
(2001) 01 RAJ CK 0019
In the Rajasthan High Court
Case No : Criminal Appeal No. 47 of 1999

Kanhaiyalal	Vs	APPELLANT
The State of Rajasthan		RESPONDENT

Date of Decision : 23-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 376

Citation : (2001) CriLJ 2325

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : Sandeep Mehta, for the Appellant; D.D. Kalla, Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.

1.This appeal has been preferred by the accused-appellant against the judgment and order dated 15-1-1999 passed by the learned Sessions Judge, Udaipur in Sessions Case No. 327/98 by which he convicted the accused-appellant for the offence u/s 376, IPC and sentenced him to undergo seven years" rigorous imprisonment and to pay fine of Rs. 1000/-, in default of payment of fine, to further undergo one year RI.

2. It arises in the following circumstances :--

On 18-9-1998 at about 12-05 PM, PW-1 Dhanji lodged a report Ex. P/1 before PW-7 Bheru Singh, SHO, Police Station Dhariyawad, District Udaipur stating inter-alia that on 17-9-1998 at about 5-00 p.m., his daughter Shambhudi P.W. 2 (hereinafter referred to as the prosecutrix) had gone to cut grass in the field of lohar, where accused-appellant came and forcibly caught hold her and tried to commit rape on her after beating her and when she made hue and cry, PW-3 Shankari came there and she also made hue and cry and, thereafter, accused-

appellant ran away from the scene and after that, prosecutrix came to her house and she told the whole story to her mother PW-4 Chokhli. It is further stated in the report that as there was no means of communication, therefore the report could not be lodged on 17-9-1998 and the same was lodged on 18-9-1998. At the time when the report Ex. P/1 was lodged by PW-1 Dhanji, prosecutrix was also with him.

On this report, PW-7 Bheru Singh chalked out the FIR Ex. P/2 and started investigation. It may be stated here that on the back of the report Ex. P/1, it is also mentioned that prosecutrix told the police that rape was committed by the accused-appellant with her.

During investigation, the prosecutrix was got medically examined in respect of her injuries, age and rape. The injury report of the prosecutrix is Ex. P/5 which shows that she received six injuries. The report about determination of age of the prosecutrix is Ex. P/9, where it is written that her age is nearabout 15 years. The report of Gynecologist is Ex. P/15, where it is written that there is evidence of penetration in the vagina of the prosecutrix. The accused-appellant was arrested by the police through Ex. P/6 on 19-9-1998.

After usual investigation, the police submitted challan against the accused-appellant in the Court of Magistrate and from where the case was committed to the Court of Session.

The learned Sessions Judge, Udaipur framed charges against the accused-appellant for the offence u/s 376, IPC on 12-11-1998. The charge was read over and explained to the accused-appellant, who pleaded not guilty and claimed trial.

During the course of trial, the prosecution examined as many as 12 witnesses and got exhibited many documents. Thereafter, statement of the accused-appellant u/s 313, Cr. P.C. was recorded. No evidence was produced in defence.

After conclusion of the trial, the learned Sessions Judge, Udaipur through his judgment and order dated 15-1-1999 found the accused appellant guilty of the charge u/s 376, IPC and accordingly he convicted and sentenced the accused appellant in the manner as stated above.

Aggrieved from the said judgment and order dated 15-1-1999 passed by the learned Sessions Judge, Udaipur, the present appeal has been filed by the accused-appellant.

3. In this appeal, the follpwing submissions have been raised by the learned counsel for the accused-appellant:--

1. That as per the highest case of the prosecution put forward in the FIR, it was the case of molestation and not that of rape and, therefore, the learned Sessions Judge has committed mistake in convicting the accused-appellant for the offence u/s 376, IPC and the case of rape has been improved by the prosecution.

2. That whereas in the first medical examination of the prosecutrix, the doctor

opined that there were finger nail marks on the body of the prosecutrix, on the other hand, subsequently when she was examined by the Gynaecologist, no marks of injuries have been alleged on her body, which shows that prosecution has concocted a case out of nothing.

3. That false report was lodged by PW-1 Dhanji because of personal dispute with the accused-appellant.

Hence, it is prayed that this appeal be allowed and accused-appellant be acquitted of the charge u/s 376, IPC.

4. On the other hand, the learned Public Prosecutor supported the impugned judgment and order passed by the learned Sessions Judge, Udaipur.

5. I have heard the learned counsel for the accused-appellant and the learned Public Prosecutor and perused the record of the case.

