

State of Rajasthan

Vs

Narayan

Criminal Appeal No. 481 of 1992

(A. M. Ahmadi, Kuldip Singh, B. P. Jeevan Reddy JJ)

30.07.1992

JUDGEMENT

A.M.AHMADI, J.

1.Special leave granted.

2.Smt. Koyali, wife of PW 5 Tulchharam, complains that she was raped by the respondent Narayan on the morning of 23rd October, 1976 when she had gone to the cattle-shed to serve fodder to the cattle. The accused Narayan who is the brother-in-law of PW 5 Tulchharam's sister entered the cattleshed and finding the prosecutrix alone gagged her mouth and forcibly tried to take her inside but on her resisting threw her on the ground on the spot and raped her. The prosecutrix cried for help and struggled with the accused to save her honour. Her cries attracted the attention of PW 4 Joga Ram and PW 7 Bherudan. Bherudhan reached the spot first in point of time followed by Joga Ram and saw the accused on top of the prosecutrix. He pulled him up with one hand and consoled the prosecutrix who was weeping. Thereafter the accused ran away from the scene of occurrence and met PW 5 Tulchharam on the way who saw him tying his Dhoti from behind. The prosecutrix told PW 4 and PW 7 that the accused had forcibly violated her person. She complained that notwithstanding her protestations the accused over-powered her and had intercourse with her against her will. In the- struggle her garments were torn and she also suffered certain abrasions on the elbow joints and on the lumber region as the ground on which she was laid was rough and uneven. She also narrated the incident to her husband PW 5, an army man who had come to the village to celebrate Diwali which had fallen on the previous day. He was dissuaded by the accused and others from filing a complaint and was threatened with certain consequences if he did so. However, two days later he went to Merta with his wife to lodge his complaint Exhibit P3. Thereafter the investigation was taken up by the police and in the course of the investigation the statements of the aforesaid two eye-witnesses PW 4 and PW 7 came to be recorded. PW 1 Dr.R.P. Soni examined the prosecutrix on 25th October, 1976 and found that her clothes were torn, they carried slightly watery and blood like discharge stains and there were teeth marks, two in number, on her left breast near the nipple. On internal examination he found both the labia majora and minora and the clitoris swollen and read with slight bleeding discharge and the walls of the vagina tender with slight swelling. He also noticed abrasions on the back at the lumber region and on both the elbow joints. In his vaginal smear on microscopic examination showed 90% of dead sperms and 10% of live sperms. On the basis of these findings he concluded that the duration of the rape could be about 24 to 48 hours. After the police completed the investigation it submitted a charge-sheet alleging that the accused had committed offences punishable under Sections 452, 376, 342, 323 and 147 of the

Indian Penal Code. The learned Sessions Judge, Merta by his judgment and order dated 22nd November, 1978 found the accused guilty under Sections 376 and 451, IPC and sentenced him to suffer rigorous imprisonment for two years and to pay a fine of Rs. 1000/-, in default to suffer rigorous imprisonment for three months on the first count and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs. 500/-, in default to undergo rigorous imprisonment for one month on the second count. The substantive sentences were to run concurrently.

3. The accused, feeling aggrieved by this order filed an appeal, being Criminal Appeal No. 423/78, in the High Court of Rajasthan at Jodhpur. The said appeal came up for hearing Before a learned single Judge, who by his judgment and order dated 15th March, 1988 (reported in 1988 (1) Raj LW 278) reversed the order of conviction and sentence passed by the learned Sessions Judge and acquitted, the accused. With regard to the prosecution version regarding the incident having happened on the morning of 23rd October, 1976 in the cattle-shed of PW 5, the learned single Judge observed (para 9):

"It appears improbable that somebody will choose that hour of the day for committing forcible rape with a lady in a bada which is just near the public way." ,

4. He also observed that since it was a day next to Diwali there must have been a lot of movement on the public street to the west of the cattle-shed and, therefore, it is not possible to believe that anybody could commit forcible rape in the 'bada' adjacent to the public way. Proceeding further the learned Judge thought it inconceivable that a man would come to commit rape with a lady who is his sister-in-law's sister-in-law after about 6 years without any rhyme and reason and that too in day time. Taking this line of approach the learned single Judge found the story of the prosecutrix improbable and refused to place reliance thereon. The delay of two days in lodging the complaint was also considered to be a factor which went to show that the entire story was concocted. With regard to the evidence of PW 1 Dr. R. P. Soni, the learned Judge opined that since the prosecutrix was a married lady and two days had passed in between, it is only natural and she must have cohabited with her husband who had come on leave and hence the find of male sperms in her vagina is not surprising and that also explains the semen stains on her Ghagra. He also noted that according to the evidence of the prosecutrix although the accused had penetrated her, he had not discharged and, therefore, the story of the presence of male sperms of the accused in her vagina is unbelievable. The story that the prosecutrix was wearing torn clothes was also negated for the reason that the learned Judge found it difficult to believe that she would be wearing the same clothes two days thereafter. So also the learned Judge found it difficult to believe that the accused would be wearing the same semen stained dhoti for about 7 days. With regard to the evidence of the two eye-witnesses PWs 4 and 7 the learned Judge observes 'it is very easy to procure such witnesses in the village within a period of two days who may be ready to support the prosecution version'. On this line of reasoning the learned Judge refused to place reliance on the testimony of these two witnesses. He also found it unnatural that the prosecutrix should stop weeping on being consoled by one of the witnesses. He goes on to add that she could stop weeping only if she had cohabited with her own consent. As regards the injuries on the back and elbows of the prosecutrix, the learned Judge says ((1988) 1 Raj LW 278, para 19):

