

(1980) 10 MP CK 0009

Madhya Pradesh High Court

Case No: Criminal Appeal No. 559 of 1976

Mohan Chamaru Ram

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision: Oct. 22, 1980

Acts Referred:

- Penal Code, 1860 (IPC) - Section 354, 366, 376, 511

Citation: (1983) MPLJ 97

Hon'ble Judges: M.D. Bhatt, J

Bench: Single Bench

Advocate: Rajendra Singh, for the Appellant; Dhote, for the Respondent

Final Decision: Dismissed

Judgement

M.D. Bhatt, J.

Judgment in this appeal will equally govern the disposal of connected Criminal Appeal No. 602 of 1976, both of which have arisen from Sessions Trial No. 9 of 76 of the Court of Sessions Rajnandgaon. The appellant-accused Mohan, on his conviction under sections 366 and 376 of the Indian Penal Code, has been sentenced to three years" R. I. on each count with the direction for the concurrent running of sentences, whereas the other appellant-accused Nanhu has been convicted only of the offence punishable u/s 354 of the Indian Penal Code and has been sentenced to one year"s R. I.

In the trial Court, both the appellants-accused Mohan and Nanhu along with eight others had been prosecuted u/s 366 of the Indian Penal Code for abduction of an unmarried girl Shushila and the appellant-accused Mohan along with eight others had been further prosecuted u/s 376 of the Indian Penal Code for commission of rape on her. The appellant-accused, however, was prosecuted for abetment of rape u/s 376 read with section 511 of the Indian Penal Code.

The case of the prosecution was briefly as under:

On the night of 23rd December, 1975, P. W. 1 Ku. Sushila and her close friend P. W. 5 Ku. Padma, both unmarried girls with their ages being near about 16 years were returning home after a little rendezvous. When they passed in front of the hutment of the appellant-accused Nanhu, Nanhu was found sitting in front of his hutment. He called in Sushila on the pretext of showing her a sample of thread which he wanted to purchase from her mother who was a petty dealer in threads and cotton. Sushila, least suspecting the evil designs of the appellant-accused Nanhu, whom she used to address as "Mama" because of her mother's associations with him, went inside the hutment along with Padma. Both were made to sit on a cot. Thereafter, the appellant-accused Nanhu closed the front door which was made of old tin sheets; and immediately thereafter, put off the burning lamp. Both the girls protested but of no avail. Nanhu tried, at first, to molest Padma and then Sushila, but meanwhile certain young boys, who somehow at the relevant time were hovering nearabout this hutment which was the part of a big chawl comprising of very many poor small residential accommodations belonging to the working class people viz. mill workers, labourers, vegetable vendors and petty shop keepers in that slum area of Motipur on the outskirts of Rajnandgaon town, sensed some foul game inside the dark hut, some boys peeped in, saw the girls, and foresaw their amorous prospects. The appellant-accused Mohan was one of them. Both the girls Padma and Sushila had tried to step out from the hut but Sushila was pushed inside and the appellant-accused bolted the door from outside, whereas Padma, who was a little younger, was made to leave the place. Thereafter Sushila was bodily lifted by the group of young boys comprising of Mohan and others and was taken, at first, to a nearby tank, and therefrom to a lonely field. All along while she was being carried on the hands and shoulders of the boys, she was subjected to eve-teasing, and molestation, of all possible sorts. No part of body remained untouched. Her underwear had slipped from its proper place; and it actually finally fell down in or near-about the tank. On her being taken to the field, Mst. Sushila was subjected to the mass rape by each and every boy. More than ten boys, one after the other had committed rape on her and the appellant-accused was one of them and was nearly the foremost in his commission of this barbarous act. Sushila had lost her consciousness after a while, due to the commission of brutal incessant acts of rape on her. While this casualty was here going on in the field near the tank, Padma, after leaving Nanhu's hut, had started for home, sobbing all the way. One Gous Mohammad (P. W. 8) met her on the way. He took her to the adjoining ward viz. Maharpara, thinking that this girl probably belonged to that ward. She was taken to P. W. 2 Ratanlal's pan shop. There she was identified. She disclosed that Sushila had been detained inside Nanhu's hutment. The boys of Maharpara therefore rushed to Nanhu's house; but neither Sushila nor Nanhu could be found at home. Therefore, they searched the girl in nearabout places but of no avail. It was at about 1-30 p. m. when P. W. 8 Gaus Mohammad and P. W. 9 Bharat in their fresh bid for search,