6. Before proceeding further, I would like to discuss the medical evidence of the present case.

7. So far as the age of the prosecutrix is concerned, for that statement of PW-8 Dr. G.L. Dad may be referred to. He states that on 21-9-1998 in capacity as Medical Jurist, Udaipur examined PW-2 Shambhudi, prosecutrix in respect of rape as well as her age and found that her height was 4 feet 10 1/2 inch, weight 36 kg. teeth 28, her breasts were not developed and axillary and pubic hair were not grown. After seeing her X-ray of wrist and elbow, he found that the age of the prosecutrix was about 15 years. He has proved the report Ex. P/9.

8. Another witness of the prosecution in this respect is PW-11 Dr. Narendra Kumar, Radiologist. He states that on 21-9-1998, he was Assistant Professor in the Medical College, Udaipur and he examined the prosecutrix for the purpose of determining her age from the point of view of radiological age and he opined that the age of the prosecutrix was between 14 to 16 years. He has proved the report Ex. P/13.

9. Thus, from the above medical evidence, it can easily be said that the age of the prosecutrix on the date of occurrence was between 14 to 16 years.

Medical examination of prosecutrix in respect of Injuries

10. In this respect, PW-6 Dr. Amrish-kumar has been produced by the prosecution. He states that on 18-9-1998 he being the Medical Officer in the Public Health Centre, Dhariyawad examined the prosecutrix and found the following injuries on her person :--

1. Bruise-- 7.5 cm. x 5.0 cm. on right side of neck.
2. Abrasion (nail abrasions) (Five)-- 1.0 cm. x 0.25 cm. each on right breast.
3. Lacerated wound with tenderness-- 2 cm. x 0.5 cm. on Hymen.

4. Abrasion (Two) 1.0 cm. x 0.25 cm. each on right labia majora.
5. Abrasion (Three) 1.0 cm. x 0.25 cm. each on left labia majora.
6. Abrasion (Four) 1.0 cm. x 0.5 cm. each on left side of back.

He has proved the injury report Ex. P/5.

11. Thus, from the injury report Ex. P/5, it is clearly proved that on the date of occurrence, prosecutrix was having above six injuries on her person.

Medical examination of prosecutrix in respect of rape

12. In this respect, the prosecution has produced PW-12 Dr. Madhubala Chouhan. She states that on 21-9-1998 she was posted as Assistant Professor in the Janana Hospital, Udaipur and she along with PW-8 Dr. G.L. Dad, Medical Jurist examined the prosecutrix and it was found that her hymen was ruptured and she has also stated that there was evidence of penetration in her vagina, but she did not find outer injuries. She has proved the report Ex. P/15.

13. Now the oral evidence in respect of commission of crime of rape has to be examined.

14. Before proceeding further, something should be said about legal position in respect of evidentiary value of the statement of the prosecutrix in rape case and the same can be summarised in the following manner:--

1. That prosecutrix of the sex offence cannot be regarded as an accomplice or cannot be put on par with an accomplice, actually she is a victim of the crime.
2. That corroboration of the testimony of prosecutrix in rape case is not required as a rule of law.
3. That corroboration in such cases is, however, required as a matter of prudence and this rule of prudence has now almost hardened into rule of law.
4. That the rules of prudence which has been hardened into rule of law is that the rule as to corroboration must be present in the mind of Judge and must have been incorporated in the judgment.
5. That if the evidence-of the prosecutrix does not suffer from any basic infirmity and the probabilities factor does not render it unworthy of credence, as a general rule, corroboration should not be insisted upon.
6. That the corroboration of the prosecutrix evidence may be dispensed with where the circumstances of a case make it safe to do so, But the reasons for dispensing with the necessity of such corroboration should be forthcoming in the Judgment.
7. That corroboration should ordinarily be required in the case of woman having attained majority and who is habitual to sexual intercourse as in such cases there is likelihood of her having levelled such an accusation on account of instinct

of self-preservation or when the probabilities factor is found to be out of time.

8. That the view that though corroboration should ordinarily be required in the case of a grown up woman, it is unnecessary in the case of a child of tender years is not correct. Whether corroboration is unnecessary is a question of fact in every case.

15. Apart from this, in rape cases, the Court must bear in mind human psychology and behavioural probability when assessing the testimonial potency of the victim's (prosecutrix) version.

16. Keeping the above legal position in mind, the evidence of the present case is being critically examined.

17. No doubt in the report Ex. P/1 it is mentioned that accused-appellant tried to outrage the modesty of the prosecutrix, but in that report, it is also written that prosecutrix told the whole story to her mother PW-4 Chokhli first and at the time of lodging report Ex. P/I before the Police Station Dhariyawad, the prosecutrix was also present and on the back of the report Ex. P/I, it is also mentioned that prosecutrix told the police that she was raped by the accused-appellant.

18. PW-1 Dhanji has clearly stated in his statement that prosecutrix told the whole story to her mother PW-4 Chokhli first.

