



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Criminal Appeal No. 209/1991

1. Madan son of Ramnarain Meena aged 20 years
2. Sheoji son of Cheetar Meena aged about 24 Years
3. Prahlad son of Dula Meena aged about 30 Years,
all resident of Village Jammaniya, Police Station
Chaksu, District Jaipur.

----Appellants

Versus

State of Rajasthan.

----Respondents

For Appellant(s) : Mr. Rinesh Gupta with
Mr. Sarwat Alam

For Respondent(s) : Mr. Manvendra Singh, PP

JUSTICE ANOOP KUMAR DHAND

Judgment

Reserved on 15/01/2025
Pronounced on 31/01/2025
Reportable

1. By way of filing of this appeal, validity of impugned judgment dated 24.06.1991 passed by the Sessions Judge, Jaipur District in Sessions Case No.92/1989 has been questioned.
2. By passing the impugned judgment, the appellants have been convicted for the offence under Section 376 IPC and they have been sentenced to undergo 10 years rigorous imprisonment (for short 'RI') with fine of Rs.500/- each and in default of payment of fine to further undergo one month's additional RI. They have also been convicted for the offence



under 447 IPC and sentenced to undergo three months RI. Both the sentences were ordered to run concurrently.

3. Brief facts of the prosecution case are that a written report (Ex.P1) was given by PW-1 "S" with Police Station Chaksu, District Jaipur on 23.05.1989 alleging therein that her husband Ramlal went to answer the nature's call when she was sleeping and that time three persons arrived and one accused person closed her mouth and other accused person caught hold her hands and legs and took her to other house, where they threw her on the ground and one accused closed her mouth and the other one caught hold her hands and thereafter, they committed rape with her one by one.

4. Upon this report, Crime No.142/1989 was registered with the Police Station Chaksu for the offences under Section 376(2), 379 and 34 IPC. After completion of the investigation, charge-sheet was submitted against the appellants for the offence under Section 376 IPC. Thereafter, charges were framed against the accused-appellants for the above offences. The accused-appellants denied the charges and claimed trial.

5. During the course of trial, the prosecution examined as many as nine witnesses, in support of its case. Thereafter, explanation of the appellants was recorded under Section 313 Cr.P.C., wherein they denied their participation in the incident and submitted that they have been falsely implicated. After hearing the arguments of both the sides, the learned Trial Judge convicted and sentenced the



appellants, as stated above, vide impugned judgment dated 24.06.1991.

6. Feeling aggrieved by the aforesaid judgment, the appellants have approached this Court by way of filing of this appeal.

7. Learned counsel for the appellant submits that all the three appellants were not known to the prosecutrix (PW-1) "S". Counsel submits that their names were told to her by her brother-in-law after commission of the offence. Counsel submits that even in the cross-examination, this witness has admitted that prior to 2-3 days of the incident, her mother-in-law told the names of the accused persons and also the fact that the accused persons are of criminal nature. Counsel submits that there was no reason or occasion available with the mother-in-law of the prosecutrix to discuss the names of the appellants with her, as no incident had took place till then. Counsel submits that this fact has been established on the record beyond reasonable doubt that the prosecutrix did not know the appellants, hence, under these circumstances, the prosecution was under legal obligation to conduct Test Identification Parade of the appellants, but the same has not been conducted, hence, under these circumstances, the prosecution has miserably failed to establish on record that the appellants were involved in the alleged incident with the prosecutrix. Counsel submits that the prosecutrix has not received any injuries on her private parts. Counsel submits that in case three persons would have committed rape with her, then, certainly she would have received several injuries



on her private parts, but no single injury has been sustained by her on her private parts, hence, under these circumstances, the prosecution has not come with correct version before the Court below. Counsel submits that human semen was found in the vaginal smear of the prosecutrix as per the Forensic Science Laboratory (FSL) report (Ex-P7), however in the detailed cross-examination, done with the prosecutrix, she has admitted that prior to the alleged incident, her husband did sexual intercourse with her, hence, possibility cannot be ruled out that the human semen which was found struck on the clothes of the prosecutrix belongs to her husband and not to the appellants. Counsel submits that though the recovery of cloths of the appellants has not been proved by the prosecutrix, as one witness PW-6 (Samda Ram) has turned hostile and the other witness Gopi Chand has not been examined. Counsel submits that the date of the alleged incident is 23.05.1989 and as per the statements of the prosecutrix, she remained at Police Station till night at 9.00 PM of 24.05.1989, hence, under these circumstances, the so called investigation conducted by the Investigating Agency appears to be doubtful, as there was no reason or occasion to prepare the other documents which creates serious doubt on the prosecution case. Counsel submits that there is no evidence available on the record regarding the seized articles as the 'Malkhana' Incharge was not produced and no evidence has been produced on the record as to how the articles were sent to the FSL. Counsel submits that as per Rule 6.40 of the Police Rules, the concerned





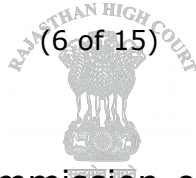
Superintendent of Police is required to send the articles to FSL, but here in the instant case, such evidence is missing. Counsel submits that in view of the submissions made herein above, the judgment passed by the Trial Court is not sustainable in the eye of law and the same is liable to be quashed and set aside and the appellants are liable to be acquitted.

