

NATHU RAM
v.
STATE OF HARYANA

OCTOBER 27, 1993

[P.B. SAWANT AND S. MOHAN, JJ.]

Indian Penal Code, 1860—Sections 354, 376 read with 511—Attempt to commit rape—Outraging the modesty of a woman—Patient brought to clinic of a private Medical Practitioner for treatment—Patient's relative sent on an errand—Doctor and another person attempting rape on the unconscious patient—On return of the relative one of the accused runs away—Other accused caught—Convicted and sentenced—Appeal by one of the accused—Conviction and sentence—Confirmed.

On a complaint filed by P.W.8, F.I.R. was registered against the appellant-accused-2 and accused-1, a private Medical Practitioner, under Sections 354 and 376 read with Section 511 Indian Penal Code.

The crux of the complaint was that the daughter-in-law of P.W.8 was suffering from Malaria and was taken to the clinic of accused No.1 for treatment. The Doctor gave some tablets and water and asked her to lie down on a cot behind a curtain, and called in the appellant-accused. Thereafter, the Doctor asked P.W.8 to bring hot water from outside. When he returned with hot water, he found that both the accused had attempted to rape his daughter-in-law, who was lying on the cot unconscious and her salwar was folded to half the extent. The Doctor was totally naked with only an underwear and the appellant was in his kachha and baniyan. P.W.8 raised an alarm and the appellant ran away. The Doctor was caught and slapped. Some people gathered there and freed the Doctor.

The trial court convicted and sentenced the accused to 3½ years' rigorous imprisonment with fine of Rs.1000 each under Sections 376/511 IPC and in default of payment of fine to undergo rigorous imprisonment for 3 months.

On appeal, the High Court confirmed the conviction and sentence. Against this decision, accused No.2 preferred the present appeal.

A The appellant contended that he had nothing to do with the alleged offence and a false case had been filed against him and that since the occurrence was alleged to have taken place on a Sunday, there was no possibility of his going to the clinic.

B Dismissing the appeal, this Court

C **HELD : 1.** P.W.8 is positive that the Doctor was standing naked while the appellant was scantily dressed in his kachha and baniyan. P.W.4 was unconscious and her Salwar had been half folded. Accused Doctor assured P.W.8 that he will cure P.W.4 with the help of his Guru who is none else than the appellant. Merely because it happened to be a Sunday, it does not mean there was no possibility of the appellant not being there. [420-C-E]

D **2.** There may be minor discrepancies in the evidence of P.W.8, but they are natural. A tutored witness will depose in a parrot-like fashion. In any event, these discrepancies are not so material as to reject his testimony. Above all, the two rustic villager P.W.4 and 8 could not have ever thought of foisting a false case, more so when there was admittedly no enmity between the appellant and accused No.1 on the one hand and the prosecution witnesses on the other. [420-F]

E **3.** No doubt, C.W.2 would say that no complaint was preferred to him by P.W.8 but the positive case of P.W.8 is that he promised to take action but he did not do so. Therefore, P.W.8 had to go upto the Chief Minister and the higher authorities. It is this relentless pursuit which made the police to register the case. [420-G]

F **4.** The sentence cannot also be called excessive under the circumstances of the case, when in complicity with Accused No.1, the appellant abetted the offence of rape. It is not that he was a mere bystander or onlooker. The scanty dress clearly will make him fall under the said two sections with which he is charged. [420-H & 421-A]

G **CRIMINAL APPELLATE JURISDICTION :** Criminal appeal No. 357 of 1990.

From the Judgment and order dated 1.11.89 of the Punjab and Haryana High Court in Criminal Appeal No. 464-SB of 1988.

H U.R. Lalit and Prem Malhotra for the Appellant.

Ms. Renu George and Ms. Indu Malhotra for the Respondent.

