

Rajasthan High Court

Nasru vs State Of Rajasthan on 15 December, 2005

Equivalent citations: 2006 CriLJ 954, RLW 2006 (1) Raj 471, 2006 (1) WLC 706

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Bench: N K Jain

JUDGMENT Narendra Kumar Jain, J.

1. This appeal under Section 374 Cr.P.C. is directed against the judgment and order dated 27.8.2001 passed by the Addl. Sessions Judge (FT) Alwar in Sessions Case No. 48/01 whereby accused appellant has been convicted and sentenced under Section 376 IPC to 7 years R.I. and a fine of Rs. 1,000/- in default of payment of fine to further undergo 2 months R.I.

2. PW3 Jormal, father of prosecutrix Sahrana PW.1 lodged a written report on 3.10.2000 at P.S. Sadar, Alwar wherein it was alleged that his daughter Sahrana was coming from his agricultural field on 1.10.2000 at about 5 p.m. and when she was on the way near field of Nawab Hasan, the accused. Nasru S/o Jhamman came all of sudden from his own field and caught hold his daughter Sahrana and committed sexual intercourse with her forcibly. When he came in late evening then she told him about this incident. In morning a Panchayat was convened and Jhamman father of the accused was summoned and he admitted the guilt but in evening when Panchayat was again convened to pass punishment, then Jhamman ran away from the Panchayat, therefore, no order could be passed by the Panchayat and as such without any further delay he came to lodge this report.

3. On the basis of this written report FIR No. 403/2000 was registered under Sections 323,341, 376 and 379 IPC and investigation commenced. The police prepared a site plan and got the prosecutrix medically examined. After completion of the investigation the police submitted a charge-sheet before the Addl. Judl. Magistrate No. 1 Alwar who committed the case for trial to the Court of Sessions Judge, Alwar who transferred the same to the Court of Addl. Sessions No. 1, Alwar.

4. The trial court framed charge against accused appellant under Section 376 and 379 IPC. The accused denied the charge and claimed to be tried. The prosecution examined 8 witnesses including PW1 Sahrana prosecutrix, PW3 Jormal, her father and complainant, PW4 Hameeda, her mother. Thereafter the statement of the accused was recorded under Section 313 Cr.P.C., wherein it was stated that he has falsely been implicated due to enmity with the complainant party. No evidence was produced in defence. The learned trial court after hearing all the parties passed the impugned judgment of conviction and sentence against the appellant as mentioned above. Being aggrieved with the same, the present appeal has been filed by him before this Court.

5. The learned Counsel for the appellant contended that as per Ex.P.2 written report it is clear that incident alleged to have taken place on 1.10.2000 at about 5 p.m. but report was lodged on 3.10.2000 at 12.30 p.m. There is a delay of 2 days in lodging the FIR, which has not been explained properly. The fact of convening Panchayat has not been proved by producing any independent witness. Therefore, the said explanation is not acceptable and delay of two days in lodging the FIR is fatal to the prosecution case. He further contended that there are serious material contradictions in

respect of place of incident. He referred Ex.P.2 written report wherein the incident was alleged to have taken place at the field of accused itself. In Ex.P.3, the incident alleged to have taken place in the field of complainant Jormal. As per statement of PW3 Jormal father of the victim, the incident alleged to have taken place in the field of Chander Khan. PW1 prosecutrix in her statement has stated that she was caught hold by accused in the field of Gokul. PW4 Hameeda. mother of the prosecutrix, has stated that incident took place in the field of Mormal, which is situated in front of their field i.e., field of Jormal. He, therefore, contended that the place of occurrence as shown in Ex.P.3 site plan has totally been changed. In statement of the prosecution witnesses, not only place of occurrence has been changed, but all important witnesses have alleged different places of occurrence, therefore, this material contradiction in important document like site plan is fatal to the prosecution case.

6. The learned Counsel for the appellant further contended that report was lodged in 3.10.2000 and prosecutrix was medically examined on the same date i.e., 3.10.2000 itself and report was given on 6.10.2000 wherein it was opined that no opinion can be given about rape. Ex.P.5 is the report in respect of age of the prosecutrix wherein her age was stated to be 17 to 18 years. There was no sign of fresh injury on the person of prosecutrix. He also referred the statement of PW5 Dr. Amar Singh, who proved the medical report and PW6 who proved the report in respect of age of the prosecutrix. He, therefore, contended that allegation of rape as alleged by prosecutrix is not corroborated with the medical evidence also. He further contended that accused in his statement under Section 313 Cr.P.C. stated that he has falsely been implicated due to previous enmity. He also referred the statement of PW3 Jormal, father of the victim, who admitted that number of cases are pending in between both the parties. Some documentary evidence like revenue suit pending in between both the parties were also placed on the record but they were not exhibited in the case. He referred *Ram Rai v. State of Rajasthan*, 2003 (1) Cr.L.R. (Raj.) 684, *Parmeshwar @ Parmiya v. The State of Rajasthan*, 2003 (1) Cr.L.R. (Raj.) 721, *Bhawani Singh v. State of Rajasthan*, 2005 (3) R.C.C., 1232 and *Kana Ram v. State of Rajasthan* 2004 (1) R.C.C., 23.