tracked down and proceeded towards one particular direction, which they had not combed earlier; and it was then that they heard the sobs and moans of Sushila. She was without clothes and was in pain. After allowing her to suitably cover her body, Bharat brought her back to the Maharpara, where Sushila went to her maternal uncle's house, and slept there during the rest of the night. In the morning, she was woken up. P. W. 3 itwarilal, the Mukhiya of Mahar community, Ratanlai and some others gathered at the house of Sushila's maternal uncle Hiralal. On their inquiries, Sushila narrated to them the whole incident, and then she was taken to the police station where the report was lodged by her. After due investigation, both the appellants-accused and others were put up for trial. All including the appellants-accused abjured the guilt. It was contended by them that they had been falsely implicated, since, there was enmity between the residents of Maharpara on the one hand and the residents of the adjoining ward, Thetwarpara to which these appellants-accused and others belonged. No evidence was adduced in defence.

The trial Court, in the light of prosecution evidence, held that repeated sexual intercourse had been committed with Sushila on the relevant night against her will and without her consent. So far as the appellant-accused Mohan was concerned, it was held that he was one of the persons who had taken prominent part in bodily lifting Sushila from the appellant-accused Nanhu's house and then in carrying her to a remote field adjoining the tank. It was equally held that at least Mohan was the person who had positively and definitely committed rape with Sushila. Accordingly Mohan was convicted of the offences punishable u/s 366 of the Indian Penal Code and was sentenced to the extent as stated at the outset. His other companions, for want of cogent and convincing proof, could not be, likewise, convicted; and had to be acquitted. There being equally enough cogent and reliable proof against the other appellant-accused Nanhu in the matter of commission of the offence u/s 354 of the Indian Penal Code, he was convicted and sentenced to the extent as stated at the outset. Hence now, their respective appeals.

The learned counsel for the appellant-accused Mohan has assailed Mohan's conviction on several grounds. It is urged that the prosecution story as given out by Sushila and Padma particularly, and also by others, is not convincing and is fraught with very many improbables. The very fact that the two young girls Sushila and Padma were wandering late at night at about 9 p.m. indicated their character. Their versions that they had gone to see the cinema in Pyarelal High School are completely falsified by the authentic statement of the Principal of this institute viz. C. W. 1 Shrivastava who has vehemently denied that on that relevant night there was any drama-performance in the said school. It is alleged that in all probability, the two girls were out on roads late at night for a gay life with some other boys under a pre-arranged plan. But, since they were discovered by the appellant-accused and their other companions who were all residents of Thetwarpara, and since they were pursued and chased, to thwart their amorous plan, the appellant-accused and others are stated to have been falsely implicated on this account. It is also urged

that Sushila, having not disclosed the incident to any one during the night and having disclosed the same, for the first time, on the next day morning and that too quite late, is a circumstance making the prosecution story quite suspicious and equally suspicious is the recording of the delayed F. I. R. at about 2 p.m. on the next day. Maternal uncle Hiralal in whose house Sushila had slept during the night and to whom along with others, the incident was narrated on the next day morning being a material witness in the case and having not been examined, it is urged that the prosecution story is rendered quite unreliable and untrustworthy. Furthermore, P. W. 1 Sushila having not corroborated the version of P. W. 2 Ratanlal and of her own mother P. W. 6 Sagarbai that during the night she had first gone to her mother's house and then later, to her maternal uncle's house, the versions of both Ratanlal and Sagarbai that they had been apprised of the incident during the night only, are exposed to be false and concocted. It is also argued with vehemence that the appellant-accused Mohan could not be simultaneously present at two different places at one and the same time. It is argued on the strength of the prosecution evidence of P. W. 8 Gaus Mohammad and P. W. 11 Indirabai, that the appellant-accused Mohan was one of those boys of the crowd who had come along with Padma and Gaus Mohammad from the side of the appellant-accused Nanhu's house either upto Ratanlal's Pan shop situate in Maharpara or upto some point only before the said Pan shop. It is urged that if this were the fact, as it actually must have been, then the version of P. W. 1 Sushila that at about the very time, the appellant-accused Mohan and his companions had taken her out from Nanhu's hut and had lifted and carried her to a distant field and had committed rape on her in the said field, is rendered a total impossibility and improbability. The learned counsel for the other appellant-accused Nanhu has, likewise, raised the same points as the counsel for the co-appellant-accused Mohan.

