

CASE NO.:
Appeal (crl.) 1046 of 2000

PETITIONER:
Mohan Lal

RESPONDENT:
State of Rajasthan

DATE OF JUDGMENT: 03/12/2002

BENCH:
M.B. SHAH & B.P. SINGH.

JUDGMENT:

J U D G M E N T

B.P. SINGH, J.

The appellant Mohan Lal was put up for trial before the Court of Special Judge, S.C./S.T. (P.A.CC.), Sri Ganganagar in Criminal Case No. 4 of 1997 charged of the offences under Section 376 IPC and Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act. The learned Special Judge by his judgment and order dated 6th February, 1998 found the appellant guilty of the offence under Section 376 IPC and sentenced him to undergo 7 years rigorous imprisonment and to pay a fine of Rs.20,000/-, in default of payment of fine to undergo further imprisonment for one year. The appellant was, however, acquitted of the charge under Section 3(2)(5) of the SC/ST (Prevention of Atrocities) Act.

S.B. Criminal Appeal No. 123 of 1998 preferred by the appellant against his conviction and sentence was dismissed by the High Court of Rajasthan at Jodhpur by judgment and order dated 13th August, 1999. This appeal has been preferred by special leave.

The case of the prosecution is that prosecutrix K (PW.1) is the daughter of PW.2 resident of village Birdhwal in the district of Sri Ganganagar. The appellant is also a resident of the same village. On 8th October, 1996 at about 10.00 or 11.00 a.m. prosecutrix had proceeded with Draupadi, wife of Bhani Ram to cut grass. Draupadi induced her to accompany her to the house of the appellant, who was his 'Jeth' (husband's elder brother) on the pretext of collecting her sickle and cloth sheet, where she was confined in a room belonging to the appellant who was present inside the room. He confined her in that room for about 3-4 hours and during this period raped her thrice. At one time she had come out of the room in the courtyard when she was seen by her brother PW.5 who resided in the adjacent house, but she was again pushed inside the room by the appellant and kept confined there for some more time. PW.5 became suspicious having seen a girl in the courtyard of the appellant. It is not in dispute that the house of PW.5 is adjacent to the house of the appellant and there is only a fence which separates the two courtyards. PW.3, brother of PW.5 had come to him and PW.5 asked him to call PW.2, the informant, father of the prosecutrix. After sometime, PW.2 came to him and he was told that there was a girl in the house of the appellant. Asking PW.3 to keep a watch, PW.2 went to call Parma Nand and Prithvi Ram with whom he went to the house of the appellant. At

that time appellant had left his house but he found Sulochana and Draupadi, wives of the two brothers of the appellant sweeping the floor in the courtyard. Prosecutrix was found inside a room and she was brought out with the help of PW.5, Parma Nand and Prithvi Ram (both not examined). Prosecutrix was terrified and it took sometimes to pacify her. All this happened at about 4.00 p.m. Prosecutrix thereafter narrated the entire incident to her father PW.2. According to the prosecution, since it was about sun set time and there was no conveyance available to go to police station at Rajiasar, which was at a distance of about 14 Kms., the informant, PW.2 went to the police station next morning after arranging for a jeep at about 10.00 a.m. At the police station, the Station House Officer was not available and he was told by the other policeman present there to bring his daughter so that his report could be recorded. He, therefore, sent his son back to the village in the jeep and thereafter prosecutrix, PW.1 came to the police station at about 4.00 p.m. By that time the Station House Officer had come and he was able to lodge his report Ext. P.1.

Though the first information report is said to have been recorded at about 4.15 p.m. on 9th October, 1996 at Police Station Rajiasar, the special report was received by the Court at Suratgarh only at 11 0' clock on 10th October, 1996. It also appears that the investigation commenced only on the 11th October, 1996 and the statement of PW.5 was recorded as late as on 13th October, 1996 i.e. 4 days after the lodging of the first information report. It appears that for about 2 days there was no investigation and this gave rise to the submission urged on behalf of the appellant that in fact the first information report was lodged after considerable delay and only after due deliberations. This explained why the special report did not reach the Court in time and also explained why the investigation commenced after 2 days and a very important witness, PW.5 was examined after 4 days of the lodging of the first information report, even though there is no explanation for such delay.

The prosecution examined several witnesses. The prosecutrix K was examined as PW.1; her father (informant) as PW.2, her cousins were examined as PW.3 and PW.5. The prosecutrix has described PW.5 as her brother. In fact the trial court has recorded a finding that PW.5 was not her brother because he is not the son of PW.2. The trial court, however, lost sight of the statement of PW.2 that PW.3 was his sister's son. It cannot therefore, be disputed that PW.3 and PW.5 are the cousins of the prosecutrix K. PW.8 - Bhagwant Singh was examined to prove the recording of the first information report at the police station. PW.4 and PW.7, namely Mam Raj Singh and Dharam Pal Singh, are the investigating officers. Dr. Vijay Prakash Beniwal, PW.6 had medically examined the appellant and the prosecutrix. The prosecution also placed on record Ext P.14, the report of the Forensic Science Laboratory, which proves that there was semen on the 'salwar' of the prosecutrix and 'kaccha' of the appellant.

