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NARAVAN @ NARAN
v
STATE OF RAJASTHAN

APRIL 10, 2007

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[S.H. KAPADIA AND B. SUDERSHAN REDDY, JJ.]

Penal Code, 1860; Ss. 376 and 392:

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Rape—Accused allegedly raped prosecutrix thrice in a tractor-trolley and snatched her gold tops and cash—FIR—Charge-sheet—Trial Court found accused guilty of committing offences u/ss. 376 and 392 IPC, convicted and sentenced him accordingly—Affirmed by High Court—On appeal, Held: Evidence of prosecutrix is full of contradictions—Her evidence do not corroborate from evidence of any of the witnesses, more particularly from evidence of PW-6, who is a material witness—Prosecutrix miserably failed to establish the charges u/ss. 379 and 392—Hence, the conviction and sentence as imposed are set aside and accused is ordered to be released forthwith—Criminal Trial—Evidence Act—Statement of witnesses—Corroboration.

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On the fateful night, when the prosecutrix was selling chillies at around 07-07.30 p.m., the appellant enticed her and took her in a tractor, which he himself was driving. He stopped the tractor near a drain on the pretext of answering the call of nature and allegedly dragged her beneath the trolley of the tractor and committed rape. She started shouting but the appellant pressed her mouth with his hands. He repeated the crime two more times and at last he took her to the banks of a pond, made her to get down from the trolley and threatened her to push into the pond and forcibly snatched her gold tops and Rs. 1,000/- cash and thereafter ran away from the scene of occurrence in his tractor. The prosecutrix reached the village and took shelter for night in the house of a lady (PW-6). Then she narrated the incident to the village Sarpanch who had made a complaint in the Police Station. On the basis of the complaint, First Information Report was registered under Sections 366, 376 and 392 IPC against the accused. After completion of the investigation, the police filed charge sheet against the accused under Sections 376 and 392 IPC. Trial Court found the accused guilty of committing offences u/ss. 376 and 393 IPC, convicted and sentenced him accordingly. On appeal, conviction and sentence

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of the accused was affirmed by the High Court. Hence the present appeal. A

Allowing the appeal, the Court

HELD: 1.1. The prosecutrix (PW-3) in her evidence for the first time in the court stated that the accused asked her to come to his village and to leave in the morning and by saying so he dropped her on the way and also pulled the chillies sacks from the trolley. In the cross-examination the prosecutrix (PW-3) stated that she boarded in the trolley at about 5 O'clock in the evening and even by 7 O'clock they reached the village. She also stated in her evidence that even after the accused committed rape on her she sat in the tractor happily. It is not stated by her in her evidence that she raised any hue and cry even while passing through the number of villages. In the first information report she stated that the accused committed rape on her thrice but in the evidence she stated that the accused committed rape on her only twice and not thrice. According to her the rape was committed on her on Kankar (rough way). She did not state that she offered any resistance though she was physically very strong. Medical report says that there were no injuries on the body of the Prosecutrix. There were no injuries on her private part. It is ultimately opined that "no definite opinion can be given regarding rape, however, she is habitual to sexual intercourse." In the circumstances, it is not possible to believe that the prosecutrix has been subjected to rape twice by the accused, as alleged. [Paras 10 and 11] [1101-D; 1102-D-F] B C D E

1.2. In the first information report as well as in her evidence the prosecutrix stated that she revealed the entire episode of committing rape on her by the accused to PW-6 in whose house in the village she slept on the fateful night. She also stated about the accused's snatching of Rs. 1,000/- from her and also some jewellery. However, PW-6 in her evidence did not state that the prosecutrix narrated the incident of rape committed on her by the accused to her. Thus, the evidence of the prosecutrix is full of material contradictions. There is no corroboration of whatsoever from any of the witnesses more particularly in the evidence of PW-6. [Para 12] [1103-A-B] F

1.3. It is true the evidence of the prosecutrix itself, if acceptable, is sufficient to establish the charge against the accused but her evidence is so artificial which cannot be accepted. In the circumstances, the prosecution miserably failed to establish the charge against the appellant for the offence punishable under Section 376 IPC. [Paras 12 and 13] [1103-C-D] G

1.4. So far as the charge against the appellant framed under Section H

- A** 392 IPC is concerned there is no acceptable evidence except the self-serving statement of the Prosecutrix which is not acceptable for the same reason as recorded. Hence, the said charge framed against the appellant also fails. The conviction as well as sentences imposed upon the appellant for the offences punishable under Sections 376 and 392 IPC are accordingly set aside. The appellant who is in jail, is ordered to be released forthwith unless required in any other case. [Paras 14, 15 and 17] [1103-D-F]
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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 526 of 2007.