Each and every point pressed before me, when scrutinized and evaluated in the light of the prosecution evidence and the attending circumstances of the incident, is found to be absolutely without any merit. The learned counsel for the appellant-accused have tried to hammer on certain inconsistencies in the averments of both the girls Sushila and Padma,, and have further tried to focus the attention on certain improbabilities of the situation, however, being completely oblivious of the mass of cogent and corroborative evidence, implicating the two appellant-accused without the least shadow of doubt.

Both P. W. 1 Mst. Sushila, the victim of mass rape and her companion P. W. 5 Mst. Padma are found to have actually corroborated the prosecution story in the matter of the first phase of the incident which had taken place at the hut of the appellant-accused Nanhu. The only snag in their whole evidence is that they claim to be returning home after seeing the drama for couple of minutes at Pyarelal High School, but this fact is not found to be corroborated by their earlier police statements and the F. I. R. and by the oral testimony of Shrivastava, the Principal of the Pyarelal High School. In this regard, it may be stated that I have equally gone

through the Principal's statement (C. W. 1) and the copy of the school programme (Ex. C-I). This much is certain that from 17th December 1975 to 24th December, 1975, Annual School Day was being celebrated. Ex. C-I is the the School Programme for the dates 22nd December, and 23rd December, 1975. This programme shows that dance, individual songs and folksongs were some of the important items of the Annual Function of the 23rd December. Timing has not been mentioned in this programme so far as these items are concerned. Shrivastava's oral testimony is simply based on his memory. He says that so far he recollects, these programmes had not taken place during the night. He could, well, be wrong, because such items like drama, mass songs in the school or college usually take place during the evening and night hours. Any way, as it is, it could well be possible that Sushila might be under the impression that some programmes at school were also to take place during the night; and she could well have gone to the school on that basis. Even otherwise also, the fact whether or not she had gone to the school, is absolutely immaterial. Even if Sushila and Padma are telling lies in this regard, what difference does it make to the salient aspects of the case ? It could, well, be that these grown-up girls, in order to save themselves from public tirades and criticism, may have fabricated and weaved the story at a late stage, justifying their being out during the night for a socio-educational-cum-recreational purpose. This story, they may have well weaved to shield their conduct and character, so that their nocturnal errands may not come for adverse criticism and comments. It may be stated that as per the medical evidence, Sushila was found to be a virgin before the alleged incident of the mass rape. Before; the incident, her hymen was absolutely intact. Therefore, she cannot be branded as a loose woman, leading a wayward life. It is just possible that she may be a bold and strong girl having courage to move freely, even in the evening and early hours of the night, along with her companions, being least afraid of the sexual maniacs. It is vehemently argued that Mst. Sushila had fled away towards the tank-side along with her paramours; and her companion Padma had hidden herself in the accused Nanhu's house, on being sighted by the boys of Thetwarpara, and that it was because of this, that the boys of Thetwarpara had been falsely implicated,-instead of the actual culprits of Maharpara, since, the residents of these two Paras or wards i.e. Maharpara and Thetwarpara, were at loggerheads for the last couple of years. This contention does not carry any conviction. Had Sushila fled away to the tank-side and had she had sexual intercourse with her boyfriends and paramours she would have chosen to keep quiet, and would not have reported the incident to the persons of her locality and finally at the police-station, to avoid exposing herself. In any case, she would not have, for nothing, implicated complete strangers, with whom personally, she had no animosity. Furthermore, had she been indulging in sex in the fields with her own friends, she would not have received as many as 40 injuries on her person as proved from medical evidence. In such a case of consent, injuries would have been the minimum, even when sexual affair might have been repeated by dozen of persons. The existence of extensive injuries, .is many as 40, on different portions of her body, mostly on her back region and on top

of it, the awe-inspiring tears of her hymen in as many as live positions viz. 1, 3, 5, 7 and 9 O" Clock-positions, make it abundantly clear that sexual intercourse with Sushila had been done forcibly and against her will by a large number of persons; and in no case, she can be the consenting party for the same.

