
(2006) 02 RAJ CK 0064

In the Rajasthan High Court

Case No : Civil Habeas Corpus Petition No. 3251 of 2000 and Criminal MisW.P. No. 259 of 2001

Birju Ram and Another etc.

APPELLANT

Vs

State of Rajasthan and Others and Others

RESPONDENT

Date of Decision : 16-02-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 51

Criminal Procedure Code, 1973 (CrPC) — Section 107, 110, 116, 164, 165

Penal Code, 1860 (IPC) — Section 147, 148, 149, 304B, 306

Citation : (2006) CriLJ 1794 : (2006) 4 RCR(Criminal) 12 : (2006) 3 RLW 2090 : (2006) 2 WLC 529

Hon'ble Judges : N.N. Mathur, J; Manak Mohta, J

Bench : Division Bench

Advocate : Sandeep Mehta, for the Appellant; Panney Singh, for CBI, Pradeep Shah, Rajeet Joshi, S.K. Vyas and G.R. Punia, for the Respondent

Judgement

N.N. Mathur, J.—The instant habeas corpus petition though filed way back in September, 2000 and the corpus namely Mst. Bagtu was produced in Court on 16-11-2000 and the custody was given to the petitioners, but the petition has been kept pending to ensure that the culprits are brought to the book and complete justice is done to the victim. The proceedings in the instant case has raised certain important issues of criminal justice system with reference to the offence against women. Much is said about gender justice in the United Charter. In the Indian Constitution, there are provisions of equality jurisprudence. The crime against women has been specified under various provisions in Indian Penal Code i.e. Sections 376, 366, 354, 304B, 306, 498A and 509, I.P.C. The domestic violence has also been covered under the Indian Penal Code by recent amendments. There are special laws like Commission of Sati Prevention Act, 1987, Dowry Prohibition Act, 1961, Immoral Trafficking Prevention Act, 1956 and Medical Termination of Pregnancy Act, 1971 dealing with crimes against women. There are various statutory and non-statutory bodies to take care of women's

right, may be right to health, right to privacy, right to Job and protection against sexual harassment. Still there are challenges, which are required to be responded by the Society particularly the State and judiciary, which we have come across in the instant case i.e. patronage culture, caste taboos, non-sensitivity on the part of magistracy.

2. The factual backdrop in which the aforesaid issues have arisen is as follows:

The victim Mst. Bagtu, while she was still one month old was engaged with an infant, named Sohanlal the son of the 4th respondent Jagmal. She studied up to 8th Standard. Sohanlal turned out to be mentally unsound. Thus, Mst. Bagtu refused to marry with him. This gave rise to dispute between the two families. Matter was taken to the "Jati Panchayat", wherein the caste taboo prevailed, issuing command against Mst. Bagtu, which was not accepted by her and the parents. Against the command of Jati Panchayat Mst. Bagtu was married to Manoharlal of Makasar on 11-3-2000. When the Parichas of the Caste and the family members of Sohanlal came to know of this fact, the panchayat was reconvened. The family members of Mst. Bagtu were threatened to pay compensation in huge sum or to face dire consequences for disobeying the command of the Caste Panchayat. Her father disagreed to the unreasonable demand. As the members of the victim family were threatened, they approached to the police and as such proceedings under Sections 107 and 116, Cr.P.C. were registered against some of the leaders of the Caste Panchayat and family members of Sohanlal. Large number of people of the community assembled outside the residence of the victim's father. He was charged for disobeying the resolution of the Caste Panchayat. Some anti-social elements, who had become comparatively affluent, by unlawful means, took advantage of the situation, started threatening the victims family to part with huge sum or face consequences. Thus, on 5-8-2000 the 4th respondent Jagmal with other persons of village Dechu reached at the matrimonial house of the victim and abducted her after causing injuries to her husband and other inmates. A First Information Report of the incident was lodged at police station, Bajju, Bikaner for offence under Sections 307, 366, 323, 452, 147, 148 and 149, I.P.C. When the police failed to trace out Mst. Bagtu the first petitioner Birju Ram the father of Mst. Bagtu and second petitioner her husband Manoharlal approached to this Court by way of filing the instant petition. The police failed to produce Mst. Bagtu for considerable time. The petitioners made a grievance of political and police protection to abductors. The complaint of continuous threat to withdraw the instant petition was also made. Strangely, while police failed to produce Mst. Bagtu before this Court, it was reported that her statement u/s 164, Cr.P.C. was recorded by Additional Chief Judicial Magistrate, Abu Road on 20-10-2000 obliging the captors. Thus, the Home Secretary and the Director General of Police of State of Rajasthan were summoned in Court and impressed upon to ensure, production of the corpus. It appears that captors got the message that they will not be able to enjoy further protection as such, decided to produce her in Court under a protective plan ensuring that she does not divulge truth and they get her

