

Madho Ram And Anr. vs The State Of U.P. on 19 December, 1972

Equivalent citations: AIR1973SC469, 1973CRILJ673, (1973)1SCC533, AIR 1973 SUPREME COURT 469, 1973 (1) SCC 533

Author: A. Alagiriswami

Bench: A. Alagiriswami

JUDGMENT

C.A. Vaidialingam, J.

1. This appeal by special leave is directed against the judgment and order dated 8-5-1969 of the Allahabad High Court dismissing Criminal Appeal No. 2180 of 1966 and confirming the conviction of the appellants for an offence under Section 366 I.P.C. as also the sentence passed by the learned Sessions Judge. The first appellant has, in addition, been convicted for an offence under Section 376 I.P.C and was sentenced to undergo three years' rigorous imprisonment with the direction that the sentences imposed on him are to run concurrently. This conviction and sentence have also been confirmed by the High Court.

2. The sole question that arises for consideration is whether the two Courts were justified in convicting the appellants for the above offences almost exclusively on the evidence of the prosecutrix, PW 7. Though originally the charge was of kidnapping, it is seen that the learned Sessions Judge framed an alternative charge under Section 366 I.P.C. on the allegation that the appellants abducted PW 7 with intent that she may be compelled to have illicit intercourse and marry the first appellant against her will. The learned Sessions Judge has held that PW 7 on the material date, namely, August 17, 1964, was over 18 years of age. Along with the appellants, four others were also tried for an offence under Section 366 read with Section 109 I.P.C. and Section 368 I.P.C., but three of them were acquitted by the Trial Court and another, Ram Swarup, was acquitted on appeal by the High Court.

3. The appellants are brothers, Madho Ram being elder. PW 1 Sham Lal had two daughters. His elder daughter, Shushila, was married to the 2nd appellant, Jagdish, about six or seven years prior to the date of occurrence. The first appellant, Madho Ram, was a widower, aged about 42 years, his wife having died about 20 years ago. The second daughter of PW 1 who is the prosecutrix, is Surja, PW 7, who was aged, on the findings of the Courts, about 19 years at the material time. The second appellant was always suggesting to his father-in-law, PW 1, that Surja PW 7, has to be given in marriage to his elder brother, Madho Ram. Neither PW 1 nor PW 7 agreed to this proposal on the ground that there was a large disparity in age: The second appellant, however, threatened that in case PW 7 did not marry his elder brother, she would be compelled by force to marry Madtoo Ram.

4. On August 17, 1964, when PW 7 had gone out of her house early morning to answer calls of nature and was returning to her house, she was intercepted by the second appellant and requested to accompany him to a near by temple on the representation that his wife (sister of PW 7) was waiting for her therein. On this representation, PW 7 accompanied Jagdish to the temple where, however, she did not find her sister. But, on the other hand Madho Ram was in the temple. On not seeing her sister, PW 7 attempted to get back home, but she was threatened. by the first appellant, in the presence of the second appellant, not to leave the place and was further required to marry Madho Ram. When PW 7 refused to accede to the said request, she was forcibly taken by both the accused out of the temple and when she was so forcibly being taken by both the accused out of the temple and was being led Away, the two appellants sighted PWs 11 and 13 coming in the opposite direction and, with a view to avoid them., PW 7 was again taken back to the temple. According to PW 7, on return to the temple, Jagdish left the place and Madho Ram committed rape on her. She was kept in the temple till about 1000 P.M. when the second appellant also came. Both the appellants took her to the house of one Ram Swarup and kept her in wrongful confinement. Madho Ram, who was with her during the night, again committed rape- on her. It is her further evidence that she was taken every day morning to the sugar-cane fields and brought back to Ram Swarup's house late in the night. The above is the sum and substance of the evidence of PW 7.