8. Per contra, learned Public Prosecutor opposed the arguments raised by counsel for the appellant and submitted that the appellants were known to the prosecutrix and that is why, she has taken the names of the appellants, hence, there was no reason to conduct their identification parade. Counsel submits that the accused Madan and Sheoji have sustained injuries, which corroborates the allegation of rape against them. Counsel submits that the prosecution has proved its case beyond reasonable doubt against all the appellants, that is why, they have been found guilty and accordingly, they have been convicted and sentenced by the Court below by passing a reasoned and speaking judgment, which requires no interference of this Court and the appeal filed by the appellants is liable to be rejected.

9. Heard and considered the submissions made at Bar and perused the material available on the record.

10. The learned Trial Judge has convicted the appellants after relying upon the evidence of the prosecutrix.

11. In the case of **Krishan Kumar Malik vs. State of Haryana** reported in **2011 (7) SCC 130** it has been held by the Hon'ble Apex Court that 'no doubt, it is true that to hold



an accused guilty for commission of an offence of rape, the solitary evidence of the prosecutrix is sufficient, provided the same inspires confidence and appears to be absolutely trustworthy, unblemished and should be of 'sterling quality'.

12. Keeping in mind the aforesaid judgment, it is required to be considered, whether it is safe to convict the accused solely on the solitary evidence of the prosecutrix ? Whether the evidence of the prosecutrix inspires confidence and appears to be absolutely trustworthy, unblemished and is of sterling quality ?

13. Every trial is a voyage of discovery, in which, truth is the quest. The Court is duty bound to find truth from the evidence, so adduced by the parties.

14. With this object, now this Court will scrutinize the evidence of the prosecution.

15. The star witness, in this case is the victim PW-1 'S' and the documentary evidence is FSL Report (Ex.P7) upon which the Trial Judge convicted and sentenced the appellants.

16. The prosecutrix (PW-1) 'S' has deposed in the witness box that around 14 months back, she was sleeping in the room along with her husband 'R'. Her husband went to answer the nature's call. Three persons arrived there and covered her mouth and took her to godown behind the house and committed rape with her. Her brother-in-law, PW-3 'B' came and raised hue & cry, then her mother-in-law, PW-2 'N' arrived on the spot and thereafter, the accused ran away from the spot.



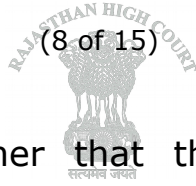
17. The prosecutrix PW-1 "S" was cross-examined and in her cross-examination she admitted that she did not know the accused persons at the time of the occurrence when rape was committed with her. Her brother-in-law came and disclosed the names of the accused to her. The extract of her cross-examination is at page No.9 of her statement and the same reads as under:

"..... यह बात सही है कि जिस वक्त तक मेरे साथ घटना वाली रात बुरा काम किया गया तब तक बुरा काम हो जाने तक मुझे खुद को यह मालूम नहीं था कि मेरे साथ बुरा काम करने वाले कौन हैं, मुझे तो मेरे जेठ ने आकर बताया कि मेरे साथ बुरा काम करने वाले प्रहलाद, मदन और श्योजी राम हैं।...."

18. This witness further submits in her cross-examination that her mother-in-law told her two-three days before the incident about the appellants that they were hooligans and scoundrels ("Gunda" & "Badmash"). But at that time, the accused were not present before them. The extract of her cross-examination at page no.4 of her statement which reads as under:

"मेरी सास ने मुझे मुलजिमान के बारे में तीनों मुलजिमान के बारे में घटना के दो-तीन रोज पहले बताया था कि ये लोग गांव के बदमाश गुण्डे हैं, जिस समय मुलजिमान का गुण्डा बदमाश होना मेरी सास ने बताया उस समय कोई भी मुलजिमान सामने नहीं था। ..."