So far as the incident at Nanhu's place is concerned, there is the corroborative evidence both of Mst. Sushila and her companion Padma (P. Ws. 1 and 5). Mst. Padma is further supported by P. W. 2 Ratanlal, P. W. 6 Sagarbai, the mother of Sushila and P. W. 10 Chhagan, all of whom state that Mst. Padma, on being escorted upto Ratanlal's Pan shop by P. W. 8 Gaus Mohammad had primarily told them that Sushila was being detained inside the house of the accused Nanhu. She is completely consistent in her version in all aspects of this point. Therefore, the versions of both Padma and Sushila naturally deserve reliance on the material fact that the accused Nanhu, by calling Susliila inside his hut with an evil design, had assaulted her and used criminal force against her with intent to outrage her modesty and even that of Padma. Conviction, therefore, of the appellant-accused Nanhu is well-merited. As a matter of fact, he deserved more severe sentence than what has actually been awarded to him, because subsequent events had all, developed after that stage, when Sushila was kept inside Nanhu's house. It could, well, be that in the subsequent events, wherein Mst. Sushila had been inhumanly ravished, the accused Nanhu may have indirect under-hand. Any way, the sentence of one year's R. I. as awarded, does not call for the least interference.

Now coming to the case of the appellant-accused Mohan, some of the points touching the credibility of the versions of Padma and Sushila have already been discussed above. It is a canard and blatant lie, as earlier discussed by me, that Sushila had been accosted by the boys of Thetwarpara, while she was going along with her boy-friends of Maharpara; and on being pursued, she and her boy-friends had to take to flight towards tank-side in open fields. It is equally a lie that Padma was actually caught when she had hidden herself in the house of Nanhu, and was, then, taken by these boys to Maharpara-side. A great stress has been laid on the point that the appellant-accused Mohan was one of the boys of the crowd of Thetwarpara who had carried Padma to the neighbouring ward i. e. Maharpara, for being entrusted to the custody"of the residents of that locality. Such a suggestion had been made by the defence to some of the prosecution witnesses. P. W. 8 Gaus Mohammad and P. W. 11 Indirabai are the only two witnesses who, during the course of their cross-examination have admitted this suggestion that Mohan was one of those boys of the crowd, who, along with Padma, had gone up to the hotel of Kanhaiya Bairagi and probably a little further, upto the railway clwwki. On this basis, it has been argued that if this were a fact, then, it was impossible for the appellant-accused Mohan to be simultaneously present at Nanhu's house, for enabling him to carry Ku. Sushila to the tank-side and then to the fields and to ravish her there.

P. W. 11 Indirabai, a Panwali (Pan shop-keeper), having a Pan shop in front of Kanhaiya Jogi's hotel, situate in accused Mohan's own locality, does not deserve credence, because of her natural interestedness. P. W. 8 Gaus Mohammad, no doubt, is the Sarpanch of that locality. He is, however, found to have given his statement quite wisely and shrewdly, so as not to annoy the residents of any of these two neighbouring localities viz. Maharpara and Thetwarpara. He supports the prosecution-story to a limited degree; and also, likewise, the defence. He saves Padma from the teasing boys, and brings her safely to Ratanlal's shop at Maharpara. He also makes anxious search for the other girl viz. Sushila in the dead of the night and successfully finds her and arranges to send her to her locality; but when the stage comes for identifying the culprits present in the field, he naively crosses the hurdle by saying that the miscreants had already lied away under the cover of darkness and as such, they could not be identified. This witness Gaus Mohammad is found to have, further, shown his tact and practical wisdom in trying to exculpate as many culprits as possible, in the course of his cross-examination, by conceding to the defence-suggestion regarding the presence of Mohan, Nandan and others in the crowd which had accompanied Padma from one locality to the other. I am, thus, clearly of the view that the versions of both Mst. Indirabai (P. W. 11) and Gaus Mohammad (P. W. 8), in the matter of the appellant-accused Mohan, as being the person accompanying Padma upto Kanhaiya Bairagi's hotel or up to the railway chokki, is mere falsehood and deliberate concoction.