5. When PW 7 did not return to her house on the morning of August 17, 1964, PW 1 searched for her and made enquiries of his elder daughter, Shushila (the wife of the second appellant) regarding the whereabouts of PW 7. Coming to know that her whereabouts were not known, he lodged a complaint late in the evening with the police. The appellants were arrested two days later and released on bail. On August 25, 1964, the police took into custody PW 7 when she was attempted to be removed in a car by the appellants and certain others. Her dhoti and petticoat were seized by the police and sent to the Chemical Examiner. In his report dated 25-11-1964, the Chemical Examiner has stated that he detected blood stains and spermatozoa on both the dress materials. In his report of December 21, 1964 the Serologist has stated that he detected human blood on both these Articles.

6. The prosecution examined PWs 1, 7, 11 and 13 to 16. PW 1, as already mentioned, is the father of the girl, PW 7, who is the prosecutrix. PWs 11 and 13 were examined as witnesses. who had seen PW 7 in the company of the appellants on the morning of August 17, 1964. PWs 14, 15 and 16 were examined to prove the fact of PW 7 being taken into custody by the police when found in the company of the appellants and others on August, 25 1964. It may be mentioned at this stage that even in the first information report, PW 1 has stated that when he was making enquiries about his daughter, PW 7, on the morning of August 17, 1964, he was informed by .PWs 11 and 13 that they had seen her in the company of the appellants near the temple. The plea of the appellants was one of complete denial.

7. From what is stated above, it will be seen that so far as the actual abduction and rape are concerned, the evidence relied on by the prosecution quite naturally was mainly that of .PW 7. The evidence of the other witnesses will only establish that PW 7 was found in the company of the appellants, first on the morning of August 17, 1964 and later on the night of August 25, 1964. But PW 1's evidence is material to find out whether the evidence of PW 7 regarding her being taken away by deceit practised on her was probable or not. PW 1 has deposed to the second appellant requesting

him to allow his elder brother to marry PW 7 and to his having declined to accede to that request. He has also stated in the first information report regarding the information given to him by PWs 11 and 13 of having seen his daughter, PW 7, in the company of the appellants on the morning of August 17, 1964. This evidence of PW 1 has been accepted by both the Courts. It is further stated that after PW 7 was recovered by the police on August 25, 1964, she informed him about what had happened from the morning of August 17 till the evening of August 25, 1964.

8. It is with the above background that the evidence of PW 7 has to be considered. The learned Sessions Judge has accepted the evidence of PW 7 as true, both when she deposed to the deceit practised upon her on the morning of August 17, 1964 as well as to the rape committed by the first appellant on her at the temple and also later in the house of Ram Swamp. In this connection, the learned Sessions Judge has also taken into account the report of the Chemical Examiner as well as the Serologist. The evidence of PWs. 11 and 13 to 16 has also been accepted for establishing the fact of PW 7 being found in the company of the appellants. Acting on this evidence, the learned Sessions Judge convicted both the appellants of the offence under Section 376 and sentenced each of them to undergo five years rigorous imprisonment. The first appellant was further convicted of the offence under Section 376 and sentenced to undergo three years' rigorous imprisonment with the direction that the sentences imposed on him are to run concurrently. The High Court, on appeal, has also accepted the evidence relied on by the learned Sessions Judge and confirmed the appellants' conviction as well as the sentences imposed on them.

9. Mr. A. K. Mulla, learned Counsel for the appellants, very strenuously urged that in this case both the learned Sessions Judge and the High Court have not given due regard to the principles laid down by this Court in considering the truth or otherwise of the evidence of PW 7. The Counsel further urged, in the absence of any corroboration for the evidence of PW 7, the conviction of the appellants, based solely on the testimony of the prosecutrix is not legal. The Counsel also urged that PW 7 had, even according to her own evidence, opportunity to mention to others about the conduct of the appellants. She not having done so, implies that she was a consenting party to the whole affair. The Counsel further pointed out that it is unimaginable that the appellants would have taken PW 7 every morning to the sugarcane fields and brought her back in the evening and thus enabled the neighbours to see her in their company. This story, on the face of it, must be considered to be false.

