

Jasveer Singh and Another Vs State of Uttrakhand

Court: Uttarakhand High Court

Date of Decision: July 23, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 164, 313

Evidence Act, 1872 â€” Section 145

Penal Code, 1860 (IPC) â€” Section 34, 376

Citation: (2009) NCC 216 : (2008) NCC 887

Hon'ble Judges: J.C.S.Rawat, J

Bench: Single Bench

Advocate: Sandeep Tandon, for the Appellant; Amit Bhatt, A.G.A., for the Respondent

Final Decision: Allowed

Judgement

J.C.S. Rawat, J.

This is a criminal appeal preferred against the judgment and order dated 19/2/2002 passed by the learned Sessions

Judge, Dehradun in ST No. 133/1997, whereby the learned Sessions Judge has convicted the accused-Appellants for the offence punishable u/s

376 read with Section 34 IPC and sentenced them to undergo rigorous imprisonment for the period of ten years and fine of rupees five thousand

only. The learned Sessions Judge further directed that in default of payment of fine, the Appellants would undergo rigorous imprisonment for

another period of one year.

2. The brief facts of the prosecution case as emerged from the record are that the victim-Smt. Kusum W/o Chain Singh (the informant of this case)

had gone to meet the natural call in the morning at about 0500 hours to 0530 hours on 06.5.1997 in the adjoining fields of her residence. When

she reached in the fields to ease herself, the accused-Appellants Harveer and Jasveer emerged there. Harveer caught hold of the victim from

behind whereas Jasveer committed forcible sexual intercourse upon her. The Appellant Harveer had an iron rod in his hand and he threatened the

victim showing the rod that if she would make any noise, she would be killed, as such, the victim remained silent during the commission of the

offence. After committing rape upon the victim, the Appellants ran away from the place of occurrence. The victim immediately went to her house

and narrated the entire story to her mother-in-law and later on to her husband Chain Singh. Chain Singh immediately went to the house of Satveer

Singh who is the brother of the Appellants and complained him about the said incident. Satveer Singh instead of saying anything to the Appellants

advised Chain Singh to remain quiet and also threatened him of dire consequences if he would lodge any report to the police to that effect.

Immediately, thereafter Chain Singh alongwith his wife (the victim) went to the police station Sahaspur where a policeman in plain dress met them

and asked them to first get the victim medically examined. Thereafter, the informant as well as the victim went to the hospital where the doctor, in

absence of the police report, refused to medically examine the victim. Consequent thereof, they went to a typist in the court premises and got a

report typed. Thereafter a report was lodged in the police station Sahaspur at about 2015 hours on the same day of the incident. After lodging the

report, the victim was sent to Women's Doon Hospital on 07.5.1997 for medical examination and she was medically examined at about 1300

hours on the same day. In the medical examination, the doctor did not find any injury on her body, neither in the external parts nor on her private

part. The doctor also referred the victim for conducting her X-ray and thereafter a supplementary medical report was prepared. The doctor opined

that there was no injury on the outer parts or on the private parts of the body of the victim. The victim was found habitual to sexual intercourse and

her age was assessed above 18 years at the time of the incident. Thereafter, statement of the victim u/s 164 Code of Criminal Procedure was

recorded on 15.4.1997 before the magistrate. On the report of the informant, the matter was investigated by the police and eventually, chargesheet

was submitted against the accused-Appellants.

3. After submission of the chargesheet, the trial court framed charges against the Appellants. The accused-Appellants denied the charges levelled

against them and claimed trial.

4. In order to prove its case, the prosecution examined the victim herself as PW1, Chain Singh as PW2 who is the husband of the victim, Smt.

Sarto Devi as PW3 who is the mother-in-law of the victim & S.I. Rajendra Singh as PW4 who is the Investigating Officer of this case.

5. The accused-Appellants were examined u/s 313 of the Code of Criminal Procedure. They have denied all the averments made in the evidence

and they have further stated that they have been falsely implicated in this case. The accused-Appellants have taken a plea that there was a dispute

with regard to payment of some money in between the complainant and the accused party, so they have been implicated in this case. The accused-

Appellants did not adduce any evidence either documentary or oral, in support of their defence.

6. The learned trial court after appreciation of the evidence found the Appellants guilty of the offence, and convicted and sentenced the Appellants

as mentioned above.

7. I have heard Mr. Sandeep Tandon, the learned Counsel for the Appellants and Mr. Amit Bhatt, Addl. Government Advocate for the

Respondent-State. I have also gone through the evidence and material on record.