custody back from Court. As per the plan on 16-11 -2000 a lawyer engaged by them for Mst. Bagtu made a mention in Court that she was prepared to appear in Court provided she is given police protection, which was immediately arranged. Thus, in no time she appeared in the Court under police escort. It was reported that she was brought in a filmy style in an Ambassador Car accompanied by accused Pratapa Ram and dropped at Pai Road. The victim appeared cheerful and well dressed. She identified herself as wife of one of the main accused namely Pratapa Ram. She also expressed her desire to stay with him. This Court in order to ensure that she was not under the influence of the persons from whose custody she had come, gave some time for reflection. Her parents were given an opportunity to meet her. Seeing her old father she broke down in the Chamber. It was felt that she needs time and proper atmosphere to come out of terror and build confidence, so as to make honest statement before the Court. Thus, she was kept comfortably in Police Guest House, under the supervision of the Superintendent of Police, Jodhpur. Nobody was allowed to meet her. On the next day, when she was brought to the Court she appeared more cheerful and confident. At the outset she made a statement to the effect that till last day she was under the threat of her captors, as such did not disclose the truth. Satisfied of Court and police protection she expressed desire to make truthful narration of her tale of woe. She stated that her surrender was planned by captors, putting her under the threat that if she makes any statement against them in Court her father and brother will be shot dead. The Court re-assured protection to her and family members. The narration given by her was recorded which runs in 7 pages. The experience disclosed by her is horrifying. The background in which she was married to the second petitioner Manoharlal need not be repeated. It was inter alia stated that a day earlier to 5-8-2000, Nehru Ram, Pratappa Ram, Shankerlal, Jagmal Ram, Bhanwarlal and Rana Ram visited her husband's house and threatened to settle the dispute or face the dire consequences. On 5-8-2000 the said persons along with 30-35 persons in Jeeps armed with guns, lathis, swords etc. arrived. They thrashed her husband Manoharlal and his brother Jagdish. She was lifted from the house and carried in the jeep. It may not be necessary to give the entire narration. Suffice is to say that she was kept in the captivity for 103 days and continuously raped by the eight of her captors at different places till she appeared before this Court on 16-11-2000. According to her, during her captivity, she was confined at various places in the State of Rajasthan, Gujarat and Maharashtra. She also stated that two of her captors namely Nehru Ram and Pratapa Ram were in possession of mobile phone and they used to ring up various persons. After some time realising that she was helpless, she tried to give impression that she was friendly. Thus, they also relaxed and started talking to various persons on mobile phone in her presence during her captivity. The captors used to discuss about seeking help from certain police officials at Jaipur. However, she could not identify the name of police officers who figured during such conversation. She also stated that Jagdish, Babu Ram and Dhanraj used to regularly talk to Nehru Ram and discuss about the police follow-up. It was also disclosed that the captors used to shift her on getting information of police

reaching near the captors. She also stated that she was carrying pregnancy at the time when she was abducted. This was got miscarriage by the captors in a hospital at Gandhi Nagar in the State of Gujarat. On getting a signal that every thing has been arranged for recording her statement u/s 164, Cr. P. C. on payment of Rs. 40,000-50,000/- to the lawyer her captors planned for her production in Court at Sirohi. She was taken to the Court at Sirohi and then to Abu. She was produced in the Court. The Magistrate only asked whether she was staying with Pratapa Ram willingly. As she was under the threat given by captors to the effect that if she reveals anything against them in Court her father and brother will be shot dead, she answered in positive. She signed on a prepared statement.

3. After recording her statement and perusing the police diary the custody Mst. Bagtu was given to her parents by order of this Court dated 17-11-2000. The part of the order may be extracted as follows:

From the statement of Mst. Bagtu, it clearly appears that she has been tortured, insulted, humiliated and treated inhumanly, for not agreeing to marry with Sohan Ram -- a mentally retarded person and then to Pratappa Ram -- married person having three children. She was being gang raped by 5 persons for three months. Though abductors may be from rural back ground, but it appears that they have become rich quickly and money is no problem for them. It appears that they deal in Transport and other business. They appear to be resourceful persons. It is alleged in complaint received from post that Nehru is indulged in opium smuggling. They could manage to dodge the police and the Court for substantial period because of some hidden help from certain influential persons.

