
(2016) 04 RAJ CK 0007
In the Rajasthan High Court
Case No : Cr. Jail Appeal No. 821 of 2011.

Sabu alias Shambhu Lal	Vs	APPELLANT
State of Rajasthan and another.		RESPONDENT

Date of Decision : 18-04-2016

Acts Referred:

Penal Code, 1860 (IPC) — Section 376, 447

Citation : (2016) 2 CriLR 868 : (2016) 1 WLCRajUC 746

Hon'ble Judges : Vijay Bishnoi, J.

Bench : Single Bench

Advocate : Shambhoo Singh and P.S. Chauhan, Advocates, for the Appellant;
R.K. Bohra, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vijay Bishnoi, J. - This criminal appeal has been filed by the appellant through jail against the judgment dated 04.10.2010 passed by Additional Sessions Judge (Fast Track), Banswara (for short "the trial court" hereinafter) in Sessions Case No. 06/2010, whereby the trial court has convicted the accused-appellant for the offences punishable under sections 376 and 447 IPC and sentenced him as under:

Under section 376 IPC : Seven years" simple imprisonment and to pay a fine of Rs. 1000/-, in default of payment of fine, further to undergo one month"s simple imprisonment.

Under section 447 IPC : One month"s simple imprisonment.

2. Both the sentences were ordered to run concurrently.

3. Brief facts of the case are that on 13.10.2009 at 5:30 P.M., prosecutrix PW.1 submitted a written report to the Station House Officer, Anandpuri, District Banswara alleging therein that in the night of 05.10.2009, when she along with her younger sister was sleeping in the courtyard of her house, then accused-appellant came there and tied her mouth with a towel and took her to the pond

situated behind her house and thereafter committed rape upon her and thereafter when she was running from there stating that she would tell about this to her mother, then the accused-appellant caught hold of her, took her back there and again raped her. She has also alleged that a day before, the accused-appellant also came to her house and tried to rape upon her mother, therefore, action be taken against him.

4. On receiving this report, S.H.O., Police Station Anandpuri, District Banswara registered the FIR No. 173/2009 dated 13.10.2009 against the accused-appellant for the offence punishable under section 376 IPC.

5. During the course of trial, the statements of the complainant were recorded under section 164 Cr.P.C., wherein she has stated that in the morning, she had informed the incident. She has repeated the allegations that in the night of 05.10.2009 when she was sleeping in the courtyard of her house, the accused-appellant came there and took her away in the pond situated behind her house and thereafter committed rape upon her twice. She has also stated that in the morning, she had informed about the incident to her maternal uncle Jorawar and also to her parents when they came home in the afternoon. She has also alleged that earlier also, the appellant tried to commit rape upon her mother.

6. After investigation, the police filed charge-sheet against the appellant for the offences punishable under sections 376 and 447 IPC and on committal, the learned trial court also framed charges against the appellant for the offences under sections 376 and 447 IPC.

7. During the course of trial, the prosecution got examined as many as 10 witnesses and the statements of the accused-appellant were recorded under section 313 Cr.P.C., wherein he has denied that he had committed the offence. Learned trial court after taking into consideration the evidence adduced by the prosecution has convicted the appellant for the offences punishable under sections 376 and 447 IPC and sentenced him as aforesaid.

8. Assailing the impugned judgment, learned counsel for the appellant has argued that the prosecution has miserably failed to prove the case against the appellant for commission of offences punishable under sections 376 and 447 IPC. It is argued that the first information report regarding the alleged incident was filed after a delay of 8 days and no satisfactory explanation was given by the prosecutrix and her parents regarding the said delay. It is also argued that the testimonies of PW.1, PW.2 and PW.3 are improbable and not liable to be relied upon, however, the trial court has erred in placing reliance on the said prosecution witnesses particularly the testimony of PW.1. Learned counsel for the appellant has contended that the testimony of PW.1 is not reliable for following reasons:

(i) Narration of the happenings of the incident by her is so unnatural that no layman can believe it.

(ii) None of the independent witnesses has corroborated the incident.