"Her husband was with her during the intervening period of two days and, therefore, it cannot be ruled out that all these injuries have been received by her while cohabiting with her husband because duration of injuries does not tally with the time of the occurrence."

5. On this line of reasoning the learned Judge reverse the order of conviction and acquitted the accused on both the counts. It is against this order of acquittal that the State has preferred this appeal.

6. Mr. Gupta, the learned counsel for the State of Rajasthan, submitted that the prosecutrix is a young woman belonging to the rural folk who had no reason whatsoever to falsely involve the accused in such a serious crime, No motive for such false involvement has been shown and it is difficult to believe that she would stake her chastity by making such a false allegation. She had known the accused since about 5 or 6 years because he had come to take her sister-in-law at the time of the Muklawwa (send-off) ceremony after marriage. She had no quarrel or enmity with the accused and, therefore, it is difficult to believe that she would level false allegation involving her chastity against the accused. The version of the accused that this was a counter blast to his complaint against PW 5 is difficult to accept. Her husband who was serving in the Army had come on leave and it is difficult to imagine why she should stake her reputation to falsely involve the accused. Equally it is difficult to believe that PW 5 would risk his wife's reputation to get even with the accused. The entire approach of the learned Judge, contends counsel, seems perverse. It is this approach which made him doubt the testimony of the prosecutrix as well as the two independent witnesses PWs 4 and 7. He also submitted that because the prosecutrix was a married woman, ordinarily one would not expect injuries on her person if she had sexual intercourse with her husband. Such injuries on the back and the elbow joints as well as on the vaginal walls are testimony of the fact that she had put up a struggle in the course whereof she sustained abrasions. As she was not a willing person and was a victim of a forcible sexual assault, there were injury marks on her vaginal walls leading to inflammation and swelling. He, therefore, submitted that the learned Judge in the High Court tried to brush aside this corroborative piece of evidence on the ground that since her husband was in the village, she must have sustained these injuries while having sexual intercourse with him. Mr. Gupta, therefore, submitted that this approach of the learned single Judge runs counter to common knowledge. Mr. Gupta pointed out that the approach of the learned Judge was almost biased against the prosecution which is betrayed by his observation that she stopped weeping because she may have been a consenting party which is nobody's case. He submitted that there was no valid reason for doubting the testimony of the prosecutrix and the two eye-witnesses as well as her husband in regard to the commission of the crime by the accused person. As regard the delay in lodging the complaint, Mr. Gupta submitted that on account of threats, social compulsions and natural reluctance to make such matters public there is always hesitation in approaching the police where the reputation of a woman is at stake. Hence it would not be proper to throw over-board the prosecution's case only on the ground of delay. We see considerable force in the submissions made by Mr. Gupta.

7. The husband of the prosecutrix was serving in the Army and had come to the village to celebrate Diwali with his wife and family members. When her husband had gone out and she was preparing to serve fodder to the cattle, the accused came from behind, put one hand on her mouth and the other on her back and tried to push her into the cattleshed. She resisted him whereupon he threw her on the ground, lifted her Ghagra, untied his dhoti and forcibly raped her. The prosecutrix being a strong woman resisted. the accused and in the process sustained abrasions on her lumber region as well as elbow joints. It is not possible to believe that a woman would suffer such abrasions while having sexual intercourse with her husband. The presence of abrasions on her elbow joints and the lumber region supply evidence of struggle during the act. The evidence of PW 1 Dr. Soni also shows that there were teeth marks near the nipple of one of her breasts lending corroboration to her testimony that the accused had violated her person.