19. PW-4 Chokhli, who is mother of the prosecutrix, has stated in her statement that she was told by the prosecutrix that rape was committed on her by the accused-appellant. She has been cross-examined, but nothing has come out which discredits her testimony.

20. So far as the statement of PW-2 Shambhudi, prosecutrix is concerned, she has clearly stated in her statement that accused-appellant has committed rape on her after putting her on the ground and at that time, PW-3 Shankari and Gauri were also with her and seeing the incident, both ran away. She has been cross-examined, but nothing has come out which affects her testimony. The statement of PW-2 Shambhudi, prosecutrix is further corroborated by the statement of PW-3 Shankari, who states that she was with the prosecutrix at the time of alleged incident.

21. Thus, there is ample oral evidence in this case which supports the case of the prosecution that accused-appellant has committed rape on prosecutrix PW-2 Shambhudi.

22. The corroboration of the testimony of the prosecutrix in rape cases is not required as rule of law, but, as a matter of prudence and this rule of prudence has now almost hardened into rule of law, which seeks corroboration.

23. The Court should expect to find evidence of a struggle to avoid sexual contact or penetration and may well feel uncertainty about the real nature of an alleged assault in its absence.

24. In the present case, abrasions on right breast, bruise on right side of neck, injuries on hymen, right labia majora, left labia majora and left side of back were found on the person of the prosecutrix, as per her injury report Ex. P/5. These injuries may be considered to constitute some evidence of struggle and bruises and abrasions on inner side of her vagina, on back and breast may be inflicted during attempt to abduct the legs forcibly. Thus, the presence of the injuries on the person of the prosecutrix further supports the case of the prosecution. The injury on the person of the prosecutrix especially on private parts has corroborative value. Her complaint to PW-4 Chokhli, mother of the prosecutrix, just after the occurrence also warrants credence to her statement.

25. Thus, it can be easily said that the statement of PW-2 Shambhudi, prosecutrix gets corroboration from the medical evidence, as in the present case, according to her medical examination reports, she received injuries on her neck, breast, private parts and her hymen was torn and there is also evidence that her vagina has evidence of penetration of penis. These are the indications that rape was committed on her.

26. For the reasons stated above, the statement of PW-2 Shambhudi, prosecutrix, which is fully supported by the medical evidence, can be believed on the point that she was forcibly raped by the accused-appellant and thus, the findings of the learned Sessions Judge in this respect are liable to be confirmed.

27. So far as the argument that allegations of rape is not found in the report Ex. P/ 1 is concerned, on this aspect, it may be stated here that no doubt allegation of committing actual rape is not mentioned in the report Ex. P/1, but only attempt to commit rape is there, but as stated earlier, the prosecutrix PW-2 Shambhudi was also present at the police station when the report Ex. P/I was lodged and she has clearly stated to the police as is evident from the back of report that she was raped by the accused-appellant and she narrated the whole story not only to PW-1 Dhanji, but to PW 4 Chokhli and PW-4 Chokhli. corroborates the statement of prosecutrix. In these circumstances, non-mentioning of allegation of rape in the report Ex. P/1 has no value and it does not affect the case. Thus, this argument stands rejected.

28. So far as the argument that PW-12 Dr. Madhubala Chouhan has stated that she did not find any injury on outer side of vagina of prosecutrix while PW-6 Dr. Amrishkumar has narrated such type of injury in the injury report Ex. P/5 and thus, there is contradiction in the statement of these two witnesses is concerned, in my opinion, this argument is also not tenable, in view of the fact that injury report Ex. P/5 is dated 18-9-1998 and PW-6 Dr. Amrish Kumar examined the prosecutrix on 18-9-1998 while PW 12 Dr. Madhubala Chouhan examined the prosecutrix on 21-9-1998, meaning thereby three days later and during these three days, minor injuries near her vagina might have disappeared and, therefore, this argument in view of the clear-cut statement of prosecutrix is liable to be rejected and the same is rejected.

29. The argument that false report was lodged by PW-1 Dhanji because of the personal dispute with the accused-appellant, on the very face appears to be absurd, because no father would falsely involve his daughter in rape case. Hence, this argument also stands rejected.

30. Thus, from all point of view, it is held that the prosecution has proved its case beyond all reasonable doubt against the accused-appellant for the offence u/s 376, IPC and the learned Sessions Judge has rightly convicted the accused-appellant for the said offence and his findings in this respect are liable to be confirmed and appeal of the accused-appellant is liable to be dismissed.

Accordingly, the appeal filed by the accused-appellant Kanhaiyalal fails and is dismissed after confirming the judgment, and order dated 15-1-1999 passed by the learned Sessions Judge, Udaipur.