
(1998) 08 RAJ CK 0029

Rajasthan High Court

Case No: Criminal Jail Appeal No. 17 of 1997

Suvraj

APPELLANT

Vs

State

RESPONDENT

Date of Decision: Aug. 17, 1998

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Penal Code, 1860 (IPC) - Section 354, 376

Citation: (1999) CriLJ 731

Hon'ble Judges: G.L. Gupta, J

Bench: Single Bench

Advocate: B.K. Pareekh and R.K. Charan, for the Appellant; V.R. Mehta, Public Prosecutor, for the Respondent

Judgement

G.L. Gupta, J.

These appeals have been directed against the judgment dt. 28-9-1996 passed by the learned Addl. Sessions Judge No. 2, Chittorgarh whereby he convicted appellant Suvraj alias Shoraj u/s 376, IPC and sentenced him to undergo R.I. for seven years and pay a fine of Rs. 500/-, in default six months S.I.

2. The prosecution case, as disclosed in the FIR lodged by Smt. "L" on 21 -6-1995 at 4 p.m. is that on the previous day at about 4 p.m. when she was grazing cattle in the river bed the accused caught hold of her, flung, put her "Loogra" in her mouth and committed rape on her. After the accused went away she took out "Loogra" from her mouth and made cries for help, when Bhanwarlal Dhakar reached there to whom she told about the incident and he took her to her house where she narrated the incident to her mother-in-law Lali and uncle-in-law Hema. On this report a case u/s 376, IPC was registered. After usual investigation, the police submitted a challan.

3. To a charge framed u/s 376, IPC, the accused pleaded not guilty. The prosecution examined P.W. 1 Smt. "L" P.W. 2 Bhanwarlal, P.W. 3 Jeetu, P.W. 4 Prabhunath, P.W. 5 Dr. Rajendra Prasad, P.W. 6 Gajendra Prasad and P.W. 7 Ajij Mohd. I.O. Accused in his statement u/s 313, Cr. P.C. denied the accusation. He did not lead any evidence in defence. After hearing the Public Prosecutor and the counsel for the accused, trial Court held that the accused had committed rape on Smt. Ladu. He, therefore, convicted and sentenced him as above.

4. Mr. Pareekh and Mr. Charan, learned counsel for the appellant pointed out that the FIR was lodged 24 hours after the alleged incident and the original FIR has been suppressed by the prosecution. It was contended that as Bhanwar Lal does not support Smt. "L" and the prosecution has not examined other two witnesses named in the FIR to whom the victim reported the matter immediately after the occurrence, it should be inferred that Smt. "L" did not tell anyone that she was ravished by the accused. Pointing out that the accused used to tremble, it was argued that sexual intercourse could not be performed by him without the consent of the victim, who was elder in age to the accused. It was also pointed out that the accused has not been charged for the occurrence of 20-6-1995, and on this ground also he is entitled to acquittal.

5. Mr. Mehta, on the other hand, supported the judgment of the trial Court.

6. I have carefully considered the above arguments. The FIR Ex. P- I indicates that the occurrence had taken place on 20-6-95. In the charge, the date of occurrence has been mentioned as 21-6-95 which is obviously incorrect. It is due to slip of pen. Accused was aware of the allegations against him from the very beginning. It cannot be said that the error in charge has occasioned the failure of justice.

7. The FIR was lodged on 21-6-1995 at 4 p.m., obviously 24 hrs. after the" occurrence. It has come on record that the police station was situate just 12 Kms. away from the place of occurrence. The delay in lodging the FIR if properly explained, is not fatal to the prosecution. The prosecution case is required to be scrutinised keeping all the facts and circumstances in mind.

8. The cause of delay in lodging the report disclosed in the FIR Ex. P-1, was that when the victim and her husband were proceeding towards Parsoli the headquarter of Police Station, some persons of Tapariya village warned them that they should not report the matter to the police. In her statement Smt. "L" giving the explanation of the delay deposes that 8 to 10 persons had come and they had taken away her husband, and throughout the night her husband did not return. The cause of delay thus is different in the statement than the one disclosed in the FIR. Then P.W. 3 Jeetu (husband of Smt. "L") does not say that he was taken by some persons in the night. Rather he says that he and his wife had left the village for Parsoli in the night itself. It is obvious that no satisfactory explanation of the delay in lodging the FIR is forthcoming. The effect of the delay shall be considered in the later part of this judgment.

9. The evidence on record shows that some occurrence did take place on 20-6-95. Besides the evidence of Smt. "L" there is testimony of Bhanwarlal, P.W. 2 who deposes to have seen the victim lying near the riverbed. According to him Smt. "L" had complained against the accused. Then it has come in the cross-examination of Jeetu that the accused was his partner in the cultivation and there was no enmity between them. Thus, there could not be any occasion for Smt. "L" to lodge a totally false report against the accused without happening of any incident whatsoever.

10. The question for consideration is whether the statement of Smt. "L" that she was ravished by the accused can be accepted. On a careful consideration of the entire material on record. I am of the view that the prosecution version of the rape does not appear to be correct. What seems to have happened is that the accused made some advances any outraged the modesty of Smt. "L" but in order to make grave charge, the allegations of rape have been made. There are reasons for coming to this conclusion.