Before the trial court it was contended on behalf of the defence that no such occurrence took place and that the appellant had been falsely implicated. In the alternative it was submitted that in any event the evidence on record discloses that the prosecutrix was a consenting party and, therefore, offence under Section 376 of the Indian Penal Code is not made out. We may notice at this stage that the prosecutrix herself stated that she was married a year before the occurrence and at that time her age was 18 years. Later she stated that her age was 15-16 years at the time of marriage. The courts below have proceeded on the basis that she was in any case above 16 years of age on the date of occurrence.

The trial court as well as the High Court accepting the evidence of PWs.1, 2, 3 & 5 found the appellant guilty of the offence under Section 376 IPC. Learned amicus curiae appearing on behalf of the appellant submitted before us that the courts below have not even closely examined the evidence on record. The cross-examination of the witnesses, according to him, will disclose that the prosecutrix K, PW.1 was a consenting party and this was not her first sexual intercourse with the appellant. He submitted that the courts below on a very superficial appreciation of the evidence on record, completely ignoring the statements made by the prosecutrix in course of her cross-examination, which supported the case of the defence, have placed reliance on her testimony, which according to him, is unworthy of belief. He submitted that this was a case where on facts coming to the knowledge of the informant, father of the prosecutrix, only after discussing the matter with his relatives and others, the informant lodged a false report on the next day.

With the assistance of learned counsel for the parties, we have perused the entire evidence on record since it was submitted that the courts below have not subjected the evidence to a critical scrutiny. We find that there is substance in the submission of the learned amicus curiae.

The only question which has to be considered is whether the prosecutrix was a consenting party.

In this regard the medical evidence is not of much assistance since the prosecutrix was a married woman and habituated to sexual intercourse as deposed by Dr. Beniwal, PW.6. He did not find any injury on the body of the prosecutrix and on her private parts. One thing is, however, noticeable, namely that according to the prosecutrix when the appellant tried to rape her, on account of her resistance, her bangles were broken and injuries were caused to her wrist. No such injury was also found on the person of the prosecutrix. We have, therefore, to closely examine the evidence of the prosecutrix and other witnesses.

A mere perusal of the evidence of the prosecutrix -K, PW.1, would show that in her examination-in-chief she stated that Draupadi, the wife of the brother of the accused, took her to the house of her brother-in-law on the pretext that she had to pick a sickle and a cloth sheet which was lying in the courtyard of the appellant. The prosecutrix accompanied her but as soon as they entered the courtyard of the appellant, she was pushed into a 'kotha' by Draupadi, who closed the door from outside. Inside the 'kotha' (room) the appellant was present who closed the door from inside by fixing the chain. Thereafter he committed rape on her thrice. When she started weeping, he threatened her saying that if she reported the matter, he will kill all the ladies of her house. According to the prosecutrix, after having sexual intercourse with her thrice, he opened the door and looked in different directions to see if someone was present. Finding an opportunity, she ran out into the courtyard, but she was caught in the courtyard by the appellant and again brought to the room. After sometime the accused-appellant went away but the wives of his brothers, namely Draupadi and Sulochana kept sitting outside the 'kotha'. They also threatened her and did not permit her to come out from the room. After about an hour, her father came and she was rescued. She further deposed that on the first occasion when she had run out of the room, she was seen by her brother (cousin) PW.5. His house was situated in the neighborhood and PW.5 could see a person standing in the courtyard of the appellant. After being rescued by her father, she was brought to her house at about 4.00 p.m. and thereafter on the next day, she had gone to the police station where

the first information report was lodged.

This witness was cross-examined at length and confronted with the statement made by her in the course of investigation, Ext.D.1. The first fact to be noticed is that in her statement made during the course of investigation, she had not even mentioned the fact that she was pushed into the room of the appellant by Draupadi. She had also not stated that after the appellant went away, those two ladies came and threatened her and did not permit her to go out. She could not give any explanation as to how such statements were not recorded. She also stated that she did not assault the appellant with her sickle because he had slapped her twice or thrice. The story of slapping is not found in her statement made under Section 161 Cr. P.C. It also appears from the cross-examination that she did not resist the appellant when he was removing her clothes, and he had sexual intercourse with her thrice with ease. On account of fear, she did not make any noise. The appellant committed rape on her easily. She admitted that her father came to the courtyard of the appellant about half an hour after the appellant had left and during that period she remained in the house of the appellant. She denied the suggestion that she hid herself in the room of the appellant since she suspected that she had been noticed by her cousin, PW.5, who was a neighbour of the appellant. She denied this suggestion, but when confronted with the statement, Ext.D.1 made in the course of investigation to the effect that she hid herself in the 'kotha', she had no explanation to offer. She further stated that after the appellant had left, she did not raise an alarm because the two ladies had come there and they kept sitting there for about half an hour i.e. till the time her father and PW.5 came to the house of the appellant. Even this is not found in her statement made in the course of investigation. She asserted that Parma Nand and Prithvi Jat had not come with her father but she could not say how their names find place in the statement made by her to the police.