8. According to the prosecution version, the accused Appellants Jasveer and Harveer had committed an offence of forcible sexual intercourse

upon the victim punishable u/s 376 IPC. Now I have to see as to whether the accused-Appellants are responsible for commission of the offence or

not. The case rests on the direct evidence of the victim. The prosecution in support of its case examined the victim as PW1 who has stated in her

evidence that the Appellants namely, Harveer and Jasveer are the labourers in a brick kiln. She has further stated that, on the date of the incident

when she had gone in the fields near her residence to ease herself in the morning, the accused-Appellants came their. The Appellant-Harveer

pressed her hands whereas the Appellant-Jasveer put off her "Salwar" and committed forcible sexual intercourse upon her. The Appellant-Harveer

threatened her not to make any noise or not tell this incident to others, otherwise she would be killed. Thereafter, they fled away from the place of

incident.

9. The prosecution has also examined Chain Singh as PW2 who is the husband of the victim who has stated in his evidence that her wife-the victim

told him about the incident on the same date when he came back to his house from his workplace at about 10 a.m. in the morning and, he also

narrated the vivid details of the incident what was stated to him by her wife. Smt. Sarto Devi PW3 is the mother-in-law of the victim to whom the

victim had narrated the entire incident immediately after reaching her home from the place of the incident. She has stated in her evidence that on the

date of the incident, the victim went to meet the natural call and after coming from there, she narrated her the entire story that how the accused-

Appellants committed the forcible sexual intercourse upon her. Smt. Sarto Devi PW3 has further stated in her evidence that Chain Singh PW2

reached his house at about 10-15 minutes after narration of the incident to her by the victim. It is also admitted by the prosecution witnesses that

the Appellants are related to the victim.

10. The ordersheet dated 06.6.2000 reveals that the documentary evidence adduced by the prosecution was a formal proof which was dispensed

with and an endorsement to that effect has been made therein, as such, the prosecution did not adduce the evidence of the doctor. The medical

report has been exhibited by the trial court as Ex. Ka-9 and Ex. Ka-10. According to the medical report, the doctor has found no mark of any

injury on her body neither in the external parts nor on the private parts. According to the supplementary medical report, the victim was not found

pregnant and the doctor has finally given an opinion that no opinion regarding rape can be given; the age of the victim was assessed above 18 years

at the time of the incident.

11. The learned Counsel for the Appellants contended that the evidence of the victim is not supported by any medical evidence; whole surrounding

circumstances are highly improbable and belies the case set up by the victim; the court cannot act on the solitary evidence of the victim; and court

should be extremely careful in accepting the sole testimony of the victim when the entire case is improbable. The learned Counsel for the

Appellants further contended that the version given in the F.I.R is totally different from the version of the evidence given by the witnesses, adduced

before the court.

12. The learned A.G.A refuted the contentions and contended that F.I.R is not an encyclopedia. It is not necessary that each and every fact

regarding the incident should be mentioned in the F.I.R. The learned A.G. Afurther contended that the report has been lodged by Chain Singh

PW2 and the evidence of the victim cannot be disbelieved on the basis of the first information report, even if, there is any discrepancy in between

the versions of the victim & the F.I.R.

13. It is the settled position of law that in a rape case, the prosecutrix stands on a higher pedestal than any other eyewitness of other offences. The

offence being an offence against the society, it not only dehumanizes the victim but also causes an injury to her reputation. In the said background,

it is a settled position of law that in a rape case, the accused could be convicted on the sole testimony of the victim, if it is capable of inspiring

confidence in the mind of the court. If the evidence of the victim inspires confidence in the mind of the court, there is no need to seek corroboration

from other attending circumstances of the case. If the evidence of the victim does not inspire confidence to convict the accused-Appellants on her

sole testimony, the court would then venture upon the other attending circumstances of the case and would also seek corroboration from other

surrounding circumstances of the case. This Court has to see as to whether the evidence of the victim inspires confidence or not.

14. Now in light of the above, I have to examine whether the testimony of the victim can be relied upon or not. In the first information report, it has

been categorically mentioned that two labourers of brick kiln namely, Appellants- Jasveer and Harveer emerged at the spot where the victim had

gone to meet her natural call. Suddenly, the Appellant-Harveer caught hold of her from behind and committed forcible sexual intercourse upon her.

The Appellant-Harveer had an iron rod in his hand at the time of commission of the offence and he also threatened the victim that if she would cry,

she would be killed by the said iron rod. Thereafter, the Appellants-Harveer and Jasveer fled away from the place of incident. Chain Singh PW2

has stated in his evidence that when he came to his house from his workplace at about 10 a.m. on the date of the incident, the victim has narrated

the entire story stating that the two labourers of the brick kiln namely, the Appellant-Harveer and the Appellant-Jasveer emerged before her when

she was easing herself and the Appellant-Jasveer committed forcible sexual intercourse with her whereas Harveer kept an open knife on her neck.