7. The learned Counsel for the appellant lastly contended that appellant was arrested on 4.10.2000 and he was not enlarged on bail during investigation/trial and during pendency of this appeal, therefore, since the date of his arrest he is in custody and he has already completed the sentence of imprisonment of about 5 years and 2 months and in view of above peculiar facts and circumstances of this case, the sentence of 7 years imprisonment awarded by the Trial Court be reduced to a period of imprisonment of 5 years 2 months, already undergone by the appellant. He referred *Sohanlal v. State of Rajasthan*, 2003(1) Cr.L.R. (Raj.) 176, wherein while convicting the accused for the offence under Section 376 IPC, reduced the sentence of imprisonment to a period of 3 and half years already undergone by him.

8. The learned P.P. contended that the delay in lodging the FIR has properly been explained by the prosecution. In FIR itself it was mentioned that on second day Panchayat was convened but in evening Jhamman, father of the accused, ran away from the Panchayat, therefore, report was lodged on third day. He further contended that although there is contradiction in respect of place of incident but the statement of the prosecutrix is trustworthy and contradictions in respect of place of occurrence are not fatal to the prosecution case. So far as corroboration of allegation of rape by

medical evidence is concerned, he contended that it is not necessary that it must be corroborated by medical evidence. So far as enmity in between both the parties is concerned, he contended that enmity is a double edged weapon and no benefit could be given to the appellant.

9. I have considered the rival submissions and examined the impugned judgment as well as record of the Trial Court.

10. PW1 Sahrana in her statement before the Court stated that at about 3 p.m. she had gone to their field and when she was coming back then accused Nasru, present in Court, caught told her hand and took her away in the field and committed sexual intercourse with her forcibly. She further stated that accused was having knife in his hand. Thereafter she went to her house and narrated the incident to his brother Mubin and thereafter to her mother. Then she told to her father and Panchayat was convened. The father of Nasru did not come in Panchayat. Thereafter Panchayat told that a report be lodged in this connection. Thereafter she went to lodge the report along with her father, mother and other persons of the village. In her cross-examination she admitted that the accused caught hold her near field of Gokul and the same place was stated by her to the police. She further stated that blood stained soil was taken in possession by police also. She also admitted that she sustained injuries on her person, her bangles were broken.

11. PW3 Jormal stated that his daughter told him about committing of sexual intercourse with her by Nasru at the point of knife. Thereafter Panchayat was convened but no decision could be taken by the Panchayat, therefore, report Ex. P.2 was lodged. In his cross-examination he admitted that report was got written from Advocate Sardar Khan. His brother Mormal had gone to get the report written from Advocate Sardar Khan. He was confronted with his statement Ex.P.2 recorded under Section 161 Cr.P.C. and number of contradictions were pointed out. He subsequently admitted that incident with his daughter took place in the field of Chandar Khan.

12. PW4 Hameeda stated that accused committed rape with her daughter. In her cross-examination she stated that she had also gone to lodge the report. She stated that report was written by S.H.O. She denied that report was got written from Advocate by brother of her husband. She further admitted that the occurrence took place in the field of Mormal, brother of her husband. She also admitted that she had gone to the place of occurrence but she did not see any blood or bangles. She stated that no case is pending between them and the accused party.

13. PW8 Roshan Lal in his cross-examination admitted that in site plan Ex. P. 3 he has not shown the field of Nasru and Nawab Hasan. He stated that there is no field in the name of accused Nasru. He stated that he prepared the site plan as per description given by prosecutrix and her parents. He admitted that he did not recover any blood or bangles from the site plan. He also admitted that he did not seize any blood-stained clothes of the prosecutrix.