11. Firstly, as already stated, the FIR was lodged after considerable delay. This shows that during this period a story of grave charge was concocted by Teja and others. In this connection, one important fact, which deserves notice, is that according to Jeetu an oral FIR was lodged by his wife Smt. "L" which was recorded by the S.H.O. That oral FIR has been suppressed by the prosecution. Instead a written FIR has been brought on record for which also it is not clear as to on whose instance it was written. Smt. "L" who is said to have produced this FIR does not say that she got it scribed by some one, rather she says that her brother had brought the written FIR and she did not know from whom he got it scribed. The brother of Smt. "L" has not been examined. There are discrepancies also in the statement of Smt. "L" and the FIR. It is evident that the FIR was not written at the instance of Smt. "L" and the oral version reported by Smt. "L" has been suppressed. The possibility that Smt. "L" in her oral FIR had not made allegation of rape is not ruled out.

12. Secondly, according to Smt. Ladu she had related the incident to Bhanwarlal, who reached there on hearing her cries, but Bhanwarlal, P. W. 2 does not depose that Smt. "L" had told him that the accused had committed sexual intercourse with her. According to him Smt. "L" had told him only this much that the accused had caught hold of her. There could not be any reason for Bhanwarlal to have concealed the truth.

13. Thirdly, according to Smt. "L" she had related the incident of rape to her mother-in-law Lali. Lali was an important witness to depose about the incident of rape but she has not been examined by the prosecution for the reasons best known to it. Hema, to whom Smt. "L" is said to have related the incident has also not been examined. It shows that he was also not prepared to say about the charge of rape. The defence is justified in arguing that adverse inference should be drawn against the prosecution for withholding these witnesses.

14. Fourthly, the medical evidence is not consistent with the evidence of Smt. "L". Dr. Rajendra Prasad, P.W. 5 deposes that there were three abrasions on the person of Smt.

"L". However, Smt. "L" nowhere says that she had suffered any injury on any part of her body. According to her though she had suffered an injury on her. elbow, which had even bled yet she did not show this injury to the medical officer. As a matter of fact, this injury is not mentioned in injury report Ex. P-3. The fact remains that the injury which Smt. "L" deposes to have suffered does not find place in the medical report and for the injuries which are mentioned in the report Smt. "L" does not depose to have sustained. Moreover the Medical Officer admits that the injuries were superficial and could be self-inflicted. It seems that in order to make a case of grave charge these injuries have been caused on the person of victim, though she had not sustained any injury in the occurrence.

15. Fifthly, in the medical report it is stated that there was some white discharge present in the private part of Smt. "L" and her clothes were also smeared with some white substance. However, the report of the Forensic Science Laboratory has not been produced. Therefore, it is not possible to say that there was presence of semen on the private part or the clothes of the victim. In any case, the victim was a married lady and the presence of semen on her clothes or private parts by itself could not be a proof of rape.

16. Sixthly, Smt. "L" says that due to the scuffle her bangles had broken and fallen on the ground. She deposes that she did show those broken bangles to the police at the time of site inspection. It is not the case for the prosecution that broken bangles were found lying at the site. Rather the evidence of Investigating Officer shows that there were no bangles piece or anything at the place of occurrence. This shows that the version of Smt. "L" that there was scuffle and her bangles had broken is not correct.

17. Seventhly, it is in evidence that the accused after committing sexual intercourse with Smt. "L" had run away leaving his "Dhoti" at the place of occurrence. It is not known as to what happened to that "Dhoti" which admittedly was not found at the time of site inspection. Bhanwarlal and Smt. "L" do not say that they had taken the "Dhoti" from the spot. This shows that the story of leaving "Dhoti" by the accused at the spot is false. It is obvious that the story was introduced just to establish the charge of rape against the accused.

18. Eighthly, the statement P.W. 2 Bhanwarlal indicates that he was just 10 steps away from the place of occurrence. Of course, in the same statement, Bhanwarlal deposes that he was around 100 to 200 yards away from the place of occurrence and he took one or two minutes to reach the place of occurrence. Whatever might be the distance of the place of occurrence from where Bhanwarlal was sitting, but it is obvious that he was not far away. Smt. "L" admits that the cloth was not inserted in her mouth before she was flung on the ground. Therefore, there was no hinderance in making cries by Smt. "L". As a matter of fact, Smt. "L" says that she shouted for help while standing. Bhanwarlal says that he reached the place of occurrence hearing the cries of Smt. "L" within a minute or two. In this short span there was hardly any occasion for the accused to commit sexual intercourse with the lady without her consent.

19. Lastly, there is yet one more circumstance which renders the story of rape doubtful. It has been admitted by Bhanwarlal that the accused is not in good health and his entire body trembles. This fact has even been admitted by Dr. Rajendra Prasad, when he says that though the accused was not suffering from paralysis yet he used to tremble. It is difficult to believe that a man, whose whole body trembled, could forcibly commit intercourse with the grown up lady, more so when it is not alleged that he had threatened her by showing any weapon.

20. On a careful consideration of above facts, I am of the view that the prosecution story that the accused had committed rape of Smt. "L", is false. It is obvious that the allegations have been made just to rope in the accused in a case of serious charge. By the evidence on record it is certainly established that the accused had outraged the modesty of the lady, and on her making cries, he ran away. The trial Court has committed grave error in convicting the appellant u/s 376, IPC.

21. Consequently, the appeals are partly allowed. The conviction and sentence of the appellant u/s 376, IPC are set aside. Instead he is convicted u/s 354, IPC. He has already remained in prison for the period more than the maximum provided for the offence u/s 354, IPC. He is directed to be released forthwith, if not required, in any other case.