The Judgment of the Court was delivered by

MOHAN, J. The appellant along with one Dr. Ramesh Kumar was sentenced to 3½ years' rigorous imprisonment with fine of Rs. 1,000 each under Sections 376/511 of the Indian Penal Code and in default of payment of fine the defaulter was to undergo rigorous imprisonment for a period of three months. The conviction and sentence imposed by the learned Sessions Judge of Narnaul was unsuccessfully appealed against before the High Court in Criminal Appeal No. 464 SB of 1988. The present appeal is directed against the said conviction and sentence by Nathu Ram, Accused 2 (appellant herein). The prosecution is as follows:

On 11th January, 1986 Mansa Ram (P.W.8) made an application to the Chief Minister of Haryana to the effect that his son Satyawani is serving in the Army and his wife Nirmala (daughter-in-law) is living in the village with him. She was suffering from Malaria. Therefore, he took her on 20th October, 1985 for treatment to a private medical practitioner, namely, Dr. Ramesh Kumar (Accused 1) who had his clinic at Satnali in the market. He and Nirmala reached the clinic at about 1 P.M. and contacted the doctor who assured them of curing her. He gave Nirmala two tablets with a glass of water and asked her to lie down on the cot behind a curtain. Dr. Ramesh called Nathu Ram, Secretary of the Market Committee, Accused 2 (the appellant herein) whom he called his Guru. Dr. Ramesh then asked Mansa Ram (P.W.8) to bring hot water from outside. When he returned with hot water and entered the clinic he found that they had attempted to rape Nirmala. On seeing him, the appellant, Nathu Ram ran away. Dr. Ramesh was caught and given a beating by him. Some other people intervened and got Dr. Ramesh freed. He thereafter went to Ganga Ram, Havaldar of Police Station, Satnali who said that he would himself arrest him but he did not take any action. He requested the Chief Minister to get the investigation of the case done.

The above complaint was marked through the Deputy Commissioner, Narnaul to the Senior Superintendent of Police, Narnaul for enquiry. On enquiry, he filed the report that the allegations in the complaint were false. Not being satisfied with the report of the police, the Deputy Commissioner of Narnaul marked the complaint on 11.9.86 for a fresh enquiry to the

- A S.D.M. Mahendragarh. He conducted the enquiry at Satnali. He made his report on 4.2.87 recommending for registration of the case against the doctor and the appellant. This was marked to the S.P.O. Narnaul for registration of the case. Accordingly F.I.R. No.31 dated 18.5.87 in P.S. Satnali was registered under Sections 354 and 376 read with Section 511 of the Indian Penal Code. After investigation the appellant and Dr. Ramesh were sent for trial.
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- Before the learned Sessions Judge Mansa Ram appeared as the main prosecution witness (P.W.8). He deposed that Nirmala (P.W.4) is the wife of his son who is employed in the Army. She was suffering from malaria fever on 20.10.85. He took her to the clinic of Dr. Ramesh (Accused 1). It was at about 1 O'clock in the day. Dr. Ramesh told that he will cure her and gave two tablets to Nirmala (P.W.4) with a glass of water which she took. Dr. Ramesh called his Guru Nathu Ram, Accused 2 (appellant herein), who is the Secretary of the Market Committee. Nirmala was asked to lie down on a cot behind a curtain in the clinic. Dr. Ramesh then asked Mansa Ram (P.W.8) to get hot water from outside. When he entered the clinic with hot water he saw Dr. Ramesh totally naked and Nathu Ram, the appellant, in his Nikar and Jersey. They were standing there and Nirmala was on a cot. She was unconscious and her Salwar had been folded to the extent of half. Mansa Ram (P.W.8) raised an alarm. The appellant ran away. Banwari (P.W.6) and Mool Chand (P.W.5) came inside the clinic. Mansa Ram (P.W.8) gave slaps to Dr. Ramesh. Several other people assembled there. He put the Salwar of Nirmala (P.W.4) in order and covered her and took her back. The same day, he handed over a complaint to Ganga Ram H.C. of Police Station, Satnali. He did not take any action.
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On accepting the evidence of prosecution witnesses the learned Sessions Judge came to the conclusion that the delay in filing the First Information Report was satisfactorily explained because Mansa Ram (P.W.8) gave the complaint in 1986 as well as in 1987 and he was relentlessly pursuing the same.