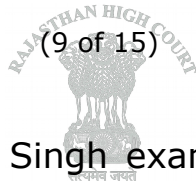
Meaning thereby the accused appellants were not known to the prosecutrix before the incident and even at the time of the incident, she was not knowing them. Her mother-



in-law, Narayani told her that these three persons are hooligans and scoundrels but they were not present there at that time. Then she said that at the time of occurrence she was not knowing the names of the accused, her brother-in-law, PW-3 "B" disclosed her their names after the occurrence, hence, it is clear that the accused were not known to her before and at the time of occurrence. Even then no test identification parade of the accused appellant was conducted by the Investigating Agency with the prosecutrix to identify the accused-appellants as to whether they committed the offence of rape with her.

19. This witness has admitted in her cross-examination that there was dark in the night, hence, she could not identify that which one of the accused-appellant had caught hold her hands and legs. While her mother-in-law PW-2 "N" has stated that it was a full moon night (रात चांदनी थी). Hence, these witnesses are not clear whether there was darkness or moonlight when the incident occurred.

20. PW-3 "B" has submitted that after hearing the hue & cry of the prosecutrix "S" he went on the spot and saw the appellants. Behind his back Gopal, Narayan, Arjun and two-three ladies arrived on the spot. But neither these witnesses (except PW-4 Arjun) have been examined by the prosecution nor they made any attempt to catch the accused persons on the spot. Hence, presence of these persons or accused persons on the spot becomes highly doubtful.



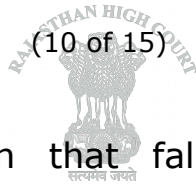
21. PW-5 Dr. Navratan Singh examined the prosecutrix on 23.05.1989 and prepared her injury report (Ex.P-2) and found certain injuries on certain parts of the body of the prosecutrix 'S' and has not given any opinion about recent intercourse with her and kept the opinion reserved till receipt of FSL Report.

22. The FSL Report (Ex.P-7) reveals that the human semen was detected on the clothes of the prosecutrix and accused. Now, the question remains for consideration of this Court is whether the human semen detected on the clothes of the prosecutrix belongs to the appellants or her husband ?

23. The prosecutrix PW-1 'S' has admitted in her cross-examination that before the incident took place her husband Rampal had sexual intercourse with her. The extract of her statement at page No.7 reads as under:

"... जिस रोज यह घटना मेरे साथ घटित हुई उस रोज घटना के पहले मेरे पति रामपाल ने मेरे साथ सम्भोग किया था। मेरे पति रामपाल ने मेरे साथ जो घटना से पहले सम्भोग किया था, उसका पानी मेरे घाघरे के लगा था और खून भी मेरे घाघरे के लगा था..."

She has admitted that after having intercourse with her husband, the water (semen) and blood struck on her clothes. Hence, the prosecution is not sure whether the semen found on the clothes of the prosecutrix belongs to her husband or appellants. Even the FSL report is silent in this regard as no grouping of semen or blood is there in FSL report.



24. Now, the question that falls for determination is whether the prosecution has proved its case beyond the reasonable doubt against the appellants ?

25. This fact is clear from the cross-examination of the prosecutrix PW-1 'S' that the appellants were not known to her at the time of commission of offence. Her brother-in-law, PW-3, "B" told her the names of the accused. At the same time she stated that her mother-in-law, PW-2, "N" told her the names of the accused 3-4 days prior to the occurrence. Meaning thereby she was not knowing the appellants and their names. Hence, under such circumstances, the Investigating Agency was supposed to conduct the Test Identification of the appellants with the prosecutrix.

The idea of holding test identification parade under Section 9 of the Indian Evidence Act is to test the veracity of the witness on the question of capability to identify an unknown person whom the witness may not have seen. If no test identification parade is held, then it will be wholly unsafe to rely on his/her bare testimony regarding identification of the accused.

26. The identification of the accused by the prosecutrix on the basis of telling her their names by her mother-in-law (PW-2) "N" and brother-in-law (PW-3) "B" is worthless. There is no link to connect the appellants with the incident occurred with the prosecutrix. For want of legally acceptable evidence regarding identification of the appellants, they cannot be held guilty.



27. The appellants are not some renowned personalities, who could be identified on the ground that prosecutrix was told about their names by her mother-in-law and brother-in-law. When the victim was not aware about the names of the appellants, then how she figured their names in her statements, such factual aspect of the matter is fatal to the case of the prosecution.

28. The Courts, while trying an accused on the charge of rape, must deal with the case with utmost sensitivity, examining the broader probabilities of a case and not get swayed by minor contradictions or insignificant discrepancies in the evidence of witnesses which are not of a substantial character.

