

(2006) 10 RAJ CK 0059
In the Rajasthan High Court

Ramesh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164, 174, 313
Penal Code, 1860 (IPC) — Section 302, 34, 376, 392, 394
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3

Citation : (2007) 1 RLW 550

Hon'ble Judges : Shiv Kumar Sharma, J; Chatra Ram Jat, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellants were convicted and sentenced by the learned Sessions Judge Bundi as under:

Ramesh:

Under Section 302 IPC:

To suffer imprisonment for life and fine of Rs. 100/-.

Under Section 376(2) IPC:

to suffer imprisonment for life and fine of Rs. 100/-

Bajrang Lal and Rajmal @ Raju:

Under Section 302/34 IPC:

Each to suffer imprisonment for life and fine of Rs. 100/-

Under Section 376(2) IPC:

Each to suffer imprisonment for life and fine of Rs. 100/-.

The substantive sentences were ordered to run concurrently.

2. The three appeals preferred against the finding of conviction were however allowed by this Court and the appellants stood acquitted of the said charges. The finding of acquittal was primarily founded on the assumption that since the star witness of the prosecution viz., Rukma (PW-4) behaved as if she was accomplice, her evidence could not have been relied upon. This finding of acquittal has been set aside by the Supreme Court. Vide order dated July 11, 2006. Their Lordships of the Supreme Court remanded the case to decide it afresh with the following observations:

In view of the other proposed to be passed by us, we do not intend to enter into the merit of the matter. We are of the opinion that the Division Bench of the High Court appears to have committed a manifest error in proceeding on the basis that PW-4 Rukma was an accomplice. In any event, no sufficient or cogent reason has been assigned in support of the said conclusion. Furthermore, once that part of the finding of the High Court is set aside, the evidence of PW-4 could undoubtedly be considered for proving the prosecution case, as she was not an accomplice. Necessarily the other part of the judgment cannot be sustained. The High Court, in our opinion, should have dealt with the findings of fact arrived at by the learned Sessions Judge and considered the matter more closely and examined the materials brought on records by the prosecution.

3. We have heard learned Counsel for the appellants as well as learned Public Prosecutor and with their assistance closely scanned the judgment of learned trial Judge and the other materials on record.

4. It is the prosecution case that Hajari Lal (PW-2) Administrator of Gram Panchayat Baswada forwarded a written report to Police Station Lakheri on January 30, 1993 through one Ram Niwas for taking into custody a dead body that was lying on the road between Bada Kheda and Baswada. Upon the said written report, Police Station Lakheri initiated proceedings u/s 174 Cr.P.C. and a criminal case u/s 302 IPC was registered. In the course of investigation the deceased was identified a Foriya by one Rukma (PW-4), who deposed that deceased was her husband by Nata. She also stated that Ramesh Chand, Rajmal and Bajrang Lal (appellants) committed murder of her husband, raped her and forcibly took her anklet and nose pin. The police aided Sections 376 and 394 IPC along with Section 3 SC/ST (PA) Act, 1989 and investigation commenced. Necessary memos were drawn, statements of witnesses got recorded, the appellants were drawn, statements of witnesses got recorded, the appellants were arrested and on completion of investigation charge sheet was Tiled. In due course the case came up for trial before the learned Sessions Judge Bundi. Charges under Sections 302, 302/34, 376 and 392 IPC were framed. The appellants denied the charges and claimed trial. The prosecution in support of its case examined as many as 36 witnesses. In the explanation u/s 313 Cr.P.C, the appellants claimed innocence. No witness in defence was however examined. On hearing Final submissions learned Sessions Judge convicted and sentenced the appellants as indicated herein above. The appellants were however acquitted of

the charge u/s 392 IPC.

5. The prosecution case is founded on the testimony of Rukma (PW-4). In the opinion of learned trial Judge Rukma was a witness of sterling worth. The infirmities shown in the testimony of Rukma were found by him as insignificant and not fatal to the prosecution case.

6. In order to adjudge the finding of learned trial Judge it is necessary to closely scrutinize the evidence of Rukma (PW-4). In her deposition she stated that the appellants killed Foriya by inflicting knife blows on his person and took her with them. She had to live with appellant Ramesh for two days and three nights and one day finding Ramesh sleeping, she somehow escaped and reached to the police station Indergarh where she narrated the incident to the SHO who got the report noted down and she put her thumb impression on the report. She remained in the police station for about 15 days. Relevant portion of Rukma's statement reads as under:

xkao ls igqapus ij ge ckckth ds ?kj esa jg FksA jes?k rks lks gh jgk Fkk] vkSj eS tYnh mBdj ckgj fudyh rks ckgj ,d vkSjr eq>s xkscjh mBkrh feyh] ftlls eSus iwNk fd ckbZ ;gka dkSu lk Fkkuk yxrk gS] rks mlus crk;k fd ;gka dk Fkkuk bUnzx<+ yxuk crk;kA ogka ls eS eksVj esa cSBdj bUnzx<+ vk;hA --- cl okys us esjs dks Fkkus ds ckgj mrkj fn;k tgka ,d flikgh [kMk Fkk] cl okys us flikgh ls dgk Fkk fd bl ckbZ dks vUnj ys tkukA bl ij eSa mlds lkFk vUnj pyh xbZ rks vUnj Fkkus esa esjs ls iwNrK dh rks eSus Fkkus esa lkjk okdk crk;kA ---- Fkkus esa djhc 15 fnu jgh gksxh] ;kfu tc rd eqyfteku idM+us esa ugha vk;s rc rd Fkkus esa jghA --- eSa yk[ksjh Fkkus esa gh jgh FkhA eSaus bUnzx<+ ds Fkkusnkj dks iwjh ckr crkbZ Fkh vkSj mUgksaus esjh ckr dks fy[kk Hkh Fkk vkSj esjk vaxwBk Hkh djok;k Fkka esjs ls djhc 1 ?kUVk iwNrK dh gksxhA

7. Rukma also admitted to have lodged the report at Police Station Lakheri:

eSus fQj vkdj yk[ksjh esa Hkh fjiksVZ fy[kkbZ Fkh vkSj ogka Hkh esjh fjiksVZ fy[kh xbZ Fkh rFkk esjk vaxwBk djok;k Fkka

8. After the incident Rukma had crossed the river while climbing on the shoulders of appellant Ramesh:

^^Qksfj;k dks ekjus ds ckn ge tc x;s rks unh vkbZ FkhA unh dk ikuh dej dej Fkka unh esa esjs diM+s Hkhxs ugha Fks] D;ksafd jes?k us esjs dks eksjksa ij cSBkdj unh ikj djokbZ FkhA

She was also made to ride on the boat in the company of many persons:

--- eq>s uko esa cSBk;k Fkka --- ml le; uko esa cgqr lkjs vkneh FksA

9. Rukma and appellant Ramesh together visited and stayed at various places. Rukma herself told Babu Lal (PW-5) that she and Ramesh were sister and brother as she was the daughter of maternal aunt of Ramesh.

10. Bhanwar Lal Sharma, Investigating Officer (PW-36) admitted that Rukma

came to the Police station Lakheri on January 31, 1993 and she remained in the quarter of police station under the control of lady police. The statement of Rukma u/s 164 Cr.P.C. got recorded on February 9, 1993. Bhanwar Lal Sharma deposed as under:

,l ,p vks bUnzx+ eql :dek dks [kqn esjs ikl ysdj vk;s Fksa esjs fy;s eSaus Fkkuk bUnzx ls jkstukepk ntZ fjiksVZ dh dksbZ udy izkIr ugha dh D;ksafd ;g eql :dek ds lkFk ?kfVr vij/k ds iwoZ esa Fkkuk yk[ksjh esa eqdnek vKkr eqyfteku esa ntZ gks pqdk Fkka eSus Fkkusnkj lk bUnzx dk c;ku ugha fy;kA eSa Hkh Fkkus bUnzx ij dksbZ fjiksVZ izkIr djus Hkh ugha x;kA eql :dek 31-1-93 dks esjs ikl Fkkus ij vk xbZ fQj fdrus fnu Fkkus ij jgh ;g eqs vc ;kn ugha gS D;ksafd cgqr le; gks pqdk gSA eqdnek gkth ds nhxj dk;Zokgh ds ipkr gh eql :dek ds c;ku fy;s x;s Fks tks 164 lhvkjihlh esa fy;s x;s FksA rc rd eql :dek fnukad 9-2-93 rd Fkkus ij iqfyl ckgj DokVZj esa iqfyl dh fuxjkuh esa jgh gSA tks ysMht iqfyl dh fuxjkuh esa jgh gSA Fkkus esa yksdvi Fkkus esa pkSd ds ckn fcfYMax dh lkbM esa gSA ;g ckr xyr gS fd :dek ml pkSd esa gh jgrh gksA ;g rks Fkkus ds lkeus jksM ds nwljh rjQ ljdkjh DokVZj esa igys rks ogka jgh ckn esa mlds HkbbZ oxSjk vkus ds ckn xkao esa jghA Fkkus ds ikl gh ekfy;ksa ds edku esa jgha eq>s HkbbZ dk uke ;kn ugha gSA mlds lkFk ysMh iqfyl jgrh FkhA ekfy;ksa ds edku ij ysMht iqfyl ugha jgrh Fkh ;g rks ysMht iqfyl mlds lkFk Fkkus ij jgh rc rd jgha og Fkkus esa 6&7 fnu jgh tks Fkkus ds ckgj ljdkjh DokVZj esa :dek jgh rc ysMht iqfyl dh fuxjkuh esa j[khA tc eS eqyfteku dk fxjrkj djds yk;k rc ;g :dek ogka jgrh FkhA :dek vkbZ rc eSaus lh/kk c;ku fy;k Fkk fjiksVZ ntZ ugha dhA mldk dksbZ fu?kkuh vaxwBk ugha dj;k Fkka D;ksafd iwoZ esa eqdnek ntZ gks pqdk Fkka bldh yk?k dks :dek dks ugha laHkykbZ yk?k dks mlds fir ds ;gka tfj;s ,,lvkbZ mn;iky HkhyokMk ds fy, Hkstk fn;k x;k Fkka