- C** From the Judgment and Order dated 28.02.2006 of the High Court of Judicature for Rajasthan at Jodhpur in S.B. CrI. No. 917 of 2002.

N.M. Popli and (A.C.) for the Appellant.

Dr. N.M. Ghatate and Jatinder Kumar Bhatia for the Respondent.

- D** The Judgment of the Court was delivered by

B. SUDERSHAN REDDY, J. 1. Leave granted.

- E** 2. This appeal by special leave is directed against the judgment of the Rajasthan High Court confirming the conviction of the appellant under Section 376 IPC and the sentence of ten years rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to further undergo three months rigorous imprisonment and under section 392 IPC, ten years rigorous imprisonment and a fine of Rs. 1,000/-, in default of payment of fine to undergo further three months rigorous imprisonment. All the sentences were directed to run concurrently. The appellant was charged with rape on Smt. Chandi (PW-3) wife of Shri Chhagan Lal. He was also charged for the offence punishable under Section 392 IPC.
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- G** 3. The prosecution story, briefly stated, is that on 25.8.1999 Smt. Chandi was selling chillies at village Singhji-ka-Khera at around 07-07.30 p.m.. The appellant Narain came to her and told her that his brother had a shop in his village and he will get her chillies sold at the shop of his brother. He accordingly got two sacks of chillies loaded into the trolley attached to the tractor which the appellant himself was driving. She also boarded into the trolley. The appellant started driving the tractor into the jungle. By the time it was dark. After driving sometime he stopped the tractor near a drain where there were
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“Lambool” trees on the pretext of answering the call of nature. The appellant entered into the trolley and dragged the sacks of chillies and put them on the ground and made her to get down from the trolley. He dragged her beneath the trolley of the tractor and committed rape. She started shouting but the appellant pressed her mouth with his hands. Thereafter, the appellant loaded the chillies bags into the tractor and made her to sit in the trolley and started driving the tractor hither and thither. He went on roaming here and there and stopped the tractor at Seriya (a place) surrounded by cactus plants. The appellant again made her to get down from the tractor and forcibly committed rape. When she started to raise hue and cry her mouth was shut by the appellant. Then again he loaded the chillies bags and made her to sit in the trolley and took her to a shed and once again committed rape. Finally he took her to the banks of a pond, made her to get down from the trolley and threatened her to push into the pond and forcibly snatched gold tops and Rs. 1,000/- and thereafter ran away from the scene of occurrence in his tractor. Then the prosecutrix reached village Aakoria and took shelter for night in the house of one Smt. Tej Kanwar (PW-6). It is alleged in the report (Ex.P-4) that rape has been committed by the appellant on the prosecutrix thrice and a sum of Rs. 1,000/- and gold tops have also been snatched away by him forcibly. Based on the report (Ex.P-4) the Police Station Kotadi, District Bhilwara issued first information report (Ex. P-5) and registered a case under Sections 366, 376 and 392 IPC against the appellant.

4. During the course of investigation, site was inspected and site-plan was drawn, the prosecutrix was got medically examined and her medical examination report (Ex.P-1) was obtained. The statement of Smt. Tej Kanwar (Ex. P-11) was recorded. After completion of the investigation, the police filed charge sheet against the appellant under Sections 376 and 392 IPC. The prosecution altogether examined 12 witnesses (PW-1 to PW-12) and 18 documents were marked (Ex. P-1 to P-18). The statement under Section 313 Cr.P.C. of the appellant was recorded in which he stated that due to enmity with Ramkunwar, Sarpanch (PW-7) he has been falsely implicated.

5. Dr. Ramesh Deedwanla (PW-1) has deposed that the appellant was well capable to commit sexual intercourse. Ramkunwar (PW-7) has deposed that about 3 years ago Smt. Chandi (PW-3) had come to him and informed him about the rape committed by the appellant. He deposed that at that time her Ghaghra was found torn. Ramesh Chandra (PW-9), SHO deposed that he received a report (Ex. P-4) on 25.8.1999 and accordingly issued first information report (Ex. P-5) and undertook the investigation. He got both the appellant

A and prosecutrix medically examined, seized the Ghaghra, having semen spots on it and sealed the same and sent it to Forensic Science Laboratory. Forensic Science Laboratory report is Exhibit P-18.