P. W. 2 Ratanlal does not say that the appellant-accused Mohan had come to the Pan shop or had brought Padma upto any particular place. Padma has also not admitted this fact in her evidence. However, considering the evidence on records, it is fully possible, that the appellant-accused Mohan, even if he had accompanied Padma to some distance, could also participate in the other act i. e. removal of Sushila from Nanhu's house and in taking her away from that place to the tank-side and to the field for commission of rape on her. The fact that both these acts were possible, would be clear from the actual distances and locations, as brought out in the evidence of P. W. 2 Ratanlal, P. W. 8 Gaus Mohammad and P. W. 11 Indirabai.

Gaus Mohammad's house is at a distance of 30 to 40 paces from the accused Nanhu's house in Motipur village. Railway Chowki is close to Gaus Mohammad's house. (Para 5, P. W. 2). Kanhaiya Bairagi's hotel is also close to Gaus Mohammad's house. Railway Chowki is at a distance of about 25 to 30 paces from the hotel of Kanhaiya Bairagi (Para 9, P. W. 8). From this, it is very clear that all these places are, all, situate within a few yards from the appellant-accused Nanhu's house; and as such, it could well be possible for the accused Mohan to join the crowd of boys for teasing Padma upto Kanhaiya Bairagi's hotel or upto the railway Chowki and then, to return back for the main purpose i. e. for taking out Sushila from Nanhu's house where he had himself detained her by bolting the door from outside and then taking her away along with his other friends, to the tank-side and fields, for committing rape. Mst. Sushila's evidence, therefore, in these circumstances, is found to be

completely reliable; and I have no reason to doubt that it was the appellant-accused Mohan who had taken a principal part in taking her away from Nanhu's house to different places along with his other friends and that he had committed rape on her and so did his other friends too.

It is also urged that Sushila's conduct after the incident is quite suspicious, inasmuch as, she did not apprise about the incident to any one during the night itself, and narrated it, only on the next morning to the prominent persons of her locality. The delayed F. I. R. is also assailed on this account. There is no merit in this contention. In rape cases, Courts must bear in mind, human psychology and behavioural probability when assessing the testimonial potency of the victim's (prosecutrix) version. The inherent bashfulness, the innocent naivete and the feminine tendency to conceal the outrage of masculine sexual aggression are factors which are relevant to improbabilise the hypothesis of false implication.

In the present case, barbarous rape by hordes of hoodlums had sapped all energy of the hapless victim Sushila. Besides the wrenching pain and agony, she was suffering due to multiple bleeding tears of her hitherto intact hymen and 40 other injuries on her body, she was naturally in a state of daze and shock. After undergoing such harrowing experience, what woman would have courage to narrate and describe her plight immediately? Immediate impulse and desire would be, to be left alone for sometime, to suffer in solitude and silence, to rest, relax and sleep; and that is what Sushila actually did. Naturally she slept till late hours at her maternal uncle's place. Itwarilal-Mukhia of the community, Ratanlal and other prominent persons of Maharpara gathered there meanwhile. She was, hence, woken up; and it was then that she narrated the incident in all its details, inculcating the appellant-accused Mohan, Nanhu and many others. Discrepancy in the matter of exact time of the day when she narrated the incident to the persons of her locality is of no material consequence, considering the illiteracy of all these working-class people. Initial hesitancy of the prosecutrix and her mother to report the matter to the police is but natural; for, delicate considerations affecting a young virgin maiden were involved. Hence, the delay in lodging the F. I. R. can, well, be appreciated. The evidence of Sushila, thus, by itself, is perfectly reliable, so far as the involvement of the appellant-accused Mohan, as her abductor and ravisher is concerned. There is enough corroborative evidence, to lend veracity to her version. The appellant-accused Mohan, therefore, is found to have been rightly convicted of the offences in question. The sentences, as awarded against him, are unfortunately too less. Any way, as it is, it does not call for any interference, now. It is equally unfortunate that some other culprits, who in all probability, could well have been convicted on this very evidence as available, have already been acquitted. It is too late in the day to take any action in that regard.

In the result, thus, the present appeal being without any merit, is dismissed; and the Order of convictions and sentences, as passed against the appellant-accused Mohan

is maintained in toto. The connected appeal, preferred by the accused Nanhu, is equally dismissed; and the Order of conviction and sentence, passed against him u/s 354 of the Indian Penal Code is also maintained in toto. The appellants-accused, who are on bails, do surrender to their respective bails for undergoing the respective sentences of imprisonment.