14. The aforesaid facts and the statements of the prosecution witnesses show that occurrence took place on 1.10.2000 at about 5 p.m. as per Ex.P.2 written report whereas PW1 stated before Court that incident took place at about 3 p.m. In Ex.P.2.it was stated that accused came all of sudden from his own field and committed sexual intercourse with the prosecutrix forcibly whereas in site plan no

field of Nasru accused was shown. As per Ex. P.3 site plan, the rape was committed in the field of Jormal, whereas Jormal PW3 stated that rape was committed in the field of Chander Khan. Prosecutrix PW1 herself stated that she was caught hold near the field of Golul and she does not corroborate that occurrence took place in their own field i.e., field of Jormal. PW4 Hameeda stated that the rape with her daughter was committed in the field of Mormal which is situated in front of their field. From statement of PW1 Sahrana it is clear that first of all she narrated the incident to his brother Mubin but Mubin was not examined in the case by the prosecution. No independent persons has been produced by the prosecution to prove that Panchayat was convened and no decision was given by the Panchayat, therefore, there was delay of 2 days in lodging the report and further, when this incident was disclosed to Mubin, then why he did not lodge the report immediately. The statement of prosecutrix is not corroborated by statements of her parents and also with the I.O. PW 8. PW1 stated that blood-stained sand and bangles were recovered by police whereas PW8 Roshan Lal Investigating Officer denied it. The prosecutrix was examined medically on the same day i.e., 3.10.2000 but as per statement of Dr. Amar Singh PW5, there was no fresh injury or bleeding. No opinion was given about rape. As per statement of PW6, Dr. B.L. Gupta her age was found to be 17 to 18 years. Parents of prosecutrix have not stated a single word about age of the prosecutrix. The trial court has recorded a finding that prosecutrix was 17 to 18 years of age.

15. Although the conviction of accused for the offence under Section 376 Cr.P.C. can be maintained even if statement of prosecutrix is not corroborated by medical evidence and no further corroboration of her statement is required provided her testimony is trustworthy and her statement Inspires confidence of the Court. So far as present case is concerned, as discussed above, it is clear that statement of the prosecutrix in the present case does not inspire confidence of the Court. Her statement Is not only not corroborated by medical evidence but the same is not corroborated by the statements of her parents as well as I.O. on number of points. The 4 prosecution witnesses PW1, PW3, PW4 and PW8 have stated 4 different places of occurrence. No satisfactory explanation has been given for not lodging the FIR immediately. No explanation has been given as to why Mubin, brother of the prosecutrix, did not lodge the report immediately and why Mubin was not examined in the case by prosecution. The enmity in between both the parties is admitted as PW3, father of the victim has admitted this fact. The above facts are fatal to the prosecution case. The prosecution evidence Is not consistent and sufficient to prove the guilt against the accused appellant beyond all reasonable doubt and all these facts are fatal to the prosecution case and on the basis of such evidence conviction of the accused appellant cannot be maintained under Section 376 IPC.

16. In Ram Rai v. State of Rajasthan (supra) in similar circumstances this Court held as under :--

PW-2 Dhanna has put himself as an eye-witness but his testimony is contrary in the site plan Ex.P/5. According to Dhanna the incident took place outside the 'Baada' and he found the accused lying on his wife outside the 'Baada'. However, the site plan Ex.P/5 shows that the incident took place inside the Baada of the accused. This inconsistency is fatal to the prosecution story. It is not explained as to how she went to the Baada of the accused. PW-1 Shanti nowhere says that the incident took place outside the Baada of the accused.

As pointed out earlier there is a delay in lodging of the FIR and there is no satisfactory explanation for the same. PW-2 Dhanna has contradicted his statement Ex.D/1 recorded Under Section 161 of the Cr.P.C. It has come in prosecution evidence that the Panchayat collected in the matter and enquired from the accused about the incident and he allegedly made an extra-judicial confession before the Panchayat. I find that the evidence in this respect is highly unsatisfactory and no conviction can be made on its basis. Pokhar is said to be one of the members of the Panchayat but he as DW-1 has stated that the Panchayat was never called in respect of the accused but the same was convened to investigate the incident between Shanti and Jag-dish. He has further slated that when Jagdish and Shanti were detected in a compromising position Shanti was beaten by her husband. He has also admitted that the said Jagdish had intimacy with the elder sister of Shanti. Pokhar is a cousin of PW-2 Dhanna.

Be that as it may I find that the evidence is highly unsatisfactory. In view of what has been said above the conclusions of conviction cannot be sustained. Accordingly, the appeal is allowed and the judgment of the learned Trial Court is set aside. The accused is acquitted. The amount of fine is deposited shall be refunded to the accused.

17. In view of the above discussions it is difficult to affirm the judgment and order passed by the Trial Court. The Trial Court has committed an illegality in not considering the prosecution evidence properly and wrongly convicted the accused appellant. .

18. Consequently the appeal of the appellant is allowed. The impugned judgment passed by the Trial Court is set aside. The accused is acquitted. He is in judicial custody and he may be released forthwith, if his custody is not required in any other case.