6. In order to consider as to whether the prosecution established the case against the appellant beyond reasonable doubt we are required to critically
B scrutinize the evidence of prosecutrix (PW-3) and Smt. Tejkanwar (PW-6) with whom PW-3 stayed on the fateful night and stated to have revealed the details of rape committed on her by the appellant. The evidence of Ramkanwar (PW-7) who is none other than the Sarpanch of the village who got exhibit P-4 (report) prepared and submitted, based on which FIR (Ex. P-5) was issued,
C is also required to be carefully evaluated.

7. In exhibit P-4 (report) the prosecutrix (PW-3) alleged that while she was selling chillies in the colony Bolon of Singhji-Ka-Khera village the accused came driving the tractor at about 7 or 7.30 p.m. on 24.8.1999 and offered to get her chillies sold in the shop of his brother in his village. He got two sacks
D of chillies kept in the trolley "*with the help of persons already sitting in the trolley*" It is alleged that the appellant had stopped the tractor near a drain where there were "Lambool" trees and forcibly committed rape on her. She started shouting but the appellant covered her mouth. She again sat into the trolley. The tractor was stopped at "Seriya" where the appellant again committed rape. She again tried to shout but the appellant covered her mouth. He once
E again made her to sit in the tractor and took her to a shed and once again committed rape. That after committing rape thrice the appellant took the prosecutrix to the banks of a pond where he forcefully snatched away Rs. 1000/-and gold tops from the prosecutrix and ran away with his tractor.

8. We are required to note that the persons who were already sitting in
F the trolley when the prosecutrix for the first time entered into the trolley along with her two sacks of chillies are not examined. Smt. Tejkanwar (PW-6) in her deposition stated that on the frightful night at about 10 or 11 O'clock the prosecutrix knocked at her door and she opened the door. The other members of the family were sleeping in the house. The prosecutrix stated that she was
G the resident of Vishniya and requested her to provide a bed-sheet so that she could sleep in the night. The material portion of her evidence reads as: "She said "give me the bed-sheet and I shall sleep." We gave her the bed-sheet to sleep on and she slept. She did not tell me anything else. I also did not ask her name. In the morning, she went from my house." This witness was
H declared hostile and subjected to cross examination by the Public Prosecutor.

In the cross-examination she stated that her statement was recorded by the police. Portion A to B of the police statement (Ex. P-11) in which she is alleged to have stated that at the relevant time the prosecutrix was weeping, is denied. It is categorically stated by her that she did not weep at all. Nothing is suggested as to why she should give false evidence. This witness nowhere stated to the effect that the Prosecutrix (PW-3) revealed anything about accused committing rape on her.

9. Ram Kumar (PW-7) was the Sarpanch at the relevant time of Akhepur village. In his evidence he stated that the prosecutrix came to him at about 8 or 9 O'clock in the morning and told him that the appellant had committed rape on her. She took him to the Police Station, Kotari. She told him that the appellant had committed rape on her three times. He accordingly got the report (Ex. P-4) filed on which he also signed.

10. The prosecutrix (PW-3) in her evidence for the first time in the court stated that the accused asked her to come to his village and to leave in the morning and by saying so he dropped her on the way and also pulled the chillies sacks from the trolley. It would be useful to re-produce her evidence for the purposes of appreciation as to whether her statement at all could be accepted.

"The accused asked me to come to his village and to leave in the morning. Then he dropped me at the Kankar (rough way) and dropped my sacks too. The accused did not say anything about getting the chillies sold. The accused had said that his brother would purchase both the sacks of chillies and asked me to come with him to his village. Then the accused committed rape on me twice at Kankar (rough way). Then he said that he would throw me in the pond. On this I said that I could come out of the pond by swimming. The accused at the time of making me to get down asked me to come down as he was not my servant and he threw both the sacks on the ground. The accused committed the rape, then he had covered my mouth and warned me that he would cut my ear. Then the accused ran away with tractor. After that I went to the village. It was 8 O'clock at night, dogs were barking in the village, when I met with the daughter-in-law of "Darogas". I told her that Narayan had committed rape on me. Then she said that Naran was such type of person. The accused had snatched rupees one thousand from me. Accused had also taken the jewellery from me. Thereafter I went to Akodiya. Then I slept at the