29. However, even in a case of rape, the onus is always on the prosecution to prove, affirmatively each ingredient of the offence it seeks to establish and such onus never shifts. It is no part of the duty of the defence to explain as to how and why in a rape case the victim and other witness have falsely implicated the accused. Prosecution case has to stand on its own legs and cannot take support from the weakness of the case of defence. However great the suspicion against the accused and however strong the moral belief and conviction of the court, unless the offence of the accused is established beyond reasonable doubt on the basis of legal evidence and material on the record, he cannot be convicted for an offence. There is an initial presumption of innocence of the accused and the prosecution has to bring home the offence

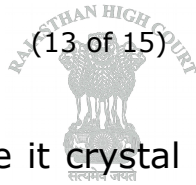


against the accused by reliable evidence. The accused is entitled to the benefit of every reasonable doubt as held by the Hon'ble Apex Court in the case of **Tukaram & Anr. v. The State of Maharashtra, AIR 1979 SC 185;** and **Uday v. State of Karnataka, AIR 2003 SC 1639.**

30. The prosecution has to prove its case beyond reasonable doubt and cannot take support from the weakness of the case of defence. There must be proper legal evidence and material on record to convict the accused. Conviction can be based on sole testimony of the prosecutrix provided it lends assurance of her testimony. However, in case the court has reason not to accept the version of prosecutrix on its face value, it may look for corroboration. In case the evidence is read in its totality and the story projected by the prosecutrix is found to be improbable, the prosecutrix case becomes liable to be rejected.

31. The court must act with sensitivity and appreciate the evidence in totality of the background of the entire case and not in the isolation. The court is required to adjudicate whether the accused committed rape on the victim on the occasion complained of.

32. The instant case is required to be decided in the light of the aforesaid settled legal propositions. This Court has appreciated the evidence on record and reached the conclusions mentioned hereinabove. Even by any stretch of imagination it cannot be held that the prosecutrix was not knowing the appellant prior to the incident. The given facts



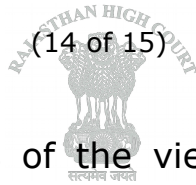
and circumstances, make it crystal clear that if the evidence of the prosecutrix is read and considered in totality of the circumstances along with other evidence on record, in which the offence is alleged to have been committed, this Court is of the view that her deposition does not inspire confidence. The prosecution has not disclosed the true genesis of the crime. In such a fact-situation, the appellant becomes entitled to the benefit of doubt.

33. The purpose of cross-examination under Section 138 of the Indian Evidence Act is to elicit the suppressed fact in discovering the truth and to impeach the credit of a witness. The real objective of cross-examination is to elicit the truth. It is not a tongue twister play or a test of talent for the witness.

In the instant case, the defence has shaken the credibility of the prosecutrix in her cross-examination that she was not aware about the names and identity of the accused before and at the time of commission of offence. She has taken the names of the appellants because her mother-in-law and brother-in-law told her their names.

34. Having gone through and considered the depositions of the prosecutrix, this Court finds that there are material contradictions in her testimony with regard to her knowing the accused persons prior to and at the time of commission of offence. Hence, her version is not believable.

35. Considering these facts, the prosecution is failed to prove its case beyond reasonable doubt against the



appellants, this Court is of the view that the judgment of conviction does not survive in the judicial scrutiny, before this Court, as such, the same is liable to be quashed and is hereby quashed. Consequently, the appeal is allowed.

36. The appellants are acquitted of the offence for which they have been convicted in the Trial Court.

37. The appellants are directed to furnish bail bonds in the sum of Rs.1 Lakh each with two sureties of Rs.50,000/- each to the satisfaction of the Trial Court in pursuance of the provisions of Section 483 BNSS by giving an undertaking to appear before the Hon'ble Apex Court in case the judgment passed by this Court is assailed by the State or the victim/complainant.

38. Before parting with the order, this Court observes that the Investigating Agency has not discharged its duties properly. In order to pacify the public opinion which may revolt against the Police for non-detection of such crimes, the Investigating Agency avoids the embarrassing situation by implicating a person who cannot be connected with the crime by legally acceptable evidence. In the instant case, it appears that the prosecuting agency has miserably failed to apprehend or book the real culprits. Had the Police conducted Test Identification Parade of the accused persons, the situation could have been different. Taking a serious note of the situation it is expected from the Police Investigating Agencies of the State to conduct the Test Identification



Parade of the alleged accused from the victim with whom the occurrence has taken place.

39. Let a copy of the judgment be sent to the Director General of Police, Jaipur and the Principal Secretary, Department of Home, Jaipur for issuing necessary and proper instructions, standing order or guidelines to all the Police Investigation Officers of the State to conduct the Test Identification Parade of the accused with the victim in those cases where the accused is not known to the victim.

(ANOOP KUMAR DHAND),J

KuD/18