8. The accused was a distant relative whom the prosecutrix had met for the first time about 5 or 6 years before at the wedding of her sister-in-law. Thereafter she had not many occasions to meet him. Her relations with the accused were not strained. The relations of her husband with the accused were also not strained. In the circumstances there was no motive or reason for the prosecutrix or her husband to falsely involve the accused in the commission of a crime which would not put her chastity at stake. Her husband had come to celebrate Diwali with his wife and family members and quarrel with anyone, more so a relative, would be farthest from his thought. Even the complaint filed by the accused on the 23rd was a fall out of the incident at which he was beaten. Unless the evidence discloses that she and her husband had strong reasons to falsely implicate the accused, ordinarily the court should have no hesitation in accepting her version regarding the incident. In *State of Maharashtra v. Chandra Prakash Kewal Chand Jain*, (1990) 1 SCC 550: (AIR 1990 SC 658) this Court had emphasised that a woman who is a victim of rape is in the same position as an injured witness and her evidence should receive the same weight. This is what this Court observed in that case (para 16 of AIR):

"A prosecutrix in a sex offence cannot be put on par with an accomplice. She is in fact a victim of the crime. The Evidence Act nowhere says that her evidence cannot be accepted unless it is corroborated in material particulars. She is undoubtedly as competent witness under Section 118 and her evidence -must receive the same weight as is attached to an injured in cases of physical violence."

9. The learned Judge in the High Court rejected her testimony for wholly unacceptable reasons. Firstly, he pointed out that because the 'bada' was situated at a short distance from the western thoroughfare it would not be possible to believe that in the days of festivities when there is considerable movement on the thoroughfare a person would try to have forcible sex with a woman. It must be remembered that the husband had gone out and the prosecutrix was all alone in the 'bada'. The accused came suddenly from behind, took her by surprise, threw her on the floor and had sexual intercourse with her. It seems that the accused was lust-ridden and seeing the prosecutrix alone lost control over himself and took her by force. There is nothing surprising in the conduct of a man who is lust-ridden in behaving in a carefree manner trying to make most of the situation of the prosecutrix being alone and helpless. There is nothing inconceivable about the accused committing rape with the prosecutrix merely because he happens to be a relative of the latter. Therefore, the line of reasoning adopted by the learned Judge in the High Court is difficult to accept. In addition to her own testimony there is the testimony of PWs 4 and 7 both of whom had reached the place of occurrence on hearing the shouts of the prosecutrix. These two persons also did not have any axe to grind against the accused and they had no reason to be actuated by malice against him. They were natural witnesses being neighbours and in the absence of strong reasons to disbelieve their versions, it is not possible to ignore their evidence as has been done by the learned Judge in the High Court. Further corroboration is to be found from the evidence of Dr. Soni. He saw abrasions, which, as pointed out earlier, corroborate forcible taking. Teeth marks on the breast also provide corroboration. The fact that the vagina was swollen also goes to show that she was forcibly taken against her wish. The presence of 90% dead and 10% live sperms has been hotly contested by the defence. Considerable importance has also been given thereto by the learned Judge in the High Court. The learned Judge observes that since the prosecutrix was a married woman and her husband had come only a few days ago to celebrate Diwali with her, the possibility of her having sexual intercourse with her husband cannot be overlooked. Thus far there is no difficulty. We may assume so although no such question was put to either the prosecutrix or her husband in the course of cross-examination. But it is not possible to believe that when a married woman has sex with her husband in the privacy of their bedroom she would suffer abrasions on her body and the vanal walls. The

abrasions on the vaginal wall and the consequential inflammation of the labia majora as well as minora and the clitoris provide corroborative evidence that someone had forcible sex with her. The learned single Judge was, therefore, wrong in brushing aside this important objective evidence tendered by the prosecution. Maybe the torn clothes were worn once again by the prosecutrix when she and her husband went to lodge the complaint two days later or the police made out such a panchnama. The same can be said about the attachment of the dhoti also, that by itself does not provide strong reason to doubt the prosecution's story regarding the incident. True it is that the complaint was lodged two days later but as stated earlier Indian society being what it is the victims of such a crime ordinarily consult relatives and are hesitant to approach the police since it involves the question of morality and chastity of a married woman. A woman and her relatives have to struggle with several situations before deciding to approach the police, more so when the culprit happens to be related. In such cases, therefore, the delay is understandable and hence merely on that account the prosecution version cannot be doubted.

10. In the result we find it difficult to accept the line of reasoning adopted by the learned single Judge in the High Court in regard to the commission of the crime in question. We think the learned counsel for the appellant is right in submitting that the totally wrong approach adopted by the learned single Judge in the High Court has resulted in miscarriage of justice. We are, therefore, compelled to interfere.

11. In the result we allow this appeal, set aside the order of the High Court and restore that of the trial court. We, therefore, overturn the acquittal order passed by the High Court and restore the order of conviction and sentence awarded by the trial court and direct the accused to surrender to his bail and serve out the sentence.

Appeal allowed.

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