A place of "Darogas" with their ladies in the same village. Later on I went to Sarpanch, I do not remember his name. After that Sarpanch took me to the Kotadi. Then both of us had lodged the report at the Police Station. Naran was wearing white shirt and white "Dhoti". I was examined by the doctor. Exhibit P-1 is the Medical Report on which my signature is from A to B. Exhibit P-4 is the Police Report on which my signature is from A to B. My signature is from A to B on the chik F.I.R., Exhibit P-5. The Police had drawn the map of the place of occurrence, my signature was taken on the same. My signature is from A to B on the map of the place of occurrence, Exhibit P-6. My signature is from A to B on the Medical Slip, Exhibit P-7. The Police took the "Ghagra" into their custody and Exhibit P-8 is the Memo of recovery of "Ghagra" on which my signature is from A to B. The "Ghagra" was completely spoiled."

11. In the cross-examination the prosecutrix (PW-3) stated that she boarded in the trolley at about 5 O'clock in the evening and even by 7 O'clock they reached Singhpur village. There were number of villages between Singhpur and Akodiya. It is also required to appreciate that she stated in her evidence that even after the accused committed rape on her she sat in the tractor happily. It is not stated by her in her evidence that she raised any hue and cry even while passing through the number of villages. In the first information report (Ex. P-5) she stated that the accused committed rape on her thrice but in the evidence she stated that the accused committed rape on her only twice and not thrice. According to her the rape was committed on her on Kankar (rough way). She did not state that she offered any resistance though she was physically very strong. Medical report (Ex. P-1) says that there were no injuries on the body of the Prosecutrix (PW-3). There were no injuries on her private part. It is ultimately opined that "no definite opinion can be given regarding rape, however, she is habitual to sexual intercourse." In the circumstances, is it possible to believe that the prosecutrix (PW-3) has been subjected to rape twice by the accused as alleged? In the First Information Report (Ex. P-5) it is stated that the prosecutrix (PW-3) has been subjected to rape by the accused thrice but in her evidence she stated that she had been subjected to rape only twice. The accused even according to the prosecutrix (PW-3) was driving the tractor from Singhpur to Bharkiya crossing through the number of villages. It is not stated by the Prosecutrix (PW-3) that she made any attempt to get down from the tractor at any point of time. On the other hand, it is stated by her that she sat in the tractor happily.

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12. Yet another important aspect of the matter : In the first information report and as well as in her evidence the prosecutrix (PW-3) stated that she revealed the entire episode of committing rape on her by the accused to Smt. Tejkanwar (PW-6) in whose house in the Aakodiya village she slept on the fateful night. She also stated about the accused's snatching of Rs. 1,000/- from her and also some jewellery. Smt. Tejkanwar (PW-6) in her evidence did not state that the prosecutrix (PW-3) narrated the incident of rape committed on her by the accused to her. The evidence of the prosecutrix (PW-3) is full of material contradictions. There is no corroboration of whatsoever from any of the witnesses more particularly in the evidence of Smt. Tejkanwar (PW-6) who is a material witness. It is true the evidence of the prosecutrix (PW-3) itself, if acceptable, is sufficient to establish the charge against the accused but her evidence is so artificial which cannot be accepted.

13. In the circumstances, we are of the considered opinion that the prosecution miserably failed to establish the charge against the appellant for the offence punishable under Section 376 IPC.

14. That so far as the charge against the appellant framed under Section 392 is concerned there is no acceptable evidence except the self-serving statement of the Prosecutrix (PW-3) which we are not willing to accept for the very same reason recorded herein above. The said charge framed against the appellant also fails.

15. For all the aforesaid reasons, we hold that the prosecution failed to establish the charges framed against the appellant for the offences punishable under Sections 376 and 392 IPC. The conviction as well as sentences imposed upon the appellant for the offences punishable under Sections 376 and 392 IPC are accordingly set aside.

16. The appeal is allowed.

17. The appellant is in jail. He is ordered to be released forthwith unless required in any other case.

S.K.S.

Appeal allowed.