(iii) The prosecutrix PW.1 in her testimony has stated that the incident took place in the night of 05.10.2009 and in the next morning i.e. 06.10.2009, she informed her maternal uncle PW.7 Jorawar about the incident, however, PW.7 in his statement has not supported the prosecution story and specifically stated that he has never been informed about any such incident by the prosecutrix.

(iv) Doctor PW.8 Ravi Upadhyaya, in his statement has clearly stated that during the course of medical examination of the prosecutrix, he did not find any injury on her body except one burn injury and he has also not given definite opinion about the commission of rape upon the prosecutrix.

(v) The prosecutrix has failed to satisfy the actual relationship of the appellant with her. In her statement, she has stated that the appellant is her brother-in-law, whereas the parents of the prosecutrix have stated that the accused is of her mother's sister and this fact in itself is sufficient to come to the conclusion that the prosecutrix has levelled false allegations against the appellant on being tutored by others.

9. Learned counsel for the appellant has further argued that the prosecution witnesses PW.1, PW.2 and PW.3 have stated in their statements that the appellant was married to sister of the prosecutrix's mother and a dispute between the appellant and his wife was going on. It is submitted that from the testimony of the parents of the prosecutrix, it is clear that relations between them and the appellant were not cordial and looking to that circumstance, there is all possibility that the appellant has falsely been implicated in this case. Lastly, it is argued that from the critical analysing of the entire evidence produced by the prosecution, it cannot be said that the prosecution has proved the case beyond reasonable doubt, hence, the trial court has grossly erred in convicting the appellant for the offences punishable under sections 376 and 447 IPC. It is, therefore, prayed that the appeal may kindly be allowed and the impugned judgment may kindly be set aside.

10. Per contra, learned Public Prosecutor has vehemently opposed the submissions made by the learned counsel for the appellant and argued that the prosecutrix was minor at the time of incident. She has specifically stated in her police statement recorded under section 161 CrPC, in the statement recorded before the Magistrate under section 164 CrPC and the statement recorded before the trial court that the appellant committed rape upon her twice in the night of 05.10.2009 and the said testimony of the prosecutrix itself is sufficient to prove the guilt of the appellant and, therefore, the trial court has not committed any illegality in convicting the accused-appellant for the offences punishable under sections 376 and 447 IPC.

11. Heard learned counsel for the rival parties and perused the impugned judgment and carefully scrutinised the record.

12. As per the statements of the prosecutrix-PW.1 and her parents PW.2 and PW.3, the incident took place in the night of 05.10.2009 at about 11:00 P.M. In the next morning i.e. 06.10.2009, the prosecutrix informed about the incident to her maternal uncle PW.7 Jorawar and in the afternoon to her parents when they came back to their village.

13. The trial court has held that the prosecutrix might have been shocked by sexual assault on her and, therefore, it took her two days to inform about the incident to her maternal uncle and her parents, however, the evidence placed on record suggests otherwise. The prosecutrix PW.1 in her statement has specifically stated that she had informed her maternal uncle Jorawar about the incident in the morning and to her parents in the afternoon. The parents of the prosecutrix PW.2 and PW.3 have also specifically stated that their daughter informed them about the incident in the afternoon. From the above piece of evidence, it is clear that the parents of the prosecutrix were aware about the incident few hours after the happening. The trial court has given one more reason for not accepting the arguments of the appellant that there was unexplained 8 days" delay in filing the FIR. It has observed that the prosecution witnesses PW.1, PW.2 and PW.3 in their statements have stated that after the incident, "HkkatxMk" (talks for compromise) took place and due to the said talks, delay might have been caused in filing the FIR. The trial court has also held that though "HkkatxMk" is not a legal procedure but in the tribale areas such practise is prevalent where the criminal incidents are being settled through "HkkatxMk". However, while giving the said finding, the trial court has failed to take into consideration the fact that PW.1, PW.2 and PW.3 have stated in their statements that a dispute between the appellant and his wife was going on and the wife of the appellant is residing with them. They also stated that the parties were exploring the possibility of compromise between the appellant and his wife. PW.3 Harish, father of the prosecutrix has specifically stated that in the said compromise talks, the accused-appellant did not participate, however, none of the above witnesses has clarified that the talks of compromise had taken place in relation to the incident being complained of or regarding the dispute between the appellant and his wife.