While giving custody of Mst. Bagtu to the first petitioner directions were also given to the CBI to investigate the nexus between the captors and the police officials. The suo moto case was also registered against Nehru, Pratapa, Bhanwarlal, Shanker Lal and Banshi Lal and notices were given to them as to why they be not directed to any interim compensation to Mst. Bagtu and other concerned persons. The CBI report could not provide any clue as the main accused Nehru in whose possession was the mobile phone, could not be arrested for substantial period. About 20 accused person were arrested and they were put to trial before the Court of Additional Sessions Judge (Fast Track), Bikaner. The trial Court by judgment dated 10-1-2005 convicted three of the captors namely Prtapa Ram, Shankerlal and Bhanwarlal for offence u/s 376(2)(g), I.P.C. and sentenced to ten years rigorous imprisonment. They were also convicted and sentenced for offence under Sections 366, 148, 451, 459/149, I.P.C. and sentenced to 3 years rigorous imprisonment along with 7 other accused person namely Mohanlal, Anna Ram, Bhima Ram, Jagmala Ram, Kishna Ram, Mohanram and Heera Ram. Out of 20 accused persons 10 have been acquitted. The trial against 12 accused persons could not be initiated as the main accused Nehru Ram was still absconding Ultimately, he was nabbed by the Rajasthan Police at Chennai on 19-2-2005, Now all the remaining accused persons are facing trial in

the Court of Additional Sessions Judge (Fast Track), Bikaner.

4. In the suo moto petition Mst. Bagtu has filed an affidavit. She has reiterated her version given before us. However, we have noticed some of the additional facts not stated in her statement. It is averred that before her production before the Court for recording of her statement u/s 164, Cr.P.C. she was taken to village near Pall, where a fake Court was mimicked. There were two persons in the black coat. One of them was sitting on the Judge chair and other was acting as a APR. Later on she identified the person sitting on the chair as Ratan Lal Vishnoi, BDO, Luni. She was made to give a statement to the effect that she was staying with the accused persons on her own will without any pressure. Thereafter she was produced before the regular Court. Before recording her statement, she was threatened on gun point by accused Nehru Ram and others. Even before producing her before the High Court, she was threatened to give statement to the effect that she left the house on her own will and had gone with Pratapa Ram else her father and brothers would be shot dead. Before High Court at the initial stage she was not prepared to divulge the correct story as she was turmолled. However, on being assured that no harm will be caused to her or the parents she made the correct statement.

5. It emerges from the above narration that Mst. Bagtu and her family members have primarily suffered at the hands of extra constitutional Institutions like Jati or caste or community or village panchayat. The instant case, may be, one out of thousands of unreported suffering of women. Of course, media has covered, some incidence like Imrana, Gudia etc. These Jati Panchayats are guided by caste taboos. The Jati Panchayat gives verdict against women for breaking caste-taboos and directs bar-barious punishments. The Members of Assembly abets and become executors. The perpetrators of the crime do not allow the law to take its course. Public opinion is sought to be formed in favour of the caste taboos and against the women resulting into punishment of victim and protection of criminals. Anti-social people, criminal and brokers with the help of muscle power money enters in such Jati Panchayat and exploits the situation for their benefits monetary or otherwise. If such cases are closely analysed, the act constitutes an offence of kidnapping for ransom etc. punishable u/s 364-A, I.P.C. People do not have a courage to stand against the Caste Panchayat. Even the so called social or political workers play their role under the pressure of Jati Panchayat for the sake of votes at all levels i.e. Election of the Gram Panchayat, Assembly or Parliament. The Academicians also play role misdirecting the issue by asking a debate on personal law or customs. Arguments are advanced that these are social problems and will vanish with the economic developments. It is well settled that the customs or traditions in conflict with the basic rights of citizens, cannot be given preference. Some times the protection of such customs and traditions are given in the name of freedom of religion without understanding that it is not absolute. It is subject to public order, morality and health and other provisions of the Constitution, which includes the gender equality and right of women to make a choice about her personal life. In the case

of rape, physical integrity of women is destroyed. No amount of introduction of religion's text and their purported interpretation can justify an inhuman action. The basic principle of justice in the civilized society is that a person committing crime is punished and not the victim. Indeed, the victim is compensated and rehabilitated. Apart from the fundamental right of a woman of right to life, to live with dignity free from cruel degrading treatment, there is also a duty cast on every citizen by Article 51(e) of the Constitution to renounce practices derogatory to the dignity of women. It must be realized that the security of a woman is essentially a law and order problem, which is the State subject. In discharge of its constitutional obligation, the State cannot take plea of helplessness in the name of tradition.