The aforesaid evidence has been given by Chain Singh PW2 based on the statement given to him by the victim immediately after the incident.

According to the F.I.R, forcible sexual intercourse was committed by the Appellant-Harveer Singh and he was also having an iron rod in his hand.

According to Chain Singh PW2 who has given his evidence on the basis of the information given to him by the victim, has stated that Jasveer has

committed forcible sexual intercourse upon the victim and Harveer had a knife in his hand who was threatening the victim by keeping a knife on her

neck. Thus, there are contradictions regarding the manner of the incident & the participation of the Appellants in the offence in between the

evidence of Chain Singh PW2 and the F.I.R lodged by him. F.I.R is a very important piece of evidence for the purpose of appreciating the

evidence led at the trial. The object of insisting upon lodging the report promptly is to bring the earliest version regarding the circumstances in which

the crime was committed including the names of actual culprit, part played by them, manner of the crime as to how it was committed, the weapon if

any used. When Chain Singh PW2 was put to said contradiction u/s 145 of the Indian Evidence Act, he has stated that he did not write in his

report Ex. Ka-2 that Harveer Singh had committed forcible sexual intercourse upon the victim. He could not explain as to how this fact has been

stated in the F.I.R. He had further admitted in Para 5 (quoted below) of his evidence that the report which was got typed by him in the court

premises, was read over to him by the typist, but the typist had not read the portion that, "Harveer had committed rape upon the victim.

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15. There is no evidence that the typist had any malice or ill will against the informant. The victim appeared before the court as PW1. She has

stated in her deposition that in the morning on the date of the incident when she had gone to meet the natural call, the accused-Appellants Harveer

and Jasveer emerged there. The Appellant-Harveer pressed her hands whereas Appellant Jasveer Singh put off her Salwar and committed forcible

sexual intercourse upon her and Harveer was only threatening her not to make any cry. According to the F.I.R, offence of forcible sexual

intercourse was committed by the Appellant-Harveer but when the victim narrated the incident to her husband, she changed the act of participation

of the Appellants in the incident. She stated that the Appellant-Jasveer has committed forcible sexual intercourse upon her. In view of the above

discrepancies, the evidence of the victim did not inspire confidence to convict the accused-Appellants solely on the basis of her testimony. In *Sujoy*

Sen v. State of W.B. reported in (2007) 3 SCC 47, the Hon'ble Apex Court has held that:

12.... However, from the version given in the FIR it is evident that the first informant had not seen the accused leaving the house of the first

informant when the latter entered into it. In fact, in the FIR it is mentioned clearly that the Appellant entered into the house of the first informant in

the absence of the latter. Thus, it appears to us that the first informant never saw the Appellant leaving the house of the first informant when the

latter entered into it and the subsequent version is an improvement. A vital link in the chain of circumstances is missing in this case.

13. No doubt, a minor discrepancy in a FIR will not be fatal to the prosecution case. But the discrepancy in the FIR in the present case is not a

minor discrepancy, but a major one. Had the first informant seen the accused entering into the house at the time of the incident he would have

definitely mentioned the fact in the FIR.

16. The doctor, who examined the victim at about 1 p.m. on the next day of the incident, did not find any injury on her body, neither in the external

parts nor on the internal part; the victim was found habitual to sexual intercourse; and there was no injury on her private parts. The doctor, who

had examined the victim, was unable to give any opinion about the sexual intercourse, which is alleged to have taken place. There is nothing on

record to reveal that microscopic examination of vaginal swab of the victim was conducted. The prosecution evidence reveals that the victim had

taken bath and washed her clothes after the incident. Thus, this evidence was destroyed by the prosecution itself, which could be of some help to

the prosecution.

17. Smt. Kusum PW1, the victim has stated in Para 5 (quoted below) of her evidence that the accused Appellants used to come in their house and

they are the sons of the sister of her mother-in-law.

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Thus, the victim has admitted the relationship of her mother-in-law, Smt. Sarto Devi PW3 with the accused-Appellants whereas Smt. Sarto Devi

PW3, the mother-in-law of the victim has stated in her cross-examination that the accused-Appellants did not use to visit their house. In the F.I.R.,

this fact did not find place and it has been stated that two labourers of the Brick Kiln namely, the Appellant-Harveer and the Appellant-Jasveer

have committed the offence. The victim PW1 has further stated in her evidence that when her husband reached at his house, she narrated the entire

story to him and thereafter, they went to the police station, Sahaspur where a person in white clothes met them and asked them that firstly, they

should get a report prepared from Dehradun and then only, a report would be lodged. Upon this, both the informant and the victim went to