11. Dr. Sunita Dua (PW-25) examined Rukma on January 31, 1993 and drew report Ex.P-15. Few white stains were found on the petticoat of Rukma. No mark of violence was however found on her body. Sign of inflammation was also not found. Vaginal swab of Rukma was taken and sent to the forensic expert. Dr. Sunita Dua opined as under:

From above findings, it cannot be said confirmly that rape has been done. Confirmation is possible only after examination of vaginal swab report from forensic expert.

12. Factual situation that emerges from the material on record may be summarized thus:

(i) Death of Foriya was homicidal in nature. Foriya entered into Nata marriage with Rukma.

(ii) After the alleged incident Rukma and appellant Ramesh had been together for 2 days and 3 nights. During this period Rukma had occasion to meet many person but she did not disclose the incident to anybody.

(iii) Rukma herself said to relatives of appellant Ramesh that she was his cousin

sister.

(iv) Rukma crossed the river while climbing on the shoulders of appellant Ramesh.

(v) Rukma remained in police station for about 15 days and did not go to the house of her in-laws to attend last ceremonies of her deceased husband.

(vi) There is no evidence on record to show that deceased Foriya before his death was seen in the company of appellants.

(vii) Recovery of knife, pursuant to disclosure statement of Ramesh, allegedly got affected on February 7, 1993 vide Ex.P/14 from the house of Ramesh.

(viii) Motilal (PW-23), motbir of recovery of knife, deposed that at the time of recovery he was not allowed to go inside the house.

(ix) Bhanwar Lal Sharma, IO admitted that knife was not sealed by him on the spot.

(x) There is no evidence on record to show that from the date of incident till his arrest, Ramesh had any opportunity to go to his house for the purpose of concealing the knife.

(xi) Dr. Sunita Dua (PW-25) deposed that the opinion in regard to rape could only given after examination of vaginal swab by the FSL.

(xii) The FSL report, which was produced along with the application at the stage of appeal, did not contain the opinion about vaginal swab.

(xiii) Report lodged by Rukma at Police station Indergarh was withheld. Even the SHO P.S. Indergarh, before whom Rukma appeared for the first time after the incident, was not examined.

(xiv) Report lodged by Rukma at Police Station Lakheri was also concealed.

(xv) Bhanwar Lal Sharma, IO, could not give explanation as to why the statement of Rukma, who reached at the Police Station on January 31, 1993, could be recorded only on February 9, 1993.

(xvi) It could also not be explained as to why Rukma was kept for 15 days in the police station. Why was the no sent to "Nari-Shala" (Ladies-Hostel).

13. According to the books on medical jurisprudence, there are four tests to be applied to corroborate or contradict evidence with regard to rape. They are the presence of absence of (i) marks of violence about the genitals, (ii) marks of violence on the person of the prosecutrix or accused, (iii) stains of spermatic fluid or of blood on the clothes of prosecutrix or the accused. In the instant case as already noticed, no marks of violence were found on the person of Rukma. Her vaginal swab was taken and sent to FSL, but FSL report did not contain the opinion about vaginal swab. Testimony of Dr. Sunita Dua could not establish that

Rukma was subjected to rape. The conduct of Rukma was also no less suspicious. It is doubtful if she made any kind of complaint regarding the alleged incident. She admitted that she did not directly tell anything about the alleged incident to the persons she met. There were large number of infirmities in the prosecution evidence. The story of alleged gang rape was of most suspicious and doubtful character. The trial Judge appeared to be obsessed by the gravity of the offence, because of the label it bore of murder and gang rape, and by long and laboured reasoning unjustly tried to meet the infirmities in the prosecution case.

14. The evidence of Rukma has been totally discredited in the cross-examination and her evidence does not inspire confidence. She remained in the police station for about 15 days and this possibility cannot be ruled out that she was tutored by the police officials. Delay of nine days in recording the statement of Rukma, even after her reaching at the police station on January 31, 1993, is also fatal to the prosecution case. The testimony of Rukma thus is unworthy of credit and it is not possible to sustain conviction on such evidence.

15. For these reasons, we allow the appeals and set aside the judgment dated February 2, 1996 of learned Sessions Judge Bundi. We acquit appellants Ramesh, Bajrang Lal and Rajmal (a Rajti of all the charges. The appellants need not surrender since they already stood enlarged.