6. It is unfortunate that an individual or a caste group or personal relations or may be for other reason enjoy patronage and takes the criminal to such a level of notoriety that they consider that law cannot reach to them. It is only the vigilant State and strong judiciary by their pro-active role can send a message to the society that the patronage culture will no more be able to protect them.

7. It may also be not out of place to mention that various level may be in very small percentage but there are people who suffers from the gender bias. Thus, there is a need to treat gender bias mentality. We have noticed gender bias mentally among some of the officials of the State Government which needs immediate treatment.

8. In the instant case much before the incident of abduction took place the father of the victim informed the police about happenings in the village particularly the activities of the Jati Panchayat. The proceedings under Sections 107, 110 were initiated. However, it appears that the police did not take the proceedings seriously. The inaction on part of the police has caused very costly to the victim Mst. Bagtu and her family members. The serious view taken by this Court in the matter had a salutary effect in the society, which is evident from the averments made in para 16 of the statement of Mst. Bagtu. It is averred that the incident of taking revenge in case of breaking of child marriage were rampant in their society but after intervention of this Court in her case to her knowledge not a incident of panchayat imposing penalty or girl being abducted had taken place during the course of last five years. She has referred to one incident, wherein in the identical circumstances daughter of one Rama Krishan a retired SHO of Bhakri near Lohawat, who was engaged with son of one Satya Narain former Sarpanch of vilage Lohawat contracted marriage with another body of her choice and a panchayat was convened for taking vengeance. In the Panchayat the father of the girl citing the example of the present incident refused to act on the instructions of the Panchayat and the girl is living happily with her husband.

9. After having noticed the cruel inhuman behaviour of the caste people and the persons in power under the patronage culture, we now turn to judiciary for corrective measures. It may be recalled that the captors managed to get statement of Mst. Bagtu recorded u/s 164, Cr.P.C. before the Additional Chief

Judicial Magistrate, Abu Road on 20-10-2000. Apparently, the captors abused the process of the Court. The magistracy in the State, needs to be more careful and sensitive.

10. The provisions of Section 164, Cr.P.C. needs to be explained which provides for recording of statement before the Magistrate. There is vital distinction between recording of statement of accused persons and recording of statement of a witness. There is provision for recording statement of witnesses when they are brought to the Court with the prayer to get their statement recorded in Court. Section 164, Cr.P.C. speaks that the Judicial Magistrate whether or not having the jurisdiction in the case, may record any confession or statement made to him during the course of investigation. The various High Courts have interpreted the provision to the effect that the Magistrate has wide jurisdiction in recording the statement u/s 164, Cr.P.C. The statement can be recorded anywhere in any part of the country. The interpretation of the provision has led to gross abuse, which we have seen in large number of cases. This has been the cause of misery and torture to a victim of sexual violence. Such cases are being frequently reported. The instant case is an illustrative among such cases. The issue has been settled by the Apex Court in Jogendra Nahak and Others Vs. State of Orissa and Others, In the said case the Apex Court after referring to the provisions of Section 164, Cr.P.C. in extenso and further examining the provisions of Sections 165 to 173, Cr.P.C. held that the police is required to adopt follow up steps in the matter of investigation and that in the scheme of the said provisions there is no set or stage at which a magistrate can take note of a stranger individual approaching him directly with a prayer that his statement may be recorded in connection with some occurrence involving a criminal offence. The Court further observed that if a Magistrate is obliged to record the statements of all such persons, who approach him the situation would become anomalous and every magistrate Court will be further crowded with a number of such intending witness brought up at the behest of accused persons. The Apex Court also dealt with the argument of apprehension to the effect that the concerned police officer may not record the statement correctly and rejected the same as follows (para 22):