As regards the so-called discrepancies in the evidence he was of the view that the statements of Mansa Ram and Nirmala, P.Ws. 8 and 4 respectively, sound natural, more so, when they were illiterates. The version by the defence that the doctor refused to perform the abortion or that the Secretary (the appellant herein) was in the knowledge of some secrets of Mansa Ram (P.W.8) and, therefore, he was being pressurised are absolutely preposterous. If an abortion had been refused the complainant could have gone to some other clinic. Why should he involve the doctor in a false case? Mansa Ram (P.W.8) had no prior enmity against Dr. Ramesh. Nathu Ram (Accused 2) could have disclosed the alleged secrets against Mansa Ram (P.W.8) during the trial. So, the plea taken by the accused persons are totally imaginary. On this basis, both the accused were sentenced to 3½ years rigorous imprisonment with a fine of Rs. 1,000.

In Criminal Appeal No. 464 SB of 1988 the High Court came to the same conclusion that the delay in filing the First Information Report had been satisfactorily explained.

It was concluded that an illiterate villager had taken his daughter-in-law to a private medical practitioner who abused his position and tried to molest the lady. Nathu Ram, the appellant exploited the situation as there was nobody to help Nirmala (P.W.4) who had been made unconscious by Dr. Ramesh Kumar (Accused 1). He also tried to misbehave with her. The testimony of prosecution witnesses was found to be convincing. Therefore, the conviction and the sentence were confirmed.

In this appeal before us, it is argued by the learned counsel for the appellant somewhat vehemently, that the evidence of Narsingh Das (C.W.1) is categorical that no complaint whatever was given to him. It is only at the instigation of some others a false complaint had come to be preferred whereas he had nothing to do with the alleged offence. Besides, that day was a Sunday. There was no possibility of the appellant going to the doctor's clinic.

A Mansa Ram (P.W.8) is the main witness in this case. Since Nirmala (P.W.4) became unconscious, the moment she was administered two pills by the doctor, she could not know much. On an analysis of the evidence of Mansa Ram (P.W.8) it is found there are vital discrepancies which will clearly be lie the case of prosecution. Merely because the appellant was standing in Kuchha and banian, that cannot straightaway lead to an inference of abetment of rape nor attempted rape, when no overt act is alleged.

B We have given our careful consideration to the above arguments. We may straightway say that we are not in a position to accept any of them.

C This is a case in which an illiterate villager with his daughter-in-law came for medical treatment but the appellant as well as the doctor had other designs to exploit the situation. When Mansa Ram (P.W.8) returned with hot water what he saw had alarmed him. He is positive that doctor was standing naked while the appellant was scantily dressed in his Kachha and banian. The Salwar of Nirmala (P.W.4) had been half folded. How the appellant came in was when Dr. Ramesh (Accused 1) assured Mansa Ram and Nirmala, P.Ws. 8 and 4 respectively, that he will cure Nirmala with the help of his Guru who is none else than the appellant. Merly because it happened to be a Sunday, it does not mean there was no possibility of the appellant not being there.

E There may be minor discrepancies in the evidence of Mansa Ram (P.W.8), as rightly held by the learned Sessions Judge but they are natural. A tutored witness will depose in a parrot-like fashion. In any event, these discrepancies are not so material as to reject his testimony. Above all, the two rustic villagers Nirmala and Mansa Ram, P.Ws. 4 and 8 respectively, could not have ever thought of foisting a false case, more so, when there was admittedly no enmity between the appellant and Dr. Ramesh on one hand and these prosecution witnesses on the other. We fully concur with the findings of both the courts that the plea of defence has to be rejected.

G No doubt, Ganga Ram (C.W.2) would say that no complaint was preferred to him by Mansa Ram (P.W.8) but positive case of Mansa Ram (P.W.8) is he promised to take action but he did not do anything. Therefore, he had to go upto the Chief Minister and the higher authorities. It is this relentless pursuit which made the police to register the case. The sentence cannot also be called excessive, under these circumstances of the

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case, when in complicity with Dr. Ramesh (Accused 1), the appellant abetted the offence of rape. It is not that he was a mere bystander or onlooker. In the circumstances narrated above, the scanty dress clearly will make him fall under the said two Sections with which he is charged. "It is the apparel that proclaims". For all these reasons, we find no ground had been made out warranting interference. Accordingly, the appeal will stand dismissed.

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Appeal dismissed.