10. Mr. O. P. Bana, learned Counsel for the State, on the other hand, pointed out that this Court has only laid down that as a rule of prudence Courts must normally look for some corroboration for the testimony of a prosecutrix so as to satisfy itself that she is telling the truth. It has further been held, the Counsel pointed out, that there is no rule of practice that there must in every case be corroboration for the evidence of a prosecutrix before her evidence can be accepted and conviction based on that evidence.

11. We are not inclined to accept any of the contentions of Mr. Mulla. The principles that have to be borne in mind by Courts when considering evidence of the prosecutrix, have been clearly laid down by several decisions of this Court. It has been held that the prosecutrix cannot be considered to be an accomplice. As a rule of prudence, however, it has been emphasised that Courts should normally look for some corroboration of her testimony in order to satisfy itself that the prosecutrix is telling

the truth and that a person, accused of abduction or rape, has not been falsely implicated. The view that, as a matter of law, no conviction without corroboration was possible has not been accepted. The only rule of law is the rule of prudence namely the advisability of corroboration should be present in the mind of the Judge or the Jury, as the case may be. There is no rule of practice that there must in every case, be corroboration before a conviction can be allowed to stand. As to what type of corroboration may be required when the Court is of the opinion that it is not safe to dispense with that requirement, it has also been laid down that the type of corroboration required must necessarily vary with the circumstances of each case and also according to the particular circumstances of the offence with which a person is charged. See *Rameshwar v. The State of Rajasthan* ; *Sidheswar Ganguly v. The State of West Bengal* . These principles have also been reiterated in the recent judgment of this Court in *Gurcharan Singh v. State of Haryana* .

12. Having due regard to the above principles we are of the opinion that neither the learned Sessions Judge nor the High Court have committed any error in accepting the evidence of P.W. 7 and convicting the appellants of the offence of abduction and the first appellant of the offence of rape also. The learned Sessions Judge has no doubt proceeded on the basis that he is acting on the uncorroborated testimony of P.W. 7 in respect of both the offences. But the learned Sessions Judge had in mind the principles laid down by this Court regarding the advisability of having corroboration and was of the view that, in the particular circumstances of this case, the rule of prudence regarding corroboration of the evidence of P.W. 7 should be departed. The High Court, on the other hand, found corroboration for the evidence of P.W. 7 regarding abduction in the evidence of P. Ws. 1, II and 13. In respect of the offence of rape, the High Court found corroboration for the evidence of P.W. 7 in the reports of the Chemical Examiner and the Serologist regarding her clothes containing spermatozoa and human blood. Both the Courts have also accepted the evidence of the Medical Officer, who examined P.W. 7. Therefore, we are of the opinion that the acceptance of the evidence of P.W. 7, either without corroboration, as has been done by the Trial Court, or after finding corroboration, as has been done by the High Court, was justified in the circumstances of this case. The learned Sessions Judge, when he dispensed with corroboration, had in his mind the rule of prudence laid down by this Court. The evidence of the other witnesses has been properly considered by both the Courts and we do not think it necessary to cover the ground again. There is no answer elicited from the prosecution witnesses that, excepting P. Ws. 11 and 13, nobody else saw P.W. 7 in the company of the appellants except on August 25, 1964, when the police contacted her. That P.W. 7 would not have been a free agent, when she was seen in the company of the appellants by P. Ws. 11 and 13, is clear from her evidence. When she was taken to the temple, she was threatened by both the appellants and, in particular, the first appellant had threatened her with dire consequences if she did not marry him. It was when the appellants were trying to take her in that state of mind out of the temple that they met PWs-11 and 13. At that time she could not have mentioned anything about her predicament to those two persons. There is nothing on record to show that at any other time she was free to act on her own, in which case the criticism of Mr. Mulla that she never sought the help of anybody, could have some force. In the absence of any such evidence on record, the only conclusion is that P.W. 7 was at all material time kept in terror by the appellants or by others at their instance.

13. For the reasons stated above, the appeal will stand dismissed.