If a magistrate has power to record statement of any person u/s 164 of the Code, even without the investigating officer moving for it, then there is no good reason to limit the power to exceptional cases. We are unable to draw up a dividing line between witnesses whose statements are liable to be recorded by the magistrate on being approached for that purpose and those not to be recorded. The contention that there may be instances when the Investigating Officer would be disinclined to record statements of willing witnesses and therefore such witnesses must have a remedy to have their version regarding a case put on record, is no answer to the question whether any intending witness can straightway approach a magistrate for recording his statement u/s 164 of the Code. Even for such witnesses provisions are available in law, e.g. the accused can cite them as defence witnesses during trial or the Court can be requested to

summon them u/s 311 of the Code. When such remedies are available to witnesses (who may be sidelined by the investigating officers) we do not find any special reason why the magistrate should be burdened with the additional task of recording the statements of all and sundry who may knock at the door of the Court with a request to record their statements u/s 164 of the Code.

Their Lordships further observed in para 23 as follows:

On the other hand, if door is opened to such persons to gel in and if the magistrates are put under the obligation to record their statements, then too many persons sponsored by culprits might throng before the portals of the magistrate Courts for the purpose of creating record in advance for the purpose of helping the culprits. In the present case, one of the arguments advanced by accused for grant of bail to them was based on the statements of the four appellants recorded by the magistrate u/s 164 of the Code. It is not part of the investigation to open up such a vista nor can such step be deemed necessary for the administration of justice.

Thus, there should not be any doubt that the statement of a witness u/s 164, Cr.P.C. can be recorded when a person is sponsored by the investigating agency. When it is not sponsored by the investigating agency the concerned Magistrate should look to the Police Diary and give sufficient time for reflection and also ascertain the bona fides of the parties concerned. We hope and trust that in future the magistracy in our State will be more vigilant and sensitive to ensure that the provisions of law are not abused, to perpetuate injustice to victim.

11. Turning to the question of direction as to payment of compensation to the victim and her family members, the parties have filed affidavits. As the accused respondents are in jail, we have also ascertained the financial conditions of the accused respondents. The claim of the victim is in the sum of Rs. 20 lacs. The accused persons, on an average income, disclosed by the accused respondents is about Rs. 4000/- per month. It is not possible to give credit to the assertions made by the parties as to their financial conditions. Thus, we are not inclined to enter into the question of payment of compensation. In exercise of powers under Article 226 of the Constitution of India. The accused persons are facing trial. The question is left to the appropriate Court to determine the compensation at appropriate stage. We have dealt with the concept of victimology, a step towards fulfilling the avowed promises made by our Constitution makers in *Suo Moto v. State of Raj* as than popularly known as German lady rape case reported in 2005 (2) RLR 819 and RLW 2005 (2) (Raj) 1385. It will be open for the complainant party to claim compensation from the accused persons in pending appear or the trial.

12. Before parting with, we record our appreciation for Shri Maheiidra Chaudhary, Additional S. P. and his team, who succeeded in nabbing Nehru Ram. The State Government will consider an appropriate award to those police officers.

13. In view of the aforesaid, both the petitions are disposed of with cost as

follows:

(1) The State Government is directed to evolve a mechanism to check the unwarranted activities of the people pushing caste taboos for their benefits in the name of Jatl Panchayat or any other name.

(2) The State Government to impress upon one and all in the Government in whatever position that any body found patronizing a person involved in criminal act shall be dealt with seriously.

(3) The cost of the petition is assessed as Rs. one lac, which shall be payable to the petitioners and the victim. The cost shall be shared by the accused persons as follows:

(i) Accused Nehru Ram and Pratapa Ram, each of them shall pay or deposit a sum of Rs. 15.000/- (Rs. fifteen thousand) with the High Court;

(ii) The patronizers or abettors of the crime namely Jagdish, Babu Ram and Dhanraj, each of them, shall pay or deposit a sum of Rs. 10,000/- (Rs. ten thousand);

(iii) The other captors namely Bhanwarlal, Shanker Lal, Banshi Lal, Mohan Lal and original culprits Jagmal and Rana Ram, each of them, shall pay or deposit a sum of Rs. 5000/- (Rs. five thousand);

(iv) Three months time is granted for paying of depositing the amount as indicated above, failing which recovery shall be made as Land Revenue;

(v) In the event the said amount is deposited with the High Court, or recovered the same shall be paid to victim Mst. Bagtu;

(4) It is made clear that, whatever is said in this order is based on the pleadings or other material before us. It will have no reflection on pending trial or appeal or any other proceedings.

(5) Copy of the order be sent to the Secretary Department of Home for compliance. Order accordingly.