It was suggested to the witness that she used to meet the appellant even prior to the incident in question and that she was paid Rs.50/- on earlier occasions as well by the appellant for having sexual intercourse with her. She was confronted with her statement under Section 161 Cr. P.C. wherein she had admitted the fact that the appellant had been giving her fifty rupees. Another significant statement which deserves to be noticed is that though the prosecutrix denied having taken tea with Sulochana and Draupadi, in her statement to the police she had stated that she had taken tea with them and Mohan Lal. It is also significant that in her statement made during the course of investigation this witness had not stated that she had attempted to run away earlier but she was again pushed inside the room by the appellant. This was the time when she had been noticed by her cousin, PW.5.

We have noticed these omissions and contradictions in her cross-examination only with a view to test the credibility of this witness because the conviction of the appellant is based primarily on her evidence. We find that in the course of investigation, she had not stated that she was forcibly pushed inside the room of the appellant ; or that the appellant had slapped her and out of fear she did not raise a hue and cry; or that after the appellant went away, she was not permitted to leave by the wives of the two brothers of the appellant but on the contrary she had hidden herself inside the room after having been seen by PW.5. Moreover her statement in the course of investigation that on earlier occasions she had been paid Rs.50/- by the appellant and that she had tea with them on the day of occurrence as well, creates a serious doubt about the truthfulness of the version of the prosecutrix and we find it unsafe to rely upon her testimony to convict the appellant. Not only this,

the case of the prosecution even otherwise does not appear to be credible and it appears that the father of the prosecutrix, PW.2 on discovering that the prosecutrix was involved with the appellant, after due deliberations, lodged a report implicating the appellant.

PW.5 undoubtedly is a cousin of the prosecutrix. He lived in the house adjacent to the house of the appellant and it is the prosecution case that anyone in the courtyard of the appellant can be seen from the house of PW.5. The case of the prosecution is that when the prosecutrix first attempted to run away and was in the courtyard, she was seen by PW.5. The evidence is not clear as to whether PW.5 had identified the prosecutrix. There is, however, no doubt that the prosecutrix had seen PW.5. If PW.5 had identified the prosecutrix there is no reason why he did not immediately come to her rescue seeing that the appellant had forcibly pushed her inside his room. If he had not identified the girl, as being the prosecutrix, there appears to be no reason for his asking his brother PW.3 to call PW.2, father of the prosecutrix. Learned amicus curiae submitted that prosecutrix having seen PW.5, hid inside the room of the appellant to avoid identification, and this is what she stated in her statement in the course of investigation. This only fits in with the case of the defence that though she was a consenting party, she was afraid that her cousin, PW.5 may come to know of the clandestine affair and expose her. PW.5, it was submitted, called her father because he may have thought that the father of the prosecutrix should take whatever steps he may consider necessary as his daughter was involved. From the evidence of PW.2, the informant, it appears that PW.5 did not disclose to him the fact that the girl he had seen in the house of the appellant was his daughter, yet PW.2, the informant, called two other persons and only thereafter entered the house of the appellant. These facts do tend to support the case of the defence that the prosecutrix having been seen by PW.5 in the house of the appellant despite best efforts to conceal herself, the latter called her father and her father alongwith PW.5 and two others thereafter went to the house of the appellant.

So far as the last part of the prosecution case is concerned, namely the recovery of the prosecutrix from the room of the appellant, the evidence supports the case of the defence that the prosecutrix was hiding behind the ladies when her father and others came to her rescue. The normal conduct of the prosecutrix in such circumstances would have been to rush to the persons who came to her rescue and not to hide behind the two ladies said to be the wives of the brothers of the appellant.

All these facts lead us to seriously doubt the truthfulness of the case of the prosecution and we are satisfied that the prosecution has failed to prove its case beyond reasonable doubt.

In the result this appeal is allowed, the conviction of the appellant is set aside and he is acquitted of the charge levelled against him. The appellant shall be released forthwith unless required in connection with any other case.

We place on record our appreciation of the useful assistance rendered by Shri Ranbir Singh Yadav, amicus curiae. We direct that a sum of Rs.750/- shall be paid to him for rendering assistance to the Court.