caution."

16. We are of the opinion that the Trial Court's reasoning in not relying upon the testimony of PW-2, PW-7 and PW-8 are substantial. Furthermore, the lack of scientific corroboration through the FSL report, in this Court's opinion, throws serious doubts about the accused Respondent's guilt or involvement. His volunteering to give samples and the prosecution's failure to get confirmation about those samples was sufficient to acquit him of the charges. Upon a careful consideration of the evidence led before the Trial Court, and the other materials placed before it, and after considering the submissions made by counsel, we are of the opinion that no substantial or compelling reasons exist warranting a second look into the case, as an appellate court. For these reasons, the petition, being

unmerited, requires rejection. It is, therefore, dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com