14. This Court is of the opinion that after going through that piece of evidence, it is clear that the delay of 8 days in filing the FIR against the appellant remained unexplained and that itself leads to a doubt that the appellant might have been falsely implicated on account of a matrimonial dispute going on between him and his wife, who happened to be the real sister of the prosecutrix"s mother. Apart from that, the another witness maternal uncle Jorawar has not supported the prosecution story and has turned hostile. In his cross-examination, he has specifically denied that the prosecutrix has informed him about the incident in the morning of 06.10.2009.

15. Dr. Ravi Upadhyaya, who had conducted the medical examination of the prosecutrix, has been examined as PW.8. He has opined that as per the medical examination of the prosecutrix, her age was 14 years. In his cross-examination,

he has specifically stated that he cannot say that rape has been committed with the prosecutrix or not. He has also stated in his statement that he has not found any injury upon the body of the prosecutrix except one burn injury and there were no external or internal injuries on the private parts of the prosecutrix.

16. Now we see the evidence of the prosecutrix PW.1, who has stated that at the first instance, the appellant had forcibly raped her in the pond and when she told him that she would tell her mother about this, then again, the appellant caught hold of her and raped her. She has stated her age as 12 years at the time of recording of her statement. As per the record, the appellant was 40 years of age at the time of incident. This Court is of the opinion that if a man of 40 years forcibly commits rape twice upon a 12 years old girl in short span of time on a rough land, there is all possibility that the minor may receive injuries on her private parts and on her body. The trial court has held that it is found that normally sand of a pond is found soft and if a rape is committed on the surface of that place, it is not necessary that any injury is caused. However, PW.1 in her statement has clearly stated that the place where the appellant had committed rape upon her, there were small stones and the sand. If it is believed that the place where the appellant had committed rape upon the prosecutrix on the surface, small stones were there, then there is all possibility that the prosecutrix could have received injuries of abrasions or bruises on back part of her body. The trial court has also given a bizarre reason to hold the appellant guilty of commission of offence that since there was a dispute between the accused-appellant and his wife, therefore, his wife was living in the house of the prosecutrix and the appellant used to visit there frequently and as he was depriving the company of his wife, he became lustful and due to that, a day before the incident, he tried to rape upon the mother of the prosecutrix and when he could not succeed in it, he committed rape upon the prosecutrix to satisfy his lust. This Court is of the opinion that the trial court has no basis to form such opinion and on the basis of surmises and conjectures, no person can be held guilty for commission of any offence.

17. Learned counsel for the appellant has rightly pointed out that the prosecutrix has failed to disclose the real relation of the appellant with her and looking to this fact, it appears that she has filed the complaint against the appellant while being tutored by some others on account of ongoing disputes between him and his wife.

18. The manner in which the prosecutrix has stated about the happening of the event is also not believable. She has stated that though she raised cries when the appellant was taking her to the pond but no body heard her cries. It is noticed that as per the prosecutrix PW.1, the incident took place at about 11:00 P.M. and about one furlong away, there is another house. Normally the nights in the village are quiet and if any person particularly a child raises a cry, then the sound goes far away and there is all possibility that anybody could have heard it.

19. After carefully analysing the over all evidence produced by the prosecution,

this Court is of the opinion that the prosecution has failed to produce any cogent and reliable evidence to hold the accused-appellant guilty for the offences punishable under sections 376 and 447 IPC.

20. Consequently, this jail appeal is allowed. The impugned judgment dated 04.10.2010 passed by learned Additional Sessions Judge (Fast Track), Banswara is set aside. Appellant-Sabu alias Shambhu Lal son of Kachru Charpota is acquitted from the offences punishable under sections 376 and 447 IPC. He is in jail, he shall be released forthwith if not required in any other case.

21. Record of the trial court be sent forthwith.