Dehradun where they got scribed & lodged the report. Chain Singh PW2, the husband of the victim has stated in his evidence that they went to the

police station where a person in plain dress met them at the gate of the police station and asked them to bring medical report then a report would

be lodged. Thereafter they went to Doon Women Hospital, Dehradun where the doctor asked them to bring police report regarding the aforesaid

incident. Eventually, they went to the court premises where they got a report typed, which was later lodged, at the police station. It is not the case

where the informant and the victim would have taken time to decide as to whether they would report the matter to the police or not. The victim as

well as her husband-the informant has stated that they immediately went to the police station to lodge the report. Thus, it is not a case where due to

shame or public fear, they had taken time to lodge the report. This is a case where they immediately decided to lodge the report but the report was

lodged at about 2015 hours whereas the incident took place in the morning at about 0500 hours - 0530 hours and his husband reached at his

house at about 1000 hours on the same day. The distance between the police station and the place of occurrence was only 04 km. Now, it is to be

seen as to whether the explanation as stated by the prosecution is plausible or not. According to the victim PW1, when she alongwith her husband

had gone to the police station to get a report lodged, a policeman who was on a plain dress outside the police station had asked them to get a

report written from Dehradun and thereafter, they went to Dehradun where her husband got typed a report and thereafter it was lodged at the

police station. According to Chain Singh PW2, the policeman who met him outside the gate of the police station had asked him to go to the

hospital to get the medical examination of the victim from the hospital. When they reached at the hospital to get the medical examination of the

victim, the doctors asked them for a copy of the police report regarding the incident. Thereafter, the doctor shown his inability to conduct medical

examination in absence of the F.I.R. Thereafter, they went to the court premises & prepared the report in the court compound by a typist. Thus,

there are contradictions as to how the report was lodged in between the evidence of both the witnesses. Apart from this, Smt. Sarto Devi PW3

has stated in Para 7 (quoted below) of her cross-examination that at about 1500-1600 hours, the police reached at the spot and her statement was

recorded on the date of the incident.

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18. It is revealed from the above evidence that the police reached at the spot at about 1500-1600 hours on 06.5.1997 whereas the report was

lodged at about 2015 hours on the same day. There was no occasion to reach the police station at about 2015 hours on 06.5.1997 or recording

of the statement of Smt. Sarto Devi PW3. Thus, the explanation offered by the prosecution for not lodging the report promptly is not reliable or

plausible. The victim PW1 has stated in Para 10 (quoted below) of her cross-examination that she used to go to ease herself at the place of

incident daily and other women also used to go with her on earlier days but on the date of incident, she went all alone. It is apparent from the

evidence of the victim that other women residing nearby to her residence also go to ease themselves near the place of occurrence.

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Though on the date of the incident, she had gone all alone to meet her natural call, but other women would have been there for easing themselves.

It is highly improbable that the Appellants would emerge at the spot where there was every likelihood of presence of other women in the vicinity.

Thus, the prosecution theory is also improbable.

19. It is the prosecution case that the Appellant-Harveer was having an iron rod in his hand while committing the offence of rape. There are also

contradictions with regard to the use of weapon, which the Appellant-Harveer was having in his hand at the time of commission of the offence of

rape. In the beginning at the F.I.R stage, it was an iron rod in the hand of the Appellant-Harveer but the husband of the victim-Chain Singh PW2

has stated in his evidence that he was told about the incident by his wife and he further stated in his evidence that the Appellant-Harveer was

having a knife in his hand which was kept open on the neck of the victim while Appellant-Jasveer was committing rape upon the victim and

threatened the victim with dire consequences. When the victim appeared in the witness box, she has stated that Harveer had pressed her hands

whereas in the cross-examination she has stated that Harveer was having a knife in his hand but in the F.I.R, it has been stated that Harveer had an

iron rod in his hand and he also committed rape. Pressing of her hands also was introduced during the evidence of the victim PW1 whereas in the

F.I.R, the accused-Appellant Harveer caught hold of her from behind and thereafter he committed rape and he was having an iron rod in his hand.

Thus, manner of incident & participation of the accused-Appellants in the offence as well as the use of the weapon, which the Appellant-Harveer

was holding in his hand during the commission of the offence of rape, are totally different at different stages. Thus, such prosecution evidence

cannot be relied upon to convict the accused-Appellants.

20. In view of the foregoing discussion, I am of view that it would not be safe to convict the Appellants. The prosecution has not established the

guilt beyond any reasonable doubt against the Appellants. I find that the learned trial court has erred in convicting and sentencing the Appellants.

Hence, the appeal is allowed and, the conviction & sentence against the Appellants awarded by the trial court are set aside. The Appellants are

acquitted of the charge levelled against them. The Appellants are on bail. They need not surrender. Their bail bonds are cancelled and sureties

discharged.

21. Let the lower court record be sent back to the court concerned. The compliance report be submitted within a period of three months.